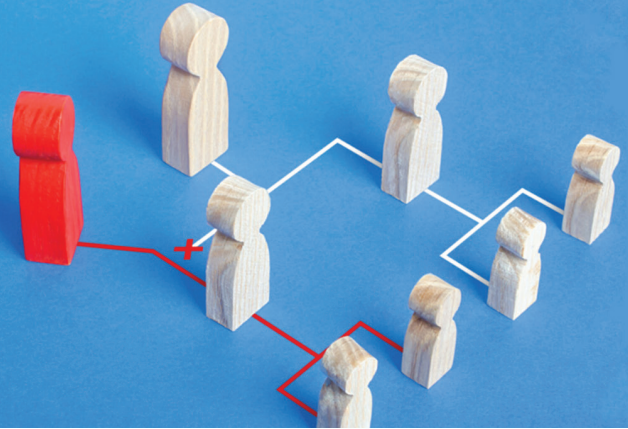


"Your Estate Matters" Legal-ease

By Ronda M. Gabb, NP, JD, RFC



There IS an "I" in **LEGITIME!**



If you are not from Louisiana, or if you have not lived here for a very long time, you may want to sit down before you read this. Louisiana is a Civilian Law jurisdiction, not Common Law like the other 49 states. Our laws stem from the Code Napoleon, yep, that Napoleon—Mr. Bonaparte himself. So here we go...only Louisiana has what is called "**Forced Heirship**." Pretty much like the name implies: under certain conditions, our law "forces" you to leave your "heir" something. That something is called the **LEGITIME** (pronounced: LEDGE-A-TEAM).

In Louisiana, if you have children under the age of 24, or children of any age with special needs or disabilities, our law requires you to leave them an inheritance. Your grandchildren with special needs can also be your forced heirs if your child, who is their parent, has predeceased you. This is why planning for families with special needs children (and grandchildren) in Louisiana is such an important and meticulous process. If you have forced heirs and your Last Will and Testament leaves your spouse everything in full ownership, you have now left your loved ones a real mess. Our law does not allow the spouse to inherit everything when there are disabled children or children under age 24. I wish I could tell you that I don't see Wills like this drafted by local attorneys,

but I do, all the time. I can understand if a grown child, or grandchild's, disability was unknown when drafting the Will, but I am referring to Wills that actually address the "minor" children and still leave all to the spouse! It is also very common for people who move to Louisiana with Wills or Living Trusts from other states that leave each other everything. I have never seen a Will or Trust that was drafted outside of Louisiana that properly complies with our forced heirship issues.

How much is the "legitime"? The legitime ("forced portion") can never be more than 50% of your estate, so you are always free to leave the remaining 50% (the "disposable portion") to whomever you wish. The minimum amount of legitime is 25% of your estate, or an intestate child's share, whichever is less. What we mean by an "intestate" share is an equal amount based upon the number of children you have. For example, if you had 10 children and only one is a forced heir, then the legitime would be 10%, not 25%, as that 10% amount would be less. A good rule of thumb is that with four children or less, the minimum legitime is always 25%, and with five children or more, the legitime is 20% or less. The forced portion and the disposable portion will always add up to 100%.

By now, I have probably made you very nervous, but relax...with a properly drafted Will or Living Trust, a surviving spouse will never notice the difference. An experienced estate planning attorney will assure that your Will/Trust not only comports with Louisiana's unique laws but will also allow the surviving spouse to retain a lifetime "super" usufruct over the legitime that gives the spouse 100% complete control and sole authority over all the assets. Additionally, if any of your forced heirs with special needs are receiving Medicaid benefits, we will draft a special needs trust to hold their legitime so they will not lose their Medicaid eligibility.

A little history here is needed, prior to 1996, this "legitime scheme" was due ALL children, regardless of age (with minimal archaic exceptions). Since then, however, if your child is 24 or older and is not disabled, you are free to leave them as much or as little inheritance as YOU choose. So now, with the legitimate exceptions explained above, an inheritance should be a gift and not a right. Yet our phones still ring and a grown, perfectly healthy child, is trying to claim an inheritance as a "forced heir," which would take assets and control from their surviving parent, to which they are not entitled. Sometimes, there IS an "I" in Legitime!



See other articles and issues of interest!

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