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Wills: Louisiana

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A Q&A guide to the law of wills in Louisiana. This Q&A addresses state laws and customs that impact wills, including the key statutes and rules related to wills, the rules of intestacy, the requirements for creating a valid will, common will provisions, information concerning fiduciaries, and information regarding making changes to wills after execution, special circumstances regarding gifts made under a will or gift recipients, and lost wills. Answers to questions can be compared across a number of jurisdictions (see Wills: State Q&A Tool).

Key Statutes and Rules

1. What are the key statutes and rules that govern wills in your state?

Louisiana Civil Code articles 1570 to 1626 govern the rules relating to dispositions *mortis causa* (transfers made by will). Because Louisiana is a civil law state, it does not recognize any common law doctrines. Therefore, if a section of this Q&A notes that Louisiana law does not permit something, it is because there is no statute that expressly permits it.

Who Can Create a Will

2. Is there a minimum age requirement to create a will?

A person must be a least 16 years of age to make a donation *mortis causa* (leave a bequest by will) in Louisiana, except in favor of the minor's spouse or children, if any (La. Civ. Code Ann. art. 1476).

3. What is the standard of mental capacity required to create a will?

A person must comprehend generally the nature and consequences of the disposition the person is making to create a valid will in Louisiana (La. Civ. Code art. 1477).

Louisiana courts have interpreted this to mean that a testator needs to understand the nature of the testamentary act and appreciate its effects (*Succession of Horrell*, 680 So.2d 725, 727 (La. App. 4 Cir. 1996)). Even a person generally lacking capacity can have a lucid moment during which the person has the necessary capacity to make a testament (*Succession of Christensen*, 649 So.2d 23, 26-27 (La. App. 1 Cir. 1994)).

4. Can an agent under a power of attorney create a will on behalf of a testator?

A mandatary (an agent) under a power of attorney cannot create a will on behalf of a testator in Louisiana (La. Civ. Code Ann. art. 1571).

Permissible Form of Will

5. What form must the will take? In particular, please specify whether:

- Handwritten (holographic) wills are permitted.
- Oral (nuncupative) wills are permitted.
- Contractual wills are permitted.
- Statutory wills are permitted.
- Electronic wills are permitted.
- Out-of-state wills are binding.

There are only two valid forms of wills in Louisiana:

- Olographic (holographic).
- Notarial testaments.

(La. Civ. Code Ann. art. 1574.)

Handwritten (Olographic) Testaments

A valid olographic testament must be:

- Entirely written in the hand of the testator.
- Dated (anywhere on the document).
- Signed by the testator at the end.

(La. Civ. Code Ann. art. 1575.)

Oral (Nuncupative) Wills

Louisiana does not permit oral wills (La. Civ. Code Ann. art. 1574).

Contractual Wills

Louisiana does not permit contractual wills (La. Civ. Code Ann. art. 1574).

Notarial Testaments

In Louisiana, a notarial testament must be:

- Dated.
- In writing.

(La. Civ. Code art. 1577.)

The testator must, in the presence of a notary and two competent witnesses:

- Declare or signify that the document being signed is the testator's testament.
- Sign it at the end and on every page.

(La. Civ. Code art. 1577(1).)

Below the final signature of the testator, the two witnesses and the notary sign an attestation clause. Customarily, the testator also signs the attestation clause, but the testator's signature is not a requirement. The testator, witnesses, and notary must all be in the room together as each one signs and no one can leave the room until the last person has finished signing or the testament is an absolute nullity. (La. Civ. Code art. 1577; see Question 6: Sample Attestation Clause and Standard Clause, Signature Page for Will (LA).)

Exceptions to these requirements for certain situations, such as if the testator cannot read, can be found in La. Civ. Code art. 1578 to 1580.1.

Electronic Wills

Louisiana does not permit electronic wills.

Out-of-State Wills

Louisiana recognizes a testament that was validly executed under the laws of the state (or country) where executed or under the laws of the testator's state of domicile (La. Code Civ. Proc. Ann. art. 2888; La. Civ. Code art. 3528).

Will Execution Requirements

6. What are the execution requirements for a valid will? In particular, please specify:

- Requirements for the testator's signature.
- Any requirements for witnesses to a will.
- Any requirements for the will to be notarized.
- An example of an attestation clause.
- The requirements for a self-proving affidavit.
- If electronic wills are permitted, any different execution requirements.

Testator's Signature

In Louisiana, the testator must sign the testament on each page and at again the end of the dispositive provisions (La. Civ. Code Ann. art. 1577(1)).

Witness Requirements

At least two witnesses must sign the will in the presence of the testator and each other (La. Civ. Code Ann. art. 1577).

A person cannot be a witness to any Louisiana testament if the person is:

- Insane.
- Blind.

- Under the age of 16.
- Cannot sign the person's name.
- Deaf or cannot read.

(La. Civ. Code Ann. art. 1581.)

Best practice is to avoid having one of the attesting witnesses be a beneficiary under the will. While doing so does not invalidate the will, any legacy in the will for that beneficiary is invalid, unless the beneficiary would also be an heir in intestacy. If the beneficiary is an heir, they are entitled to receive the lesser of:

- The witness's intestate share.
- The legacy in the testament.

(La. Civ. Code Ann. art. 1582.)

Notary Requirements

In Louisiana, a notarial testament must be signed by the testator in the presence of:

- A notary.
- Two witnesses.

The notary and the two witnesses must sign an attestation clause in the presence of the testator and each other. (La. Civ. Code Ann. art. 1577.)

Sample Attestation Clause

The attestation clause must be in the form provided by statute or substantially similar, and the sample attestation clause below meets the statutory requirements (La. Civ. Code Ann. art. 1577(2)).

PARISH OF [PARISH NAME]

STATE OF LOUISIANA

The foregoing testament consists of [NUMBER OF PAGES IN WORDS] ([NUMBER OF PAGES]) typewritten pages (this page included) and is executed under the provisions of the Louisiana Civil Code articles 1576 through 1580.1, as amended. In our presence, the testator has declared or signified that this instrument is [his/her/their] last will and testament and that [he/she/they] has signed this testament in our presence at the end and on each other separate page (initialing each correction, insertion, addition or interlineation) and, in the presence of the testator and each other, we have hereunto subscribed our names on this [DATE] day of [MONTH], [YEAR], at [CITY], Louisiana.

WITNESSES:

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

Notary Public Name _____

Notary Public ID No. _____

Self-Proving Affidavit

Louisiana does not permit self-proving affidavits. They are not necessary as notarial testaments do not need to be proved (La. Code Civ. Proc. art. 2891).

Electronic Will Execution Requirements

Louisiana does not permit electronic wills.

Limitations on Gifts to Fiduciaries and Attorney Draftsperson

7. Are there any limitations on beneficiaries a testator can name in a will? In particular, please specify if a will can provide for gifts to:

- Executors.
- Gifts to trustees named in the will.
- Gifts to guardians.
- The lawyer who drafted the will.

A legacy to a witness, a witness's spouse, or the notary of a Louisiana testament is invalid. However, if the witness or the witness's spouse is an heir in intestacy, they may receive the lesser of:

- Their intestate share.
- The legacy in the testament.

(La. Civ. Code Ann. arts. 1582 and 1582.1.)

Louisiana law generally does not prohibit legacies to fiduciaries named in the testament, absent fraud, deception, undue influence, or lack of testamentary capacity (La. Civ. Code Ann. art. 1479; see Question 3).

Gifts to Executors

A Louisiana will generally can provide for gifts to executors.

Gifts to Trustees Named in the Will

A Louisiana will generally can provide for gifts to trustees named in the will.

Gifts to Guardians

A Louisiana will generally can provide for gifts to guardians.

Gifts to Lawyer Draftsperson

The Louisiana Rules of Professional Conduct prohibit a lawyer from drafting a testament that leaves a substantial gift to that lawyer or a member of that lawyer's family, unless the lawyer is related to the testator (LA ST BAR ART 14 RPC Rule 1.8(c)). Should a lawyer still draft a testament that leaves to the lawyer a substantial gift, in addition to facing a complaint to the Office of Disciplinary Counsel, the legacy is likely to be voidable as a product of undue influence (La. Civ. Code Ann. art. 1479).

The Louisiana the Rules of Professional Conduct are deemed to have the force and effect of substantive law (*Succession of Wallace*, 574 So.2d 348, 350 (La. 1991). Therefore, a bequest to an unrelated lawyer who drafted the will is voidable as a violation of the rules (see *In re Succession of Parnham*, 755 So. 2d 265, 271 (La. App. 1st Cir. 1999)).

Rights of Family Members to Inherit

8. Are a testator's will bequests affected by community property laws, elective share laws, or other local laws that prohibit a testator from excluding a beneficiary from taking a share in the estate? In particular, please specify if a will can disinherit:

- The testator's spouse.
- A child of the testator.

Disinheriting a Testator's Spouse

Community Property

Louisiana is a community property state (La. Civ. Code Ann. arts. 2334 and 2335). Under Louisiana's community property laws, a decedent's surviving spouse owns an undivided one-half of all items classified as community property, without regard to how that property is titled (La. Civ. Code Ann. arts. 2336 and 2338). Louisiana presumes all property acquired during marriage by either spouse is community property unless it is shown to be the separate property of one of the spouses (La. Civ. Code Ann. arts. 2340). Separate property is generally property that is either:

- Acquired by a spouse before establishing a community property regime (before marriage).
- Acquired by a spouse with separate property or with separate and community property when the value of the community property is inconsequential in comparison with the value of the separate property used.
- Acquired by inheritance or donation (gift) to a spouse individually, including a gift of a community property interest by the other spouse.
- Damages awarded to a spouse for breach of contract against the other spouse or for loss from fraud or bad faith in the management of community property by the other spouse.
- Damages or other indemnity awarded to a spouse in connection with the management of the spouse's separate property.
- Acquired by a spouse from voluntary partition of the community during the existence of a community property regime.

(La. Civ. Code Ann. arts. 2341 and 2343; *Emerson v. Emerson*, 322 So.2d 347, 351 (La. Ct. App.1975).)

Louisiana considers income from:

- Community property as property acquired during the community, unless expressly classified as separate property under La. Civ. Code art. 2341 (La. Civ. Code Ann. art. 2338).
- Income derived from separate property during a community property regime as community property, unless reserved as separate property under statute (La. Civ. Code Ann. art. 2339).

An obligation incurred by a spouse during a community property regime for the common interest of the spouses or for the interest of the other spouse is a community obligation (La. Civ. Code Ann. art. 2360). Obligations incurred by a spouse during the existence of a community property regime are presumed to be community obligations (La. Civ. Code Ann. art. 2361). However, separate property obligations include obligations incurred either:

- By one spouse before the establishment of a community property regime.

- During the existence of a community property regime, but not for the common interest of the spouses or for the interest of the other spouse.
- From an intentional wrong or for the separate property of the spouse to the extent it does not benefit both spouses, the family, or the other spouse.

(La. Civ. Code Ann. art. 2363.)

Except as otherwise provided by statute (for example, a marital portion or a distribution to a forced heir), a decedent generally may dispose of the decedent's community and separate property interests in the decedent's will however the decedent wishes. If the decedent does not dispose of a community or separate property interest in the decedent's will or the decedent died without a will, Louisiana disposes of these interests according to Louisiana's intestacy statutes (see Question 16).

Marital Portion

There is no direct prohibition against a deceased spouse not providing for a surviving spouse in the deceased spouse's will. However, when a spouse dies rich in comparison to the surviving spouse, the surviving spouse is also entitled to claim a share of the predeceased testator spouse's estate. In Louisiana, this right is called the marital portion and the measure (amount) of a surviving spouse's marital portion is called the quantum, which is:

- One-fourth of the decedent's estate outright, if the decedent died without children.
- One-fourth of the decedent's estate in usufruct (with a right of use) for life of the surviving spouse, if the decedent is survived by three or fewer children.
- An intestate share in usufruct for the life of the surviving spouse, calculated as if the surviving spouse were an additional child, if the decedent is survived by more than three children.

(La. Civ. Code Ann. arts. 2432 and 2434.) While there is no statutory or common law definition for the meaning of when a spouse dies rich, for purposes of awarding the marital portion, a surviving spouse will ordinarily be awarded the marital portion when the comparison of assets owned by the deceased spouse shows a ratio of 5 to 1 or more to the assets owned by the surviving spouse (La. Civ. Code Ann. art. 2432, Paragraph (c) in Rev. Comm.).

The marital portion, as calculated above, is reduced by any legacies or payments received due to the death of the testator. It is also subject to a cap of one million dollars. (La. Civ. Code Ann. arts. 2434 and 2435.)

Because Louisiana is a community property state, most spouses are worth relatively equal amounts. Therefore, few surviving spouses qualify to elect a marital portion, which qualification generally can occur if a surviving spouse married someone with substantial separate property assets.

Disinheriting a Child of the Testator

A parent may disinherit a child if the child either:

- Raised a hand to strike a parent or has struck a parent. A threat is not sufficient.
- Was guilty of cruel treatment, crime, or grievous injury towards a parent.
- Attempted to take the life of a parent.
- Without any reasonable basis, accused a parent of committing a crime punishable by life imprisonment or death.
- Used any act of violence or coercion to hinder a parent from making a testament.
- Being a minor, married without the consent of the parent.
- Was convicted of a crime punishable by life imprisonment or death.
- Unless on active duty in the US military at the time, fails to communicate with the parent without just cause for a period of two years and:
  - the child has attained the age of majority; and
  - knows how to contact the parent.

(La. Civ. Code Ann. art. 1621.)

Defenses to disinherison are:

- The child was not capable of understanding the impropriety of the child's behavior, because of the child's age or mental capacity.
- The behavior was unintentional or justified under the circumstances.

The defense must be established by a preponderance of the evidence, but the unsupported testimony of the heir, by itself, is not sufficient to establish the defense. (La. Civ. Code Ann. art. 1626.)

Disinheriting Forced Heirs

Except for cause, a testator may not disinherit a child that is a forced heir from a Louisiana estate (La. Civ. Code Ann. art. 1494). A forced heir is a child of the testator under the

age of 24 or who is permanently disabled. Disabled heirs are defined as permanently incapable of taking care of themselves or administering their estates at the time of death of the decedent. (La. Civ. Code Ann. art. 1493(A).)

Grandchildren can be forced heirs of a decedent if that grandchild's parent predeceases the decedent and either:

- The predeceased parent would have been under the age of 24 at the time of the decedent's death (if the predeceased parent was still living).
- The surviving grandchild is permanently incapable of taking care of themselves or administering their estates at the time of death of the decedent.

(La. Civ. Code Ann. art. 1493(B), (C).)

The statute also contains a controversial and highly litigated definition of a permanently disabled forced heir, which includes descendants that, at the time of death of the decedent, have an inherited, incurable disease or condition that may render them incapable of caring for themselves or administering their estates in the future (La. Civ. Code Ann. art. 1493(E); see, for example, *In re Succession of Carroll*, 125 So.3d 505, 507-09 (La. App. 2 Cir. 2013) and *Stewart v. Estate of Stewart*, 966 So.2d 1241, 1243-44 (La. App. 3 Cir. 2007)).

If there is only one forced heir, then the forced portion equals the lesser of one-fourth of the decedent's estate or the forced heir's intestate share of the decedent's estate. If there are two or more forced heirs, then the forced portion equals one-half of the decedent's estate and each forced heir's share (called a legitime) equals the lesser of an equal share of the forced portion or the forced heir's intestate share of the decedent's estate. (La. Civ. Code Ann. art. 1495 and 1495.1.)

Common Will Provisions

9. Discuss specific provisions commonly found in a will and the rules that apply to these provisions in your state. In particular, please discuss the following provisions and their effect:

- Incorporation by reference.
- Disposition of remains or for funeral wishes.
- No-contest clause.
- Rule against perpetuities.
- Sample rule against perpetuities clause.

Incorporation by Reference

There is no statute or other rule of law that allows provisions to be incorporated by reference into a Louisiana testament, except that trust provisions may be incorporated by reference into a testamentary trust (La. R.S. 9:1754).

Disposition of Remains or Funeral Wishes

It is common practice for a testator to include burial instructions in the testator's Louisiana testament. If a person prefers their body to be cremated, the appointment of an authorizing agent is required (La. R.S. 37:877(A), (B)(1)). Cremation and the appointment of an authorizing agent may be contained in a testament or a separate affidavit (La. R.S. 37:876(A)(1)). If cremation is specifically prohibited in a testament (or other notarized document), no one can serve as an authorizing agent (La. R.S. 37:876(E)).

No-Contest Clause

No-contest clauses are not widely used in Louisiana testaments, although there is limited authority for the proposition that a bequest can be conditioned on a legatee taking (or not taking) certain actions, including an unreasonable attack on the validity of a testament (see, for example, *In re Succession of Scott*, 950 So.2d 846, 848 (La. App. 1 Cir. 2006)). A Louisiana court is unlikely to revoke a bequest to a legatee who successfully attacks a testament.

Rule Against Perpetuities

Louisiana does not recognize the common law concept of a rule against perpetuities. However, testamentary trusts that do not terminate earlier under their terms or by court order terminate automatically on:

- If at least one settlor and one income beneficiary are natural persons, on the later of:
  - the death of the last surviving income beneficiary; or
  - twenty years after the death of the settlor last to die.
- If none of the settlors is a natural person but at least one income beneficiary is a natural person, on the later of:
  - the death of the last surviving income beneficiary; or
  - twenty years after the creation of the trust.
- If at least one settlor is a natural person but none of the income beneficiaries is a natural person, twenty years after the death of the settlor last to die.

- If none of the settlors or income beneficiaries are a natural person, fifty years after the creation of the trust.

(La. R.S. 9:1831.) Louisiana does enforce a trust that states a longer term through the maximum term stated (La. R.S. 9:1831). Charitable trusts may be perpetual (La. R.S. 9:2290).

Sample Rule Against Perpetuities Clause

The Rule Against Perpetuities is a common law concept that does not exist in Louisiana. However, there is statutory language limiting the terms of trusts (see Rule Against Perpetuities). Because these limits are prescribed by statute, trusts generally do not include this limiting language.

Executors

10. What are the rules regarding executor appointments in your state? In particular, please discuss:

- The terminology that is used to identify the person who is in charge of the estate (referred to here as the executor).
- Criteria for qualifying as an executor, including limitations on who a testator can name as executor.
- Rules regarding compensation of executors.
- Whether the drafting attorney can serve as executor.
- Priority rules for appointment of executor if the named executor fails to qualify.
- Who has authority to act when there are multiple executors.

Terminology Used to Identify Person in Charge of Estate

In Louisiana, multiple terms can be used to an individual administering a succession (a decedent's estate):

- An **executor** is the person named in a testament to administer a decedent's estate.
- An **administrator** is the person appointed by the court to administer an intestate succession.
- A **succession representative** is the generic term used to refer to the person administering a succession and can refer to either an executor or an administrator.

Qualification as Succession Representative

Any person or entity may serve as a succession representative in a Louisiana probate proceeding, unless they are:

- Under 18 years of age.
- Judicially declared incompetent or proved to be mentally incompetent.
- A convicted felon, under the laws of the US or of any state or territory.
- A nonresident of the state who does not appoint a resident agent for the service of process in all actions and proceedings regarding the succession and caused the appointment to be filed in the succession proceeding.
- A corporation not authorized to perform the duties of the office in this state.
- A person proved to be unfit for appointment because of bad moral character.

(La. Code Civ. Proc. Ann. art. 3097.)

Compensation of Succession Representatives

Compensation for succession representatives is as follows:

- Executors are entitled to reasonable compensation as set out in the testament.
- Administrators are entitled to a reasonable amount as agreed on by the surviving spouse and the decedent's heirs or legatees.
- If the testament does not define compensation for the succession representative, and the surviving spouse and heirs cannot agree on an amount, the succession representative is entitled to 2.5 percent of the amount of the inventory (the gross value of the probate estate).

The court may increase the amount of the compensation on a proper showing that an increase is warranted. (La. Code Civ. Proc. Ann. art. 3351.)

Drafting Attorney as Executor

The drafting attorney may be designated as an executor in a Louisiana testament. Because appointment as an executor is not considered a legacy, the rules prohibiting legacies to the drafting attorney do not apply (La. Civ. Code Ann. art. 1583). However, the drafting attorney is subject to, and must comply with, the Louisiana Rules of Professional Conduct regarding doing business with a client and may only charge reasonable compensation for their services (LA ST BAR ART 14 RPC Rules 1.5 and 1.8(a)).

Failure of Named Executor to Qualify

If all the named executors fail to qualify, the court appoints a qualified person to serve as succession representative. In Louisiana, this person is referred to as a dative testamentary executor. Any interested party may petition the court to appoint a dative testamentary executor or the court may appoint one on its own motion. (La. Code Civ. Proc. Ann. art. 3083.)

The order of priority of appointment is the best qualified of:

- The surviving spouse, competent heirs or legatees, or the legal representatives of any incompetent heirs or legatees of the deceased.
- The nominees of the surviving spouse, of the competent heirs or legatees, or of the legal representatives of any incompetent heirs or legatees of the deceased.
- The creditors of the deceased or a creditor of the estate of the deceased or a co-owner of immovable property with the deceased.

(La. Code Civ. Proc. Ann. art. 3098.)

An individual is best qualified if they are best qualified personally and by training and experience to administer the succession (the estate) (La. Code Civ. Proc. Ann. art. 3098(B)).

Multiple Executors

If there are several succession representatives, all action requires unanimous consent, unless either:

- The testator has provided otherwise.
- The representatives have filed a written authorization for a single representative to act for all.

(La. Code Civ. Proc. Ann. art. 3192.)

Trustees

11. What are the rules regarding appointment of trustees for testamentary trusts in your state? In particular, please discuss:

- Criteria for qualifying as a trustee.
- Rules regarding compensation of trustee.
- Priority rules for appointment of trustee if the named trustees fail to qualify.
- Who has authority to act when there are multiple trustees.

Qualification as Trustee

The following persons or entities can serve as trustees:

- A natural person with full capacity to contract who is a citizen or resident alien of the US. This may be the settlor, the beneficiary, or both.
- A federally insured depository institution organized under Louisiana or US law, or the law of another state.
- A financial institution or trust company organized and authorized to exercise trust or fiduciary powers under Louisiana or US law, or a trust company organized under the laws of another state and operating in Louisiana under La. R.S. 6:626(A)(1) and (2).
- A nonprofit corporation or trust for educational, charitable, or religious purposes that is designated as an income or principal beneficiary, for trusts for mixed private and charitable purposes.

(La. R.S. 9:1783.)

Compensation of Trustee

A trustee is entitled to reasonable compensation for the trustee's services, unless the trust instrument provides otherwise or unless the trustee waives compensation (La. R.S. 9:2181). In Louisiana, there is no right line (clear) test for what constitutes reasonable compensation. Courts determine reasonable compensation by a facts and circumstances inquiry.

Failure of Named Trustee

If the office of trustee becomes vacant and no successor is named, then the court appoints one or more successor

trustees for the testamentary trust (La. R.S. 9:1785). The Louisiana Trust Code does not set out any standard or order of priority for the court to follow in deciding which person to appoint as successor trustee. The applicable court for appointment of trustee for a testamentary trust is:

- Any court agreed to by all trustees and beneficiaries, once the trustee is in possession of the entire legacy.
- If the above does not apply, the district court in the parish with jurisdiction over the settlor's succession unless the settlor designated a proper court in the trust instrument, in which case the settlor's designation is effective after the trustee has been placed in possession of (a judgment issued by the court overseeing the decedent's succession) the entire legacy.

(La. R.S. 9:2235(B), (C).)

Multiple Trustees

For a Louisiana trust, unless provided otherwise in the testament creating the trust, if there are:

- Two trustees, they must act unanimously (La. R.S. 9:2113).
- Three or more trustees, they must act by majority consent (La. R.S. 9:2114).

Guardians

12. What are the rules regarding appointment of guardians for minor children by will in your state? In particular, please discuss:

- Criteria for qualifying as a guardian.
- Whether a guardianship nomination in the will is binding or persuasive.
- At what age the guardianship terminates.

Qualification as Tutor

In Louisiana, the guardian of a minor is referred to as a tutor. Any person may be appointed as a tutor if the appointment is in the best interest of the minor and that person is not disqualified as being one or more of the following:

- Under 18 years of age.
- Judicially declared incompetent or proved to be mentally incompetent.
- A convicted felon.
- Indebted to the minor, unless the tutor discharges the debt before the appointment.
- An adverse party to a suit to which the minor is a party.
- A person, on contradictory hearing, proved to be incapable of performing the duties of the office or to be otherwise unfit for appointment because of the person's physical or mental condition or bad moral character.

(La. Civ. Code Ann. art. 263; La. Code Civ. Proc. Ann. art. 4231.)

The court appoints only one person as tutor. If the parent dying last appointed several tutors, the court must appoint as tutor the person first mentioned (La. Civ. Code Ann. art. 262). If a minor is an orphan with no named tutor, then all relatives of that minor, which relatives are of the age of majority, residing in the parish of the judge appointing the tutor, must timely apply to be appointed tutor (La. Civ. Code Ann. arts. 308 and 309).

Tutorship Binding or Persuasive

The appointment of a tutor by the minor's parent dying last is binding, unless the named tutor is disqualified (see Qualification as Tutor). The parent may make the appointment in the parent's testament or in a document executed before two witnesses and a notary. (La. Civ. Code Ann. art. 257.) The person named tutor by a parent is not obligated to accept the appointment (La. Civ. Code Ann. art. 259).

Termination of Tutorship

A Louisiana tutorship terminates when the minor reaches the age of majority or is emancipated (La. Code Civ. Proc. Ann. art. 4206; La. Civ. Code Ann. art. 280). In Louisiana, the age of majority is eighteen years of age (La. Civ. Code Ann. art. 29).

Changes to Will After Execution

13. What are the rules regarding changes to a will after it is executed? In particular, please specify:

- How a will can be modified after it is executed.
- How a will can be revoked after it is executed.
- Whether a previously revoked will can be reinstated, and if so, how.

Modification of a Will

A Louisiana testator can revoke, add, or otherwise modify a legacy or other testamentary provision by:

- Executing a codicil to the original testament in compliance with the form requirements for an olographic (handwritten) testament or a notarial testament (see Question 5: Handwritten (Olographic) Testaments).
- Making a later incompatible disposition of the object of the legacy.
- Making a later *inter vivos* disposition of the object of the legacy without reacquiring it.
- Clearly writing the revocation or crossing out the provision on the original testament and signing that writing.

(La. Civ. Code Ann. arts. 1608 and 1610.)

Revocation of a Will

A Louisiana testament can be completely revoked if the testator:

- Physically destroys it or has it destroyed at the testator's direction.
- Declares it revoked in a new notarial testament, a new olographic testament, or in an authentic act (a document executed before a notary and two witnesses).
- Identifies and clearly revokes it by a writing that is entirely written and signed by the testator in the testator's own handwriting.

(La. Civ. Code Ann. art. 1607.)

Louisiana has a unique provision allowing for the revocation of otherwise irrevocable donations inter vivos and mortis causa (gifts and bequests) on the grounds of the donee's ingratitude, if the donee or legatee:

- Attempted to take the life of the donor.
- Is found guilty of cruel treatment, crimes, or grievous injuries toward the donor.

(La. Civ. Code Ann. arts. 1556, 1557, and 1610.1.)

The action for revocation for ingratitude:

- Must be brought within one year from the day the donor knew or should have known of the act of ingratitude.
- If the donor dies before the above time expires, may be brought by the donor's successors within the time remaining. If the donor died without knowing or having reasons to know of the act, the action may be brought within one year of the donor's death.
- If already brought by the donor, may be pursued by the donor's successors.
- If the donee is deceased, may be brought against the donee's successors.

(La. Civ. Code Ann. art. 1558.)

Reinstatement of a Will

A Louisiana testament revoked by destruction cannot be reinstated. Louisiana revives a testament revoked in another manner (by a subsequent will or authentic act) if the revocation itself is revoked before to the testator's death. (La. Civ. Code Ann. art. 1609.)

Special Circumstances Regarding Gifts or Recipients

14. Please describe what happens if:

- A beneficiary does not survive the testator.
- A gift is not owned by the testator at the testator's death.
- There are not enough assets passing through the will to satisfy all the gifts.
- The gifted property is encumbered.
- The testator and a beneficiary or fiduciary to which the testator was married when the will was executed are no longer married when the testator dies.
- The testator gets married after the will is executed.
- A child is born after the will is executed.
- A beneficiary causes the testator's death.
- The testator and a beneficiary die at the same time.

Beneficiary Does Not Survive the Testator

The legatee of a bequest must be in existence on the date of the Louisiana testator's death to receive a bequest (La. Civ. Code Ann. art. 939). A testator may also condition a bequest on survival of the legatee for a period of time not to exceed six months (La. Civ. Code Ann. art. 1521). If the legatee is not in existence or does not outlive the survival period (if applicable), the bequest lapses (La. Civ. Code Ann. art. 1589(1), (3)).

If the legatee of a lapsed legacy was the testator's child or sibling or the descendant of testator's child or sibling (called the preferred class), then the lapsed legacy accretes (passes) to the descendants of the predeceased legatee by roots (*per stirpes*) (La. Civ. Code Ann. art. 1593). If the legatee is not a member of the preferred class, then lapsed legacies accrete as follows:

- To the successor receiving the gift, under the testament, if the legacy to the predeceased legatee was not made (La. Civ. Code Ann. art. 1591).
- To the surviving joint legatees *pro rata*, if a joint legacy occurs (La. Civ. Code Ann. art. 1592).
- To the universal or residual legatees, *pro rata* (La. Civ. Code Ann. art. 1595).
- If none of the above rules apply, by intestate succession (La. Civ. Code Ann. art. 1596).

Gift Not Owned by Testator at Death

A bequest of property no longer owned by a Louisiana testator at the testator's death is considered revoked (La. Civ. Code Ann. art. 1608(3)). However, if the legacy is extinguished because of its loss or destruction before the death of the decedent (rather than intentional contrary disposition), then the legatee is entitled to:

- Any part of the property that remains.
- Uncollected insurance proceeds or any award of condemnation or expropriation, as applicable.

(La. Civ. Code Ann. art. 1597(A).)

Not Enough Assets

If the testament does not provide for the preference of payment of legacies, then the succession representative must pay the legacies as follows:

- Particular legacies (specific bequests) must be discharged first (La. Civ. Code Ann. art. 1600).
- If there are not enough assets to satisfy all the particular legacies, then they are distributed in the following order:
  - the legacies of specific things;
  - legacies of collections or groups of things;
  - sums of money expressly declared as payment for services; and
  - any remaining sums of money are distributed *pro rata*.
- (La. Civ. Code Ann. art. 1601.)

(La. Civ. Code Ann. art. 1599.)

Gifted Property Encumbered

Liability for a debt is transferred with the donation of encumbered property, unless the secured debt is not attributable to the encumbered property. If property is encumbered to secure a debt, the debt is presumptively charged to that property (and its fruits and products). This presumption may be rebutted by a preponderance of evidence that the secured debt is not attributable to the encumbered property. (La. Civ. Code Ann. art. 1422).

Effect of Divorce

Legacies to and fiduciary appointments of spouses are automatically revoked on the divorce of the spouse from the testator, unless the testator provides to the contrary in the testament or codicil to the testament (La. Civ. Code Ann. art. 1608(5)).

Effect of Marriage

The later marriage of a testator does not revoke the testator's testament, although the legacies in that testament may be impacted by the surviving spouse's community property rights and the testator's estate may be subject to a claim for the marital portion (see Effect of Divorce and Question 8: Disinheriting a Testator's Spouse).

After-Born Child

Louisiana's forced heirship laws protect pretermitted heirs from disinherison (see Question 8: Disinheriting a Child of the Testator).

Beneficiary Causes Testator's Death

If a legatee is convicted of the killing or attempted killing of a testator or is otherwise judicially declared (usually

in the succession proceeding) to have participated in the intentional, unjustified killing or attempted killing of the testator, that legatee is then declared unworthy and disinherited (La. Civ. Code Ann. art. 941).

Simultaneous Death

Louisiana does not presume survivorship (La. Civ. Code Ann. art. 31). If the decedent and a legatee die simultaneously, the legacies to that legatee lapse unless it can be proven that the legatee survived the decedent.

Lost Wills

15. Please describe what happens if the original will is lost.

If the original testament of a Louisiana testator was in the testator's possession before the testator's death and cannot be found after, the presumption is that the testator destroyed it and it is therefore revoked. That presumption can be overcome, and the will probated, by clear and convincing evidence showing:

- That the testator made a valid will.
- The contents or substance of the will.
- That the will, though not found at the testator's death, was never revoked by the testator.

(*Succession of Justice*, 679 So.2d 597, 599 (La. App. 2 Cir. 1996).)

However, if the original testament of a Louisiana testator was not in the testator's possession when it was lost, a copy of the testament may be probated unless clear convincing evidence of revocation is provided to the court (La. Code Evid. Art. 1004; *Succession of Deshotel*, 10 So.3d 873, 878-79 (La. App. 3 Cir. 2009)).

Rules of Intestacy

16. Please describe how property passes if there is no will or if the terms of the will distribute assets according to the laws of intestacy in your state (who are the testator's heirs).

Intestate succession is different in Louisiana depending on the character of the decedent's property as separate property or community property.

- **Community Property.** The surviving spouse already owns one one-half of all items of community property in the surviving spouse's own right, regardless of how the property is titled (La. Civ. Code Ann. arts. 2336 and 2338). The decedent's half of the community property is left to the decedent's descendants, by roots (*per stirpes*), subject to a usufruct (right of use) in favor of the surviving spouse that lasts until the surviving spouse's death or earlier remarriage (La. Civ. Code art. 890). If the decedent has no descendants, then the decedent's share of the community property goes to the decedent's surviving spouse outright (La. Civ. Code art. 889).
- **Separate Property.** The decedent's separate property goes outright to the decedent's descendants, *per stirpes* (La. Civ. Code art. 888). If the decedent did not have any surviving descendants, the decedent's separate property devolves in equal shares to the decedent's siblings (or a predeceased sibling's descendants, *per stirpes*), subject to a joint and survivor usufruct for life in favor of the decedent's parents (La. Civ. Code art. 891). The surviving spouse has no rights to any of the decedent's separate property from Louisiana's intestacy laws, although the surviving spouse may have a claim for the marital portion (see Question 8: Disinheriting a Testator's Spouse).