

What are "Successions"?

The term "successions" refers to the body of law concerning the distribution of a person's property after death. Depending on the value of the property, the type of property, the debts of the decedent and some other factors, the process may be very simple or it may be very complicated. An individual case will usually be referred to as the "Succession of John Doe" or simply "The Succession." If an individual executed a valid testament (i.e., will) that decedent is said to have died "Testate." A testament may alter the rules concerning how property is inherited and a Louisiana Law of "Forced Heirship" may alter a testament. For individuals dying before 1996, the law of forced heirship is different than for individuals that died after 1996.

If the decedent did not execute a testament or revoked the testament before death, or if a testament is declared invalid by a court of law, the decedent is said to have died "Intestate." Generally, Louisiana law of intestacy states that property is inherited by the closest generation down from the decedent, to the exclusion of others. Thus, children inherit from parents and parents inherit from their parents. Children would inherit from their grandparents if the child of the grandparent predeceased the grandparent. Generally, speaking, spouses do not inherit from each other under Louisiana laws of intestacy, and thus we strongly recommend that spouses have last wills and testament drafted at the earliest possible convenience.

The most typical last will and testament is between spouses, where the first spouse to die wills all of their property to the surviving spouse, and then upon the death of the surviving spouse any remaining property is divided equally between their children. Of course, multiple marriages, step-children, special needs children, minor children, inherited property, and other circumstances may come into play, thus making the process much more complex.

Do I have to open a Succession in every case?

A judicial succession proceeding is how the law recognizes the transfer of immovable property (i.e., real estate), allows for the transfer of bank accounts and stocks and bonds or any other assets that are registered in the name of the deceased, and arranges for the payment of the debts of the decedent. If an individual dies without owning any of those assets, and without having substantial debt, it may not be necessary to open his succession.

Judicial Proceedings(A): Acceptance without Administration.

Succession without administration is the most common form of succession procedure, sometimes referred to as a "Simple Putting in Possession, " and can be used whenever the succession is clearly solvent and there is no need for an administration. Only the attorney for the succession has to appear in court, but you will be required to sign the pleadings and affidavits for the succession that will prove the facts necessary to obtain the Judgment of Possession.

Judicial Proceeding(B): Administration of the Succession.

Succession with administration is the most complex form of succession procedure. Administration is necessary whenever there needs to be a judicial determination of any of the assets of the estate or for ease of dealing with any claims or property belonging to the estate. Generally speaking, when a succession is administered, someone must be appointed the succession representative. The succession representative will be responsible for collecting all of the assets of the decedent, determining what debts are owed by the succession and seeing that they are paid, and initiating the court proceedings to resolve any questions that

brought about the need for an administration. The succession representative owes a fiduciary duty to the heirs and creditors of the succession. Prior to property being sold or debts paid, pleadings need to be filed to have the judge's permission to do so and complex advertising and court hearings may be required.

Once all of the issues have been resolved in court, the succession representative will propose a "Tableau of Distribution," which explains how the assets of the succession will be divided. If there is no opposition to the tableau, it can be homologated by the judge, and the assets will then be distributed according to the tableau. If there is an opposition to the tableau, there will be a trial, and after the trial, the judge will decide whether to homologate the tableau despite the opposition. The succession representative will also be obligated to file an accounting of his administration annually and at the conclusion of the succession.

Some of the above procedures can be lessened if the administration is opened under Independent Administration as authorized by the Louisiana Code of Civil Procedure. If a decedent did not authorize independent administration in a testament then all the decedent's heirs must consent to independent administration in writing. Independent Administration saves costs and legal fees, sometimes in a tremendous amount.

Partition

When individuals co-own property together that no longer want to own this property together, they can voluntarily agree to divide up property or file a lawsuit to have the property divided up through a partition action. A partition can either be in kind, meaning the thing is physically divided up, or by "Licitation," which means the property is sold either through a private sale or at a courthouse auction. If the land at issue can be divided up into equal portions, that may be one way to resolve the issue after the successions are opened. The partition action is a separate legal proceeding. We may, however, be able to use a partition action in lieu of opening multiple successions.