

**LOUISIANA PROBATE LAW PRACTICE**  
***EX PARTE PETITIONS FOR POSSESSION***

Southeast Louisiana Legal Services  
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## **LOUISIANA PROBATE LAWS—EX PARTE PETITIONS FOR POSSESSIONS**

### **Introduction**

In Louisiana, probate law is called succession law.

This outline discusses Louisiana succession law and procedures for intestate and testate successions that can be completed by an *ex parte* petition for possession without the need for administration.

Warning: Screen clients for unresolved Katrina related insurance claims. These claims may be time barred on August 29, 2006 if lawsuit is not filed. They may need to apply to be the estate administrator in order to timely file a lawsuit on the insurance policy.

## Sources of Louisiana Probate or Succession Laws

Louisiana probate or succession laws include:

Substantive Probate Law	La. Civil Code art. 870-967, 1095-1429
Probate Procedures	La. Code Civ. Proc. art. 2811 <i>et seq.</i>
Tutorship Procedures	La. Code Civ. Proc. art. 4031 <i>et seq.</i>
Community Property Law	La. Civil Code art. 2325-2437
Inheritance Tax	La. R.S. 47: 2401 <i>et seq.</i>

## Treatises and Practice Manuals on Louisiana Probate Law

L. Carman, *Louisiana Successions, 2d Ed.* (LexisNexis 2005)

C. Neff, *Louisiana Estate Planning, Will Drafting and Estate Administration, 2d Ed.* (LexisNexis 2004)

M. Williams, *Successions: Wills and Donations*, in Louisiana Legal Services and Pro Bono Desk Manual (2005)

Louisiana Probate Laws (West 2006)

## Overview of Probate Procedures

In Louisiana, the heirs or legatees must open a succession in order to be sent into possession of a decedent's real estate. Procedurally, many successions can be handled by the filing of an *ex parte* petition for possession with a district court.

A succession is intestate or testate. A succession is intestate if the decedent did not leave a will or his will has been revoked or annulled. Probate code articles govern the distribution of property in an intestate succession. A succession is testate if the decedent

left a will. The will, if valid, will govern the distribution of a decedent's property.

Many low-income successions can be completed without an administration. There are different rules for intestate and testate successions.

### **Intestate Succession Rules**

In an intestate succession, a petition for possession may send the heirs into possession by the *ex parte* petition of:

1. All the competent heirs if all competent heirs accept the succession and the succession is relatively free of debt. La. Code Civ. Proc. art. 3001, 3004; or
2. The surviving spouse in community with the decedent if all the heirs are incompetent and no legal representative has been appointed for some or all of the heirs. La. Code Civ. Proc. art. 3004; or
3. The legal representative of the incompetent heirs, if all of the heirs are incompetent and a legal representative has been appointed. La. Code Civ. Proc. art. 3004.

Also, a surviving spouse in community of an intestate decedent can use an *ex parte* petition for possession to be recognized as the owner of his undivided one-half of the community and of the other one-half to the extent he has the usufruct (similar to "life estate") thereof. La. Code Civ. Proc. art. 3001.

In an intestate succession, if a competent heir can't be located, the other heirs, including the absentee heir, can be sent into possession after appointment of an attorney to represent the absentee and a contradictory rule against the absentee's attorney. La. Code Civ. Proc. art. 3006.

### **Testate Succession Rules**

In a testate succession, a petition for probate and possession may send the legatees into possession on the *ex parte* petition of all legatees if:

1. Each legatee is competent or acting through a legal representative;
2. Each legatee accepts the succession; and

3. None of the creditors has demanded administration.

La. Code Civ. Proc. art. 3031.

If the will named a succession representative, that person must join in the petition for possession in order for judgment to be rendered *ex parte*. La. Code Civ. Proc. art. 3033. A simple solution to this requirement is to have the succession representative sign an affidavit that he declines his appointment.

### **Overview of Key Steps in Handling a Succession**

1. Identify the heirs or legatees
2. Assess capacities of heirs/legatees and need for tutorship
3. Assess whether any heirs have renounced or are willing to renounce or transfer their interests
4. Identify property of estate and classify as community or separate
5. Determine whether property must be included in taxable estate
6. Value property at time of death
7. Identify unpaid debts, community and separate, at time of death
8. Prepare and file the inheritance tax return
9. Prepare and file the petition for possession, other required pleadings/documents and the judgment of possession

### **Identifying the Heirs**

#### **Intestate Successions**

Inheritance rules are different for community and separate property. If the decedent had children or other direct descendants, they will inherit the decedent's separate property and the "naked ownership" of his one-half of the community property subject to a surviving spouse's "usufruct." The usufruct lasts until the surviving spouse dies or remarries. The usufruct applies to community property, even as to children of

another marriage, and as to forced heirs' portions, if any.<sup>1</sup>

For other intestate successions, you have to classify the decedent's property as community or separate in order to identify the heirs. Community property goes to the surviving spouse if there are no children or direct descendants.

For separate property, there are 5 classes of intestate heirs. They inherit in the following order of priority:

1. Descendants
2. Parents<sup>2</sup> and siblings (and their descendants)
  - A. If there are siblings (or their descendants) and surviving parent(s), the siblings (or their descendants) inherit subject to a joint and successive usufruct in favor of the parent(s).
  - B. If there are siblings (or their descendants) and no surviving parents, siblings (or their descendants) inherit free of usufruct
  - C. If there are no siblings (or their descendants), the surviving parent(s) inherit.

Note: Check Civil Code art. 892 for rules for half-siblings

3. Surviving spouse if not judicially separated from decedent
4. More remote ascendants (e.g., grandparents, aunts, uncles)
5. More remote collaterals

Relatives in the most favored class inherit to the exclusion of other classes. The nearest relatives in class, determined by counting degrees (a "degree" is a generation), inherit to the exclusion of more distant relatives in that class. It is helpful to draw a family tree diagram to determine who inherits.

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<sup>1</sup> Powers and duties of a usufructuary can be found at La. Civ. Code art. 550-629.

<sup>2</sup> Effective August 15, 2004, a father who only orally acknowledged his illegitimate child may not inherit from that child.

Inheritance by descendants, siblings and surviving spouse is subject to an exception. If an ascendant has given the decedent immovable property during decedent's life, the ascendant shall inherit the donated immovable property. La. Civ. Code art. 897-98.

Inheritance of real estate situated in another state is governed by the law that would be applied by the courts of that state. La. Civ. Code art. 3533-34. However, if the decedent died domiciled in Louisiana and left at least one forced heir, the value of the out-of-state real estate shall be included in calculating the forced heir portion. Civ. Code art. 3534. Succession to movables is generally determined by the law of the state in which the deceased was domiciled at the time of his death. La. Civ. Code art. 3532.

### **Who are children for inheritance purposes?**

The following children may inherit from the decedent:

- legitimate children
- illegitimate children who have been acknowledged by authentic act or signing the birth certificate or legitimated by subsequent marriage
- unacknowledged illegitimate children who prove filiation in a judicial proceeding
- adopted children

Under Act 192 of 2005, eff. June 29, 2005, unacknowledged illegitimate children have up to 1 year after their father's death to file a filiation action. Prior to Act 192, the Louisiana statute of limitations for a filiation action was 1 year after the parent's death or 19 years after the child's birth, *whichever first occurs*. Unacknowledged children's filiation claims that were time-barred before Act of 2005, are not revived by Act 192 according to the 3d Circuit. *See Succession of McKay*, 2005-603 (La. App. 3d Cir. 2/1/06).<sup>3</sup>

The children of a child who predeceased the decedent will succeed to said child's inheritance rights from the decedent. Representation takes place ad infinitum in the direct line of descendants. La. Civ. Code art. 882.

### **Renunciation issues in intestate successions**

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<sup>3</sup>However, note that this issue is being litigated in other circuits and it is possible that the prior law, Civil Code art. 209, became unconstitutional after advances in DNA testing for paternity.

A heir may renounce his right to inherit after the decedent dies. La. Civ. Code art. 947, 949, 951.

Renunciation of the succession by some heirs will affect who inherits from the decedent, and may have some inheritance tax implications. To the extent that renunciation concentrates title in one or a few heirs, the tax exemptions of the renouncing heirs are lost. Check to see if any identified heirs have renounced or will renounce. Renunciation by minors can only be made by their legal representative with court approval through a tutorship. La. Civ. Code art. 948.

The law on renunciation changed on July 1, 1999. Therefore, you must be careful to apply the applicable renunciation rules at the time of the decedent's death.

### **Post-June 30, 1999 Law**

If an intestate heir who is the decedent's child renounces, his share goes to his children or their descendants. La. Civ. Code art. 964. If the renouncing heir is the decedent's sibling, his share goes to his direct descendants. A heir may renounce in favor of a third person to whom the inheritance would not devolve by statute or the will. Such renunciations are treated as "donative" renunciations or donations. La. Civ. Code art. 960.

Under post-June 30, 1999 law, a renunciation must be express and in writing. La. Civ. Code art. 963. Although no longer required, it is good practice for the renunciation to be by authentic act, i.e., written act before notary and 2 witnesses. Note, however, that a "donative" renunciation (a renunciation that causes renounced rights to devolve in a manner other than provided by intestate inheritance rules or by the will) is considered an acceptance of the succession and a donation. La. Civ. Code art. 960. A donation or "donative" renunciation of real estate or incorporeal things must be by authentic act under penalty of nullity. *See* La. Civ. Code art. 1536; Official Revision Comment to Civ. Code art. 960.

Care must be taken in planning renunciations. In some instances, a heir who renounces may end up getting a share of the inheritance if another heir subsequently renounces. For example, a decedent is survived by 3 children, A, B and C, and the goal is to concentrate title in A. B renounces, but B has no descendants. B's share will go to A and C. If C later renounces and has no descendants, his inheritance will go to A and B. This devolution to B after his renunciation can be prevented by having B also renounce any accretions in his original renunciation. *See* Official Revision Comment to Civ. Code art. 964.

A person who renounces must not have accepted the succession tacitly or expressly. *See generally*, La. Civ. Code art. 957-59. For post-June 30, 1999 deaths, a petition for possession should not omit allegations as to whether a heir has accepted or renounced a succession. It is good practice to obtain verification of the petition from each accepting heir even though the law only requires verification by one petitioner.

### **Pre-July 1, 1999 Law**

We are not aware of any case law on the applicability of the pre-July 1, 1999 renunciation rules. However, note that Civil Code art. 870 states that succession rights are governed by the law in effect on the date of the decedent's death.

For a decedent death prior to July 1, 1999, a renouncing heir's share goes to the co-heirs of the same degree. If all the children renounce, the surviving spouse may end up with the decedent's community property. *Succession of Heroman*, 29 So.2d 473 (La. 1946). However, *Heroman* was legislatively overruled by Act 1421 of 1999, codified at Civ. Code art. 964, which became effective on July 1, 1999.

Prior to July 1, 1999, renunciation had to be done by authentic act, i.e., a written act before notary and 2 witnesses. Civil Code art. 1017.

### **Renunciation Rules for Testate Successions**

The will governs what happens to a legatee's inheritance if he renounces. In the absence of a will provision, the inheritance goes to those persons who would have succeeded to them if the legatee had predeceased the decedent. La. Civ. Code art. 965.

### **Testate Successions—Who Inherits**

The will governs who inherits unless it is wholly or partially invalid. Check to see if the will is invalid for any of these reasons:

1. Revoked by testator
2. Not in compliance with formalities required by law or does not make a bequest
3. Testator lacked capacity
4. Fraud, duress or undue influence

5. Impermissible legacy (e.g., legacy to notary or witness)
6. Will does not give forced heirs the share mandated by law

### **Forced Heir Issues in Testate Successions**

Louisiana has the unique concept of forced heirship which reserves a portion of the decedent's estate to certain descendants, for which they cannot be denied by will. La. Civ. Code art. 1493 *et seq.* Forced heirship issues may arise in testate successions if the will does not give a forced heir his forced heirship portion.

Effective January 1, 1996, the forced heirship rules were amended. There are complex rules for determining whether the new laws or prior laws govern. If the decedent died before January 1, 1996 or executed his last will before January 1, 1996, you should review the discussion in L. Carman, *Louisiana Successions* at §§ 2.49-50 if the decedent's children were older than 23 at the donor's death. These older children may qualify as forced heirs if the pre-January 1, 1996 law governs. Civil Code art. 870 provides that "testate and intestate succession rights, *including the right to claim as a forced heir*, are governed by the law in effect on the date of the decedent's death." For pre-January 1, 1996 wills where the decedent died in 1996 or later, it appears that the testator's intent as to a forced heir portion is determined on an ad hoc basis.

Under current law, forced heirs are descendants of the first degree (i.e., children) 23 years or younger, or descendants of any age who, because of mental incapacity or physical infirmity, are incapable of taking care of their person or administering their estates. La. Civ. Code art. 1493. Representation of a descendant who predeceased the donor is permitted if the deceased descendant would have been 23 years or younger at the donor's death. La. Civ. Code art. 1494-95.

### **Identify the Decedent's Property of the Estate and Taxable Estate**

Generally, the decedent's estate includes his property, rights and debts at the time of his death. For a married decedent, this usually consists of his separate property and one-half of the community property. Divorced decedents may also own community property that has not been partitioned.

Some property may not be part of the estate or the "taxable estate." Examples include:

1. Life insurance unless payable to the estate. La. R.S. 22:647 (A)-(B). Life

insurance proceeds are exempt from forced heirs' claims. La. Civ. Code art. 1505(c).

2. Annuities payable to a named beneficiary. La. R.S. 22: 647 (B). **But, an annuity acquired during the existence of a community property regime is includable in the decedent's estate to calculate the interest of the surviving spouse in community.** Only non-retirement annuities are subject to forced heir claims. La. Civ. Code art.1505(c).
3. IRA and Simplified Employee Pension Plan (SEP). These plans are exempt from Louisiana inheritance tax unless payable to the estate. La. R.S. 47: 2404 (c). **But, if a non-participant spouse has a community property claim to the surviving spouse's IRA or SEP, said claim should be listed in the sworn descriptive list.**
4. Retirement or pension plans. These plans are generally payable to a beneficiary, don't pass through the estate and are exempt from Louisiana inheritance tax. La. R.S. 47: 2404(c). If the plan directs the proceeds to the estate, the pension plan would become an asset of the estate.
5. U.S Savings Bonds. Ownership is determined by federal law, not Louisiana law.
6. Bank account with co-depositor. Don't include in estate if these funds were actually the property of the co-depositor.

If a client does not know where the assets are or can't get access to information from banks, he may need to file a petition to be appointed as the administrator.

### **Classify Property as Community or Separate**

The following community property rules apply to property acquired after 1979.

Property of married persons is either community or separate. La. Civ. Code art. 2335. Property acquired during a marriage is presumed to be community. La. Civ. Code art. 2340. In most cases, property acquired during a marriage will be community property. The major exception is property acquired by donation or inheritance.

The community property regime begins upon marriage and terminates with death or divorce. In a divorce, the community property regime is generally terminated

retroactive to the filing date of the divorce petition upon which the divorce was granted. Obtain the case name, docket number, court and divorce date for your case file and inclusion in the succession pleadings.

Louisiana community property laws apply to spouses domiciled in Louisiana regardless of their domicile at time of marriage. La. Civ. Code art. 2334. Movable property brought to Louisiana by a married couple is generally governed by the law of the domicile of the acquiring spouse at the time of acquisition. La. Civ. Code art. 3523. Movable property, wherever situated, acquired during the marriage by either spouse while domiciled in another state will be treated as community property under Louisiana law upon termination of the community if either spouse is domiciled in Louisiana. La. Civ. Code art. 3526.

Immovable property in Louisiana is generally governed by Louisiana law regardless of the acquiring spouse's domicile at time of acquisition. La. Civ. Code art. 3524. The nature of immovable property in another state acquired by either spouse, which would be community property under Louisiana law, is determined under Louisiana law if either spouse is domiciled in Louisiana at the termination of the community. La. Civ. Code art. 3525.

**Community property includes:**

- property acquired during the marriage through work or effort of either spouse or with community property or with community or separate property
- property donated jointly to the spouses
- fruits of community property
- fruits of separate property (Civ. Code art. 2339)
- damages awarded for loss of community property
- all other property not classified by law as separate property.

La. Civ. Code art. 2338.

**Separate property includes:**

- property acquired by spouse before establishment of community regime (unless

changed by subsequent act)

- property acquired by a spouse by inheritance or donation to him individually
- property acquired with separate property or with separate property and community property where the value of the community property is inconsequential compared to the value of the separate property.
- damages for personal injuries sustained by a spouse during the community.

La. Civ. Code art. 2341, 2344.

Use of community property to improve separate property or pay a mortgage may give rise to a community property claim or liability for reimbursement. La. Civ. Code art. 2364. Similarly, satisfaction of a community obligation with separate property gives rise to a claim for reimbursement. La. Civ. Code art. 2365.

Matrimonial agreements or spousal donations may affect the classification of property as community or separate. La. Civ. Code art. 2328, 2343, 2343.1. Be sure to ask about matrimonial agreements, donations of community property, or transfer of separate property to the community.

### **Identify the Decedent's Debts and Classify as Community or Separate**

“Estate debts” are the decedent’s unpaid debts at death and administration expenses. The decedent’s debts must be classified as community or separate. One half of the community debts are deducted from the decedent’s estate. The entire amount of the decedent’s separate debts are deducted from his separate property estate.

In Louisiana, real estate taxes are only *in rem* debts, not *in personam* debts, i.e., the debt runs against the property, not the person. It would be helpful to check to see if the real estate taxes are delinquent in order to advise the clients’ of the need to avoid or redeem a tax sale. In New Orleans, tax history for a property can be obtained at [www.cityofno.com](http://www.cityofno.com).

Debt incurred by a spouse during the community regime for the common interest of the spouses or the interest of the other spouse is community debt. La. Civ. Code art. 2360. All debts incurred by a spouse during the community property regime are presumed to be community debts. La. Civ. Code art. 2361.

Separate debts include:

- debts incurred before the establishment of a community property regime
- debts incurred during the marriage, but not for the common interest of the spouses or for the interest of the other spouse
- debt for intentional tort not perpetrated for community's benefit
- debt incurred for separate property to extent it does not benefit community, the family or other spouse.

La. Civ. Code art. 2363.

Effective July 1, 1999, funeral expenses are separate debts of the decedent. La. Civ. Code art. 1422-23.

## **Prepare and File a Louisiana Inheritance Tax Return**

### **Overview**

For deaths before July 1, 2004, Louisiana imposes an inheritance tax on the decedent's taxable estate.

For deaths after June 30, 2004, no Louisiana inheritance tax is owed if the heirs apply for judicial opening of the succession or a judgment of possession within 9 months of the decedent's death. Act 884 of 2004, codified at La. R.S. 47: 2401 B. The judicial opening of a succession is an absolute requirement for avoiding inheritance tax. If the application is untimely, inheritance tax is due as if the decedent died before July 1, 2004. La. R.S. 47:2401. *See* discussion below for pre-July 1, 2004 inheritance tax.

### **Deaths before July 1, 2004**

An inheritance tax return is due in any estate in which the inheritance tax is due or the gross estate is \$15,000 or more.

The Louisiana inheritance tax is imposed on the net estate minus any applicable exemptions. The "net estate" is the value of the estate minus the estate debts, the "mortgage deduction" and the actuarial value of the surviving spouse's usufruct. *See* instructions to Louisiana Department of Revenue Form R-3318 for guidance on estate

debts.

Inheritance tax is not due for the surviving spouse's one half share of the community property. Inheritance tax is due on all property inherited from a decedent unless excepted by statute. La. R.S. 47: 2404. Out-of-state real estate and oil and gas interests are not subject to Louisiana inheritance tax. Intangible personal property (stocks, bonds, bank accounts) are subject to Louisiana inheritance tax regardless of where the property is located unless the decedent was not domiciled in Louisiana at death. La. R.S. 47: 2404.

The "mortgage deduction" for Louisiana property is the full value for which the decedent's estate is liable. Real estate encumbered with a mortgage that exceeds 50% of the value, gets an additional deduction equal to 20% of the mortgage. However, the mortgage plus additional 20% deduction may not exceed the value of the mortgaged real estate. La. R.S. 47: 2404 (B).

The inheritance tax rates and exemptions vary by the class of heirs and legatees. The exemption for direct descendants are often sufficient to avoid any inheritance tax. The exemptions for each direct descendant has been gradually increased from \$5,000 for a 1983 death to \$25,000 for a death in 1987 or later. The tax rates for deaths after June 30, 1998 have been reduced by amounts varying from 18% to 80%. For information on tax rates and exemption amounts from 1983 to present, *see* La. R.S. 47: 2403; L. Carman, *Louisiana Successions*, § 12.08.

For deaths on or after January 1, 1993, the total amount of an inheritance or gift to a surviving spouse is exempt from Louisiana inheritance tax. Act 236 of 1987.

### **Valuation of Property and Debts**

The value of decedent's taxable property is the fair market value at date of death. An alternative valuation date up to 6 months after the decedent's death may be elected. The decedent's debt is the unpaid amount owed at death.

For clients opening successions on decedents who died many years ago, it may be difficult to value the property or ascertain the unpaid debts. For real estate, a sale close to the death date can be helpful information. Tax assessors keep records on the assessed value of the property for each year, and these values may provide some guidance.

The values given to property and debt in the tax return should correspond to the values listed in the sworn descriptive list.

## **Statute of Limitation or Prescription Issues for Louisiana Inheritance Taxes**

If the heirs owed inheritance taxes and have failed to open a succession for many years, penalties and interest may be substantial. (However, La. R.S. 47: 2420 E fortunately exempts estates under \$100,000 from penalties and interest). In old cases, check to see if the statute of limitations (or “prescription”) has run.

Effective January 1, 1973, taxes can’t prescribe unless has a tax return has been filed. La. R.S. 47: 2422. Prior to January 1, 1973, taxes could prescribe in 3 years even if a return had not been filed. Thus, inheritance taxes may be time-barred if the decedent died before July 1, 1969.

If the decedent died before July 1, 1969, you must file a contradictory rule against the inheritance tax collector to show that the taxes have prescribed.

## **How to File a Louisiana Inheritance Tax Return**

An inheritance tax return must be filed before the petition for possession is filed with the court. For deaths after June 30, 2004, an inheritance tax return does not have to be filed if the succession is judicially opened within 9 months of the decedent’s death. La. R.S. 47: 2426 A(2)(a).

The inheritance tax return can be mailed to the Louisiana Department of Revenue or physically delivered to one of its regional offices. The Department will immediately give you an acknowledgment of payment of taxes or no taxes due if the return is hand delivered to a regional office. Otherwise, the acknowledgment will be mailed to you. The acknowledgment must be attached to the petition for possession filed with the court.

You must file copies of the following with the tax return filed with the Department of Revenue:

1. Affidavit of Jurisdiction, Death and Heirship
2. Sworn descriptive list
3. Will, if any
4. Petition for Possession

*See* La. Code Civ. Proc. art. 2951.

Inheritance tax returns may be downloaded from the Louisiana Department of Revenue's web page, [www.revenue.louisiana.gov](http://www.revenue.louisiana.gov).

### **Payment of Inheritance Taxes by One Heir**

Sometimes, one of the heirs has advanced or paid the inheritance taxes for the estate. This heir is entitled to seek reimbursement from the other co-heirs for their proportionate share of the taxes. *Succession of McCall v. McCall*, 550 So.2d 328 (La. App. 3d Cir. 1989).

### **How to File an Ex Parte Petition for Possession**

#### **More than One Decedent Problem**

Often, the original heirs die before the succession of the decedent has been opened. The heirs of the original heirs can be placed into possession without first putting the original heirs in possession. *In re Succession of Parker*, 882 So.2d 748 (La. App. 2d Cir. 2004).

#### **Jurisdiction and venue**

A petition for possession must be brought in the district court for the parish where the decedent was domiciled at the time of his death. La. Code Civ. Proc. art. 2811. If the decedent was not domiciled in Louisiana at the time of his death, his succession may be opened in the district court of any parish where his immovable property is located. The domicile of Katrina evacuees who die out of state will have to be determined on a case by case basis.

#### **Court Filing Fees**

The client should be asked for a deposit of the estimated court filing fees, which are usually about \$300 for most successions involving real estate. These fees vary from court to court. By law, the fees for "small successions" where the gross estate is less than \$50,000 are one half the cost for larger succession. If an attorney needs to be appointed for an absent heir, costs for the attorney's fee (usually about \$375) and filing and service of a rule should also be collected.

#### **Procedures**

To get an *ex parte* judgment of possession in any succession (intestate or testate),

the following pleadings and documents must be filed with the court:

**1. Verified Petition for Possession**

The petition for possession must be verified by at least one petitioner. La. Code Civ. Proc. art. 3002-05, 3032. It is good practice to have all accepting heirs or legatees verify the petition for possession. The allegations of the petition should include:

- a. competency of the petitioners
- b. the date of death of the decedent
- c. all facts on which jurisdiction is based
- d. the facts showing that the petitioners are the sole heirs
- e. that the succession is relatively free of debt
- f. that no inheritance taxes are owed

*See* La. Code Civ. Proc. art 3002.

In testate successions, a petition for probate and petition can be filed. Generally, this is the recommended procedure for simple successions. The will must be presented to the court. You should take the original will and the petition for possession to the judge to guard against loss of the original will by the court. Also, obtain certified copies of the judgment of possession.

After July 1, 1999, notarial and statutory wills are self-proving. An olographic will still needs proof, which can be done by an affidavit unless the judge orders oral testimony. La. Code Civ. Proc. art. 2883.

**2. Affidavit of Jurisdiction, Death and Heirship**

This affidavit must state the decedent's death, marriages and all other facts necessary to establish jurisdiction and decedent's relationship to the heirs. It is good practice to cite the case name, docket number, court name and divorce judgment date of the decedent's divorces. The affidavit must be signed by two persons who have personal knowledge of the facts. Heirs may sign this affidavit. La. Code Civ. Proc. Art. 2821-23.

### **3. Sworn Descriptive List**

A heir or legatee must swear to a detailed, descriptive list of all items of property belonging to the decedent's estate, stating the actual cash value of each item at the donor's death. La. Code Civ. Proc. art. 3136. The legal description of the real estate should be listed in the sworn descriptive list. Many retirement and pension plans ask for the account number of their plans to be identified in the court pleadings. Unfortunately, this creates identity theft problems. Call the pension plan to see if it will accept a description that does not list an account number. Listing the account number in the descriptive list rather than the judgment of possession will minimize the threat of identity theft.

It is not expressly required that a descriptive list show the estate's debts. But, some practitioners do. Listing the debts makes it easier for the Department of Revenue to review and approve the inheritance tax return.

### **4. Acknowledgment from Department of Revenue that no inheritance taxes due**

The acknowledgment from the Department of Revenue that no inheritance taxes are due should be attached to the petition. The tax return itself does not have to be filed with the petition.

### **5. Judgment of Possession**

The judgment of possession should

- a. recognize the petitioners as the heirs, legatees, surviving spouse in community, usufructuary as the case may be
- b. send the heirs or legatees into possession of the decedent's property and recognize the surviving spouse as entitled to possession of an undivided one half of the community property, and of the other undivided one half to the extent that the surviving spouse has the usufruct thereof.
- c. declare that no inheritance or estate transfer taxes are owed to the State.

La. Code Civ. Proc. art. 3061.

The judgment of possession is the "deed" for the heirs. Care should be taken to

accurately state the legal description of the real estate in the judgment of possession. Get the latest deed or judgment of possession to find the correct legal description of the real estate. Also, the judgment of possession should include the last known address of at least one of the heirs, legatees or surviving spouse.

The judgment of possession should be recorded in the conveyance office for each parish in which real estate is located. Additional filing fees will be required for said recordation. In Orleans Parish, a copy of the judgment of possession must also be sent to the board of assessors. La. R.S. 9: 1425. This must be done within 15 days of the judgment of possession under penalty of fine.

Advise the clients as to their possible rights to the \$75,000 homestead exemption from real estate and the procedures for applying for the same. Currently, any heir who occupies the home is entitled to a pro rate share of the homestead exemption. For example, if 2 of the 3 heirs live in the home, they would be entitled to two-thirds of the \$75,000 homestead exemption from real estate taxation.

## **Helpful Data Bases**

### **Valuation**

[www.cityofno.com](http://www.cityofno.com) (New Orleans real estate)

[www.opboa.org](http://www.opboa.org) (New Orleans real estate)

This web site is maintained by the Orleans Parish assessors. It lists assessed values for the current and prior year. Recent sales will list the notarial archive number which helps you find the deed at the conveyance office. The search engine can identify all properties owned by an individual.

[www.jpasessor.com/services/services.html](http://www.jpasessor.com/services/services.html) (Jefferson Parish real estate)

[www.stassessor.org](http://www.stassessor.org) (St. Tammany Parish real estate)

Other Southeast Louisiana assessors:

St. Bernard Parish	504-279-6379
St. Charles Parish	985-783-6281
St. Helena Parish	225-222-4131
Plaquemines Parish	504-297-5256

Tangipahoa Parish           985-748-7181  
Washington Parish         985-839-7815

[www.kbb.com](http://www.kbb.com)   (Cars)

### **Deeds, Mortgages, Divorce Judgments and Attorneys**

In Orleans Parish, conveyance and mortgage records can be checked for free through computer data bases for documents recorded after 1989. For earlier Orleans Parish records, the real estate description can be obtained from the Real Estate Records office at City Hall. You need the NA (“Notarial Archive” number) to pull the actual deed from the Conveyance Office. For other parishes, deeds will be recorded at the clerk’s office of district court.

Divorce judgments can be obtained from the clerk’s office for the district court in which the judgment was obtained. Older records may need to be ordered from the court’s warehouse.

Many post-Katrina clients have trouble locating their attorneys or notaries. Current address information for attorneys may be found in “Membership” at [www.lsba.org](http://www.lsba.org).

### **Vital statistics**

Louisiana Vital Records and Health Statistics:

P.O. Box 60630  
New Orleans, LA 70160  
(504) 219-4500

[www.nola.com](http://www.nola.com) or [www.legacy.com/nola/LegacyHome.asp](http://www.legacy.com/nola/LegacyHome.asp) (New Orleans area death notices for last 6 months, free)

[www.legacy.com](http://www.legacy.com) (Nationwide death notices, \$2.95 fee)

[www.vitalsearch.com](http://www.vitalsearch.com) (Death and birth records, fees charged)

[www.vitalchek.com](http://www.vitalchek.com) (Death and birth records, fees charged)

## **Checklist Forms**

1. Succession Checklist for Clients
2. Family Tree Worksheet for Clients
3. Property and Debts Worksheet for Clients
4. Intestate Succession Checklist for Attorneys
5. “Critical Dates” Checklist for Attorneys

## **Pleading Forms**

Petition for Possession (Intestate Succession)

Verification of Petition

Affidavit of Jurisdiction, Death and Heirship

Sworn Descriptive List

Inheritance Tax Return

Judgment of Possession

## SUCCESSION CHECKLIST

☞ Please bring these papers and information to your interview

### Death Information

- Death certificate
- Deceased person's Social Security Number
- Copy of will (if the deceased had one)

### Family Relationships of Deceased Person

- Obituary or funeral program
- Marriage license (if available)
- If prior marriage(s), copies of divorce judgment(s)
- List of all deceased person's children, including:
  - Name
  - Date of Birth
  - Address
  - If not a child of the marriage, state whether father signed birth certificate, acknowledgment of paternity or adopted the child
- Any adoption or paternity acknowledgment papers for any of the deceased's children

**Note: if a child died before the deceased, we will need the above information for that child's children**

### Deceased Person's Property

- Act of Sale or Deed for deceased person's house and other real estate  
(You can get the Act of Sale from your parish courthouse or in New Orleans, from the Conveyance Office at the Convention Center)
- Assessed value of real estate (or most recent appraisal available)
- Title to cars, trucks, boats, trailers, etc.

- Bank accounts
- Stocks, bonds, mutual funds, certificates of deposit
- Safety deposit bank information (Do not enter the safety deposit box)
- Pension or retirement plan information

**Deceased Person's Debts**

- Funeral and cemetery costs
- List of all debts owed by deceased person at time of death, including:
  - Real estate mortgages
  - Car notes
  - Other loans
  - Credit cards
  - Income taxes
  - Medical bills

**NOTE: WORK SHEETS FOR THE DECEASED PERSON'S FAMILY TREE AND PROPERTY AND DEBTS ARE ATTACHED—PLEASE COMPLETE**

**DECEASED PERSON'S FAMILY TREE**

**TABLE 1: Information of deceased person's spouses**

<b>SPOUSES OF DECEASED</b>	<b>DATE OF MARRIAGE</b>	<b>DATE OF DIVORCE OR DEATH</b>

Address/Phone and Date of Birth of Surviving Spouse: \_\_\_\_\_

\_\_\_\_\_

**TABLE 2: Information on Deceased Person's Children**

<b>Children of Deceased &amp; Social Security No.</b>	<b>Other Parent's Name</b>	<b>Address &amp; Phone</b>	<b>Date of Birth</b>	<b>Date of Death</b> (If dead, list his/her children in Table 3)

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**TABLE 3: Information on children of any child listed in Table 2 above, who is dead**

<b>Child's Name &amp; Social Security No.</b>	<b>Name of Child's Deceased Parent from Table 2</b>	<b>Address/Phone</b>	<b>Date of Birth</b>	<b>Date of Death</b>

**TABLE 4: Other persons listed in will**

For anyone named in will, but not listed in Tables 1 to 3, provide information below

<b>Name</b>	<b>Address/Phone</b>	<b>Under 18 years old (Yes/No?)</b>	<b>Date of Death</b>

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**DECEASED PERSON'S PROPERTY AND DEBTS**

☞ List the deceased person's property and debts at the time of his/her death:

**PROPERTY**

	<b>Identification No. or description</b>	<b>Location</b>	<b>Estimated value at time of death</b>
<b>Real Estate</b>			
<b>Stocks, bonds</b>			
<b>Notes, cash</b>			
<b>Cars, boats, trailers</b>			
<b>Insurance or annuities</b>			
<b>Furniture/Household goods</b>			
<b>Other property</b>			

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**DEBTS**

☞ List the debts at amount due at time of death

	<b>Creditor</b>	<b>Community or Separate Debt?</b>	<b>Amount due at death</b>
<b>Funeral &amp; cemetery expenses</b>			
<b>Real estate mortgages</b>			
<b>Car loans</b>			
<b>Other Debts</b>			

## **INTESTATE SUCCESSION STEPS—CHECKLIST FOR ATTORNEYS**

### **Overview**

Generally, you should prepare the intestate succession pleadings in this order:

1. Affidavit of Jurisdiction, Death and Heirship
2. Sworn descriptive list of property
3. Renunciations, other acts of transfer (if applicable)
4. Inheritance tax return
5. Petition for Possession
6. Judgment of Possession

The need for tutorships for minor heirs or legatees should be evaluated.

### **Checklist of Steps**

- Affidavit of Jurisdiction, Death and Heirship
- Sworn detailed descriptive list of property
- Inheritance tax return (and required attachments)
- Inheritance tax receipt from Department of Revenue
- Petition for Possession
- Verifications of Possession
- Renunciation Acts or other acts of transfers (if applicable)
- Judgment of Possession
- Certified Copies of Judgment of Possession for client and recordation
- Record judgment of possession in parishes where real estate located
- For Orleans Parish real estate, send judgment of possession to District Assessor

## “CRITICAL DATES” CHECKLIST FOR ATTORNEYS

Note: Generally, the law in effect on a decedent’s death governs. Here are some critical dates where Louisiana probate law changed. Check to see if any apply to client’s succession.

July 1, 1969	Inheritance taxes may be prescribed for persons who died before July 1, 1969.
1979	Community property laws amended
January 1, 1993	For deaths on or after January 1, 1993, total amount of surviving spouse’s inheritance exempt from taxation
January 1, 1996	Forced heirship rules changed. Note: for deaths or wills before this date, children over 23 may be forced heirs
July 1, 1999	Renunciation rules changed. Inheritance goes downstream instead of to co-heirs. Statutory wills no longer require proof and funeral debts are considered “separate” debts
July 1, 2004	Inheritance taxes no longer owed if succession opened within 9 months of decedent’s death.
August 15, 2004	Fathers can no longer inherit from illegitimate child who was only orally acknowledged
June 29, 2005	Statute of limitations for filiation action by unacknowledged children increased to 1 year after decedent’s death

Template: Intestate succession  
1 Surviving spouse, 2 legitimate children, 1 predeceased & survived by 1 child  
No renunciations  
Community and separate property

**34<sup>TH</sup> JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. BERNARD**

**STATE OF LOUISIANA**

**NO.**

**DIVISION “”**

**SUCCESSION OF JOHN GREEN**

**PETITION FOR POSSESSION**

The petition of Susan Green, Thomas Green and Georgia Brown, all of whom are competent and of the full age of majority, respectfully represents:

1.

Petitioners, Susan Green and Thomas Green are domiciled in St. Bernard Parish.  
Petitioner, Georgia Brown, is domiciled in Orleans Parish.

2.

John Green (hereinafter “decedent”) died intestate in St. Bernard Parish, Louisiana, on October 1, 2000, where he was domiciled at the time of his death. Decedent was married only once, on July 1, 1960, to Susan Green with whom he was living at the time of his death. Only two children, Thomas Green and Mary Brown, were born of this marriage. Mary Brown predeceased the decedent and was survived by only one child, Georgia Brown, and did not adopt anyone. No other children of any status whatsoever, were born to decedent, nor did he adopt

anyone. The Affidavit of Jurisdiction, Death and Heirship is attached and incorporated by reference.

3.

Decedent left property within the jurisdiction of this Court, all of which was acquired during the existence of the community of acquets and gains between decedent and petitioner, Susan Green, except for 100 shares of IBM stock inherited by decedent as separate property, which property is fully described in the sworn descriptive list of assets attached and incorporated by reference.

4.

Susan Green, as surviving spouse of decedent, is entitled to be recognized as owner and sent into possession of an undivided one-half interest in the property comprising the community of acquets and gains that existed between her and the decedent, and is entitled to the usufruct, until death or remarriage, of decedent's one-half interest in the community property.

5.

Thomas Green and Georgia Brown are the sole heirs of the decedent and are entitled to be recognized as owners and sent into possession of equal shares of the naked ownership of decedent's undivided one-half interest in the property that formed the community of acquets and gains between Susan Green and decedent, subject to a usufruct in favor of Susan Green until her remarriage or death. Also, Thomas Green and Georgia Brown, as sole heirs of decedent, are entitled to be recognized as owners in equal shares of decedent's separate property.

6.

The succession is relatively free of debt. None of the creditors has demanded an

administration. There is no necessity of administration. All heirs accept the succession.

7.

As will appear from the receipt of the Louisiana Department of Revenue and Taxation, annexed hereto, there is no inheritance tax or estate transfer tax due the State of Louisiana.

WHEREFORE, petitioners pray for judgment that:

1. Susan Green be recognized as surviving spouse of decedent, and as such, entitled in her own right to the ownership and to be placed into possession of an undivided one-half interest in the property comprising the community of acquets and gains that existed between her and the decedent, and to the usufruct, until death or remarriage, of decedent's one-half interest in the community property.
2. Thomas Green and Georgia Brown be recognized and decreed to be the sole heirs of the decedent and, as such, entitled to be recognized as owners and sent into possession of equal shares of the naked ownership of decedent's undivided one-half interest in decedent's share of the community property, subject to a usufruct in favor of Susan Green until her remarriage or death, and placed in possession of an undivided one-half interest each in all of decedent's separate property.
3. All inheritance and estate transfer taxes due the State of Louisiana have been paid.

Respectfully submitted,

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Attorney Name  
LSBA No.  
Attorney for Petitioners  
New Orleans Legal Assistance  
(an office of Southeast Louisiana Legal Services)  
1010 Common St., Suite 1400A  
New Orleans, LA 70112  
(504) 529-1000

Template: Intestate succession  
1 Surviving spouse, 2 legitimate children, 1 predeceased & survived by 1 child  
No renunciations  
Community and separate property

**34<sup>TH</sup> JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. BERNARD**

**STATE OF LOUISIANA**

**NO.**

**DIVISION**

**SUCCESSION OF JOHN GREEN**

**AFFIDAVIT OF JURISDICTION, DEATH AND HEIRSHIP**

STATE OF LOUISIANA

PARISH OF ST. BERNARD

BEFORE ME, the undersigned authority, personally came and appeared Susan Green and Mary Brown, who being first duly sworn, did depose and say:

We are well acquainted with John Green (hereinafter the “decedent”), his family and that the following facts are within our personal knowledge:

1. John Green (hereinafter “decedent”) died intestate in St. Bernard Parish, Louisiana, on October 1, 2000, where he was domiciled at the time of his death.
2. Decedent was married only once, on July 1, 1960, to Susan Green with whom he was living at the time of his death.
3. Only two children, Thomas Green and Mary Brown, were born of the marriage

between decedent and Susan Green.

4. Mary Brown predeceased the decedent and was survived by only one child, Georgia Brown. Mary Brown did not adopt anyone.
5. No other children of any status whatsoever, were born to decedent, nor did he adopt anyone.

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SUSAN GREEN  
ADDRESS

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GEORGIA BROWN  
ADDRESS

Sworn to and subscribed before  
me this \_\_\_\_ day of \_\_\_\_\_ 2006.

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LSBA NO.  
NOTARY PUBLIC

My commission is for life.

