

Why Should I Have a Last Will and Testament?

By Gary Calligas

I frequently speak to large groups of seniors about issues that concern them and often ask for a show of hands of those who have a written Last Will and Testament. I'm always amazed at the large number of adults that have not created a will to protect their assets and their loved ones. Some of the reasons expressed included:

- "My estate is too small."
- "My children get along great. They will just divide everything evenly."
- "I'm in debt. There won't be anything left to divide."
- "I handled the transfer of assets when my parents died. My oldest son knows my wishes and will handle things when I'm gone."
- "I don't have children."
- "I don't like to think about death."

According to an AARP survey, 40% of Americans over the age of 45 do not have a will. Many people are reluctant to deal with matters related to their death, while others have given it a lot of thought but procrastinate in drawing up the appropriate legal documents. However, it's crucial for all adults to have a written will as it protects your family and communicates your wishes about your possessions to avoid possible conflicts among heirs and unnecessary legal action.

According to a local elderly estate attorney, "The biggest reason that anyone needs to have a will is in order for them to control the distribution of their property. We always say that Louisiana has written a will for you, it is up to you to change it. Meaning, without a will the property will be distributed to the heirs in accordance with Louisiana law. Sometimes, the way the law says how to distribute the property is not what a person really wants."

If you die intestate (without a will) in Louisiana, your assets are dispersed according to intestate succession laws which is determined on whether or not you have a surviving spouse, children, parents and/or siblings. For example, if a childless married person dies owning property that is considered "separate" (property that was inherited or acquired before marriage), this property goes to their surviving siblings or parents. The spouse is only entitled to the community property. If a married person with children dies, children inherit your share of the community property subject to the surviving spouse's right to use it for life, plus all of your separate property.

In the absence of a will, a judge appoints an administrator who will settle your affairs. The administrator could be entitled to up to 10% of the estate's value and the entire process could take years to resolve, potentially creating a financial burden on the family if there are no available funds for funeral or other expenses. The administrator also determines what happens to items that may have a sentimental value, leading to resentment among heirs.

Some estate attorneys promote long-term care planning in will preparation, as there are many benefits of using a testamentary trust (a trust written into a testament/will) that could protect a large part of the assets that could be used for the benefit of the surviving spouse, without

disqualifying them from receiving Medicaid payments for nursing home care costs. There are also ways to minimize the amount of taxes the estate will pay after you die.

I'm also surprised to learn that of those seniors with wills who attend my presentations, many state that they have not updated their wills in over 20 years. Most estate attorneys suggest reviewing your will every three years, and updating after any life change, such as marriage, divorce, birth of a child, death of beneficiary or executor, inheritance or purchase of significant property or assets, or lack for need of trusts for children or disabled dependents.

Remember, if you do not have a will, Louisiana law will make one for you. You will have no say in how or to whom your assets will go.

Gary L. Calligas is the publisher of *The Best of Times*, a free monthly magazine for mature adults in Northwest Louisiana and is the host of *The Best of Times Radio Hour* which airs at 9:05 am every Saturday on NEWS RADIO 710 KEEL. For more information, please visit www.thebestoftimesnews.com or email gary.calligas@gmail.com.