

PROBATE, OWNERSHIP OF PROPERTY, FORCED HEIRSHIP

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This article explains what assets are probate assets and which are not, how property is owned, and the current status of the forced heirs laws.

Probate assets are assets that pass under the terms of your will or under state intestacy laws. They include real estate, stocks, bonds, brokerage accounts, personal effects, automobiles, etc. (except as provided below).

Non-probate assets are assets that pass under the terms of beneficiary designations. They include life insurance, retirement benefits, U.S. Savings Bonds, and assets in trust.

Since the way property is inherited under the laws of intestacy depends upon how the property is owned, it is important to understand what comprises separate and community property.

Separate property is property acquired by a spouse prior to the marriage, property donated to the spouse as his or her separate property, property inherited by the spouse, property acquired by the spouse with separate property funds and all property of a spouse if spouses have executed a marriage contract adopting a Separation of Property Regime (Pre-Nuptial Agreement).

Community Property is property acquired during the existence of the marriage through the efforts of either spouse. If there is no marriage contract, property acquired with community funds or with separate and community funds where the separate funds are inconsequential in comparison with the community property used, is considered community property. Property donated to spouses jointly is community property.

Furthermore, community property is income from both separate and community property, unless the income from separate property has been reserved by the owner spouse by separate act. Damages awarded for loss or injury to community property, and all other property not classified by laws as separate property is community property.

In Louisiana, forced heirship is the right of forced heirs (children and their descendants) to a specified portion of an estate, in spite of a will. Forced heirs include all children under the age of 24 and all children of any age who are permanently incapable of caring for their persons or administering their estates by virtue of a mental incapacity or physical infirmity.

The forced portion with one forced heir is one quarter (1/4). With two or more forced heirs, the forced portion is one-half (1/2). The forced heirs' rights may be deferred in favor of a surviving spouse for the life of the surviving spouse by utilizing a usufruct.

If a child predeceases a parent and has children, a grandchild can be a forced heir of the grandparent if he or she is permanently incapable of caring for his person or administering his estate by virtue of mental incapacity or physical infirmity.

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