

What you should know about Separate Property How it is Inherited

Misconceptions about how property is owned and inherited leads to unintentional mistakes and unnecessary problems. Many assume that all property acquired during a marriage is community property. While this is the general rule, it is simply not true for all property obtained during a marriage.

For example, a young married man starts buying property with a business partner who is also married. The wives of these men are not part of the acquisitions, and they sign off on each Act of Sale as interveners, declaring they understand and agree the property is being purchased by their husbands with separate funds.

Both men are tragically killed in an auto accident. Neither of them have wills. After all, they are young! Who owns the property these men have purchased together? One of the men has children, and these children inherit his separate assets, not the wife. The other man has no children, so his separate assets belong to his siblings rather than his wife. Remember both wives agreed with their signatures that the properties were being purchased with separate funds. The property is legally separate property even though it was purchased during the marriage.

By legal definition, separate property is that which is acquired prior to a marriage; that which is acquired by inheritance or donation to one spouse individually; or that which is acquired by one spouse with separate funds or with separate and community funds where the community funds are very small in comparison to the separate funds.

Suppose you inherit a camp in Grand Isle or farmland near Thibodeaux, and even though you were married twice, you never had children of your own. Your second wife had children with her first husband, but you did not legally adopt those children. You have a heart attack with no warning and die before executing a will. Who gets the camp and farmland? They are separate property because you inherited them individually. From the prior example, you know the wife cannot inherit your separate property unless you leave it her in a will. But, could her children inherit your property? The answer is "no". Again in this case, the siblings of the deceased inherit the separate property.

In this second example, the deceased could have given his separate property to anyone he wished in a will because he had no children. In the first case, the man with no children could have given his separate property to his wife or anyone else in a will because he had no children. The other young man who had young children could have given his wife control by giving her a lifetime usufruct of his separate property and by putting the children's interest in a trust making the wife the trustee. This would have to be done in a properly drafted will with trust provisions.

Louisiana provides that without a will, separate property is inherited in a specific order, which may seem a bit complicated and unfair. The law gives a usufruct (usage) of the property of a single person with no children to his parents, with his siblings having as to their interest the

naked ownership of that interest. If the parents of a single person have not survived him, his brothers and sisters or their children become full owners.

Without a will, the property of a married person without children is inherited in the same way as the single person described above.

As to the married person with children and no will, his separate property passes to his children without a usufruct to the surviving spouse.

As you can see under Louisiana Law as it relates to separate property, there is no protection for a spouse or significant other without a will. However, a correctly drafted will affords much protection to your loved ones.

Melchers Law Firm, APC
504-467-1092

909 West Esplanade Ave. Ste 206
Kenner, Louisiana 70065