

## Estate Planning for New Louisiana Residents

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### Practice Areas

- Trusts

### I. Introduction

Louisiana is one of the few states in the country that is governed by a community property regime for married couples. In addition, it grants certain individuals rights of inheritance. This paper will outline some of these concepts and other estate planning matters.

### II. What is Community Property?

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Community property consists of property acquired during the existence of the community property regime through the effort, skill or industry of either spouse; property acquired with community property or with community and separate property unless classified as separate property; and income generated from both separate or community property.

#### B. Presumption

Property in the possession of either spouse during the existence of the community property regime is presumed to be owned by the community, but either spouse may prove that it is not.

#### C. What is Separate Property?

A spouse's separate property comprises of property acquired prior to the establishment of a community property regime; property acquired by a spouse with separate property or with separate and community property when the value of the community property is inconsequential; and property acquired by spouse by inheritance or donation.

#### D. Revenue Generated By Separate Property

Revenue from separate property becomes community property unless reserved as separate property in accordance with prescribed Louisiana forms.

#### E. Management of Community Property

Each spouse, acting alone, may manage, control and dispose of community property; except that the concurrence of both spouses is required for the alienation, encumbrance or lease of immovable property, furniture and fixtures located within the family home, all or substantially all of the assets of a community business, and movables issued or registered in the name of both spouses.

#### F. Debts of the Community

An obligation incurred by a spouse during the existence of a community property regime for the common interest of the spouses or for the interest of the other spouse. Again, there is a presumption that obligations are community obligations.

#### G. Separate Debts of a Spouse

An obligation incurred prior to the establishment of a community property regime or incurred during the

existence of the community property regime not for the common interest of both spouses.

### III. Renunciation of Community Property Regime

A. Prior to marriage, spouses may execute a matrimonial agreement to the effect that they shall not be subjected to the laws of community property. Such an agreement can include many provisions, the most customary of which merely states that there shall be no community regime in this marriage.

B. A separate property agreement may be entered into by contract prior to marriage, but after marriage only with the approval of the court except for married couples moving into the state.

C. During the first year after moving into and acquiring a domicile in this state, spouses may enter into a matrimonial agreement without court approval.

### IV. Marital Portion

When a spouse dies rich in comparison with the surviving spouse, the surviving spouse is entitled to claim the marital portion from the succession of the deceased spouse which is one-fourth of the decedent's succession if the decedent died without children, while if he is survived by children, then the marital portion becomes a usufruct, i.e. a life income interest.

### V. Forced Heirs

A. Forced heirs are:

- Children age 23 or younger at the time of death;
- Children of any age who are mentally or physically incapable of caring for their persons or administering their estates;
- Certain grandchildren, when a parent has predeceased the grandparent;

### B. Forced Portion

Donations which include bequests may not exceed three-fourths of the property of the decedent if, at the time of his death, he has one forced heir, and cannot exceed one-half of the property of the decedent if, at the time of his death, he has two or more forced heirs.

### VI. Living Wills

A living will is an instrument which states an individual's desire as to whether his life should be artificially prolonged in the event that he has either an incurable injury, disease or illness, or is in a continual profound comatose state with no reasonable chance of recovery.

### VII. Powers of Attorney

Powers of attorney authorize another individual or group of individuals to act for the party granting the power of attorney. It becomes particularly useful in the event of an individual's incapacity.

### VIII. Revocable Living Trusts

A living trust is often used to place all of an individual's assets in trust for the purpose of avoiding probate and is aggressively marketed and is oversold. The Louisiana Attorney General just issued a warning to consumers to be aware of high-pressure sales pitches from estate planners pushing living trusts. A living trust is usually not recommended in Louisiana where costs of probate should be reasonable as compared

to some states where probate costs and administration are quite expensive and complex. This investment planning technique should be used very sparingly and probably only in the case of an individual who is not married and elderly, and all of whose assets consist of marketable securities.

#### IX. Irrevocable Trusts

An irrevocable trust is frequently used to save estate taxes, to provide for the management of assets for incompetents, to provide for management of assets of children, and to provide income to a surviving spouse while preserving the assets for children. It is frequently funded with life insurance. A trust can be simple. It does not need to exceed three or four pages in length. A spouse can be the trustee. The cost of creation should be minimal.

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