

Regular Session, 2011

SENATE BILL NO. 22

BY SENATOR MURRAY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SUCCESSIONS. Provides relative to small succession procedures and effects. (gov sig)

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AN ACT

To amend and reenact Code of Civil Procedure Articles 3421, 3431, 3432 and 3434, and to enact Code of Civil Procedure Article 3422.1, relative to successions; to provide relative to small successions; to provide certain definitions, terms, procedures, conditions, requirements, and effects; to provide relative to certain immovable property; to provide for conveyance of certain ownership interest in immovable property by a small succession; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Articles 3421, 3431, 3432 and 3434 are hereby amended and reenacted, and Code of Civil Procedure Article 3422.1 is hereby enacted, to read as follows:

Art. 3421. Small successions defined

~~A small succession, within the meaning of this Title, is the succession of a person who dies leaving property in Louisiana having a gross value of fifty thousand dollars or less. On and after January 1, 2010, a small succession, within the meaning of this Title, is the succession of a person who dies leaving property in Louisiana, the deceased's interest in which has a gross value of seventy-five thousand dollars or~~

1 ~~less.~~ A small succession, within the meaning of this Title, is the succession or the
2 ancillary succession of a person who has died at any time, leaving property in
3 Louisiana having a gross value of seventy-five thousand dollars or less valued
4 as of the date of death.

5 * * *

6 Art. 3422.1. Small succession immovable property damaged by disaster or
7 catastrophe

8 A. The provisions of this Article shall apply to immovable property,
9 subject to a small succession proceeding, that is damaged by a disaster or
10 catastrophe for which a declaration of emergency or federal declaration of
11 disaster or emergency was issued.

12 B. In the absence of a written agreement among co-owners for the use
13 and management of such immovable, any public entity or agent of such entity
14 may conclusively presume that a co-owner in possession of the immovable for
15 more than one year has been appointed by all other co-owners to manage,
16 administer, restore and repair the immovable, and to receive, disperse and
17 account for funds given to him by the public entity solely for the purposes of
18 such repair and restoration.

19 C. The power of the managing co-owner shall include the power to
20 execute mortgages in order to secure funds for the purposes of repair and
21 restoration of the immovable, and also to encumber the immovable with such
22 restrictions as may be required by the public entity, without the need to obtain
23 the concurrence of the other co-owners.

24 D. Possession of the immovable by the managing co-owner shall be
25 considered as having continued during any period such co-owner has been
26 forced to leave the immovable due to fire, hurricane, flood, or other disaster or
27 catastrophe.

28 E. The management of the immovable by the co-owner shall be subject
29 to the laws of negotiorum gestio and mandate applicable to the other co-owners.

1 **However, the provisions of this Article shall control to the extent of any conflict.**

2 **F. It is the intent of the legislature that the provisions of this Article be**
3 **liberally construed in order to allow the maximum possible rehabilitation,**
4 **restoration, and rebuilding of immovable property in this state, subject to a**
5 **small succession proceeding, that has been damaged by disaster or catastrophe.**

6 **G. The provisions of this Article shall expire on January 1, 2013.**

7 * * *

8 Art. 3431. Small successions; judicial opening unnecessary

9 A. It shall not be necessary to open judicially the small succession of a person
10 **domiciled in Louisiana who died intestate, or domiciled outside of Louisiana**
11 **whose testament has been probated by court order of another state** ~~who died~~
12 ~~intestate leaving no immovable property, other than an ownership interest in small~~
13 ~~succession immovable property as defined in Paragraph D, and whose sole heirs are~~
14 the following:

15 (1) His descendants.

16 (2) His ascendants.

17 (3) His brothers or sisters, or descendants thereof.

18 (4) His surviving spouse.

19 **(5) His legatees under a testament probated by court order of another**
20 **state.**

21 B. Any person appointed as public administrator by the governor may use the
22 affidavit procedure of this Chapter to take possession of the estate of the deceased
23 for transmittal to the state provided there is no surviving spouse or other heir present
24 or represented in the state ~~and provided that the estate does not include any~~
25 ~~immovable property, other than small succession immovable property, and provided~~
26 he has advertised one time in the official journal of the parish where a succession
27 would have been opened under Article 2811, and verifies that he has received no
28 notice of opposition.

29 C. The legal notice required in Paragraph B of this Article shall read as

1 follows:

2 "Notice is hereby given to any heirs or creditors of _____ that
3 _____, Public Administrator for the parish of _____, intends to
4 administer the intestate succession of _____, under the provisions
5 of Small Successions as set forth in Chapter 2 of Title V of Book VI of the Code of
6 Civil Procedure.

7 Anyone having an objection to such administration of the succession should
8 notify _____ at _____."

9 ~~D. As used in this Chapter, "small succession immovable property" means~~
10 ~~(1) immovable property, comprised of a single lot or contiguous lots, on which is~~
11 ~~situated a single building that, together with any ancillary buildings, contains not~~
12 ~~more than four dwelling units, each of which has its primary use as a residence, and~~
13 ~~in a portion of which either the deceased or the surviving spouse resided or a portion~~
14 ~~of which was the last place of residence of either the deceased or the surviving~~
15 ~~spouse if neither the deceased nor the surviving spouse was residing in that residence~~
16 ~~on the date of death because of illness, incapacity, natural disaster or destruction; or~~
17 ~~(2) any cemetery spaces.~~

18 Art. 3432. Affidavit for small succession; contents

19 A. When it is not necessary under the provisions of Article 3431 to open
20 judicially a small succession, at least two persons, including the surviving spouse,
21 if any, and one or more competent major heirs of the deceased, may execute one or
22 more multiple originals of an affidavit, duly sworn to and acknowledged before any
23 officer or person authorized to administer oaths in the place where the affidavit is
24 executed, setting forth:

25 (1) The date of death of the deceased, and his domicile at the time thereof;

26 (2) The fact that the deceased died intestate;

27 (3) The marital status of the deceased, the location of the last residence of
28 the deceased, and the name of the surviving spouse, if any, and the surviving
29 spouse's address, domicile, and location of last residence;

1 (4) The names and last known addresses of the heirs of the deceased, their
2 relationship to the deceased, and the statement that an heir not signing the affidavit
3 (a) cannot be located after the exercise of reasonable diligence, or (b) was given ten
4 days notice by U.S. mail of the affiants' intent to execute an affidavit for small
5 succession and did not object;

6 ~~(5) The fact that the deceased left no immovable property other than small~~
7 ~~succession immovable property;~~

8 ~~(6)~~ **(5)** A description of the property left by the deceased, including whether
9 the property is community or separate, and which in the case of immovable property
10 must be sufficient to identify the property for purposes of transfer;

11 ~~(7)~~ **(6)** A showing of the value of each item of property, and the aggregate
12 value of all such property, at the time of the death of the deceased;

13 ~~(8)~~ **(7)** A statement describing the respective interests in the property which
14 each heir has inherited and whether a legal usufruct of the surviving spouse attaches
15 to the property;

16 **(8) An attachment consisting of certified copies of the testament and the**
17 **probate order of another state, if the affidavit is being used in lieu of an**
18 **ancillary probate proceeding.**

19 (9) An affirmation that, by signing the affidavit, the affiant, if an heir, has
20 accepted the succession of the deceased; and

21 (10) An affirmation that, by signing the affidavit, the affiants swear under
22 penalty of perjury that the information contained in the affidavit is true, correct and
23 complete to the best of their knowledge, information, and belief.

24 B. If the deceased had no surviving spouse, the affidavit must be signed by
25 at least two heirs. If the deceased had no surviving spouse and only one heir, the
26 affidavit must also be signed by a second person who has actual knowledge of the
27 matters stated therein.

28 C. In addition to the powers of a natural tutor otherwise provided by law, a
29 natural tutor may also execute the affidavit on behalf of a minor child without the

1 necessity of filing a petition pursuant to Article 4061.

2 * * *

3 Art. 3434. Endorsed copy of affidavit authority for delivery of property

4 A. A multiple original of the affidavit authorized by Article 3432, shall be
5 full and sufficient authority for the payment or delivery of any money or property of
6 the deceased described in the affidavit to the heirs of the deceased and the surviving
7 spouse in community, if any, in the percentages listed therein, by any bank, financial
8 institution, trust company, warehouseman, or other depositary, or by any person
9 having such property in his possession or under his control. Similarly, a multiple
10 original of an affidavit satisfying the requirements of this Article shall be full and
11 sufficient authority for the transfer to the heirs of the deceased, and surviving spouse
12 in community, if any, or to their assigns, of any stock or registered bonds in the name
13 of the deceased and described in the affidavit, by any domestic or foreign
14 corporation.

15 B. The receipt of the persons named in the affidavit as heirs of the deceased,
16 or surviving spouse in community thereof, constitutes a full release and discharge for
17 the payment of money or delivery of property made under the provisions of this
18 Article. Any creditor, heir, succession representative, or other person whatsoever
19 shall have no right or cause of action against the person paying the money, or
20 delivering the property, or transferring the stock or bonds, under the provisions of
21 this Article, on account of such payment, delivery, or transfer.

22 C.(1) A multiple original of the affidavit, to which has been attached a
23 certified copy of the deceased's death certificate, shall be recorded in the conveyance
24 records in the office of the clerk of court in the parish where any ~~small succession~~
25 immovable property described therein is situated, after at least ninety days have
26 elapsed from the date of the deceased's death.

27 (2) An affidavit so recorded, or a certified copy thereof, shall be admissible
28 as evidence in any action involving ~~small succession~~ immovable property to which
29 it relates or is affected by the instrument, and shall be prima facie evidence of the

1 facts stated therein, including the relationship to the deceased of the parties
 2 recognized as heir, surviving spouse in community or usufructuary as the case may
 3 be, and of their rights in the ~~small succession~~ immovable property of the deceased.

4 (3) An action by a person, who claims to be a successor of a deceased person
 5 but who has not been recognized as such in an affidavit authorized by Article 3432,
 6 to assert an interest in ~~small succession immovable~~ property formerly owned by the
 7 deceased, against a third person who has acquired an interest in the ~~small succession~~
 8 ~~immovable~~ property, or against his successors by onerous title, is prescribed in two
 9 years from the date of the recording of the affidavit in accordance with this
 10 Paragraph.

11 Section 2. The provisions of this Act are not intended to establish any necessity to
 12 open a succession judicially which does not qualify as a small succession.

13 Section 3. This Act shall become effective upon signature by the governor or, if not
 14 signed by the governor, upon expiration of the time for bills to become law without signature
 15 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 16 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 17 effective on the day following such approval.

The original instrument was prepared by Jerry G. Jones. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

DIGEST

Murray (SB 22)

Present law in Code of Civil Procedure defines "small succession" as the succession of a person who dies leaving property in Louisiana having a gross value of \$50K or less. On and after January 1, 2010, a small succession is the succession of a person who dies leaving property in Louisiana, the deceased's interest in which has a gross value of \$75K or less.

Proposed law defines "small succession" as the succession or the ancillary succession of a person who has died at any time, leaving property in Louisiana having a gross value of \$75K or less valued as of the date of death.

Proposed law provides that under certain circumstances a co-owner in possession of small succession immovable property that is damaged by a declared disaster or catastrophe may receive and expend funds given to him by a public entity to repair and restore the property. Further authorizes the co-owner to execute mortgages to secure funds and encumber the immovable in order to repair and restore the property without obtaining the concurrence of the other co-owners. Provides that proposed law shall expire on Jan. 1, 2013.

Present law provides that judicial opening of a small succession is not necessary for a person who died intestate leaving no immovable property, other than an ownership interest in small succession immovable property, and whose sole heirs are the following:

- (1) His descendants.
- (2) His ascendants.
- (3) His brothers or sisters, or descendants thereof.
- (4) His surviving spouse.

Defines "small succession immovable property" as (1) immovable property, comprised of a single lot or contiguous lots, on which is situated a single building that, together with any ancillary buildings, contains not more than four dwelling units, each of which has its primary use as a residence, and in a portion of which either the deceased or the surviving spouse resided or a portion of which was the last place of residence of either the deceased or the surviving spouse if neither the deceased nor the surviving spouse was residing in that residence on the date of death because of illness, incapacity, natural disaster or destruction; or (2) any cemetery spaces.

Proposed law deletes definition of "small succession property" and provides that judicial opening of a small succession is not necessary of a person domiciled in Louisiana who died intestate, or domiciled outside of Louisiana whose testament has been probated by court order of another state, and whose sole heirs are the following:

- (1) His descendants.
- (2) His ascendants.
- (3) His brothers or sisters, or descendants thereof.
- (4) His surviving spouse.
- (5) His legatees under a testament probated by court order of another state.

Present law provides contents of small succession affidavit, including the fact that the deceased left no immovable property other than small succession immovable property.

Proposed law deletes this requirement, and adds requirement of an attachment consisting of certified copies of the testament and the probate order of another state, if the affidavit is being used in lieu of an ancillary probate proceeding.

Proposed law also changes references from "small succession immovable property" to "immovable property" in provisions setting forth requirements for delivery of property.

Present law provides that an action by a person, who claims to be a successor of a deceased person but who has not been recognized as such in an affidavit, to assert an interest in small succession immovable property formerly owned by the deceased, against a third person who has acquired an interest in the small succession immovable property, or against his successors by onerous title, is prescribed in two years from the date of the recording of the affidavit.

Proposed law provides that an action by a person, who claims to be a successor of a deceased person but who has not been recognized as such in an affidavit, to assert an interest in property formerly owned by the deceased, against a third person who has acquired an interest in the property, or against his successors by onerous title, is prescribed in two years from the date of the recording of the affidavit.

Proposed law provides that its provisions are not intended to establish any necessity to open a succession judicially which does not qualify as a small succession.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.C.P. Arts. 3421, 3431, 3432 and 3434; adds C.C.P. Art. 3422.1)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Authorizes a co-owner of small succession immovable property that is damaged by a declared disaster to receive and expend public funds to repair and restore the property.
2. Further authorizes the owner to execute mortgages to secure funds and encumber the immovable for purposes of repair and restoration of the property without obtaining concurrence of other co-owners.
3. Provides for expiration date of proposed law on Jan. 1, 2013.