

Regular Session, 2001

HOUSE BILL NO. 633

BY REPRESENTATIVES MCMAINS AND ANSARDI

(On Recommendation of the Louisiana State Law Institute)

AN ACT

To amend and reenact Civil Code Articles 942, 946, 952, 965, 1416, 1575, 1577, 1593, and 1597 and to enact Civil Code Article 1610.1, relative to successions; to authorize persons to bring an action to declare a successor unworthy; to provide for the devolution of succession rights; to provide for probate or amendment of testaments; to provide for accretion upon renunciation in testate successions; to provide liability of universal successors to creditors; to provide for olographic testaments; to provide for loss, extinction, or destruction of property given; to provide for revocation of testamentary dispositions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 942, 946, 952, 965, 1416, 1575, 1577, 1593, and 1597 are hereby amended and reenacted and Civil Code Article 1610.1 is hereby enacted, to read as follows:

Art. 942. Persons who may bring action

An action to declare a successor unworthy may be brought only by a person who would succeed in place of or in concurrence with the successor to be declared unworthy, or by one who claims through such a person.

When a person who may bring the action is a minor or an interdict, the court, on its own motion, or on the motion of any family member, may appoint an attorney to represent the minor or interdict for purposes of investigating and pursuing an action to declare a successor unworthy.

Revision Comments - 2001

(a) Under this amendment, if the person who would have the right to bring an action to declare a successor unworthy is either a minor or an interdict, the court can appoint an attorney to represent that person for purposes of investigating whether there may be a cause of action to declare a successor unworthy, and if so, to pursue the cause of action. It is important for the court to have the opportunity to appoint an attorney where the person who might inherit is interdicted, since there is a strong possibility that, if that is the case, the unworthy successor himself may be the curator for the interdict.

(b) This amendment authorizes the court to appoint an attorney either on the court's own motion or on the motion of any "family member." The term "family member" is not defined, because the area should be kept intentionally broad to enable anyone reasonably related to the family to step forward and raise the issue. One purpose of the concept of unworthiness is to prevent a malefactor, such as a murderer, from profiting from his misdeed. Even if someone may not be, technically speaking, a "family" member, the fact that the issue would be raised to the court may be important, and the amendment authorizes the court "on its own motion" to appoint an attorney at law.

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Art. 946. Devolution of succession rights of successor declared unworthy

If the decedent died intestate, when a successor is declared unworthy his succession rights devolve as if he had predeceased the decedent; but if the decedent died testate, then the succession rights devolve in accordance with the provisions for testamentary accretion as if the unworthy successor had predeceased the testator.

When the succession rights devolve upon a child of the successor who is declared unworthy, the unworthy successor and the

other parent of the child cannot claim a legal usufruct upon the property inherited by their child.

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Art. 952. Probate or annulment of testament after acceptance or renunciation of succession

An acceptance or renunciation of rights to succeed by intestacy is null if a testament is subsequently probated or given the effect of probate. An acceptance or renunciation of rights to succeed in a testate succession is null if the probate of the testament is subsequently annulled or the rights are altered, amended, or revoked by a subsequent testament or codicil.

* * *

Art. 965. Accretion upon renunciation in testate successions

In the absence of a governing testamentary disposition, the rights of a testate successor who renounces accrete to those ~~of his descendants by roots who were in existence at the time of~~ persons who would have succeeded to them if the legatee had predeceased the decedent death, but if none exist, in accordance with the rules for lapsed legacies.

* * *

Art. 1416. Liability of universal successors to creditors ~~for debts of~~ estate

Universal successors are liable to ~~the~~ creditors ~~of the~~ estate for the payment of the estate debts in proportion to the part which each has in the succession, but each is liable only to the extent of the value of the property ~~and its fruits and products~~ received by him, valued as of the time of receipt.

A creditor has no action for payment of an estate debt against a universal successor who has not received property of the estate ~~or its fruits and products.~~

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Art. 1575. Olographic testament

An olographic testament is one entirely written, dated, and signed in the handwriting of the testator. ~~It Although the date may appear anywhere in the testament, the testator must sign the testament at the end of the testament. If anything is written by the testator after his signature, the testament shall not be invalid and such writing may be considered by the court, in its discretion, as part of the testament.~~ The olographic testament is subject to no other requirement as to form. The date is sufficiently indicated if the day, month, and year are reasonably ascertainable from information in the testament, as clarified by extrinsic evidence, if necessary.

Additions and deletions on the testament may be given effect only if made by the hand of the testator.

Revision Comment - 2001

The 2001 amendment is intended to legislatively overrule *Succession of King*, 595 So.2d 805 (La. App. 2 Cir. 1992), which held that in an olographic testament the signature should be at the end of the testament. Otherwise, the amendment is not intended to change the law in any manner, but only to clarify it.

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Art. 1577. Requirements of form

The notarial testament shall be prepared in writing and ~~shall be~~ dated and shall be executed in the following manner. If the testator knows how to sign his name and to read and is physically able to do both, then:

(1) In the presence of ~~the~~ a notary and two competent witnesses, the testator shall declare or signify to them that the instrument is his testament and shall sign his name at the end of the testament and on each other separate page.

(2) In the presence of the testator and each other, the notary and the witnesses shall sign the following declaration, or one substantially similar: "In our presence the testator has declared or signified that this instrument is his testament and has signed it at the end and on each other separate page, and in the presence of the testator and each other we have hereunto subscribed our names this ____day of _____, ____."

* * *

Art. 1593. Exception to rule of testamentary accretion

If a legatee, joint or otherwise, is a child or sibling of the testator, or a descendant of a child or sibling of the testator, then to the extent that the legatee's interest in the legacy lapses ~~other than by renunciation~~, accretion takes place in favor of his descendants by roots who were in existence at the time of the decedent's death. The provisions of this Article shall not apply to a legacy that is declared invalid or is declared null for fraud, duress, or undue influence. ~~When a legacy lapses because of renunciation the accretion is governed by Article 965.~~

* * *

Art. 1597. Loss, extinction, or destruction of property given

A legacy is extinguished to the extent that property forming all or part of the legacy is lost, extinguished, or destroyed before the death of the testator. However, the legatee is entitled to any part of the

property that remains and to any uncollected insurance proceeds attributable to the loss, extinction, or destruction, and to the testator’s right of action against any person liable for the loss, extinction, or destruction.

A legacy of a certain object is not extinguished when the object of the legacy has been transformed into a similar object without an act of the testator.

If the object of the legacy has been condemned or expropriated prior to the testator’s death, the legatee is entitled to any uncollected award and to succeed to any right of action concerning the condemnation or expropriation.

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Art. 1610.1. Grounds for revocation of testamentary dispositions

The same causes that authorize an action for the revocation of a donation inter vivos are sufficient to authorize an action for revocation of testamentary dispositions.

Section 2. The Louisiana State Law Institute is hereby directed to review the Comments to this Act and to submit any changes or additional comments for publication in the Civil Code.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____