

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, relative to successions; to provide relative to small successions; to provide certain definitions, terms, procedures, conditions, requirements, and effects; 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 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 less.~~ **A small succession, within the meaning of this Title, is the succession or the ancillary succession of a person who has died at any time, leaving property in**

1 of Small Successions as set forth in Chapter 2 of Title V of Book VI of the Code of
2 Civil Procedure.

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

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

14 Art. 3432. Affidavit for small succession; contents

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

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

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

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

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

1 succession and did not object;

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

4 ~~(6)~~ **(5)** A description of the property left by the deceased, including whether
5 the property is community or separate, and which in the case of immovable property
6 must be sufficient to identify the property for purposes of transfer;

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

9 ~~(8)~~ **(7)** A statement describing the respective interests in the property which
10 each heir has inherited and whether a legal usufruct of the surviving spouse attaches
11 to the property;

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

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

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

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

24 C. In addition to the powers of a natural tutor otherwise provided by law, a
25 natural tutor may also execute the affidavit on behalf of a minor child without the
26 necessity of filing a petition pursuant to Article 4061.

27 * * *

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

29 A. A multiple original of the affidavit authorized by Article 3432, shall be

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

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

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

23 (2) An affidavit so recorded, or a certified copy thereof, shall be admissible
24 as evidence in any action involving ~~small succession~~ immovable property to which
25 it relates or is affected by the instrument, and shall be prima facie evidence of the
26 facts stated therein, including the relationship to the deceased of the parties
27 recognized as heir, surviving spouse in community or usufructuary as the case may
28 be, and of their rights in the ~~small succession~~ immovable property of the deceased.

29 (3) An action by a person, who claims to be a successor of a deceased person

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

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

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

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Jerry G. Jones.

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.

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)