

SENATE BILL NO. 22

BY SENATOR MURRAY AND REPRESENTATIVE WILLMOTT

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

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AN ACT

To amend and reenact Code of Civil Procedure Articles 3421, 3431(A)(introductory paragraph) and (5) and (B), 3432(A)(introductory paragraph) and (5) through (8), and 3434(C), to enact Code of Civil Procedure Article 3422.1, and to repeal Code of Civil Procedure Article 3431(D), 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(A)(introductory paragraph) and (5) and (B), 3432(A)(introductory paragraph) and (5) through (8), and 3434(C) 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 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 Louisiana having a gross value of seventy-five thousand dollars or less valued as of the date of death.**

* * *

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

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

B. In the absence of a written agreement between co-owners for the use and management of such immovable recorded in the mortgage records for the parish in which the immovable is situated, any public entity or agent of such entity may conclusively presume that a co-owner in possession of the immovable for more than one year has been appointed by all co-owners to manage, administer, repair, reconstruct, and restore the immovable, and to receive, disperse and account for funds given to him by the public entity solely for the purposes of such repair, reconstruction, and restoration.

C. The power of the managing co-owner shall include the power to execute mortgages to secure funds not exceeding the amount necessary to repair, reconstruct, and restore the immovable, and also to encumber the immovable with such restrictions as may be required by the public entity, without the need to obtain the concurrence of all co-owners.

D. Possession of the immovable by the managing co-owner shall continue during any period the managing co-owner has been forced to leave the immovable due to fire, hurricane, flood, or other disaster or catastrophe.

E. The management of the immovable by the co-owner shall be subject to the laws of negotiorum gestio and mandate applicable to co-owners. However, the provisions of this Article shall control to the extent of any conflict.

F. It is the intent of the legislature that the provisions of this Article be liberally construed to allow the maximum possible repair, reconstruction, and restoration of immovable property in this state, subject to a small succession proceeding, that has been damaged by disaster or catastrophe.

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

2 * * *

3 Art. 3431. Small successions; judicial opening unnecessary

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

10 * * *

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

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

21 * * *

22 Art. 3432. Affidavit for small succession; contents

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

29 * * *

30 ~~(5) The fact that the deceased left no immovable property other than small~~

1 ~~succession immovable property;~~

2 (6) (5) A description of the property left by the deceased, including whether
3 the property is community or separate, and which in the case of immovable property
4 must be sufficient to identify the property for purposes of transfer;

5 (7) (6) A showing of the value of each item of property, and the aggregate
6 value of all such property, at the time of the death of the deceased;

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

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

13 * * *

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

15 * * *

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

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

27 (3) An action by a person, who claims to be a successor of a deceased person
28 but who has not been recognized as such in an affidavit authorized by Article 3432,
29 to assert an interest in ~~small succession immovable~~ property formerly owned by the
30 deceased, against a third person who has acquired an interest in the ~~small succession~~

1 ~~immovable~~ property, or against his successors by onerous title, is prescribed ~~in~~ two
2 years from the date of the recording of the affidavit in accordance with this
3 Paragraph.

4 Section 2. Code of Civil Procedure Article 3431(D) is hereby repealed in its entirety.

5 Section 3. The provisions of this Act are not intended to establish any necessity to
6 open a succession judicially which does not qualify as a small succession.

7 Section 4. This Act shall become effective upon signature by the governor or, if not
8 signed by the governor, upon expiration of the time for bills to become law without signature
9 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
10 vetoed by the governor and subsequently approved by the legislature, this Act shall become
11 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____