

SENATE BILL NO. 32

BY SENATOR MILLER (On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Code of Civil Procedure Arts. 3421, 3422, 3422.1(B), (C), and (E), 3431, 3432, 3432.1, 3434, and 3443, and to enact Code of Civil Procedure Art. 3433, relative to small succession procedures; to provide for the definition of a small succession; to provide for court costs; to provide for immovable property damaged by disaster; to provide for judicial proceedings; to provide for affidavits for small successions; to provide for the delivery of property; to provide for the sale of succession property; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Arts. 3421, 3422, 3422.1(B), (C), and (E), 3431, 3432, 3432.1, 3434, and 3443 are hereby amended and reenacted, and Code of Civil Procedure Art. 3433 is hereby enacted, to read as follows:

Art. 3421. Small successions defined

~~A. A small succession, within the meaning of this Title, is the succession or the ancillary~~ **any of the following:**

(1) The succession of a person who ~~at any time has died and the decedent's property~~ died domiciled in Louisiana ~~has~~ and who died leaving property with a gross value of one hundred twenty-five thousand dollars or less valued as of the date of death.

(2) The ancillary succession of a person who died domiciled outside of Louisiana and who died leaving property in Louisiana with a gross value of one hundred twenty-five thousand dollars or less valued as of the date of death.

(3) The succession of a person whose ~~or, if the~~ date of death occurred at least twenty years prior to the date of filing execution of a small succession affidavit as authorized in this Title, and who died leaving property in Louisiana of any value.

~~B. A small succession shall also include a succession of a person who has~~

1 ~~died testate, leaving no immovable property, and probate of the testament of the~~
 2 ~~deceased would have the same effect as if the deceased had died intestate.~~

3 Comments – 2024

4 This revision clarifies the scope of the small succession legislation. It
 5 changes the law insofar as it allows the estate of a decedent who dies testate and
 6 domiciled in Louisiana with immovable property to qualify as a small succession,
 7 provided that the gross value of the estate is one hundred twenty-five thousand
 8 dollars or less. In doing so, this revision allows a testate succession that includes
 9 immovable property and qualifies as a small succession under this Title to qualify
 10 for reduced court costs under Article 3422, but the revision does not allow such a
 11 succession to utilize the affidavit process provided in Article 3431.

12 Art. 3422. Court costs; compensation

13 In judicial proceedings under this Title, the following schedule of costs,
 14 compensation, and fees shall prevail:

15 (1) Court costs ~~for successions valued less than one hundred twenty-five~~
 16 ~~thousand dollars~~ shall be one-half of the court costs in similar proceedings in ~~larger~~
 17 successions **that are not small successions**, ~~but the minimum costs in any case shall~~
 18 ~~be five dollars; and.~~

19 (2) The compensation of the succession representative shall be not more than
 20 five percent of the gross assets of the succession.

21 Comments – 2024

22 This revision clarifies the law. It changes the law only insofar as it eliminates
 23 an outdated reference to a minimum court cost for a small succession.

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

26 * * *

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

1 C. The power of the managing co-owner shall include the power to ~~execute~~
 2 ~~mortgages to secure funds not exceeding the amount necessary to repair, reconstruct,~~
 3 ~~and restore the immovable, and also to encumber the immovable with such~~
 4 ~~restrictions as may be required by the public entity, without the need to obtain the~~
 5 ~~concurrence of all co-owners.~~ **do any of the following, without the need to obtain**
 6 **the concurrence of all co-owners:**

7 **(1) Manage, administer, repair, reconstruct, and restore the immovable.**

8 **(2) Receive, disburse, and account for funds given to the managing**
 9 **co-owner by a public entity solely for the purposes of the repair, reconstruction,**
 10 **and restoration of the immovable.**

11 **(3) Execute mortgages to secure funds not exceeding the amount**
 12 **necessary to repair, reconstruct, and restore the immovable.**

13 **(4) Encumber the immovable with restrictions as may be required by a**
 14 **public entity.**

15 * * *

16 E. The management of the immovable by the co-owner shall be subject to the
 17 laws of negotiorum gestio and ~~mandate applicable to co-owners.~~ However, the
 18 ~~provisions of this Article shall control to the extent of any conflict~~ **to the extent not**
 19 **inconsistent with the provisions of this Article.**

20 * * *

21 Comments – 2024

22 This revision clarifies the law by reorganizing various provisions in existing
 23 law. It does not change the law, which allows for a "managing co-owner" to perform
 24 various actions provided in Paragraph C of this Article without the concurrence of
 25 other co-owners in dealing with certain types of damaged immovable property
 26 subject to a small succession proceeding.

27 Art. 3431. Small successions; judicial opening unnecessary

28 A. It shall not be necessary to open judicially the small succession of a **any**
 29 **of the following persons:**

30 **(1) A** person domiciled in Louisiana who died intestate ~~or testate as provided~~
 31 ~~by Article 3421(B), or,~~

32 **(2) A person domiciled in Louisiana who died testate leaving no**

1 immovable property in Louisiana, if the surviving spouse, all persons who
 2 would inherit under the testament, and all other persons who would inherit in
 3 the absence of a testament agree to waive probate of the testament.

4 (3) A person domiciled outside of Louisiana who died intestate or whose
 5 testament has been probated by court order of another state, ~~and whose sole heirs are~~
 6 the following:

- 7 (1) ~~His descendants.~~
- 8 (2) ~~His ascendants.~~
- 9 (3) ~~His brothers or sisters, or descendants thereof.~~
- 10 (4) ~~His surviving spouse.~~
- 11 (5) ~~His legatees under a testament.~~

12 B. Any person appointed as public administrator by the governor may use the
 13 affidavit procedure of this Chapter to take possession of the estate of the deceased,
 14 if the estate of the deceased would qualify as a small succession, for transmittal
 15 to the state, provided that there is no surviving spouse or other heir present or
 16 represented in the state; and provided ~~he~~ that the public administrator has
 17 advertised one time in the official journal of the parish where a succession would
 18 have been opened ~~under~~ in accordance with Article 2811; and verifies that ~~he has~~
 19 ~~received~~ no notice of opposition has been received.

20 C. The legal notice required in Paragraph B of this Article shall read as
 21 follows:

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

27 Anyone having an objection to ~~such~~ the administration of the succession
 28 should notify _____ at _____."

29 Comments – 2024

30 This revision preserves much of existing law but modifies the law with regard

1 to when the judicial opening of a succession is unnecessary for some types of
 2 successions. Specifically, in accordance with this revision, it is not necessary to open
 3 judicially the succession of a decedent who died testate and domiciled in Louisiana
 4 if the estate qualifies as a small succession and the decedent's succession does not
 5 transfer immovable property in Louisiana, provided that the surviving spouse, all
 6 persons who would inherit under the testament, and all other persons who would
 7 inherit in the absence of a testament agree to waive probate of the testament.
 8 Similarly, it is not necessary to open judicially the succession of a decedent who died
 9 domiciled outside of Louisiana, if the estate qualifies as a small succession and the
 10 decedent died either intestate or testate, provided that the testament has been
 11 probated by a foreign court.

12 Art. 3432. Affidavit for small succession **for a person who died intestate**; contents

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

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

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

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

24 (4) The names and last known addresses of the heirs of the deceased, their
 25 relationship to the deceased, and the statement that an heir not signing the affidavit
 26 **either**:

27 (a) ~~cannot~~ **Cannot** be located after the exercise of reasonable diligence; ~~or,~~

28 (b) ~~was~~ **Was** given ~~ten~~ **thirty** days notice by ~~U.S.~~ **United States** mail of the
 29 affiants' intent to execute an affidavit for small succession and did not object;

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

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

35 (7) A statement describing the respective interests in the property ~~which~~ **that**

1 each heir has inherited and whether a legal usufruct of the surviving spouse attaches
2 to the property;

3 (8) An affirmation that, by signing the affidavit, the affiant, if an heir, has
4 accepted the succession of the deceased; ~~and~~

5 (9) An affirmation that, by signing the affidavit, the affiants swear under
6 penalty of perjury that the information contained in the affidavit is true, correct, and
7 complete to the best of their knowledge, information, and belief.

8 B. If the deceased had no surviving spouse, the affidavit ~~must~~ **shall** be signed
9 by at least two heirs. If the deceased had no surviving spouse and only one heir, the
10 affidavit ~~must~~ **shall** also be signed by a second person who has actual knowledge of
11 the matters stated ~~therein~~ **in the affidavit**.

12 C. In addition to the powers of a natural tutor **or curator** otherwise provided
13 by law, a natural tutor may also execute the affidavit on behalf of a minor child
14 without the necessity of filing a petition pursuant to Article 4061, **and a curator**
15 **may also execute the affidavit on behalf of an interdict without the necessity of**
16 **court authorization**.

17 Comments – 2024

18 This revision preserves much of existing law but provides a unified approach
19 for decedents who die intestate, whether domiciled in Louisiana or outside of
20 Louisiana. The contents of the required affidavit have not been changed by the
21 revision, other than to make minor semantic changes, to extend the notice period
22 given to heirs not signing the affidavit in accordance with Subsubparagraph
23 (A)(4)(b) of this Article, and to include curators in Paragraph C of this Article.

24 Art. 3432.1. Affidavit for small succession for a person **domiciled in Louisiana**
25 who died testate; contents

26 A. When it is not necessary ~~under~~ **in accordance with** the provisions of
27 Article 3431 to open judicially a small succession, ~~at least two persons~~ **all of the**
28 **heirs and legatees of the deceased**, including the surviving spouse, if any, ~~and one~~
29 ~~or more competent legatees of the deceased~~, may execute one or more multiple
30 originals of an affidavit, duly sworn before any officer or person authorized to
31 administer oaths in the place where the affidavit is executed, setting forth all of the
32 following:

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

2 (2) The fact that the deceased died testate.

3 (3) The marital status of the deceased, the location of the last residence of the
4 deceased, and the name of the surviving spouse, if any, and the surviving spouse's
5 address, domicile, and location of last residence, together with the names and last
6 known addresses of the legal heirs of the deceased, and identifying those of the legal
7 heirs who are also forced heirs of the deceased.

8 (4) The names and last known addresses of the legatees of the deceased, ~~and~~
9 ~~the statement that a legatee not signing the affidavit was given ten days notice by~~
10 ~~U.S. mail of the affiants' intent to execute an affidavit for small succession and did~~
11 ~~not object.~~

12 (5) A description of the **movable** property left by the deceased, including
13 whether the property is community or separate, and ~~which, in the case of an~~
14 **affirmation that the deceased died owning no** immovable property, ~~must be~~
15 ~~sufficient to identify the property for purposes of transfer~~ **in Louisiana.**

16 (6) A showing of the value of each item of property subject to the jurisdiction
17 of the courts of Louisiana, and the aggregate value of ~~all such~~ **the** property, at the
18 time of the death of the deceased.

19 (7) A statement describing the respective interests in the property ~~which~~ **that**
20 each legatee has inherited and whether a legal usufruct of the surviving spouse
21 attaches to the property.

22 (8) An attachment consisting of ~~certified copies~~ **a copy** of the testament ~~and,~~
23 ~~if the testament has been probated by court order of another state, the probate order~~
24 ~~of the other state.~~

25 (9) An affirmation that, by signing the affidavit, the affiant, if a legatee, has
26 accepted the legacy of the deceased.

27 (10) **An affirmation that, by signing the affidavit, each affiant expressly**
28 **waives any right to challenge the validity of the testament or any of its**
29 **provisions.**

30 (11) An affirmation that, by signing the affidavit, the affiants swear under

1 penalty of perjury that the information contained in the affidavit is true, correct, and
 2 complete to the best of their knowledge, information, and belief.

3 ~~B. If the deceased had no surviving spouse, the affidavit must be signed by~~
 4 ~~at least two persons who have actual knowledge of the matters stated therein.~~

5 ~~C.~~ In addition to the powers of a natural tutor **or curator** otherwise provided
 6 by law, a natural tutor may also execute the affidavit on behalf of a minor child
 7 without the necessity of filing a petition pursuant to Article 4061, **and a curator**
 8 **may also execute the affidavit on behalf of an interdict without the necessity of**
 9 **court authorization.**

10 Comments – 2024

11 This revision preserves much of existing law and specifies the requirements
 12 of an affidavit for decedents who die testate and domiciled in Louisiana. Unlike
 13 Articles 3432(A) and 3433(A), all heirs and legatees of the deceased, including the
 14 surviving spouse, must sign the affidavit prescribed in this Article. The affidavit
 15 procedure prescribed in this Article is not available if a decedent died testate owning
 16 immovable property in Louisiana.

17 **Art. 3433. Affidavit for small succession for a person domiciled outside of**
 18 **Louisiana who died testate; contents**

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

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

27 **(2) The fact that the deceased died testate.**

28 **(3) The marital status of the deceased, the location of the last residence**
 29 **of the deceased, and the name of the surviving spouse, if any, and the surviving**
 30 **spouse's address, domicile, and location of last residence, together with the**
 31 **names and last known addresses of the heirs of the deceased, and identifying**
 32 **those of the heirs who are also forced heirs of the deceased.**

1 (4) The names and last known addresses of the legatees of the deceased,
2 and the statement that a legatee not signing the affidavit was given thirty-days
3 notice by United States mail of the affiants' intent to execute an affidavit for
4 small succession and did not object.

5 (5) A description of the property left by the deceased in Louisiana,
6 including whether the property is community or separate, and which, in the
7 case of immovable property, shall be sufficient to identify the property for
8 purposes of transfer.

9 (6) A showing of the value of each item of property subject to the
10 jurisdiction of the courts of Louisiana, and the aggregate value of the property,
11 at the time of the death of the deceased.

12 (7) A statement describing the respective interests in the property that
13 each legatee has inherited and whether a usufruct of the surviving spouse
14 attaches to the property.

15 (8) An attachment consisting of a copy of the testament and a certified
16 copy of the probate order of the court of another jurisdiction or the equivalent
17 thereof.

18 (9) An affirmation that, by signing the affidavit, the affiant, if a legatee,
19 has accepted the legacy of the deceased.

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

23 B. If the deceased had no surviving spouse, the affidavit shall be signed
24 by at least two persons who have actual knowledge of the matters stated in the
25 affidavit.

26 C. In addition to the powers of a natural tutor or curator otherwise
27 provided by law, a natural tutor may also execute the affidavit on behalf of a
28 minor child without the necessity of filing a petition pursuant to Article 4061,
29 and a curator may also execute the affidavit on behalf of an interdict without
30 the necessity of court authorization.

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Comments – 2024

This revision preserves much of existing law and specifies the requirements of an affidavit for decedents who die testate and domiciled outside of Louisiana. Unlike Article 3432.1(A), only two persons must sign the affidavit prescribed in this Article. Again, unlike Article 3432.1, this Article allows for use of the affidavit procedure when the decedent dies domiciled outside of Louisiana while owning immovable property in Louisiana but requires, in accordance with Subparagraph (A)(8) of this Article, that both a copy of the testament and the probate order must be attached to the affidavit.

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

A. A multiple original of the affidavit **or a certified copy thereof** authorized by Article 3432, ~~or 3432.1,~~ **or 3433** shall be full and sufficient authority for the payment **of any money** or **the** delivery of any ~~money or~~ property of the deceased described in the affidavit to the heirs or legatees of the deceased and the surviving spouse in community, if any, in the percentages listed ~~therein~~ **in the affidavit**, by any federally insured depository institution, financial institution, trust company, warehouseman, ~~or other~~ depository, **domestic or foreign corporation**, or by any person having ~~such~~ **the** property in his possession or under his control. ~~Similarly, a multiple original of an affidavit satisfying the requirements of this Article shall be full and sufficient authority for the transfer to the heirs or legatees of the deceased, and surviving spouse in community, if any, or to their assigns, of any stock or registered bonds in the name of the deceased and described in the affidavit, by any domestic or foreign corporation.~~

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

C.(1) A multiple original of the affidavit, ~~to which has been attached a certified copy of the deceased's death certificate,~~ **or a certified copy thereof and**

1 any required attachments in accordance with Article 3433 shall be recorded in
2 the conveyance records ~~in the office of the clerk of court in~~ of the parish where any
3 immovable property described ~~therein~~ in the affidavit is situated, ~~after at least ninety~~
4 ~~days have elapsed from the date of the deceased's death. For recordation purposes,~~
5 a photocopy of the certified death certificate may serve as, and take the place of, the
6 certified copy of the death certificate.

7 (2) An affidavit so recorded, or a certified copy thereof, shall be admissible
8 as evidence in any action involving immovable property to which ~~it~~ the affidavit
9 relates or which is affected by the ~~instrument~~, affidavit and shall be prima facie
10 evidence of the facts stated ~~therein~~ in the affidavit, including the relationship to the
11 deceased of the parties recognized as heir, legatee, surviving spouse in community,
12 or usufructuary as the case may be, and of their rights in the immovable property of
13 the deceased.

14 (3) An action by a person who claims to be a successor of a deceased person;
15 but who has not been recognized ~~as such~~ in an affidavit authorized by Article 3432
16 or ~~3432.1~~, 3433 to assert an interest in immovable property formerly owned by the
17 deceased; against a third person who has acquired an interest in the property, ~~or~~
18 ~~against his successors~~ by onerous title, or against his successors, is prescribed two
19 years from the date of the recording of the affidavit and required attachments in
20 accordance with this ~~Paragraph~~ Article.

21 Comments – 2024

22 (a) This revision preserves much of existing law and provides that an
23 affidavit executed in accordance with this Chapter is sufficient authorization for a
24 person holding property of the decedent to deliver it in accordance with the affidavit.
25 Moreover, delivery of the property of the decedent in accordance with the affidavit
26 provided in this Chapter protects transferees from claims of third parties in
27 accordance with Paragraph B of this Article.

28 (b) Paragraph C of this Article provides that recordation of the affidavit and
29 the relevant attachments in the conveyance records is required only if immovable
30 property is involved pursuant to Article 3432 or 3433.

31 (c) Analogous to R.S. 9:5630, Subparagraph (C)(3) of this Article limits the
32 rights to immovable property of third persons who claim to be successors of the
33 decedent but who are not recognized in the affidavit.

34 * * *

35 Art. 3443. Sale of succession property; publication of notice of sale

1 A. Notice of the public sale of property, movable or immovable, by the
 2 succession representative of a small succession shall be published once and only in
 3 the parish where the succession is pending, and the property shall be sold ~~not~~ no less
 4 than ten days nor more than fifteen days after publication.

5 B. Notice of the application of the succession representative of a small
 6 succession to sell succession property, movable or immovable, at private sale shall
 7 be published once and only in the parish where the succession proceeding is pending;
 8 and shall state that any opposition to the proposed sale ~~must~~ shall be filed within ten
 9 days of the date of publication.

Comments – 2024

This revision does not change the law but makes only minor semantic changes.

Section 2. (A) The Louisiana State Law Institute is hereby directed to print the following Comment to Code of Civil Procedure Article 3441:

Comments – 2024

The 2024 revision did not affect this Article, which provides that all of the rules applicable to the judicial opening of a succession and its acceptance without administration apply to small succession proceedings.

(B) The Louisiana State Law Institute is hereby directed to print the following Comment to Code of Civil Procedure Article 3442:

Comments – 2024

The 2024 revision did not affect this Article, which provides that all of the rules applicable to the judicial opening of a succession and its rules for sending heirs and legatees into possession apply to small succession proceedings.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____