

SENATE RESOLUTION NO. 194

BY SENATOR FOIL

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations to the Louisiana Legislature pertaining to Code of Civil Procedure provisions regarding succession proceedings.

WHEREAS, provisions of the Code of Civil Procedure concerning succession proceedings warrant a review as to whether certain provisions should be updated and clarified; and

WHEREAS, to prevent cross-filings, consideration should be given to requiring that a certificate of the clerk of court be included with the petition for possession that no other succession has been opened for the deceased nor request for notice filed pursuant to Article 3091; and

WHEREAS, to establish death, domicile, and heirship, Articles 2821 and 2822 provide that "official certificates" may confirm death, marriage, and all other facts or affidavits executed by two persons having knowledge of the facts, while Article 2852 concerning the probate of a testament, requires that a petitioner submit with his petition "evidence of the death of the decedent", creating a question as to whether a certified death certificate is required to establish death; and

WHEREAS, regarding probate of testaments, Article 2852 provides that if a testament is one other than a statutory testament, a notarial testament, or a nuncupative testament by public act, and is in the possession of the petitioner, he shall present it to the court, and pray that it be probated and executed and Article 2891 provides that a notarial testament, a nuncupative testament by public act, and a statutory testament do not need to be proved; however, while the Civil Code provides for two types of testaments - notarial and olographic - other forms are still provided in the Code of Civil Procedure including olographic, nuncupative testament by private act, and mystic, as well as foreign testaments under Article 2888; and

WHEREAS, as a foreign testament "may be probated in this state by producing the evidence required under the law of the place where made", a self-proving foreign testament subject to probate procedure in Louisiana would require evidence of the law of the place where made and is affidavit proof of this law necessary; and

WHEREAS, Article 2890(B) dispenses with the need for proces verbal when affidavits are used to prove a will under Articles 2883 through 2887, although Article 2887 has been repealed, and Article 2888 is not included; and

WHEREAS, Articles 2881 and 2882 require hearings for ex parte probate of testaments when affidavit evidence is acceptable; and

WHEREAS, regarding the necessity for all heirs or legatees to join in the petition for possession although only one may verify the petition, intestate successions without administration require all heirs join the petition for possession; an intestate succession under administration where the final tableau has not been homologated requires a majority of the heirs join the petition; and a testate succession requires all general and universal legatees join the petition for possession whether without administration or at any time prior to final tableau is homologated; and

WHEREAS, "successor" as defined in Article 3506 and "all general and universal legatees" found in Articles 3031 and 3372 appear problematic in testate successions as to whether every single legatee - both general and particular - are included; and

WHEREAS, Article 3396.19 which provides for a court order discharging the succession representative after homologation of the final account, does not require obtaining a judgment of possession, as provided in Articles 3361 and 3371; and

WHEREAS, should Article 2952 be repealed as all other provisions of the Part entitled "Payment of State Inheritance Taxes" have been repealed as inheritance taxes have been eliminated; and

WHEREAS, Article 3136 still provides for filing of a descriptive list with the Department of Revenue.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations to the Louisiana Legislature pertaining to Code of Civil Procedure

provisions regarding succession proceedings and to submit a report, including recommendations for proposed legislation, to the legislature no later than February 1, 2022.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

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PRESIDENT OF THE SENATE