
DIGEST

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Murray

SB No. 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.

Proposed law provides that under certain circumstances a co-owner in possession of small succession immovable property that is damaged by a declared disaster or catastrophe may receive and expend funds given to him by a public entity to repair, reconstruct, and restore the property. Further authorizes the co-owner to execute mortgages to secure funds and encumber the immovable in order to repair, reconstruct, and restore the property without obtaining the concurrence of the other co-owners. Provides that proposed law shall expire on Jan. 1, 2013.

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 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(A)(intro. para.) and (5) and (B), 3432(A) (intro. para.) and (5) through (8), and 3434(C); Adds C.C.P. Art. 3422.1; Repeals C.C.P. Art. 3431(D))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Authorizes a co-owner of small succession immovable property that is damaged by a declared disaster to receive and expend public funds to repair and restore the property.
2. Further authorizes the owner to execute mortgages to secure funds and encumber the immovable for purposes of repair and restoration of the property without obtaining concurrence of other co-owners.
3. Provides for expiration date of proposed law on Jan. 1, 2013.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the reengrossed bill.

1. Made numerous technical amendments.
2. Specified that mortgages to secure funds are limited to the amount necessary to repair, reconstruct, and restore the immovable.