LOUISIANA SUCCESSION LAWS

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I. INTRODUCTION

A. Purpose of Paper
   1. General survey of law applicable to successions.
   2. Checklist of common problem areas for the division order analyst.
   3. Discuss major legislative revisions.
   4. Since the rights to a succession are generally fixed in accordance with the law at the time of death of the deceased, a division order analyst should be familiar with all laws, past and present, applicable to successions.

B. General Terms and Definitions
   1. Succession - the transmission of the estate of the deceased to his successors. La. C.C. art. 871.
   2. Estate - the property, rights and obligations a person leaves after his death. La. C.C. art. 872.
   3. Testate Succession - results when the deceased leaves a will, and the will is in proper form. La. C.C. art. 874.
   4. Intestate Succession - results when there is no will or the will is invalid. La. C.C. art. 875.
   5. Legatees - successors under a testate succession. La. C.C. art 876.

II. INTESTATE SUCCESSION

A. General Principles
   1. If a person dies without a will or the will is void, the person’s estate is distributed in accordance with the rules of intestate succession.
   2. In order to be called as an heir to an intestate succession, a person must be a descendant, ascendant or collateral, by blood or
adoption, or be a surviving spouse not judicially separated from the deceased. La. C.C. art. 880.

3. Descendants are children, grandchildren, great-grandchildren, etc. Ascendants are parents, grandparents, great-grandparents, etc. Collaterals are relatives who do not descend from one another but share a common ancestor, such as siblings, aunts and uncles, cousins, etc.

4. Generally, the most closely-related relative is called to the succession. The unit of measurement used to determine how close two people are related is the "generation," and each generation is a degree. Thus, a father is related to his child in the first degree and to his grandchild in the second degree. The line of relationship is either direct or collateral. The direct line is either ascending or descending. In the direct line, the number of degrees is equal to the number of generations between the relative and the deceased. In the collateral line, the number of degrees is equal to the number of generations between the relative and the common ancestor, plus the number of generations between the common ancestor and the deceased. Thus, an uncle and nephew are related in the third degree, while first cousins are related in the fourth degree.

5. **Doctrine of Representation**

   a. Representation is defined as a fiction of law, the effect of which is to put the representative in the place, degree and rights of the person represented. La. C.C. art. 881.

   b. Representation takes place ad infinitum with respect to descendants of the deceased. La. C.C. art. 882.

   For example, a father of two children dies intestate, survived by one child and predeceased by the other. The predeceased child is survived by two children. According to the doctrine of representation, the two grandchildren represent the predeceased child's share, and the estate is inherited one-half by the surviving child and the other one-half is inherited by the two grandchildren, in equal proportions, through representation of the predeceased child.

   c. Representation also operates in favor of descendants of predeceased brothers and sisters of the deceased. La. C.C. art. 884.
For example, a person dies intestate survived by no descendants and no parents, but is survived by a brother and two children of a predeceased sister. According to the doctrine of representation, the two children of the predeceased sister represent the predeceased sister's share, and the estate is inherited one-half by the brother and the other half is inherited by the two children of the predeceased sister, in equal proportions, through representation of the predeceased sister.

d. Representation never takes place in favor of ascendants. La. C.C. art. 883.

B. Devolution of Community Property

1. Property acquired during a marriage is presumed to be community property. La. C.C. art. 2340. Each spouse owns an undivided 1/2 interest in community property. La. C.C. art. 2336. Community property comprises:

a. Property acquired during the existence of the legal regime through the effort, skill or industry of either spouse;

b. Property acquired with community things, or with community and separate things when the value of the separate things is inconsequential in comparison with the value of the community things used to acquire the thing;

c. Property donated to the spouses jointly;

d. Natural and civil fruits of community property;

e. Damages awarded for loss or injury to a thing belonging to the community;

f. Natural and civil fruits of separate property, and minerals produced from separate property, including bonuses, delay rentals, shut-in payments and royalties from mineral leases, unless spouse executes declaration reserving fruits as his separate property; the declaration must be made in an authentic act or in an act under private signature duly acknowledged, and the declaration must be provided to the other spouse prior to filing in the conveyance records;
g. Transfer by a spouse to the other of a one-half (1/2) interest in separate property with stipulation that it will be community; and

h. All other property not classified as separate.

La. C.C. arts. 2338, 2339 and 2343.1.

2. Rules of Intestacy of Community Property for Deaths after January 1, 1982

a. If the deceased leaves descendants, the deceased's share of the community is inherited by his descendants, subject to the usufruct of the surviving spouse. The descendants succeed in equal proportions and by head if they are all in the same degree. They take by roots if all or some succeed by representation. The usufruct of the surviving spouse terminates at death or remarriage. La. C.C. arts. 888 and 890.

For example, a husband dies intestate survived by his spouse, one child and two children of a predeceased child.

INHERITANCE OF LOUISIANA INTESTATE SUCCESSION

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|    |
Wife

|    |
Child

|    |
Deceased Child

|    |
Grandchild

|    |
Grandchild
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The husband's share of the community property is inherited one-half by the surviving child, and the other half is inherited by the two grandchildren, in equal proportions, through representation of the predeceased child. The surviving spouse retains her share of the community and acquires the usufruct of her husband's share of the community which usufruct terminates on her death or remarriage.
b. If the deceased leaves no descendants, the deceased's share of the community is inherited in full by the surviving spouse. La. C.C. art. 889.

3. Rules of Intestacy of Community Property for Deaths prior to January 1, 1982

The primary differences between the present law and the prior law are as follows:

a. The usufruct of the surviving spouse affected only community property inherited by issue of the marriage. Former La. C.C. art. 916.

b. Former La. C.C. art. 915 governed the situation where the deceased was survived by no descendants. This article was amended numerous times with the rights of the surviving spouse being elevated in each instance. By Act 160 of 1920, it became settled that the deceased's share of the community was divided into two parts when there was no issue, one for the deceased's father and mother, or the survivor of them, and the other for the surviving spouse. The surviving spouse inherited the deceased's share of the community in full only when the deceased was survived by no descendants and was predeceased by both parents. This change was incorporated in subsequent amendments to this former Civil Code article.

C. Devolution of Separate Property

1. Separate property is property owned exclusively by one person. Separate property comprises:

a. Property acquired by a spouse prior to the establishment of a community property regime;

b. Property acquired by a spouse with separate things, or with separate and community things when the value of the community things is inconsequential in comparison with the value of the separate things used to acquire the thing;

c. Property acquired by a spouse by inheritance or donation to him individually;
d. Damages awarded to a spouse in an action for breach of contract against the other spouse or for the loss sustained as a result of fraud or bad faith in the management of community property by the other spouse;

e. Damages for personal injuries and damages awarded to a spouse in connection with the management of his separate property;

f. Things acquired by a spouse as a result of a voluntary partition of the community during the existence of the community property regime;

g. Fruits of separate property if declaration executed in the manner required by law; and

h. Donation by a spouse to the other spouse of his interest in community property.

La. C.C. arts. 2341, 2343 and 2344.

2. Rules of Intestacy of Separate Property for Deaths after January 1, 1982

a. If the deceased leaves descendants, the deceased's separate property is inherited in full by his descendants. La. C.C. art. 888. As with community property, they take in equal portions and by heads if they are in the same degree. They take by roots if all or some of them succeed by representation.

For example, a husband dies intestate survived by his spouse, one child and two children of a predeceased child.
In this example, the decedent’s separate property is inherited by child, in the proportion of 1/2, and by each grandchild, in the proportion of 1/4, all free of the usufruct of the surviving spouse.

b. If the deceased leaves no descendants, but is survived by a father, mother, or both, and by brothers or sisters, or descendants from them, the brothers and sisters, or their descendants, inherit the separate property of the deceased, subject to a usufruct in favor of the parent or parents. La. C.C. art. 891.

c. If the deceased leaves no descendants and is predeceased by his parents, his brothers and sisters, or descendants from them, inherit the separate property of the deceased in full ownership. La. C.C. art. 892.

d. If the deceased leaves no descendants and leaves no brothers and sisters, or descendants from them, the deceased's parent or parents inherit the separate property of the deceased in full ownership. La. C.C. art. 892.

e. The surviving spouse inherits the separate property of the deceased only when the deceased leaves no descendants, no parents, and no brothers or sisters, or descendants from them. La. C.C. art. 894.

f. If the deceased leaves none of the above types of heirs, the separate property of the deceased is inherited by the nearest ascendants. If the ascendants in the paternal and maternal lines are in the same degree, the property is divided into two equal shares, one share for the paternal line and the other share for the maternal. The ascendants in each line share by heads. If there is in the nearest degree but one ascendant in the two lines, such ascendant excludes the more remote ascendants. La. C.C. art. 895.

g. If none of the above types of heirs exist, the separate property is inherited by the nearest collateral relatives. If there are several in the same degree, they succeed equally and by heads. La. C.C. art. 896.
h. In default of all of the above, the estate belongs to the State of Louisiana. La. C.C. art. 902.

3. Rules of Intestacy of Separate Property for Deaths Prior To January 1, 1982

The primary differences between the present law and the prior law are as follows:

a. The surviving spouse is not called as an heir to separate property unless the deceased is not survived by any descendants, ascendants or collaterals.

b. If the deceased is survived by his parents and by brothers and sisters, or the descendants from them, the succession is divided into two portions, one-half going to the mother and father and the other half going to the brothers and sisters, or the descendants from them. However, should only one parent be alive, the surviving parent takes only one-fourth and the brothers and sisters, or the descendants from them, take the other three-fourths.

4. Special Rules and Exceptions

a. Brothers and sisters related by half-blood

A full brother or sister is one with both parents in common with the deceased. A half brother or half sister has only one parent in common with the deceased. If brothers and sisters of the deceased are called to take his succession, and the deceased is survived by full brothers and sisters and by half brothers and half sisters, the property is divided into two equal shares, one share for the maternal line and the other share for the paternal line. Full brothers and sisters take in both lines. Half brothers and half sisters take only in the parental line in common with the deceased. Each line's share is equally divided between the number of siblings in the line. La. C.C. art. 893.
b. **Right of inheritance by ascendants of immovable property donated by them to descendants who die without issue**

Ascendants inherit immovables donated by them to their descendants who die without posterity when these immovables are found in the succession. La. C.C. art. 897. However, the ascendants take these immovables subject to any mortgages created by the donee. La. C.C. art. 898.

**D. The Usufruct**

1. **General Principles**

   a. The usufruct is defined as a real right of limited duration over the property of another. The features of the right vary with the nature of the things subject to it. La. C.C. art. 535. Former Article 533 defined the usufruct as the right of enjoyment of a thing belonging to another with the right to use the thing so as to derive all profits and possible advantages from it.

   b. The person who has the usufruct is called the "usufructuary," and the person who owns the property subject to the usufruct is called the "naked owner."

   c. If the usufruct is of a consumable such as money, the usufructuary is treated as owner and may consume the property as he sees fit. At termination of the usufruct, the usufructuary is bound to pay to the naked owner the value of the consumable at commencement of the usufruct or deliver to the naked owner things of the same quantity and quality. La. C.C. art. 538.

   d. If the usufruct is of a nonconsumable such as land, houses, shares of stock, furniture or vehicles, the usufructuary has the right to possess them and to derive all profits and advantages that they may produce. The usufructuary is bound to use them as a prudent administrator so as to preserve their substance and to deliver them to the naked owner at termination of the usufruct. La. C.C. art. 539.
e. The usufructuary is entitled to the fruits of the thing. La. C. C. art. 550. Fruits are the things derived from the property without diminution of its substance. La. C. C. art. 551. The usufructuary is not entitled to the products resulting from depletion from the land. La. C. C. art. 488.

f. The usufruct terminates upon the death of the usufructuary. La. C. C. art. 607. However, the legal usufruct of the surviving spouse over the decedent’s share of the community property terminates at the remarriage of the surviving spouse or the surviving spouse’s death, whichever occurs first. La. C. C. art. 890.

2. Legal Usufruct of the Surviving Spouse

a. The surviving spouse acquires, by operation of law, the usufruct of the deceased’s share of the community when the deceased dies intestate survived by descendants. La. C.C. art. 890.

b. This usufruct terminates on the death or remarriage of the surviving spouse.

c. Under the present law, the usufruct affects the community property inherited by all descendants of the deceased. Prior to January 1, 1982, the usufruct affected only community property inherited by issue of the marriage between the deceased and the surviving spouse.

d. The legal usufruct does not affect separate property of the deceased.

3. Testamentary Usufruct in Favor of the Surviving Spouse

a. La. C.C. art. 1499, provides that a testator, in his will, may grant his spouse, as usufructuary, the following:

   (1) the usufruct over all of his property, both separate and community, including the forced portion; and

   (2) the power to dispose of nonconsumables without the consent of the naked owners.
b. La. C.C. art. 1499 further provides that the testamentary usufruct is for life unless a shorter period is expressly designated.

4. Rights of Usufructuary as to Minerals

a. The rights of the usufructuary and of the naked owner in mines and quarries are governed by the Louisiana Mineral Code. La. C.C. art. 561.

b. Historically, the classification of minerals as either fruits or products resulted in complicated jurisprudential rules dividing certain elements of mineral production into fruits, and others into products. The Mineral Code resolved the problem by declaring that the usufruct of land does not include the landowner’s rights in minerals, subject to exceptions found in the Mineral Code. La. Min. Code art. 188.

c. The usufruct of land refers to the situation in which title to the mineral rights is part of the ownership of the land itself.

   For example:

   A husband and wife purchase a tract of land, including the mineral rights thereto, during their marriage as community property, and the husband subsequently dies intestate, survived by his wife and children. The wife acquires by operation of law the usufruct of the husband’s community ½ interest in the tract of land inherited by the children. The usufruct in this situation is a usufruct of land.

d. The general rule is that the usufruct of land does not include the landowner’s rights in minerals, except “as to mines or quarries actually worked at the time the usufruct was created.” La. Min. Code art. 190(A).

   (1) As to oil and gas, the “open mines” concept means that if at the time the usufruct is created, minerals are being produced from the land or other lands unitized therewith, or if there is present on the land or other unitized property a well shown by a surface
production test to be capable of producing in paying quantities, the usufructuary is entitled to the enjoyment of the landowner’s rights in minerals as to all pools penetrated by the well or wells in question. La. Min. Code art. 191.

e. A significant exception to the general rule is the usufruct of the surviving spouse. The usufruct of the surviving spouse includes the use and enjoyment of the landowner’s rights in minerals, whether or not mines or quarries were actually worked at the time of creation of the usufruct. La. Min. Code art. 190(B). However, the spousal usufruct does not include the right to execute a mineral lease without the consent of the naked owner. La. Min. Code art. 190(B).

Note: A surviving spouse, as the usufructuary of land, is to receive all bonuses, rentals and royalties in connection with a mineral lease. However, the surviving spouse has no authority to execute a mineral lease without the consent of the naked owners. The Mineral Code does not provide for any incentive for the naked owners to grant such consent, or for any relief to the usufructuary if the naked owners refuse to grant such consent.

f. Note that the rights of the usufructuary in the minerals may be expanded by a conventional act. A conventional usufruct, including one created by a donation or a testament, may by express provision include the use and enjoyment of all or a specified portion of the landowner’s rights in minerals. La. Min. Code art. 189.

For example:

A parent donates a tract of land to his children subject to the reservation of the usufruct. The reservation provides that the usufruct covers all of the minerals. In such case, the donor retains the right to execute a mineral lease, and the right to all bonuses, rentals and royalties. However, such mineral lease does not extend beyond the term of the
usufruct unless the naked owners join therein. La. Min. Code art. 118.

g. The usufruct of a *mineral right* refers to the situation in which the ownership of the mineral rights is segregated from the ownership of the land such as the usufruct of a mineral servitude, mineral lease or mineral royalty.

For example:

A husband and wife sell a tract of land reserving the minerals, and the husband subsequently dies intestate survived by his wife and children. The wife acquires by operation of law the usufruct of the husband’s community ½ interest in the mineral servitude created by this mineral reservation which is inherited by the children. The usufruct in this situation is a usufruct of a mineral right.

h. In such case, the usufructuary of a mineral right is entitled to all benefits of the use and enjoyment that would accrue to him as if he were the owner of the right. La. Min. Code art. 193. The usufructuary of a mineral right may grant a mineral lease that extends beyond the term of the usufruct and binds the naked owners of the servitude. La. Min. Code art. 118.

**Note:** The usufructuary of a mineral right is to receive all bonuses, rentals and royalties in connection with a mineral lease, and the usufructuary may execute a mineral lease without the consent of the naked owners. Such lease will not expire at termination of the usufruct and will bind the naked owners without their consent thereto.

i. A usufructuary is not obligated to account to the naked owner for production or the value thereof or any other income to which he is entitled to receive as a usufructuary of land or as a usufructuary of a mineral right. La. Min. Code art. 194.
E. Children Born Outside the Marriage

1. Under present law, children born outside the marriage inherit to the same extent as children born during the marriage of the parents, as long as the child is filiated to the parent.

2. Prior to the January 1, 1982, revision of the Civil Code, “legitimate” children, or their descendants, inherited to the exclusion of “illegitimate” children. This distinction was declared unconstitutional by the Louisiana Supreme Court in Succession of Brown, 388 So. 2d 1151 (La. 1980). This holding was made retroactive to January 1, 1975, the effective date of the 1974 Louisiana Constitution. Succession of Clivens, 426 So. 2d 585 (La. 1982). (Note: “illegitimate” children were defined as those who were both conceived and born outside of the marriage. Former La. C. C. art. 180).

F. Biological Filiation

In 2005, the Louisiana Legislature passed Act 192 which revised the Civil Code articles on biological filiation.

1. Proof of Maternity
   a. Maternity may be established by a preponderance of the evidence that the child was born of a particular woman, except as otherwise provided by law. La. C. C. art. 184.

2. Proof of Paternity
   a. The husband of the mother is presumed to be the father of a child born during the marriage or within 300 days from the date of the termination of the marriage. La. C. C. art. 185.

   b. If a child is born within 300 days from the day of the termination of a marriage and his mother is married again before his birth, the first husband is presumed to be the father. La. C.C. art. 186.

   c. If the first husband, or his successor, obtains a judgment of disavowal of paternity, the second husband is presumed to be the father. The second husband may then initiate a disavowal action but must do so within a peremptive period
of one year from the day the judgment of disavowal obtained by the first husband is final. *Id.*

3. **Contestation Action by the Mother**

   a. The mother of a child may institute an action to establish both that her former husband is not the father of the child and that her present husband is the father. This action may be instituted only if the present husband has acknowledged the child by authentic act. La. C. C. art. 191.

   b. The action by the mother must be instituted within a peremptive period of 180 days from the marriage to her present husband and within 2 years from the day of the birth of the child. La. C. C. art. 193.

4. **Presumption of Paternity by Subsequent Marriage and Acknowledgment**

   a. A man who marries the mother of a child not filiated to another man and who, with the concurrence of the mother, acknowledges the child by authentic act is presumed to be the father of that child. La. C. C. art. 195.

5. **Three Other Methods of Establishing Paternity**

   a. **Formal Acknowledgment**

      (1) A man may, by authentic act, acknowledge a child not filiated to another man. This creates a presumption that the man is the father of the child, and this presumption can only be invoked in favor of the child. La. C. C. art. 196.

      (2) Prior to the revision in 2016, the signing of the birth certificate by a man was sufficient for acknowledgment.

   b. **Child’s Action to Establish Paternity**

      (1) A child may institute an action to prove paternity even though he is presumed to be the child of another man. If the action is instituted after the
death of the alleged father, a child shall prove paternity by clear and convincing evidence. La. C.C. art. 197.

(2) For purposes of succession only, this action is subject to a peremptive period of one year, which commences to run from the day of the death of the alleged father. Id.

(3) Examples of evidence which may be admitted to prove paternity include blood tests, informal acknowledgments, and cohabitation of mother and father at time of conception. Comment © to La. C.C. art. 197.

c. Father’s action to Establish Paternity

(1) A man may institute an action to establish his paternity of a child at any time, and this action is strictly personal. La. C.C. art. 198.

(2) If the child is the presumed child of another man, then the action must be brought within one year from the day of the child’s birth (unless the mother deceived the father of the child regarding his paternity, in which case the father must bring the action within one year from the day he knew or should have known of his paternity or within ten years from the day of the birth of the child, whichever comes first). In all cases, the action shall be brought no later than one year from the day of the death of the child. Id.

G. Adopted Children

1. The adopted child is considered for all purposes as the child and forced heir of the adoptive parent or parents. Therefore, the adopted child has the right to inherit from the adoptive parents, or parent, and their relatives. La. C.C. art. 199.

2. The adoptive parents, or parent, and their relatives have the right to inherit from the adopted child.
3. The adopted child retains his right of inheritance from his former legal parents and their relatives.

4. However, former legal parents and their relatives forfeit their right of inheritance from the surrendered child.

III. TESTATE SUCCESSION

A. General Principles

1. Donation mortis causa - is a donation which takes effect on the death of the donor and by which the donor disposes of some or all of his property. La. C.C. art. 1469. In order to be valid, the donation must be contained in a form of last will and testament recognized by law. La. C.C. art. 1570. The person who makes a will is called the "testator."

2. Capacity

   a. Capacity of the testator to make a will must exist at the time the testator executes the will. La. C.C. art. 1471. All persons are presumed to have capacity. La. C.C. art. 1470.

   b. Capacity to receive under a will must exist at the time of death of the testator. La. C.C. art. 1472. A legatee has "capacity" under this article if he is in existence at the time of death of the testator.

   c. In order for an unborn child to receive under a will, the child must be conceived at the time of death of the testator and the child must be subsequently born alive. La. C.C. art. 1474.

   d. A minor under the age of 16 does not have capacity to make a will, except in favor of his spouse or children. La. C.C. art. 1476.

   e. To have capacity to make a will, "a person must also be able to comprehend generally the nature and consequences of the disposition that he is making." La. C.C. art. 1477.

   f. A will is null upon proof that it was:
(1) the result of fraud or duress (La. C.C. art. 1478); or
(2) procured through undue influence (La. C.C. art. 1479).

g. General requirements for witnesses to a will (La. C.C. arts. 1581-1582). A witness:
(1) Must be 16 years of age and able to sign name.
(2) May not be insane or blind.
(3) May not be deaf or unable to read in the notarial testament for the sight-impaired or illiterate person.
(4) Any gift to an heir or legatee serving as a witness is null, but the remainder of the will is valid; however, if the witness would be an heir in intestacy, the witness may receive the lesser of his intestate share or the legacy in the testament.

**B. Rules on the Form of Olographic and Notarial Testaments**

1. Olographic Will (La. C.C. art. 1575)
   a. It is prepared by the testator himself.
   b. In order to be valid, it must be entirely handwritten, dated and signed at the end by the testator.
   c. The olographic will can be made anywhere.
   d. No witnesses or notary is required.

2. Notarial Testament (La. C.C. arts. 1576-1580.1)
   a. There are five types of notarial testaments:
      (1) The standard notarial testament; the testator must be able to read and sign his name. La. C.C. art. 1577.
      (2) The notarial testament for a person who is able to read but physically unable to sign his name. La. C. C. art. 1578.
(3) The notarial testament for the sight-impaired or illiterate person. La. C.C. art. 1579.

(4) The braille testament. La. C.C. art. 1580.

(5) The notarial testament for a person who is deaf or deaf and blind, but who is able to read sign language, braille or visual English. La. C.C. art. 1580.1.

b. The general requirements for the standard notarial testament are:

(1) Be in writing and dated. The notarial will can be handwritten, printed or typed, and it can be prepared by any person. La. C. C. art. 1577.

(2) Be executed in the presence of a notary and two witnesses. In addition to the general requirements for all wills, the witnesses to a notarial will must know how to read and sign their names and be physically able to do both. La. C. C. art. 1581.

(3) The testator shall declare or signify to the notary and two witnesses that it is his last will and testament. La. C. C. art. 1577.

(4) The testator must sign his name at the end of the will and on each other separate page of the will. La. C.C. art. 1577.

(5) Contain an attestation clause signed by the notary and witnesses which states that the testator signed the will at the end and on each separate page of the will and that the testator signified or declared that it was his last will and testament. La. C. C. art. 1577.

C. Testamentary Dispositions

1. Prior Law - testamentary dispositions were either universal, under universal title, or particular. Former La. C.C. art. 1605.
a. A universal legacy is a testamentary disposition by which the testator gives to one or several persons the whole of the property which he leaves at his death. Former La. C.C. art. 1606.

For example, "I give, devise and bequeath to my wife all property I own at the time of my death."

b. A legacy under universal title is that by which a testator bequeaths a certain portion of his property, such as a half, third, etc., or a legacy by which the testator bequeaths all of his immovables or all of his movables, or a fixed portion of them. Former La. C.C. art. 1612.

For example, "I give, devise and bequeath to my wife one-half of the property I own at the time of my death."

c. Particular legacy is every legacy not included in the definition for universal legacy or legacy under universal title. Former La. C.C. art. 1625.

For example, "I give, devise and bequeath my wedding ring to my wife."

2. Law On and After July 1, 1999 - testamentary dispositions under the revised law are either universal, general or particular.

a. The definition for the universal legacy is basically the same as prior law but is expanded to include residuary bequests. La. C.C. art. 1585.

b. General legacy is the equivalent of the legacy under universal title. The definition also includes the legacy of these certain categories of property: separate or community, movable or immovable, or corporeal or incorporeal. La. C.C. art. 1586. For example, "I give all my movables to my wife."

c. The definition for particular legacy is the same as the prior law; it is neither general nor universal. La. C.C. art. 1587.
D. **Substitutions**

1. **Prohibited substitution** - a disposition not in trust by which the thing is donated in full ownership to a first donee, who is charged to preserve the thing and deliver it to a second donee at the first donee's death. La. C.C. art. 1520. This type of legacy is null.
   
   a. **Elements** - the donee or legatee is charged to keep the property during his lifetime for another person to whom it is to be delivered at his death.
   
   b. For example, "I give, devise and bequeath my wedding ring to my daughter, Clara, and on her death, it shall become the property of my niece, Ann."
   
   c. However, it is permissible to give the usufruct to one person and the naked ownership to another.

2. **Vulgar substitution** - a disposition by which a third person is called to take a gift, inheritance or legacy in case the donee, heir or legatee does not take it. La. C.C. art. 1521. This type of legacy is permitted.

   For example, "In the event I am predeceased by my wife, I give, devise and bequeath to my son all property I own at the time of my death."

IV. **FORCED HEIRSHIP**

A. **General Principles**

1. **Forced Heirship** -- the doctrine of forced heirship requires a deceased to leave a portion of his estate to his children, who are referred to as "forced heirs." The portion required by law to be left by the deceased to his children depends on the number of children who survive the deceased.

   The problem of forced heirship ordinarily arises when the deceased dies testate and the deceased bequeaths all or most of his estate to someone other than his children. However, forced heirship can be a problem in an intestate succession when the deceased has donated, during his lifetime, all or most of his property to someone other than his children.
Since 1981, the Louisiana Legislature has been active in passing legislation reducing the rights of forced heirs and increasing the rights of the surviving spouse. Furthermore, forced heirship has now been limited to certain classes of children depending on their age or their ability to take care of themselves.

2. **Forced Portion** - the forced portion is the portion of the deceased's estate that is reserved by law in favor of forced heirs. La. C.C. art. 1495.

3. **Legitime** - the legitime is the portion of the deceased's estate reserved for a *single* forced heir. In other words, if there are 3 forced heirs, the *forced portion* is ½, but the *legitime* for each forced heir is 1/6 (1/3 of ½). La. C.C. art. 1494.

4. **Disposable Portion** - the disposable portion is that portion of the deceased's estate that can be disposed of by the deceased free from the claims of forced heirs. La. C.C. art. 1495. If the deceased has no forced heirs, the deceased may dispose of his entire estate. La. C.C. art. 1497.

B. **The Forced Portion**

1. **Rules of Forced Heirship before January 1, 1982**

   a. The forced portion before January 1, 1982, was as follows:

      (1) One child - 1/3  
      (2) Two children - 1/2  
      (3) Three or more children - 2/3  

   b. If no children survived the deceased, the deceased's parents were also forced heirs. The forced portion of the parents was 1/3. If only one parent survived the deceased, the forced portion was reduced to 1/4. *Succession of Greenlaw*, 148 La. 255, 86 So. 786 (La. 1920).
2. **Rules of Forced Heirship from January 1, 1982, to July 1, 1990**  
   **(Acts 1982, No. 884)**
   
   a. From January 1, 1982, to July 1, 1990, the forced portion was as follows:
      
      (1) One child - 1/4
      
      (2) Two or more children - 1/2
   
   b. The descendants of a predeceased child were allowed to represent a predeceased child's share.

3. **Acts 1990, No. 147, effective July 1, 1990**
   
   a. Under Act 147 of 1990, the following persons are forced heirs:
      
      (1) Descendants of the first degree who are 22 years of age or younger at the time of their parent's death; or
      
      (2) Descendants of the first degree who, because of physical infirmity or mental incapacity, are incapable of taking care of themselves or administering their estates.
   
   b. Descendants of a predeceased child are permitted to represent the predeceased child's share if such predeceased child would have been 22 years of age or younger at the time of his parent's death.
   
   c. Under Act 147 of 1990, the forced portion was as follows:
      
      (1) One forced heir - 1/4
      
      (2) Two or more forced heirs - 1/2
   
   d. The Louisiana Supreme Court declared Act 147 of 1990 unconstitutional in **Succession of Lauga**, 624 So.2d 1156 (La. 1993). This decision reinstated the law of forced heirship as it existed from January 1, 1982, to July 1, 1990.
4. **1995 Constitutional Amendment**

a. In 1995, the Louisiana Constitution was amended to overcome the effect of Lauga. La. Const. Art. 12, §5 (B), provides:

"The legislature shall provide for the classification of descendants, of the first degree, twenty-three years of age or younger as forced heirs. The legislature may also classify as forced heirs descendants of any age who, because of mental incapacity or physical infirmity, are incapable of taking care of their persons or administering their estates. The amount of the forced portion reserved to heirs and the grounds for disinherison shall also be provided by law. Trusts may be authorized by law and the forced portion may be placed in trust."

b. In 1996, the Louisiana Legislature enacted La. C. C. Art. 1493. This article provides that the term “permanently incapable of taking care of their persons or administering their estates at the time of the death of the decedent” shall include descendants who, at the time of death of the decedent, have, according to medical documentation, an inherited, incurable disease or condition that may render them incapable of caring for their persons or administering their estates in the future.


a. Under Act 77 of 1996, the following persons are forced heirs:

(1) Descendants of the first degree 23 years of age or younger; or

(2) Descendants of the first degree of any age who, because of mental incapacity or physical infirmity, are permanently incapable of taking care of their persons or administering their estates.
b. Under the present law, grandchildren have the rights of a forced heir only through representation, and only in the following two instances:

(1) A grandchild, who is not disabled, may represent his predeceased parent as a forced heir if his parent would have been 23 years of age or younger at the time of his grandparent's death; or

(2) A permanently disabled grandchild may represent his predeceased parent as a forced heir no matter what age his predeceased parent would have been at the time of his grandparent's death.

c. From June 18, 1996, to the present, the forced portion is as follows:

(1) One forced heir - 1/4

(2) Two or more forced heirs - 1/2

C. Calculation of the Forced Portion

1. The process of determining the amount of the forced portion is referred to as the "active mass" calculation. La. C.C. art. 1505.

2. The formula for such calculation is as follows:

   a. Determine the value of all property owned by the deceased at his death;

   b. Add to this amount the value of all gifts made by the deceased within three years of his death, according to their value at the time of such gifts;

   c. Subtract from the aggregate of items (a) and (b) the debts of the estate; and

   d. Then multiply either 1/4 or ½, depending on the number of forced heirs, times the balance left after subtracting item © from the aggregate of items (a) and (b).

3. Property presently excluded from the "active mass" calculation include:
a. Life insurance proceeds and premiums. La. C.C. art. 1505C. If the proceeds are paid to a forced heir, the value of such proceeds will be credited toward the satisfaction of his legitime.

b. Benefits payable under any pension and profit-sharing plans, including IRAs. La. C.C. art. 1505D. If the benefits are paid to a forced heir, the value of such benefits will be credited toward the satisfaction of his legitime.

c. The value of remunerative donations, unless the value of the services rendered by the donee is less than 2/3 the value of the donated property in which event the gratuitous portion is included. La. C.C. art. 1510.

d. The value of onerous donations, unless the value of the charges incurred by the donee is less than 2/3 the value of the donated property in which event the gratuitous portion is included. La. C.C. Art. 1511.

e. The value of immovable property located outside of the State of Louisiana, unless the deceased is domiciled in the State of Louisiana at the time of his death and the deceased leaves at least one forced heir in the State of Louisiana at the time of his death. La. C.C. art. 3534.

D. Enforcement of Rights of Forced Heirs

1. If the deceased does not leave his forced heirs sufficient property to satisfy the forced portion, the forced heirs have a right of action for reduction.

2. The action for reduction can only be brought by the forced heir, the heirs or legatees of the forced heir, or the assignee of the forced heir. La. C.C. art. 1504.

3. If the deceased does not leave the forced heirs sufficient property to satisfy the forced portion under his will, the will is not automatically null. Instead, the bequests made under the will are reduced to the extent necessary to satisfy the forced portion. La. C.C. art. 1503.
4. When the property of the estate is insufficient to satisfy the forced portion, the forced heirs may recover the amount needed to satisfy the forced portion from the donees of donations made by the deceased three years prior to his death. La. C.C. art. 1508. This three-year period was added by Act 77 of 1996 to coordinate with the "active mass" calculation under Civil Code Article 1505. Prior law had no time limitation for gifts subject to reduction.

5. The most recent gift is reduced first. The donee has the option of either returning the property in kind or to contribute to the payment of the legitime. If the property is no longer owned by the donee, the donee must contribute to the payment of the legitime but only to the extent of the value of the donated property at the time of the donation. La. C.C. art. 1513.

6. If the property is returned in kind by the donee, the property is returned subject to any charges or encumbrances created by the donee, but the donee is accountable for any diminution in value. La. C.C. art. 1513.

7. The right of the forced heir to file an action for reduction prescribes in five years. This prescription does not run while the forced heir is a minor. La. C.C. art. 3497.

E. Collation

1. The doctrine of collation is the means by which the civil law seeks to enforce, as far as possible, the equal distribution of the parent's property among his children. It is presumed that a parent desires to treat all of his children equally and that what a parent gives a child prior to his death is intended only as an advance on the child's inheritance. La. C.C. art. 1229.

2. Collation is made by the child returning the property to the estate to be divided equally among all of the children or by the child taking less in the succession.

3. The scope and application of collation was significantly reduced by Act 77 of 1996. Under the present law, only a descendant of the first degree, who is a forced heir, can demand collation. Further, collation only applies to gifts made within three years prior to the
parent's death. La. C.C. art. 1235. Previously, all children could demand collation and no time limitation existed.

4. Types of gifts which are exempt from collation include:
   a. Expenses of board, support and education, and wedding gifts. La. C.C. art. 1244.
   b. Manual gifts, or gifts of corporeal movables accompanied by actual delivery. La. C.C. art. 1245.

5. Further, the deceased may dispense with collation in his will, or in the act of donation itself or in any subsequent act executed before a notary and two witnesses. La. C.C. art. 1232.

6. Immovable property collated or returned by the child to the succession is subject to the "real right by onerous title," whether created by the child or by operation of law. La. C.C. art. 1281. For example, if the child granted a mineral lease affecting the immovable, such property is returned to the succession subject to the mineral lease.

7. Collation can no longer be demanded where the heirs accept the succession and a judgment of possession is rendered. Doll v. Doll, 206 La. 550, 19 So.2d 249 (La. 1944).

8. The action for collation prescribes in ten years. La. C.C. art. 3499.

V. SUCCESSION PROCEDURE

A. Jurisdiction

1. A succession proceeding shall be brought in the district court of the parish where the deceased was domiciled at the time of his death. If the deceased was not domiciled in the State of Louisiana at the time of his death, the succession proceeding shall be brought in the district court of any parish where:
   a. immovable property of the deceased is located; or
   b. movable property of the deceased is located if the deceased owned no immovable property in the State of Louisiana at the time of his death. La. C.C.P. art. 2811.
2. These are rules of jurisdiction and not venue. La. C.C.P. art. 44. Therefore, these rules are not waivable.

3. Jurisdiction of the court is proven by affidavits executed by two persons having knowledge of the facts. La. C.C.P. arts. 2821 and 2822.

B. Probate of Wills

1. Procedure

   a. A will has no effect unless it is probated or ordered filed in accordance with the rules of the Louisiana Code of Civil Procedure. Once probated or ordered filed, the will has effect as of the date of the testator’s death.

   b. Any person with an interest in the succession may petition a court for probate of the will. La. C.C.P. art. 2851.

   c. Evidence of the jurisdiction of the court and the death of the deceased, along with the original will, is submitted with the petition for probate. La. C.C.P. art. 2852.

   d. If the will is not in the possession of the petitioner, he may petition the court for a search of the will by a notary. When the will is found by the notary, it is produced in court. La. C.C.P. arts. 2854 and 2855.

   e. All wills may be proved by affidavit unless the court wishes to hear testimony or the genuineness of the will is in dispute.

      (1) Olographic will - proved by testimony of two credible witnesses who identify handwriting; if genuineness of will is not attacked, a person’s testimony may be given in the form of an affidavit. La. C.C.P. art. 2883.

      (2) Notarial will - no proof by affidavit is required; upon production of the will, the court shall order the will to be filed and executed. La. C.C.P. art. 2891.

2. Challenge to a petition for probate of a will -- If the petition for probate of the will is challenged, a contradictory hearing is held and
the burden of proving the authenticity and validity of the will is on the proponent of the will. La. C.C.P. arts. 2901 and 2903.

3. Prescriptive period to probate a will -- The prescriptive period to file a petition for the probate of a will is five years from the date of judicial opening of the succession. La. C.C.P. art. 2893.

4. Annulment of a probated will -- A probated will may be annulled only by a direct action filed in the succession proceeding against the legatees, residual heirs, if any, and the executor, if not discharged. The action is tried as a summary proceeding. The burden of proof is on the plaintiffs, unless the action is filed within three months of the date of probate of the will. La. C.C.P. art. 2932. An action for annulment of a probated will prescribes in five years. La. C.C. art. 3497.

C. Simple Possession without Administration.

1. Intestate
   a. Procedure
      (1) File a verified petition for possession, along with the affidavit of death, domicile and heirship.
      (2) File an inventory or sworn descriptive list of assets and liabilities.
      (3) A judgment of possession shall be rendered by the court if the petition for possession and the record of the proceeding show that the petitioners are entitled to the relief prayed for. La. C.C.P. art. 3061.
   b. This procedure shall be available when all heirs are competent, accept the succession unconditionally, and the succession is relatively free of debt. La. C.C.P. art. 3001. The surviving spouse, if any, should join in the proceeding.
   c. This procedure may also be available when no creditor has demanded an administration of the succession and the petition is filed by all competent heirs who accept unconditionally, and by the legal representatives of all incompetent heirs. La. C.C.P. art. 3004.
2. **Testate Successions**

a. **Procedure**

(1) After probate of will, file a verified petition for possession.

(2) File an inventory or sworn descriptive list of assets and liabilities.

(3) A judgment of possession shall be rendered by the court if the petition for possession and the record of the proceeding show that the petitioners are entitled to the relief prayed for. La. C.C.P. art. 3061.

b. This procedure may be available when all of the legatees are competent or acting through a qualified legal representative, all competent residuary legatees accept the succession unconditionally and no creditor has demanded an administration of the succession. La. C.C.P. art. 3031. The executor should join in the petition. La. C.C.P. art. 3033.

D. **Administration of Successions**

1. **Qualification of Succession Representatives**

a. The person named as executor in a last will and testament will be confirmed as such by a court after probate of the will and upon the application of the executor. Letters testamentary are issued to the executor after the executor has taken his oath of office and furnished security, if required. La. C.C.P. arts. 3081 and 3082.

b. If the deceased died intestate or did not name an executor in his will, any interested person may petition the court to be appointed administrator. La. C.C.P. art. 3091.

c. No person may be confirmed as executor or administrator who is under 18 years of age, interdicted, a convicted felon, a nonresident of the state who has not appointed a resident agent for service of process, a corporation not authorized to
2. General Functions, Powers and Duties

a. A succession representative is a fiduciary with respect to the succession and must collect, preserve and manage succession property as a prudent administrator. La. C.C.P. art. 3191.

b. The rights and duties of the succession representative include:

(1) the right to take possession of the property comprising the succession;
(2) the right to enforce obligations in its favor;
(3) the duty and right to represent the succession in civil actions;
(4) the duty to close the succession as soon as advisable;
(5) the duty to preserve, repair, maintain and protect the succession property; and
(6) the duty to account annually and to file a final account showing the money and other property received by the succession representative and the disposition of such property.

c. After court approval, a succession representative may:

(1) compromise a claim by or against the succession;
(2) extend, renew or modify an obligation of the succession;
(3) invest funds of the succession;
(4) continue any business of the deceased;
(5) sell, exchange or lease succession property;
(6) borrow money on behalf of the succession; or

(7) pay debts of the succession.

Court approval must be obtained by the succession representative in accordance with the rules of the Louisiana Civil Code of Procedure. Any such action without court approval is null.

d. Procedure for granting a mineral lease by a succession representative (La. C.C.P. art. 3226):

(1) The mineral lease may be granted for a primary term of more than one year as may appear reasonable to the court.

(2) A copy of the proposed mineral lease must be attached to the application of the succession representative.

(3) The court order shall state the minimum bonus, the minimum royalty which shall never be less than 1/8, and such other terms as the court may embody in the order.

(4) Notice of the application for the mineral lease must be published once in the parish where the succession proceeding is pending and once in the parish where the land covered by the mineral lease is located. The notice shall state that an order granting authority will be issued in seven days after publication of the notice, unless an opposition is filed prior to that time.

(5) If no opposition is filed, the court may grant the succession representative the authority to execute the mineral lease.

(6) An opposition to the application is tried as a summary proceeding.
3. **Independent Administration**

a. In 2001, the Louisiana Legislature significantly revised succession procedure to provide for the "independent administration" of an estate. There can be an independent administration of the estate if the testator provided for an independent administration in his testament or if the successors in either an intestate or testate succession agree upon an independent administration. La. C.C.P. arts. 3396, et seq.

b. An independent administrator or executor has all the rights, powers and duties of a succession representative but without the necessity of delay for objection, or application to, or any action in or by the court. La. C.C.P. art. 3396.15.

c. Thus, if the estate is under independent administration, it is appropriate to take a mineral lease from either the independent administrator or executor. The independent administrator or executor may execute a mineral lease without the necessity for application to or approval by the court.

d. If the succession representative is not an independent administrator or executor, the succession representative has no authority to execute a mineral lease without court approval.

4. **Closure of a Succession under Administration**

a. Any time after the homologation or court approval of the final tableau of distribution for the payment of debts and charges of the succession by the succession representative, any heir or legatee may file a petition for possession. La. C.C.P. arts. 3361 and 3371.

b. The succession representative will be discharged after approval of the final account, or the waiver thereof by the heirs, and upon showing proof to the court that the creditors have been paid and that the succession property has been distributed to the heirs and legatees. La. C.C.P. art. 3391.
c. A judgment of possession shall be rendered in the same manner as provided for in the case of a succession without an administration. La. C.C.P. art. 3381.

E. Judgments of Possession

1. A judgment of possession shall:
   a. recognize the petitioners as heirs, legatees, surviving spouse, or usufructuary, as the case may be;
   b. send the heirs and legatees into possession of the property of the deceased; and
   c. send the surviving spouse into possession of his undivided one-half of the community, and of the other undivided one-half to the extent he has the usufruct thereof. La. C.C.P. art. 3061.

2. Legal Effect of a Judgment of Possession. A judgment of possession is only *prima facie* evidence of the deceased to the heirs or legatees and of their right to the possession of the estate of the deceased. La. C.C.P. art. 3062. A judgment of possession automatically incorporates all of the terms of a testamentary trust or a testamentary usufruct without the necessity of stating those terms in the judgment. La. C.C.P. art. 3061.

3. Res Judicata. A judgment of possession is not a basis for plea of *res judicata* or conclusive evidence against persons having an adverse interest in or a claim against the estate. Guidry v. Dufrene, No. 96 0194 (La. App. 1st Cir. 11/8/96), 687 So.2d 1044.

4. Reopening of Succession. After a judgment of possession is entered, a succession may be reopened "if other property is discovered, or for any other proper cause." However, "the reopening of a succession shall in no way adversely affect or cause loss to any bank, savings and loan association or other person, firm or corporation, who has in good faith acted in accordance with any order or judgment of a court of competent jurisdiction in any previous succession proceedings." La. C.C.P. art. 3393.
5. **Description of Immovable Property.** A particular description of immovable property affected by a judgment of possession is not required. See Comment under La. C.C.P. art. 3061.


7. **Prescriptive Period to Assert Right of Inheritance.** La. Civil Code article 3502 provides:

   "An action for the recognition of a right of inheritance and recovery of the whole or a part of a succession is subject to a liberative prescription of thirty years. This prescription commences to run from the day of the opening of the succession."

8. **Rights of Third Persons.** La. R.S. 9:5630 provides:

   "An action by a person who is a successor of a deceased person, and who has not been recognized as such in the judgment of possession rendered by a court of competent jurisdiction, to assert an interest in an immovable formerly owned by the deceased, against a third person who has acquired an interest in the immovable by onerous title from a person recognized as an heir or legatee of the deceased in the judgment of possession, or his successors, is prescribed in two years from the date of the finality of the judgment of possession."

   a. This statute protects only "a third person who has acquired an interest in the immovable by onerous title." In other words, the third person must have given consideration for his acquisition of the immovable to be protected.

   b. This statute also provides that 30 years after a judgment of possession is recorded, there shall be a conclusive presumption that the judgment of possession was rendered by a court of competent jurisdiction.

9. **Judicial Estoppel.** In *Succession of Williams*, 418 So.2d 1317 (La. 1982), the Louisiana Supreme Court held that the heir, who participated in the succession proceeding causing the decedent's estate to be distributed in a manner different than that provided by
law, was judicially estopped from subsequently attacking the judgment of possession. This case was subsequently followed by the Louisiana Supreme Court in Succession of Villarubia, 680 So.2d 1147 (La. 1996), where a forced heir was prohibited from claiming his forced portion after participating in the succession proceeding in which he accepted a particular bequest and never claimed his forced portion.

F. Ancillary Successions

1. An ancillary succession proceeding is appropriate when a nonresident dies leaving property situated in Louisiana. The procedure in such a succession is the same as provided by law for the succession of a Louisiana domiciliary. La. C.C.P. art. 3401.

2. In order for a will probated outside of Louisiana to take effect in the State of Louisiana, the will must be probated in a court of competent jurisdiction in Louisiana. The procedure regarding the probate of a testament made under the laws of a jurisdiction other than the State of Louisiana is governed by La. R.S. 9:2421, et seq., and La. C.C.P. art. 2888.

3. A succession representative appointed by a court outside of Louisiana has no authority to act with respect to Louisiana property of a decedent until he is qualified in a court of competent jurisdiction in Louisiana. La. C.C.P. art. 3402.

4. After qualification, the succession representative may exercise all the rights and privileges and has the same obligations as a succession representative originally qualified in Louisiana. Id.

5. When taking a mineral lease from an ancillary succession, the lessee should require an ancillary succession proceeding in which a judgment of possession is rendered and places the successors into possession of the decedent’s Louisiana estate. If a succession representative is appointed and qualified in the ancillary succession proceeding, the procedures for taking a mineral lease are the same as provided by law for the succession of a Louisiana domiciliary.
G. Small Successions After Acts 2017, No. 96, § 1

1. The Louisiana Legislature has made significant changes to the laws governing small successions in recent years. The recent changes to Louisiana law on small successions have greatly improved the ability of the heirs or legatees of a decedent to use the small succession affidavit in lieu of a more expensive judicial succession proceeding.

2. A small succession is currently defined as the succession of a Louisiana domiciliary, or the ancillary succession of a nonresident, who has died at any time, leaving property in Louisiana having a gross value of $125,000.00 or less as of the date of death. La. C.C.P. art. 3421.

3. Furthermore, the affidavit for a small succession can be used when the decedent leaves property in Louisiana of any value, provided that the date of death of the decedent occurred more than twenty years prior to the date of filing of the small succession affidavit. Id. (Note: twenty-five years was reduced to twenty years by Acts 2017, No. 96, § 1).

4. There may be some question as to the manner in which to calculate the $125,000.00 limit for a small succession. Article 3421 is unclear as to whether the gross value of $125,000.00 refers to the decedent’s community one-half interest or to the total value of the community owned by both spouses. Furthermore, the statute is unclear as to whether the calculation of the $125,000.00 limit includes the value of movable property of a Louisiana decedent located outside of Louisiana. According to one commentator, this calculation should include only the value of the decedent’s community one-half interest, and the calculation should include the value of movable property of a Louisiana decedent located outside of Louisiana. Peter S. Title, Louisiana Real Estate Transactions, § 6:40 (2d ed. 2014-2015).

5. Under the current law, a small succession affidavit can be used in the succession of a Louisiana domiciliary who died intestate, or in the ancillary succession of a nonresident who died either testate or intestate. In other words, a small succession affidavit cannot be used when a Louisiana domiciliary died testate. In order to be able to use the small succession affidavit in the testate ancillary succession, the
decedent’s testament must have been probated by court order of another state. La. C.C.P. art. 3431.

6. Furthermore, a small succession affidavit is restricted to the situation when the sole heirs of the decedent are one of the following:

a. his descendants;
b. his ascendants;
c. his brothers or sisters, or descendants thereof;
d. his surviving spouse; or
e. his legatees under a testament probated by court order of another state.

Id.

7. The small succession affidavit must be executed by at least two persons, including the surviving spouse, if any, and one or more competent major heirs of the decedent. If the decedent had no surviving spouse, the affidavit must be signed by at least two heirs. If the decedent had no surviving spouse and only one heir, the affidavit must be signed by a second person who has actual knowledge of the matters stated therein. Please note that a natural tutor may also execute the affidavit on behalf of a minor child without the necessity of filing an application for authority. La. C.C.P. arts. 3432, 3432.1. The affidavit may be executed in one or more multiple originals.

8. In the case of an intestate succession, the affidavit is required to contain the following information:

a. the date of death of the deceased and his domicile at that time;
b. the fact that the deceased died intestate;
c. the marital status of the deceased, the location of the last residence of the deceased, and the name of the surviving spouse, if any, and the surviving spouse’s address, domicile and location of last residence;
d. the names and last known addresses of the heirs of the deceased, their relationship to the deceased, and the statement that an heir not signing the affidavit (i) cannot be located after the exercise of reasonable diligence, or (ii) was given ten days notice by U.S. Mail of the affiants’ intent to execute an affidavit for small succession and did not object;

e. a description of the property left by the deceased, including whether the property is community or separate, and in the case of immovable property must be sufficient to identify the property for purposes of transfer, a showing of the value of each item of property, and the aggregate value of such property, at the time of the death of the deceased;

f. a statement describing the respective interests in the property which each heir has inherited and whether a legal usufruct of the surviving spouse attaches to the property;

g. an affirmation that by signing the affidavit, the affiant, if an heir, has accepted the succession of the deceased; and

h. an affirmation under penalty of perjury that the facts stated in the affidavit are true, correct and complete to the best of affiant’s knowledge, information and belief.

La. C.C.P. art. 3432.

9. In the case of a testate succession of a nonresident, the information required to be listed in the small succession affidavit is similar to the small succession affidavit for an intestate succession. However, the small succession affidavit for a testate succession of a nonresident has the following differences:

a. a statement that the deceased died testate;

b. in addition to the required information for the surviving spouse, the names and last known addresses of the legal heirs of the deceased (and which of those are forced heirs);

c. the names and last known addresses of the legatees of the deceased; and
d. an attachment to the affidavit consisting of certified copies of the testament and the probate order of another state.

La. C.C.P. art. 3432.1.

10. After at least ninety days after the date of the decedent’s death, a multiple original of the affidavit shall be recorded in the conveyance records of each parish where any immovable property described therein is situated. Furthermore, a certified copy of the decedent’s death certificate shall be attached to the affidavit. La. C.C.P. art. 3434.

11. An affidavit so recorded, or a certified copy thereof, shall be admissible as evidence in any action involving immovable property to which it relates, or is affected by the instrument, and shall be prima facie evidence of the facts stated therein, including the relationship to the decedent of the parties recognized as heirs, surviving spouse in community or usufructuary as the case may be, and of their rights in the immovable property of the decedent. Id.

12. The small succession affidavit provides the heirs and legatees of a decedent with many of the same rights and benefits as a judgment of possession. Furthermore, a small succession affidavit protects a third person acquiring by onerous title an interest in the immovable property of the decedent, including the mineral lessee, from the claim of an unrecognized heir or legatee. However, the third person is protected only after the expiration of two years from the date of recording of the affidavit in accordance with the requirements of Louisiana Code of Civil Procedure article 3434. Id.