



LOUISIANA STATE LAW INSTITUTE

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December 16, 2025

Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: SENATE RESOLUTION NO. 194 OF THE 2021 REGULAR SESSION

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to succession procedure.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge
Director

GH/puc
Enclosure

cc: Senator Franklin Foil

email cc: David R. Poynter Legislative Research Library
drplibary@legis.la.gov

Secretary of State, Ms. Nancy Landry
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
SUCCESSIONS AND DONATIONS COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO SENATE
RESOLUTION NO. 194 OF THE 2021 REGULAR SESSION**

Relative to succession procedure

Prepared for the
Louisiana Legislature on

December 16, 2025

Baton Rouge, Louisiana

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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

SR NO. 194

ENROLLED

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.

PRESIDENT OF THE SENATE

December 16, 2025

To: Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE IN RESPONSE TO
SENATE RESOLUTION NO. 194 OF THE 2021 REGULAR SESSION**

Senate Resolution No. 194 of the 2021 Regular Session requested the Louisiana State Law Institute to study and make recommendations pertaining to the Code of Civil Procedure provisions regarding succession proceedings. Specifically, the resolution asked the Law Institute to determine whether provisions of the Code of Civil Procedure concerning succession proceedings warrant updating and clarifying. In fulfillment of this request, the Law Institute assigned the project to its Code of Civil Procedure Committee but after review, it was referred to the Law Institute's Successions and Donations Committee, which operates under the direction of Professor Ronald J. Scalise, Jr. as Reporter.

Over the course of several meetings, the Committee examined each "whereas" clause contained in the resolution to determine if further study was needed. The first clause appropriately observes that "provisions of the Code of Civil Procedure concerning succession proceedings warrant a review as to whether certain provisions should be updated and clarified." A wholesale examination and revision of the succession provisions of the Code of Civil Procedure is a matter on the Committee's long-term agenda. In the interim, the Committee suggests the following revisions and recommendations.

The second clause is aimed at preventing cross-filings and seeks to require that a certificate from the clerk of court be included with each petition for possession. The Committee has very rarely seen this occur in practice and does not believe it to be a concern. Consequently, no change is recommended.

The third directive is to clarify the documentation that is necessary to establish death. The Committee notes that death may be established by affidavit and that the language of Code of Civil Procedure Article 2821 is disjunctive; therefore, the law allows death to be established either by "official certificates issued by the proper public officer, or by affidavits." Consequently, no change is recommended.

Fourthly, the resolution observes that although the Civil Code provides for only two types of testaments, the Code of Civil Procedure includes probate procedures for other types of wills, such as mystic wills and nuncupative wills. In the Committee's view, the provisions in the Code of Civil Procedure should be maintained because testaments created under prior law may still exist, and a procedure for probating wills under prior law needs to remain in the law. Consequently, no change is recommended.

The fifth clause questions whether affidavit proof is the proper form required of the probate of a foreign testament. The Committee observed that in the absence of objection, courts often take judicial notice of foreign law. In other instances, proof of foreign law is no different from proof of any other fact, and affidavit evidence may be relevant. Consequently, no change is recommended.

The sixth “whereas” clause notes that Code of Civil Procedure Article 2890 references an article that has been repealed and does not include new Article 2888. The Law Institute recommended a simple technical amendment to adjust the citation range.

The seventh clause points out that the language of Code of Civil Procedure Article 2881 implies that a hearing is required for the ex parte probate of a testament. The Law Institute therefore recommended proposals to align the law with the current practice of using affidavits in the ex parte probate of testaments.

The eighth “whereas” clause seeks clarification of who is required to join in the petition for possession. Although the various articles may appear inconsistent at first glance, the provisions are aligned depending upon the type of succession proceeding and whether the decedent dies testate or intestate. Moreover, the potential ambiguity in Code of Civil Procedure Article 3362 has been clarified by recent court decisions. Consequently, no change is recommended.

Clause number nine questions the meaning of the term “successor” in Civil Code Article 3506. In the Committee’s view, the term “successor” clearly includes universal, general, and particular legatees. Consequently, no change is recommended.

The tenth clause suggests that Code of Civil Procedure Article 3396.19 may not require a judgment of possession, as provided in Articles 3361 and 3371. Article 3396.18, however, was amended in 2020 to clarify that a judgment of possession is required in all instances. The Comments to that Article further provide that “[t]his revision clarifies the law by definitively stating that the rendition of a judgment of possession is still necessary even when a succession is independently administered. The 2017 amendments did not intend to repeal the requirement of a judgment of possession . . .” Consequently, no change is recommended.

Although the eleventh clause of the resolution suggests that Code of Civil Procedure Article 2952 should be repealed, the Committee observed that the substantive law is necessary but that the heading to the relevant portion of the Code is deceptive. The Law Institute proposed an amendment to the heading of the Chapter to address this issue.

Lastly, the Committee determined that the concern expressed in the final “whereas” clause was addressed by Acts 2024, No. 371 introduced on recommendation of the Law Institute. Consequently, no further change is recommended.

The Law Institute’s proposed recommendations to address the concerns raised by the resolution were submitted as Senate Bill No. 67 of the 2025 Regular Session, which was enacted by the Legislature as Acts 2025, No. 34.