

Regular Session, 2001

# ACT No. 974

HOUSE BILL NO. 632

BY REPRESENTATIVES MCMAINS AND ANSARDI

(On Recommendation of the Louisiana State Law Institute)

## AN ACT

To enact Chapter 13 of Title III of Book VI of the Louisiana Code of Civil Procedure, to be comprised of Code of Civil Procedure Articles 3396 through 3396.20, and 5251(14), relative to probate procedure; to provide for the independent administration of estates; to provide definitions; to provide the scope of independent administration; to provide for the designation of an independent executor by the testator; to provide for the testator's failure to designate an independent executor; to provide for the independent executor's rights, powers, and duties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 13 of Title III of Book VI of the Louisiana Code of Civil Procedure, comprised of Code of Civil Procedure Articles 3396 through 3396.20, and Article 5251(14) are hereby enacted to read as follows:

**CHAPTER 13. INDEPENDENT ADMINISTRATION OF ESTATES****Art. 3396. Definitions****In this Chapter:**

(1) "Independent administration" means the administration of an estate in accordance with the provisions of this Chapter.

(2) "Independent administrator" means the succession representative authorized by the court to administer a succession in accordance with the provisions of this Chapter. The term "independent administrator" means and includes "independent executor".

(3) "Independent executor" means and includes an independent administrator.

(4) "Letters of independent administration" means letters testamentary or letters of administration that signify that the administration of a succession by the designated succession representative is authorized pursuant to the provisions of this Chapter. The term "letters of independent administration" includes "letters of independent executorship", and the term "letters of independent executorship" includes "letters of independent administration". Such letters have the same force and effect as letters of administration or letters testamentary in a succession that is administered in accordance with the other provisions of this Book.

Revision Comment - 2001

The concept of "independent administration" of an estate employs new terms of art that are used throughout Chapter 13. This Article defines those terms and clarifies that some of the terms may be used interchangeably. For the definition of "succession representative," see Article 5251(14).

Art. 3396.1. Scope

Upon qualification of a succession representative and compliance with the provisions of this Chapter, the court shall issue Letters of Independent Administration or Letters of Independent Executorship, as appropriate, certifying that the independent administrator has been duly qualified.

## Revision Comments - 2001

(a) This Article uses the mandatory "shall" to establish that, at the outset, independent administration is not discretionary with the court. When a succession representative "qualifies" and "complies" with the provisions of this Chapter, the court is required to issue the appropriate "letters of administration" certifying that the independent administrator has been duly qualified. Subsequent events may result in a reversal of that appointment. See Article 3396.20.

(b) In order for a succession representative to be appointed an Independent Administrator, the succession record must contain the documentation required by the other provisions of Book VI with regard to filing or probate of a testament, establishment of the jurisdiction of the court, affidavit of death, domicile and heirship, and oath of the succession representative.

Art. 3396.2. Provision for independent administration by testator

A. When a testament provides for independent administration of an estate, the court shall enter an appropriate order granting independent administration of the estate.

B. A statement in a testament to the effect that the succession representative may act as an "independent administrator" or "independent executor" is sufficient to constitute authorization for independent administration of an estate.

## Revision Comment - 2001

This Article deals with independent administration of a testate succession when the testator himself has provided for independent administration of the estate. This Article clarifies that a testament need not contain magic words or specific language in order to make such a provision. In the same manner that the Trust Code permits a settlor to use the word "spendthrift" in a trust instrument and thereby bring into

play all the rules of Trust Code Section 2007, this Article permits a similar short-hand method for a testator to provide for independent administration.

Art. 3396.3. Designation of executor but failure to provide for independent administration by testator

When a decedent dies testate and his testament designates an executor, but his testament does not provide for independent administration of the estate as provided in this Chapter, all of the general or universal legatees of the decedent may agree to have an independent administration and in the application for filing for probate of the decedent's testament, or thereafter, collectively designate the person named in the testament to serve as independent executor. In such case, the court shall enter an order granting independent administration and appointing the person designated in the application as independent executor.

Revision Comment - 2001

This Article sets forth the procedure required to obtain independent administration of a testate succession when the testament designates a succession representative, but does not expressly authorize independent administration of the estate.

Art. 3396.4. Failure to designate an executor

When the decedent dies testate but his testament fails to designate an executor, or the person designated is unwilling or unable to serve, all of the general or universal legatees of the decedent may agree on the advisability of having an independent administration and collectively designate a qualified person to serve as dative independent executor. In such case, the court shall enter an order granting independent administration and appointing the person designated in the application as dative independent executor.

## Revision Comment - 2001

This Article sets forth the procedure required to obtain independent administration of a testate succession when no executor is designated, or, if designated, the person designated as executor is unwilling or unable to serve.

Art. 3396.5. Independent administration when decedent dies intestate

When a decedent dies intestate, all of the intestate successors may agree on the advisability of having an independent administration and collectively designate, in the application for administration of the decedent's estate, or thereafter, a qualified person to serve as independent administrator. In such case, the court shall enter an order granting independent administration and appointing the person designated in the application as independent administrator.

## Revision Comment - 2001

The immediately preceding Articles (3396.2 through 3396.4) apply to testate successions only. When the succession is intestate, the successors are not precluded from having an independent administration. This Article permits the intestate successors to agree to have an independent administration, but only if they act unanimously. Like Article 3396.1, this Article uses the mandatory "shall," and provides that the court "shall" enter an order granting independent administration if the requirements of Article 3396.5 are met.

Art. 3396.6. Independent administration when estate is part testate, part intestate

When a decedent dies partially testate and partially intestate, all of the successors whose concurrence is required in Articles 3396.3, 3396.4, and 3396.5 must concur in the request for independent administration of the estate, and in the designation of the person to serve as independent administrator.

## Revision Comment - 2001

This Article covers a gap that would otherwise exist in the procedures set forth in the preceding Articles when the succession is

part testate and part intestate. When a decedent dies leaving a testament that only disposes of a portion of the estate, so that some of the estate passes by testacy and some passes by intestacy, this Article permits independent administration of the estate and sets forth the requirements to implement it.

Art. 3396.7. Trusteeships

If a trust is created in the testament or a trustee is a legatee, and if concurrence in having an independent administration is required, the trustee shall be deemed to be the legatee authorized to consent to independent administration on behalf of the trust.

Revision Comment - 2001

When concurrence is required in order to have an independent administration, and property is left in trust, this Article removes any doubt as to whose concurrence is required. The consent of the trustee only, not the beneficiary, is required.

Art. 3396.8. Usufruct

When the testament creates a usufruct and concurrence in having an independent administration is required, or when the usufruct arises by operation of law, the concurrence of the usufructuary and the naked owner is required.

Revision Comment - 2001

When concurrence is required, whether the usufruct is created by testament or by operation of law, this Article requires the consent of the usufructuary and of the naked owner. See C.C. Art. 890 (rev. 1996) If there are more than one usufructuary or naked owner, the consent of all of them is required. The concurrence of the usufructuary alone is not sufficient, and conversely, the concurrence of all the naked owners, without the consent of the usufructuary, would not suffice, either.

Art. 3396.9. Unemancipated minor

If a successor whose concurrence is required for independent administration is an unemancipated minor, the concurrence may be made on his behalf by the administrator of his estate or his natural

tutor, as appropriate, without the need for a formal tutorship proceeding and concurrence of an undertutor.

Revision Comment - 2001

When concurrence is needed, and the successor is a minor, this Article authorizes the administrator of the minor's estate, or his natural tutor, to concur on behalf of the minor. To simplify matters, the Article expressly provides for that concurrence to be granted without the need of a formal tutorship proceeding.

Art. 3396.10. Survivorship

If the testament contains a provision that a legatee must survive the decedent by a prescribed period of time in order to take under the testament, the legatee living at the time of filing of the application for independent administration shall be the legatee authorized to consent to independent administration.

Revision Comment - 2001

Civil Code Article 1521 permits a testator to impose a short-term survivorship requirement as a suspensive condition for a legatee to take under the testament. In that situation, when concurrence is required, this Article resolves the question of whose concurrence is needed so that it is not necessary to wait until the term of the condition has expired.

Art. 3396.11. Possibility of renunciation

A. The subsequent renunciation of an heir or legatee who has consented to an independent administration shall have no effect on the validity of the independent administration, and the consent of those persons who receive an interest in the succession by reason of the renunciation is not required.

B. A successor who concurs in the application for independent administration of an estate shall not be considered, for that reason, as having formally or informally accepted the succession.

## Revision Comment - 2001

Under substantive succession law, a successor is not required to accept an inheritance or legacy, but may renounce. The purpose of this Article is to validate a concurrence by the appropriate successor when concurrence is granted and the successor subsequently renounces. This Article protects the independent administration of the estate by providing that the subsequent renunciation has no effect on the validity of the independent administration. In addition, in order to remove any concern that a successor might be considered as having formally or informally accepted the succession by concurring in the application for independent administration, this Article expressly provides that the concurrence will not be considered as a formal or informal acceptance by the successor.

Art. 3396.12. Death of successor

If a successor dies before the filing of an application for independent administration and the share of the successor is transmitted to his estate, then the deceased successor's universal successors, or the succession representative if one has qualified as such, may sign the application for independent administration of the decedent's estate.

## Revision Comment - 2001

When a successor dies and transmits his share to his own successors before he concurs in the independent administration the universal successors, or the succession representative, of the now-deceased successor may sign the application for independent administration in place of the successor who has died.

Art. 3396.13. Testamentary prohibition of independent administration

A testator may expressly provide that no independent administration of his estate may be allowed. In such case, his estate, if administered, shall be administered in accordance with the other provisions of Book VI.

## Revision Comment - 2001

Because independent administration of the estate significantly relaxes the procedural rules, a testator may desire that his estate not be administered by independent administration, even if his successors agree. Although this situation may be rare, this Article makes it a matter of public policy that the testator himself may prohibit an independent administration of his estate.



Art. 3396.14. Security of independent administrator

Except where the testament provides otherwise, an independent administrator shall not be required to provide security for the administration of the estate. If an interested person, such as an heir, legatee, or creditor of the estate requests security, then upon application by such party, and after a contradictory hearing, the court may order the independent administrator to furnish security as the court determines to be adequate.

## Revision Comments - 2001

(a) In most testate successions, it is customary to relieve the succession representative of the obligation of posting security. This Article implements the same rule for an independent administration, but, in fairness, because of the relaxed nature of the procedure, this Article authorizes an heir, legatee or creditor to request security. In many instances, a surviving spouse may request security as an "interested person" under this Article. In that instance, the court must have a hearing and may order the administrator to furnish security in whatever manner the court determines to be adequate under all circumstances.

(b) This Article is intentionally worded to clarify that the court need not necessarily order a bond to be posted. There are any number of remedies that may be appropriate to protect the parties. Even when a bond is appropriate, the court may reduce the penal sum of the bond to an amount that the court considers satisfactory. See Civil Code Article 1514, regarding the security furnished by a usufructuary. See Also C.C.P. Art. 3152.

Art. 3396.15. Rights, powers, and duties; performance without court authority

Except as expressly provided otherwise in this Chapter, an independent administrator shall have all the rights, powers, authorities, privileges, and duties of a succession representative provided in Chapters 4 through 12 of this Title, but without the necessity of delay for objection, or application to, or any action in or by, the court.

## Revision Comments - 2001

(a) This Article sets out the broad scope of authority permitted a succession representative who serves as an independent administrator. The primary function of independent administration is to permit the succession representative to act without the expense or delays involved in publication of notice, delay for objection, or application to the court for approval. When all of the successors are in agreement, the necessity for publishing requests for approval to alienate or encumber property, or to pay debts, serves little or no purpose and significantly increases the cost of probate. The more formal rules that apply in other successions are generally not necessary to protect the successors or the creditors. Further, all of the successors and creditors have the opportunity to oppose an independent administration at the outset, and to request more formal administration after an independent administration has already begun.

(b) This Article is at the very heart of independent administration. It allows the succession representative to assume the role of succession representative and proceed to act without being encumbered by all of the more formalistic procedural rules that are in most cases unrealistic and impractical. This new approach should significantly reduce the time involved in administering an estate, as well as many of the legal fees and out-of-pocket costs incurred in administering the estate. Although the procedural rules are relaxed, the succession representative is a fiduciary and is responsible for his actions.

(c) This Article sets forth the primary duties of an independent administrator, which are also specified in Code of Civil Procedure Articles 3221 et seq. All of those duties are not repeated here, since they are subsumed under the express provisions in this Article for collection of the assets, preservation and management of the assets, and authorizing the succession representative to discharge estate debts or "make arrangements" for the discharge of such debts.

(d) An independent administrator has all the rights, powers, authority and privileges of other succession representatives but without the necessity of obtaining court approval to exercise them. These rights include the power to borrow money and incur obligations and secure such obligations by encumbering property of the estate, and to sell or exchange movable and immovable property upon such terms and conditions, and to do so for such a duration of time, as the independent executor, in his discretion, determines to be proper. All such loans, obligations, encumbrances, leases, sales, and exchanges are valid and enforceable against the estate and against successors who take possession of property of the estate.

(e) One of the paramount functions of independent administration is to permit a succession representative to perform all of those duties without having to apply to the court or obtain court approval. The succession representative must, in due course, distribute assets of the estate to those persons entitled to receive them. There are

requirements spelled out in Chapter 13 that provide for the designation of the assets on a sworn descriptive list, proof that the inheritance tax has been paid on such assets, and a judgment of possession, whether final or partial, before the succession representative may make distribution.

Art. 3396.16. Enforcement of claims against estate

Any person having a claim against the estate may enforce the payment or performance of the claim against an independent administrator in the same manner and to the same extent provided for the assertion of such rights in this Code.

Revision Comment - 2001

This Article incorporates by reference the provisions contained elsewhere in the Code of Civil Procedure for enforcing claims against an estate. Those procedures are adequate and appropriate, even in the context of independent administration.

Art. 3396.17. Accounting

An independent administrator is not required to file an interim accounting. Nevertheless, any person interested in the estate may demand an annual accounting from the independent administrator as provided in Article 3331. Further, the court on application of any interested person may require an independent administrator to furnish accountings at more frequent intervals.

Revision Comment - 2001

Under existing rules a succession representative is required to render an annual accounting of receipts and disbursements. This Article relaxes that requirement for independent administration. Nevertheless, the article imposes an obligation on the independent administrator to account before he is discharged. To protect successors and creditors, this Article further provides that any person interested in the estate may demand an annual accounting, which is all that would be obtained under the other rules on succession procedure. The article further authorizes the court, on application of "any interested person," to require accountings at more frequent intervals.

Art. 3396.18. Inventory or sworn descriptive list

A. Before the succession can be closed and the independent administrator discharged, there must be filed an inventory or sworn descriptive list of assets and liabilities of the estate verified by the independent administrator.

B. A successor shall not be placed in possession of property without the filing of an inventory or sworn descriptive list of assets and liabilities and proof that the inheritance tax, if any, shown as due on the return has been paid. The successor may be placed in possession by a final or partial judgment of possession.

## Revision Comment - 2001

Because of the relaxed nature of the proceedings in independent administration, this Article affords a measure of protection to successors, and to creditors, by requiring a sworn descriptive list of assets and liabilities, verified by the succession representative, as well as a petition for possession and a final judgment of possession. The chief function of independent administration is to reduce expenses and remove some of the potholes and roadblocks along the way when the succession representative is performing his functions of collecting the assets, ascertaining the liabilities, discharging the liabilities, and ultimately turning property over to the persons who are entitled to receive it. Once those tasks are completed, there must be sufficient information in the succession record for successors and creditors to determine the assets and liabilities of the estate.

Art. 3396.19. Final account

Unless the heirs and legatees waive a final accounting, the independent administrator shall file a final account with the court. After homologation of that account, the court shall enter an order discharging the succession representative. The final account shall be served in accordance with Chapter 9 of Title III of Book VI.

## Revision Comment - 2001

Although the rules do not require annual accountings, unless demand is made for them and the court orders them, this Article preserves the requirement of a final accounting. As in other succession

proceedings, however, a final account may be waived. It is reasonable to assume that a final account likely will be waived in most instances where independent administration is employed. In the absence of a waiver, however, a final account must be filed with the court and must be homologated.

Art. 3396.20. Removal of succession representative and termination of independent administration

The court on motion of any interested person, after a contradictory hearing, may remove an independent administrator for any of the reasons provided in Book VI for which a succession representative may be removed from office. In addition, the court on motion of any interested person, after a contradictory hearing, may for good cause order that the letters of independent administration be withdrawn and that the succession thereafter be administered under the procedures set forth elsewhere in Book VI, other than those contained in this Chapter.

Revision Comments - 2001

(a) This Article protects successors and creditors by providing for removal of an independent administrator and also for termination of the independent administration itself. In the hands of trustworthy succession representatives, the ease and efficiency of independent administration is not merely appropriate but highly desirable. When a question is raised about the propriety of actions of an independent administrator or whether a succession representative should be removed for any reason, this Article provides a basis for removal of the representative. It also provides that the court may order the independent administration to cease. In that event, the succession would thereafter be administered in accordance with the rules by which successions are administered with all the formalities required by the Code of Civil Procedure.

(b) Acts taken on behalf of the succession by the independent administrator prior to his removal or prior to the withdrawal of letters of independent administration remain valid and enforceable by and against the succession.

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Art. 5251. Words and terms defined

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(14) The term "succession representative" includes executor, independent executor, administrator, independent administrator, provisional administrator, together with their successors. The inclusion of the terms "independent executor" and "independent administrator" within the definition of succession representative shall not be construed to subject such a succession representative to control of the court in probate matters with respect to the administration of a succession, except as expressly provided in Chapter 13 of Title III of Book VI.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_