HANDLING CLAIMS AGAINST THE ESTATE

BY

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A. Required Creditor Notice.

La. C.C.P. art. 3301. Payment of estate debts; court order. A succession representative may pay an estate debt only with the authorization of the court, except as provided by Articles 3224 and 3302.

Comments:

(a) Art. 1063 of the Civil Code also prohibits the payment of legacies without court authority.

(b) These articles do not apply to the payment of debts incurred in the operation of a business owned by a succession. Arts. 3224 and 3225, *supra*, authorize the representative to conduct such a business as a going concern under order of court. Debts incurred in the course of such an operation are paid in the regular course of business.

(c) R.S. 6:66, permitting banks to make transfers of funds of a succession predicated upon a judgment of court or letters of a succession representative, is not affected by this article.

(d) See, also, Comments under Art. 3224, *supra*.

La. C.C.P. art. 3224. Continuation of business. When it appears to the best interest of the succession, and after compliance with Article 3229, the court may authorize a succession representative to continue any business of the deceased for the benefit of the succession; but if the deceased died testate and his succession is solvent, the order of court shall be subject to the provisions of the testament. This order may contain such conditions, restrictions, regulations, and requirements as the court may direct.

Comments:
(a) This article remedies what has been termed one of the greatest deficiencies of Louisiana probate procedure. McMahon, The Revision of Probate Procedure in Louisiana, 1 La.Bar J. 53, 63 (October, 1953).
(b) In the absence of express authority to continue the business of the decedent, an administrator may nevertheless be willing to do so, but under the prevailing jurisprudence he does so at his own risk. *Cf. Carroll, Hoy and Co. v. Davidson*, 23 La.Ann. 428 (1871); *Succession of Worley*, 40 La.Ann. 622, 4 So. 507 (1888). While the representative is authorized to perform conservatory acts for the business, express authority to continue the business as a going concern might prove essential, especially where it is apparent that the estate cannot be settled and the funds distributed for some time to come. *Cf.* Arts. 1138 and 1140 of the Civil Code, authorizing the administration of partnership effects for one year after dissolution.
(c) Under this article, the authority to continue the business includes the authority to pay debts incurred in connection with the operation of the business and to sell property in furtherance thereof. *Cf.* Arts. 3261 and 3301, *infra*.
(d) See, also, Comments under Art. 3225, *infra*.

La. C.C.P. art. 3229. Notice by publication of application for court order; opposition.
A. When an application is made for an order under Articles 3198, and 3224 through 3228, notice of the application shall be published once in the parish where the succession proceeding is pending in the manner provided by law. When an application is made for an order under Article 3226 to grant a mineral lease, the notice shall also be published in the parish or parishes in which the affected property is located.
B. A court order shall not be required for the publication of the notice. The notice shall state that the order may be issued after the expiration of seven days from the date of publication and that an opposition may be filed at any time prior to the issuance of the order. If no opposition is filed, the court may grant the authority requested at any time after the expiration of the seven days from the date of publication.
C. An opposition shall be tried as a summary proceeding.

La. C.C.P. art. 3302. Time of payment of estate debts; urgent estate debts.
A. Upon the expiration of three months from the death of the decedent, the succession representative shall proceed to pay the estate debts as provided in this Chapter.
B. At any time and without publication the court may authorize the payment of estate debts the payment of which should not be delayed.
Comments:
(a) The purpose of the delay of three months is to give creditors an opportunity to present their claims. Art. 136 of the Civil Code of 1808, corresponding to Art. 1179 of the 1870 Civil Code, included a purpose clause: “for the purpose of allowing sufficient time to the creditors ... to put in their claims ....” Sec. 148 of the Model Probate Code provides a delay of four months before debts can be paid.
(b) Art. 1189 of the Civil Code makes a specific reference to funeral expenses, court costs, and expenses of the last illness as examples of debts “the payment of which cannot be retarded.” No illustrations have been included in the above article in order to give the court broad discretion regarding debts the payment of which should not be delayed.

La. C.C.P. art. 3303. Petition for authority; tableau of distribution

A. When a succession representative desires to pay estate debts, he shall file a petition for authority and shall include in or annex to the petition a tableau of distribution listing those estate debts to be paid. A court order shall not be required for the publication of the notice of filing of a tableau of distribution.

B. If the funds in his hands are insufficient to pay all the estate debts in full, the tableau of distribution shall show the total funds available and shall list the proposed payments according to the rank of the privileges and mortgages of the creditors.

La. C.C.P. art. 3304. Notice of filing of petition; publication. Notice of the filing of a petition for authority to pay an estate debt shall be published once in the parish where the succession proceeding is pending in the manner provided by law. The notice shall state that the petition can be homologated after the expiration of seven days from the date of publication and that any opposition to the petition must be filed prior to homologation.

Comments:

(a) The source articles do not specify the number of advertisements required, but it has been held that in Orleans Parish there must be three advertisements in ten days. *Succession of Greene*, 158 La. 123, 103 So. 532 (1925). Under this article one advertisement of the petition for authority is sufficient.

(b) With respect to the effect of the failure to comply with the delay of ten days, it has been held that a judgment homologating an administrator's account before the expiration of ten days is a nullity. *Succession of Taylor*, 172 La. 1099, 136 So. 65 (1931).

(c) For the requirements of the publication of the notice, see R.S. 43:203.

(d) See, also, Comments under Art. 3442, *infra*.

Article 3304 is amended to meet the notice requirements established by the U.S. Supreme Court decision of *Tulsa Professional Collection Services v. Pope*, 108 S.Ct. 1340 (1988). In that case the Supreme Court held that notice must be given to creditors whose interests might be adversely affected by the proceedings and who are known or who could be known by reasonably diligent efforts. Notice under this Article is not required for creditors who have already filed claims because they will receive notice under Article 3242.

La. R.S. 43:203. Judicial advertisements, publication, exceptions. When publication is required by law of any notice of a judicial sale, or of the filing of a tableau of distribution, account, application for appointment or for authority, or of any other notice in a judicial proceeding:

(1) When only one publication is required by the applicable code or statutory provision, the newspaper advertisement of such notice shall be published at least ten days before the date of the judicial sale, or the expiration of the delay allowed in the notice for the filing of an opposition or answer, or for any other appearance or act;

(2) When two publications are required of notice of a judicial sale by public auction, the first newspaper advertisement of such notice shall be published at least thirty days before the date of the judicial sale, and the second advertisement shall be published not earlier than seven days before, and not later than the day before, the judicial sale;

(3) The first newspaper advertisement of the notice required by Article 3282 of the Louisiana Code of Civil Procedure, to authorize the private sale of immovable property of a succession,

shall be published at least twenty days before, and the second newspaper advertisement shall be published the day before, the commencement of the delay allowed for the filing of an opposition to the proposed sale.

(4) When the court orders additional advertisements of notice of a judicial sale, Paragraphs (1), (2), or (3) of this Section, whichever is applicable, must be complied with. The additional advertisements shall be published prior to the judicial sale, or prior to the commencement of the delay allowed for the filing of an opposition or answer, as the case may be, on the dates designated in the court order; or, if not so designated, on the dates designated by the party requesting the publication.

In computing the required interval of time after the advertisement provided in Paragraph (1) of this Section, or after the first advertisement provided in Paragraph (2) of this Section, neither the date of such advertisement nor the date of the expiration of the delay, or the date of the judicial sale, as the case may be, is included. In computing the required interval of time after the first advertisement provided in Paragraph (3) of this Section, neither the date of such advertisement nor the date of the commencement of the delay for the filing of an opposition thereto is included.

When Paragraphs (1), (2), or (3) of this Section, whichever is applicable, is complied with, the publication of a larger number of newspaper advertisements than required by law or by court order does not affect the validity of the publication, but the expense of the unnecessary advertisements may not be taxed as costs.

The provisions of this Section do not apply to, or otherwise affect, the judicial advertisements required by Articles 803, 4432, and 4624 of the Louisiana Code of Civil Procedure, or by R.S. 9:1583.

La. C.C.P. art. 3305. Petition for notice of filing of tableau of distribution.

An interested person may petition the court for notice of the filing of a tableau of distribution.

The petition for such notice shall be signed by the petitioner or by his attorney, and shall set forth: (1) the name, surname, and address of the petitioner; (2) a statement of the interest of petitioner; (3) the name, surname, and office address of the attorney at law licensed to practice law in this state to whom the notice prayed for shall be mailed; and (4) a prayer that petitioner be notified, through his attorney, of the filing of the tableau of distribution.

A copy of this petition shall be served upon the succession representative, as provided in Article 1314.

Comments:

(a) This article and Art. 3306, *infra*, afford additional protection by way of notice to those who request it.

(b) Art. 1314, *supra*, permits service upon an attorney. It applies to all pleadings which require appearance or answer on the part of the party served.

La. C.C.P. art. 3306. Notice of filing of tableau of distribution; effect of failure to serve. When notice has been requested in accordance with Article 3305, the succession representative, without the necessity for a court order thereon, shall send a notice of the filing of a tableau of distribution by mail to the attorney designated by the person praying for notice at the address designated. Proof of mailing is sufficient; no proof of receipt is required.

If no notice of the filing of a tableau of distribution has been mailed when required under this article, a judgment homologating the tableau of distribution shall have no effect against the person praying for such notice.
Comments:
This article does not eliminate the necessity for the usual publication, but affords a creditor extra protection not heretofore available. Therefore, notice by ordinary mail suffices and no proof of receipt is required.
See, also, Comments under Art. 3305, *supra*.

La. C.C.P. art. 3307. Homologation; payment.
A. An opposition may be filed at any time before homologation, and shall be tried as a summary proceeding. If no opposition has been filed, the succession representative may have the tableau of distribution homologated and the court may grant the authority requested at any time after the expiration of seven days from the date of publication or from the date the notice required by Article 3306 is mailed, whichever is later.
B. If an opposition has been taken under advisement by the court after the trial thereof, notice of the signing of the judgment homologating the tableau of distribution, as originally submitted or as amended by the court, need be mailed by the clerk of court only to counsel for the opponent, or to the opponent if not represented by counsel.
C. After the delay for a suspensive appeal from the judgment of homologation has elapsed, the succession representative shall pay the debts approved by the court.
Comments:
(a) An opposition may be filed ten days after notice, provided it is filed before homologation. *Succession of Price*, 35 La.Ann. 905 (1883). This article codifies that principle.
(b) The provisions for appeal are new; they were added in view of the fact that an appeal may be taken from a judgment homologating an unopposed account. See Art. 3308, *infra*.
(c) The provision prohibiting homologation until ten days after the mailing of the notice required by Art. 3306, *supra*, has been added to implement the system of notice by mail.

La. C.C.P. art. 3308. Appeal. Only a suspensive appeal as provided in Article 2123 shall be allowed from a judgment homologating a tableau of distribution. The appeal bond shall comply with Article 2124.
The succession representative shall retain a sum sufficient to pay the amount in dispute on appeal until a definitive judgment is rendered. He shall distribute the remainder among the creditors whose claims have been approved and are not in dispute on appeal.
Comments:
(a) In order not to delay the termination of the succession proceedings unnecessarily, only a suspensive appeal is permitted, which must be taken within the delays and under the conditions provided in Art. 2123, *supra*.
(b) Since the funds are in custodia legis, only a costs bond would be necessary. See Art. 2124, *supra*.
(c) See, also, Comments under Art. 3307, *supra*.

B. Determining Priority of Claims

La. Civ. Code art. 3252. General privileges on both movables and immovables. The privileges which extend alike to movables and immovables are the following:
1. Funeral charges.
2. Judicial charges.
3. Expenses of last illness.
4. The wages of servants.
5. The salaries of secretaries, clerks and other agents of that kind.
Whenever a surviving spouse or minor children of a deceased person shall be left in necessitous circumstances, and not possess in their own rights property to the amount of one thousand dollars, the surviving spouse or the legal representatives of the children, shall be entitled to demand and receive from the succession of the deceased spouse or parent, a sum which added to the amount of property owned by them, or either of them, in their own right, will make up the sum of one thousand dollars, and which amount shall be paid in preference to all other debts, except those secured by the vendor's privilege on both movables and immovables, conventional mortgages, and expenses incurred in selling the property. The surviving spouse shall have and enjoy the usufruct of the amount so received from the deceased spouse's succession, until remarriage, which amount shall afterwards vest in and belong to the children or other descendants of the deceased spouse.

La. Civ. Code art. 3253. Order of payment of privileges; debtor's movables taken before immovables. When, for want of movables, the creditors, who have a privilege according to the preceding article, demand to be paid out of the proceeds of the immovables of the debtor, the payment must be made in the order laid down in the following chapter.

La. Civ. Code art. 3191. General privileges on all movables, enumeration and ranking. The debts which are privileged on all the movables in general, are those hereafter enumerated, and are paid in the following order:
1. Funeral charges.
2. Law charges.
3. Charges, of whatever nature, occasioned by the last sickness, concurrently among those to whom they are due.
4. The wages of servants for the year past, and so much as is due for the current year.
5. Supplies of provisions made to the debtor or his family, during the last six months, by retail dealers, such as bakers, butchers, grocers; and, during the last year, by keepers of boarding houses and taverns.
6. The salaries of clerks, secretaries, and other persons of that kind.

La. Civ. Code art. 3192. Funeral charges, definition. Funeral charges are those which are incurred for the interment of a person deceased.

La. Civ. Code art. 3193. Reduction of funeral charges of insolvent decedent. If the property of the deceased is so encumbered as not to suffice for the payment of his creditors, the funeral charges may, upon the request of any of them, be reduced by the judge to a reasonable rate, regard being had to the station in life which the deceased held and which his family holds.

La. Civ. Code art. 3195. Law charges, definition. Law charges are such as are occasioned by the prosecution of a suit before the courts. But this name applies more particularly to the costs, which the party cast has to pay to the party gaining the cause. It is in favor of these only that the laws [law] grants the privilege.
Note: Law charges do not include accountant's fees. *Succession of Garcia*, 628 So.2d 152 (La. App. 4 Cir.1993).

La. Civ. Code art. 3196. Costs which enjoy privilege. The creditor enjoys this privilege, not with regard to all the expenses which he is obliged to incur in obtaining judgment against his debtor, but with regard only to such as are taxed according to law, and such as arise from the execution of the judgment.

La. Civ. Code art. 3197. Costs for the general benefit of creditors. The cost of affixing seals and making inventories for the better preservation of the debtor's property, those which occur in cases of failure or cession of property, for the general benefit of creditors, such as fees to lawyers appointed by the court to represent absent creditors, commissions to syndics; and finally, costs incurred for the administration of estates which are either vacant or belonging to absent heirs, enjoy the privileges established in favor of law charges.

La. Civ. Code art. 3198. Costs not taxed in suit. Not only has the creditor no privilege for the costs which are not taxed, or which are not included among those mentioned above, but he has no right to demand them even from the debtor.

La. Civ. Code art. 3276. Priority of claims against succession arising after death. The charges against a succession, such as funeral charges, law charges, lawyer fees for settling the succession, the thousand dollars secured in certain cases to the surviving spouse or minor heirs of the deceased, and all claims against the succession originating after the death of the person whose succession is under administration, are to be paid before the debts contracted by the deceased person, except as otherwise provided for herein, and they are not required to be recorded.

La. Civ. Code art. 3214. Clerks and secretaries, extent and rank of privilege for salaries. Although clerks, secretaries and other agents of that sort can not be included under the denomination of servants, yet a privilege is granted them for their salaries for the last year elapsed, and so much as has elapsed of the current year. This privilege, however, can not be enforced until after that of the furnishers of provisions.

Louisiana Civil Code art. 1599. Payment of legacies, preference of payment. If the testator has not expressly declared a preference in the payment of legacies, the preference shall be governed by the following Articles.

Louisiana Civil Code art. 1600. Particular legacies; preference of payment. A particular legacy must be discharged in preference to all others.

La. Civ. Code art. 1601. Preference of payment among particular legacies. If the property remaining after payment of the debts and satisfaction of the legitime proves insufficient to discharge all particular legacies, the legacies of specific things must be discharged first and then the legacies of groups and collections of things. Any remaining property must be applied toward the discharge of legacies of money, to be divided among the legatees of money in proportion to the amounts of their legacies. When a legacy of money is expressly declared to be in recompense for services, it shall be paid in preference to all other legacies of money.

Art. 1602. Discharge of an unsatisfied particular legacy.
Intestate successors and general and universal legatees are personally bound to discharge an unpaid particular legacy, each in proportion to the part of the estate that he receives.

C. Allowing and Rejecting Claims, and Paying Them

La. Civ. Code art. 1415. Estate debts; administrative expenses. Estate debts are debts of the decedent and administration expenses. Debts of the decedent are obligations of the decedent or those that arise as a result of his death, such as the cost of his funeral and burial. Administration expenses are obligations incurred in the collection, preservation, management, and distribution of the estate of the decedent.

Comments:

The basic function of this article is to define, and as such it makes three important categorical distinctions. First, it classifies “estate debts” as including not only debts of the decedent but also administration expenses. The broad inclusion of both categories of debts and expenses is very important in this revision. The second category, “debts of the decedent,” would necessarily refer to obligations that were incurred by or for the decedent during his lifetime, but the article defines it also to encompass expenses that arise out of one's death such as funeral and burial expenses. The third category, “administration expenses”, is broadly defined to include expenses that are incurred after death in preserving, safeguarding, and operating the property of the estate, such as repairs, costs of maintenance and upkeep, interest attributable to a debt, and custodial fees.

La. Civ. Code art. 1421. Estate debts, charged. Unless otherwise provided by the testament, by agreement of the successors, or by law, estate debts are charged against the property of the estate and its fruits and products in accordance with the following articles.

Comments:

The preceding article acknowledges that the method of charging debts and allocating responsibility may be determined by the testator or the successors themselves, who may allocate responsibility for payment of estate debts by agreement. In the absence of any such testamentary or conventional allocation, estate debts are charged both to the property of the estate and to its fruits and products, and this article is essentially a preamble or threshold article that serves as a springboard for the rules that follow. The article itself does not set forth a new rule. Accepting the general principle that both the property of the estate and the fruits and

products of the property are chargeable with responsibility to pay estate debts, it sets the stage for the articles that follow. Of the rules enunciated in the succeeding articles, some are new, and others are mere clarifications of prior law, or in other words, expressions of what is generally believed to be prior law.

La. Civ. Code art. 1422. Debts attributable to identifiable or encumbered property. Estate debts that are attributable to identifiable property or to the production of its fruits or products are charged to that property and its fruits and products. Also, when the decedent has encumbered property to secure a debt, the debt is presumptively charged to that property and its fruits and products. The presumption may be rebutted, by a preponderance of the evidence that the secured debt is not attributable to the encumbered property.

Comments:

(a) This article contains many important rules. The first sentence sets forth the principle that when an estate debt is attributable to identifiable property, or to the production of fruits or products of that property, the debt is charged to that property and its fruits and products. The simplest illustration would be a farm as to which expenses are incurred for fertilizer, pesticide or repairs to farm machinery. Those debts are administration expenses that would clearly be attributable to identifiable property, namely the farm, and to the production of fruits or products of the farm. If the farm is the object of a particular legacy, it would not customarily be charged with an estate debt, but under this article, those expenses would be allocable to the farm itself and not to other legacies. Similarly, repairs to a house would be attributable to that house. Owner's insurance with regard to rental property would be an estate debt attributable to identifiable property, namely the rental property itself, so that the insurance expense would be charged to that property and as an administration expense it would first be charged to the rents received.

(b) The second sentence of the article allocates primary responsibility for an encumbrance to the property that is encumbered. This rule is relatively simple in the case of an ordinary conventional mortgage, such as a homestead loan to purchase a home. The rule is less clear when a collateral mortgage or a mortgage to secure future advances is used by which the decedent has encumbered the property to raise funds that were or may be used for other purposes than the acquisition or preservation of that property. For example, a landowner grants a mortgage to secure future advances on Blackacre and uses it to secure a line of credit for a business that is unrelated to the property. For that reason, the article carefully states that a debt is “presumptively” charged to the encumbered property and its fruits and products. As a presumption only, the rule is not inflexible. Evidence may be introduced to overcome the presumption, and the debt may be charged differently. By way of illustration, if the decedent pledged shares of stock in a corporation to borrow money to purchase an automobile, then the debt may not be allocable to the stock, but it is presumed to be attributable to the stock which is the encumbered property, and the burden of proof is, of course, on the challenger, to show otherwise. To remove any doubt as to the standard of proof required to overcome the presumption, the article states that it must be overcome by a “preponderance of the evidence.”

(c) Under prior law, the general rule in Louisiana was that a legacy of encumbered property carries the encumbrance with it to the legatee in the absence of a clear expression of intent to leave the property free and clear of the encumbrance. See Article 1638, Louisiana Civil Code

(1870). There has been some interesting jurisprudence with reference to allocation of debts and whether or not a testator intends for the debt to be discharged by the executor. In Succession of Waterman, 298 So.2d 731 (La. 1974), the Louisiana Supreme Court held that the declaration by the testator that all of his “just debts” should be paid led to the conclusion that a particular legacy of Blackacre that was encumbered by a mortgage was to be delivered to the legatee free and clear of the encumbrance.
(d) The provisions of this article are, of course, exceptions to the rules set forth in the following articles with reference to charging debts ratably to the property that is the object of general and universal legacies.

La. Civ. Code art. 1423. Decedent's debts charged ratably. Debts of the decedent are charged ratably to property that is the object of general or universal legacies and to property that devolves by intestacy, valued as of the date of death. When such property does not suffice, the debts remaining are charged in the following order:
(1) Ratably to the fruits and products of property that is the object of general or universal legacies and of property that devolves by intestacy; and
(2) Ratably to the fruits and products of property that is the object of particular legacies, and then ratably to such property.
Comments:
(a) This article sets forth the important general principle that “debts of the decedent” are charged ratably to general and universal legacies.
(b) As a general rule, particular legacies are not charged with the responsibility of paying estate debts, whether the debts are debts of the decedent or administration expenses. There are exceptions to that rule, of course, under the provisions of Article 1422, where an estate debt is allocable to identifiable property or property that is encumbered. For that reason, the article states that the decedent's debts are charged ratably to all of the property that devolves as general legacies, universal legacies, or by intestacy. There is no preference between a general legacy and a universal legacy, because by definition a testament cannot contain both kinds of legacies. There is a preference between a particular legacy, on the one hand, and general and universal legacies on the other hand, as in prior law. See C.C. Article 1600, but note also C.C. Article 1422 regarding debts identified with property.

La. Civ. Code art. 1424. Administration expenses, how charged. Administration expenses are charged ratably to the fruits and products of property that is the object of the general or universal legacies and property that devolves by intestacy. When the fruits and products do not suffice to discharge the administration expenses, the remaining expenses are charged first to the property itself, next to the fruits and products of property that is the object of particular legacies, and then to the property itself.
Comments:
(a) Consistent with the provisions of Article 1423, which refers to debts of the decedent, this article sets forth the identical principle for administration expenses, namely that they are not charged to particular legacies but ratably to the fruits and products of general or universal legacies and the property that passes by intestacy. The basic distinction between Articles 1423 and 1424 is that Article 1423 refers to “debts of the decedent” and Article 1424 refers to “administration expenses.” Debts of the decedent are charged to the property of the estate, but

administration expenses are charged to the fruits and products of the property. If the fruits and products are insufficient, then the administration expenses are charged to the property itself. The creditors are entitled, of course, to be paid out of either source, and if the property that is the object of general or universal legacies is not sufficient, either by virtue of its fruits and products or of the property itself, then the administration expenses are charged to the fruits and products of the particular legacies, and if that resource, too, is not sufficient, then they are charged to the property that is the object of the particular legacy itself. In all instances, where there are several items of property among which the charge may be allocated, the charge is made ratably.

(b) This article, in conjunction with Article 1423, attempts to set forth a priority, allocating the decedent's debts to property of the estate and administration expenses to revenues of the estate, then further breaking down those categories so that particular legacies do not bear any responsibility for these expenses unless they fall within one of the recognized exceptions, such as being encumbered to secure a debt or having a debt attributable to the object of the particular legacy as identifiable property.

(c) In most instances professional fees such as the fees of the attorney who handles the estate, or accounting fees, or the compensation paid to the executor are incurred in part for administration purposes and in part as a result of the death of the decedent, so that they should be allocated partially to principal and partially to income. No hard and fast rule can be developed, and Civil Code Article 1426 authorizes a succession representative or the heirs to allocate such fees between debts of the estate and administration expenses in accordance with what is reasonable and equitable in view of the interests of the various successors. See Civil Code Article 1426, second paragraph.

La. C.C.P. Art. 3241. Presenting claim against the succession. A creditor of a succession under administration may submit his claim to the succession representative for acknowledgment and payment in due course of administration.

Except for the purposes of Article 3245, no particular form is required for the submission of a claim by a creditor of the succession other than that it be in writing.

Case:

Kambur v. Matto, 94-650 (La.App. 5 Cir. 12/28/94, 4); 648 So.2d 1079, 1081.

La. C.C.P. art. 3242. Acknowledgment or rejection of claim by representative. The succession representative to whom a claim against the succession has been submitted, within thirty days thereof, shall either acknowledge or reject the claim, in whole or in part. This acknowledgment or express rejection shall be in writing, dated, and signed by the succession representative, who shall notify the claimant of his action. Failure of the succession representative either to acknowledge or reject a claim within thirty days of the date it was submitted to him shall be considered a rejection thereof.

Comments:

(a) Art. 3241, *supra*, states the principle that claims may be presented in an informal manner and allows flexibility in the manner of presenting them. A formal method of presentation is permitted by Art. 3245, *infra*, and a creditor who follows it may suspend the running of prescription even though the claim is not subsequently acknowledged by the representative.

(b) Art. 3242, *supra*, merely develops further the system of processing claims. The succession representative is given a reasonable time within which to act, and if he does not, then the creditor may treat his failure to do so as a rejection, which under subsequent provisions frees the creditor to take other action. See Art. 3246, *infra*.
(c) The requirements of Art. 985 of the Code of Practice of 1870 regarding the approval of claims are not sacramental, and it has been held that the acknowledgment thereof may be made in several ways. See Comment (b) to Art. 3243, *infra*. The requirement that the claims be submitted in writing, however, has been retained.
(d) The notice provision of Art. 1133 of the Civil Code is unnecessary for the reason that the failure of the representative to give the required notice would not prevent a creditor from presenting his claim to the succession representative.
(e) See, also, Comments under Arts. 3244, 3246, *infra*.

Cases:
Succession of Bearden, 27,007 (La.App. 2 Cir. 6/21/95, 7); 658 So.2d 746, 750, *writ denied*, 95-1901 (La. 11/3/95); 662 So.2d 11.
Dutel v. Succession of Touzet, 94-0978 (La.App. 4 Cir. 1/19/95, 4-5); 649 So.2d 1084.
In re Sucsession of Picolo, 798 So. 2d 322 (La. Ct. App. 5th Cir. 2001).

Notes: Articles 3242 and 3243 are the articles whereby a creditor can informally submit claims to the succession representative.

La. C.C.P. art. 3243. Effect of acknowledgment of claim by representative. The acknowledgment of a claim by the succession representative, as provided in Article 3242, shall:
(1) Entitle the creditor to have his claim included in the succession representative's petition for authority to pay debts, or in his tableau of distribution, for payment in due course of administration;
(2) Create a prima facie presumption of the validity of the claim, even if it is not included in the succession representative's petition for authority to pay debts, or in his tableau of distribution; and
(3) Suspend the running of prescription against the claim as long as the succession is under administration.
Comments:
(a) Art. 3243(2) is an innovation in so far as it bears on the doctrine of *In re Romero*, 38 La.Ann. 947 (1886), which held that claims against a succession, although recognized by a representative and placed upon the tableau as succession debts, would nevertheless have to be proved when opposed by the heirs, and that claims unsupported by evidence would be rejected.
(b) Prescription is interrupted by the presentation of the claim and subsequent acknowledgment thereof by the representative. *Succession of Dubreuil*, 12 Rob. 507 (La.1846). The requirements of Arts. 984 through 987 of the Code of Practice of 1870 are not sacramental. *Maraist v. Guilbeau*, 31 La.Ann. 713 (1879). The acknowledgment can be made by a letter of the succession representative recognizing the claim. *Succession of Yarborough*, 16 La.Ann. 258 (1861). The claim is also acknowledged when it is placed on the tableau of distribution and the

representative prays for homologation. *Succession of Richmond*, 35 La.Ann. 858 (1883). However, the mere placing of a claim in the hands of the attorney for the succession will not interrupt prescription. Succession of Egan, Mann.Unrep.Cas. 399 (La.1880). A confession of judgment is a sufficient acknowledgment. *Succession of Mansion*, 34 La.Ann. 1246 (1882).
(c) The procedure for the payment of debts and charges of the succession is provided for in Chapter 7 of this Title.
(d) The acknowledgment of the debt by the succession representative forms the basis for the introduction of parol evidence to prove the debt or liability of the deceased under the provisions of R.S. 13:3721, as amended.
(e) See, also, Comments under Art. 3242, *supra*, and Arts. 3244, 3245, *infra*

La. C.C.P. Art. 3244. Effect of inclusion of claim in petition or in tableau of distribution. The inclusion of the claim of a creditor of the succession in the succession representative's petition for authority to pay debts or in his tableau of distribution creates a prima facie presumption of the validity of the claim; and the burden of proving the invalidity thereof shall be upon the person opposing it.
Comments:
(a) Art. 3242 and 3243, *supra*, apply to situations where a claim is presented informally. This article covers the situation where the representative places the claim on the petition for authority to pay debts or on the tableau of distribution on his own motion. In either case, such action amounts to an acknowledgment of the claim, and consequently, the same rule regarding prescription under Art. 3243, *supra*, is applicable under this article. See Maraist v. Guilbeau, *supra*; *Morris v. Cain*, 39 La.Ann. 712, 1 So. 797 (1887).
(b) See Comment (a) under Art. 3243, *supra*.

La. C.C.P. art. 3245. Submission of formal proof of claim to suspend prescription.
A. A creditor may suspend the running of prescription against his claim for up to ten years:
(1) By delivering personally or by certified or registered mail to the succession representative, or his attorney of record, a formal written proof of the claim.
(2) By filing a formal written proof of the claim in the record of the succession proceeding, if the succession has been opened and no person has been appointed or confirmed as succession representative and no judgment of possession has been signed.
(3) By filing a formal written proof of the claim in the mortgage records of the appropriate parish as provided in Article 2811, in the absence of a proceeding to open the succession.
B. Such proof of claim shall be sworn to by the claimant and shall set forth:
(1) The name and address of the creditor;
(2) The amount of the claim, and a short statement of facts on which it is based; and
(3) If the claim is secured, a description of the security and of any property affected thereby.
C. If the claim is based on a written instrument, a copy thereof with all endorsements must be attached to the proof of the claim. The original instrument must be exhibited to the succession representative on demand, unless it is lost or destroyed, in which case its loss or destruction must be stated in the claim.
D. The submission of this formal proof of claim, even though it be rejected subsequently by the succession representative, shall suspend the running of prescription against the claim as long as the succession is under administration or, if the succession has been opened and no person

has been appointed or confirmed as succession representative and no judgment of possession has been signed, submission of the formal proof of claim shall suspend the running of prescription against the claim as long as no judgment of possession has been signed. In the absence of a proceeding to open the succession, submission of the formal proof of claim shall suspend the running of prescription against the claim for five years, commencing from the date of submission of the proof of claim.

Comments:

(a) The short statement of facts on which the cause of action is based is sufficient to put the representative on notice of the claim. If the creditor complies with this article, it is unnecessary for him to do anything more in order to interrupt prescription.

(b) The submission of a formal proof of the claim under this article will establish the basis for the introduction of parol evidence to prove the debt or liability of the deceased under the provisions of R.S. 13:3721, as amended.

(c) This article does not affect R.S. 9:5621, which provides that all actions against administrators, curators, and executors are barred two years after the homologation of their final account, except in case of misappropriation of property or failure to pay the amounts shown in the final account.

La. C.C.P. art. 3246. Rejection of claim; prerequisite to judicial enforcement.

A creditor of a succession may not sue a succession representative to enforce a claim against the succession until the succession representative has rejected the claim.

If the claim is rejected in whole or in part by the succession representative, the creditor to the extent of the rejection may enforce his claim judicially.

Comments:

(a) The presentation required by this article as a prerequisite to the filing of suit is an informal presentation only, provided that it be in writing. See Art. 3241, *supra*.

(b) Although the article provides that the creditor cannot sue the representative until the latter has rejected his claim, if the representative fails to take any action for thirty days after the claim has been submitted to him, his failure to act will be considered as a rejection under Art. 3242, *supra*.

(c) The second paragraph of this article is based upon Art. 986 of the 1870 Code of Practice, which provides that if the claim is not liquidated or if the representative refuses to approve it, the creditor may bring an ordinary action or may proceed by way of opposition to the final account. The language “may enforce his claim judicially” is intended to cover both of these procedures.

(d) This article is applicable to all claims, whether liquidated or not, including damage suits.

(e) See Arts. 685 and 734, *supra*, as to proper party plaintiff or defendant in claims by or against successions.

(f) See, also, Comments under Art. 3242, *supra*.

Case: *Matherne v. Matherne's Estate*, 341 So. 2d 1254 (La. Ct. App. 1st Cir. 1976)

La. C.C.P. art. 3247. Execution against succession property prohibited. Execution shall not issue against any property of a succession under administration to enforce a judgment against the succession representative, or one rendered against the deceased prior to his death.

Comments:
(a) These articles are designed to withdraw the succession from ordinary execution by creditors and to subject it only to the orderly process of administration.
(b) It will be noted, however, that these articles do not prevent mortgage holders from enforcing their mortgage, either via executiva or via ordinaria, without reference to the succession proceedings. See *Succession of Guillory*, 167 So. 901 (La.App.1936).

La. C.C.P. art. 3248. Enforcement of conventional mortgage or pledge. The provisions of Articles 3246 and 3247 shall not prevent the enforcement of a conventional mortgage on or a pledge of movable or immovable property of the succession in a separate proceeding.

La. C.C.P. art. 3249. Succession representative as party defendant. The succession representative shall defend all actions brought against him to enforce claims against the succession, and in doing so may exercise all procedural rights available to a litigant.

La. Civ. Code art. 3222. Deposit of succession funds; unauthorized withdrawls prohibited; penalty.
A succession representative shall deposit all moneys collected by him as soon as received, in a bank account in his official capacity, in a state or national bank in this state, and shall not withdraw the deposits or any part thereof, except in accordance with law.
On failure to comply with the provisions of this article, the court may render a judgment against the succession representative and his surety in solido to the extent of twenty percent interest per annum on the amount not deposited or withdrawn without authority, such sum to be paid to the succession. He may also be adjudged liable for all special damage suffered, and may be dismissed from office.
Case: *In re Succession of LeBouef*, 2013-0209 (La.App. 1 Cir. 9/9/14, 11); 153 So.3d 527, 535

> "The defendants failed in the duty imposed upon them by La. C.C.P. art. 3222 to "deposit all moneys collected by [them] as soon as received, in a bank account in [their] official capacity ... and [to] not withdraw the deposits or any part thereof, except in accordance with law." Linda Naquin was a named co-signor on one of the decedent's bank accounts. Rather than depositing the funds from this bank account into the succession account, the defendants kept the decedent's existing account open and used it to pay succession debts, all without court approval. The defendants also distributed substantial funds to both their siblings and themselves from the succession account without obtaining court approval. Finally, the defendants violated La. C.C.P. arts. 3301 and 3303(A) by paying succession debts without court approval."

D. Handling Lawsuits Against the Estate and the Decedent

- What are some of the types of lawsuits may be brought against the succession? Nota Bene: This is not an exclusive list.
  - Contestation of the validity of the will;
  - Suit to acknowledge a debt of the estate;
  - Suit to establish or refute the heirship of individuals;

- Traversal of the inventory or detailed descriptive list;
- Continuation of litigation against the decedent before he or she died;
- Removal of the administrator, executor or succession representative.
- Compelling forced heirship rights (testate succession only);
- Recovery of estate property;
- Filiation action;
- Survival action;
- Wrongful death action; or
- Other tort claims.

It's important to remember who your client is, and this topic will be / has been covered by Leslie Halle of Gold, Weems, Bruser, Sues & Rundell (APLC).

So what code articles are important to remember when handling claims against the estate and against the decedent? See some of them, below:

La. C.C.P. art. 3198. Compromise and modification of obligations.

A succession representative may:
(1) Effect a compromise of an action or right of action by or against the succession; or
(2) Extend, renew, or in any manner modify the terms of any obligation owed by or to the succession.
Any action taken under this article must be approved by the court after notice as provided by Article 3229.

La. C.C.P. art. 3196. Procedural rights of succession representative. In the performance of his duties, a succession representative may exercise all procedural rights available to a litigant.

Cases: An administrator had right and duty to sue for return of property illegally taken from the succession by heirs. *Davidson v. Davidson*, App.1940, 199 So. 447; An executor or administrator had the right to bring actions for the recovery of the real estate of decedent. *Smith v. Sinnott*, Sup.1892, 44 La.Ann. 51, 10 So. 413.

La. C.C.P. art. 685. Succession. Except as otherwise provided by law, the succession representative appointed by a court of this state is the proper plaintiff to sue to enforce a right of the deceased or of his succession, while the latter is under administration. The heirs or legatees of the deceased, whether present or represented in the state or not, need not be joined as parties, whether the action is personal, real, or mixed.
Comments:
(a) The exception in the first sentence of this article avoids a conflict with R.S. 13:3331, permitting the administrator or executor appointed or confirmed by a court of another state to

sue in the courts of this state for damages for the wrongful death of the deceased, without qualifying as ancillary administrator or executor.

(b) This article is declaratory of the jurisprudence so far as it recognizes the right of an administrator alone to institute and prosecute a personal action. *Fluker v. Kent*, 27 La.Ann. 37 (1875); *Labit v. Perry*, 28 La.Ann. 591 (1876); Woodward v. Thomas, 38 La.Ann. 591 (1886); *Gurley v. City of New Orleans*, 124 La. 390, 50 So. 411 (1909). It is similarly declaratory of the jurisprudence to the extent that it recognizes the right of an executor alone to institute and prosecute a personal action. Hicky v. Sharp, 4 La. 335 (1832); Keane v. Goldsmith, Haber & Co., 14 La.Ann. 349 (1859); Eskridge v. Farrar, 30 La.Ann. 718 (1878); Smith v. Sinnott, 44 La.Ann. 51, 10 So. 413 (1892); Benton v. Benton, 106 La. 99, 30 So. 137 (1901).

Prior jurisprudential rules with respect to the right of an administrator alone to bring a real action to enforce a right of the succession were neither rational nor workable. There was authority for the proposition that when the succession owed debts, the administrator had procedural capacity to institute and prosecute a real action in behalf of the succession, without any necessity of joining the heirs. Woodward v. Thomas, *supra*. See also, Pauline v. Hubert, 14 La.Ann. 161 (1859); and *Succession of Delaneuville v. Duhé*, 114 La. 62, 38 So. 20 (1905). On the other hand, it had been held that where there was no proof that the succession owed debts, the administrator had no procedural capacity to bring a real action in behalf of the succession without joining the heirs. Ledoux v. Burton, 30 La.Ann. 576 (1878); Succession of Preston v. Brady, 125 La. 535, 51 So. 579 (1910); *Griffith's Estate v. Glaze's Heirs*, 199 La. 800, 7 So.2d 62 (1942). And, in at least one case, it was held that even when the succession owed debts, if it was solvent the administrator alone could not bring the real action. *Bull v. Andrus,* 137 La. 982, 68 So. 799 (1915).

The prior jurisprudence is in a similarly unsatisfactory state with respect to the right of an executor alone to institute and prosecute a real action. See *Executors of Hart v. Boni*, 6 La. 97 (1833); Smith v. Sinnot, *supra*; and Benton v. Benton, *supra*.

The lack of any rational basis for these different rules is demonstrated rather convincingly. Under Civil Code Art. 1049, the rules which govern the curator of a vacant succession apply equally to the administrator. Woodward v. Thomas, *supra*. Yet, the curator of a vacant succession was expressly empowered by positive law to bring a real action to enforce a right of the succession, whether it owed debts or not. *Causey v. Opelousas-St. Landry Securities Co.*, 187 La. 659, 175 So. 448 (1937).

Both succession practice and succession theory have changed to a very considerable extent since the adoption of the 1825 Code of Practice and Civil Code. Prior to the advent of inheritance taxes, there was absolutely no necessity for the judicial opening of a succession which owed no debts, where all of the heirs were competent majors. Under the tax acts, however, any succession of any consequence must be opened judicially. When it is opened it invariably has debts--if nothing more, for the court costs and attorney's fees incurred in opening the succession. Years ago, the only reason for having an administrator appointed was to pay the debts of the deceased; hence the administrator represented the creditors rather than the heirs. Today there are many reasons for administering a succession, including tax avoidance or reduction. In this code the succession representative, regardless of his title, represents both creditors, and heirs or legatees; and he has been granted powers to act for the benefit of the heirs or legatees, primarily if not exclusively. See Arts. 3198, 3211, 3221, and 3223 through 3228, *infra*.

In the light of these developments the prior jurisprudential rules on the subject have become anachronistic. There is no reason today why a succession representative alone should not be able to enforce judicially all rights of the deceased, or of his succession, whether the action is personal, real or mixed. This article accomplishes this result, and the language employed is emphatic enough to indicate clearly the legislative intent to overrule all cases to the contrary.
(c) See, also, Comments under Arts. 734, 3196, 3246, *infra*.
Case: If no succession is open and under administration, an heir can sue directly, in his or her own name, without having been recognized as such by the probate court; all that is required is that he furnish satisfactory evidence of his right to inherit. Woodard v. Upp, App. 1 Cir.2014, 2013-0999 La.App. 1 Cir. 2/18/14, 2014 WL 621444

La. C.C.P. art. 801. Voluntary substitution for deceased party; legal successor. When a party dies during the pendency of an action which is not extinguished by his death, his legal successor may have himself substituted for the deceased party, on ex parte written motion supported by proof of his quality.
As used in Articles 801 through 804, "legal successor" means:
(1) The survivors designated in Article 2315.1 of the Civil Code, if the action survives in their favor; and
(2) Otherwise, it means the succession representative of the deceased appointed by a court of this state, if the succession is under administration therein; or the heirs and legatees of the deceased, if the deceased's succession is not under administration therein.

La. C.C.P. art. 802. Compulsory substitution for deceased party; summons. On ex parte written motion of any other party, supported by an affidavit of the truth of the facts alleged, the court may order the issuance of a summons to the legal successor to appear and substitute himself for the deceased party. This summons shall show the title and docket number of the action, and the name and address of the court where the action is pending.

La. C.C.P. art. 803. Same; service or publication of summons.
A. When the name and address of the legal successor is known, and he is a resident of the state, he shall be summoned to appear and substitute himself for the deceased party within thirty days of the date the summons is served on him.
B. When the name and address of the legal successor is known, but he is a nonresident or absentee, he shall be summoned to appear and substitute himself for the deceased party within sixty days of the receipt of the summons through registered or certified mail.
C. If the name or address of the legal successor is unknown, the summons shall be by two publications not less than fifteen days apart in a newspaper published in the parish where the action is pending and in the parish of the domicile of the deceased party, which shall summon him to appear and substitute himself for the deceased party within sixty days of the first publication. The summons shall be addressed to the legal successor by name, if the latter is known; and otherwise shall be addressed to "The legal successor of _____, deceased".

E. Insolvency Issues

The purpose of the administration of a succession is the payment of debts and all powers of the administration are incidental to that purpose. In insolvency, priority of claims discussed above is of the utmost importance. The executor of the succession should pay according to the highest ranking in priority. If two creditors are of equal priority, then the creditors should be paid pro rata.

It is also important to remember that "[t]he succession representative has a duty of collecting, preserving and managing the property of the succession in accordance with law." La. C.C.P. art. 3191; *See also Succession of Roberts*, 255 So.2d 610 (La.App. 1st Cir.1971), writ refused 257 So.2nd 148 (La.1972). Therefore, the administrator of an insolvent succession may represent creditors and may maintain an action for their benefit which the deceased could have brought. *Judson v. Connelly* 4 La. Ann.169 (La.1849).

La. Civ. Code art. 1188. Unpaid new creditors' action against paid creditors; prescription. If, after the creditors of the succession have been paid by the curator, in conformity with the dispositions of the preceding articles, creditors present themselves, who have not made themselves known before, and if there does not remain in the hands of the curator a sum sufficient to pay what is due them, in whole or in part, these creditors have an action against those who have been paid, to compel them to refund the proportion they are bound to contribute, in order to give the new creditors a part equal to that which they would have received, had they presented themselves at the time of the payment of the debts of the succession.

But this action on the part of the creditors who have not been paid, against the creditors who have been, is prescribed by the lapse of three years, counting from the date of the order or judgment, in virtue of which the payment has been made.

In all these cases, the creditors who have thus presented themselves can in no manner disturb the curator on account of the payments he has made under the authorization of the judge, as before stated.