

# **RECENT CHANGES IN LOUISIANA WILL, SUCCESSION AND TRUST LAW**

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## **SUCCESSION LAW CHANGES**

1. Civil Code Articles 870, 1484 and 1611 – When Louisiana's forced heirship law was changed in 1996, R.S. 9:2501 was adopted and was amended several times. The purpose of R.S. 9:2501 was to determine the "intent" of the testator by certain legislative means as to whether the forced heirship law would apply or not. R.S. 9:2501 has been repealed in its entirety. The new rule is to basically look at the law in effect at the time of the testator's death. However, when a testament uses a term the legal affect of which has been changed after the date of execution of the testament, the court may consider the law in effect at the time the testament was executed to ascertain the testator's intent and the interpretation of the legacy or other testamentary provision.
2. Louisiana Civil Code Article 395 – A judgment of interdiction removes the capacity of an interdict to make a donation inter vivos.
3. Louisiana Code of Civil Procedure Articles 3396 - 3396.20 – Louisiana has now adopted laws which will allow for the independent administration of a succession. The testator will now be allowed to designate an independent executor under his will, or in the case of an intestate succession, the heirs may approve the appointment of an independent administrator. What this means is that the executor or administrator will not have to apply for court authority to do such things as sell stocks and bonds, sell immovable property, enter into leases, enter into settlements and compromises, or to get court approval for other actions. This is very beneficial and you may be seeing executors giving you their letters testamentary or letters of administration indicating that there is an independent administration.
4. Louisiana Civil Code Article 1521 – The current survivorship provision with respect to taking a legacy is 90 days. The 90-day period has been increased to six months. This will now coincide with the six-month period which is permitted under federal tax law.

5. Louisiana Code of Civil Procedure Article 3061 – Judgments of Possession are required to include the last known address of at least one of the heirs or legatees or the surviving spouse, as the case may be. The failure to include the address of at least one of the heirs or legatees or the surviving spouse shall not affect the validity of the judgment.
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7. Louisiana Civil Code Article 965 – The default provision regarding accretion of lapsed legacies when a legatee renounces a legacy has been changed to provide that the renounced legacy will now pass to the persons who would have received the legacy if the legatee had predeceased the decedent instead of providing that the renounced legacy passes to the descendants by roots of the legatee.
8. Louisiana Revised Statute 9:2801.1 – A new provision regarding the partition of community property has been added to provide that when federal law or the provisions of a statutory pension or retirement plan, state or federal, preempt or preclude community classification of property that would have been classified as community property under the principles of the Louisiana Civil Code, then the spouse of the person entitled to such property shall be allocated or assigned the ownership of community property equal in value to such property prior to the division of the rest of the community property.
9. Louisiana Civil Code Articles 1617 through 1626 – The grounds for disinheritance of forced heirs have been reenacted. These provisions were inadvertently deleted when some of the rules regarding forced heirship were changed previously. Article 1621 provides the following causes for disinheritance by parents:
  - A. The child has raised his hand to strike a parent or has actually struck a parent, but a mere threat is not sufficient.
  - B. The child has been guilty towards a parent of cruel treatment, crime or grievous injury.
  - C. The child has attempted to take the life of a parent.
  - D. The child, without any reasonable basis, has accused a parent of committing a crime for which the law provides that the punishment could be life imprisonment or death.
  - E. The child has used any act of violence or coercion to hinder a parent from making a testament.
  - F. The child, being a minor, has married without the consent of the parent.
  - G. The child has been convicted of a crime for which the law provides that the

punishment could be life imprisonment or death.

- H. The child, after attaining the age of majority and knowing how to contact the parent, has failed to communicate with the parent without just cause for a period of two years, unless the child was on active duty in any of the military forces of the United States at the time.
- 9. Civil Code Article 2347 – The concurrence of both spouses is now required for the alienation, encumbrance, lease or harvest of community timber.
- 10. Louisiana Civil Code Article 938 and Louisiana Revised Statute 9:2502 – A successor is permitted to exercise rights of ownership with respect to his interest in a thing of the estate as well as his interest in the estate as a whole at any time prior to the qualification of a succession representative. If a successor exercises his rights of ownership after the qualification of a succession representative, the effect of that exercise is subordinate to the administration of the estate. The provisions of this new law are intended to be remedial and any action to annul an alienation, lease or incumbrance of immovable property owned by the decedent at his death and made by successor prior to the appointment of a succession representative must be brought within a preemptive period of one year from the effective date of the change in the law.

#### **SELECTED REVISIONS TO THE LOUISIANA TRUST CODE**

- 1. Louisiana Revised Statute 9:1783 (A) 2 – Financial institutions and trust companies which are authorized to exercise trust or fiduciary powers under the laws of Louisiana or the United States can be trustees of Louisiana trusts.
- 2. Louisiana Revised Statute 9:1784 – A trustee who accepts a Louisiana trust submits to the jurisdiction of the courts of the State of Louisiana.
- 3. Louisiana Revised Statute 9:1789(A) – A trustee shall be removed in accordance with the provisions of the trust instrument or by the proper court for sufficient cause.
- 4. Louisiana Revised Statute 9:1789(B) – A corporate trustee shall be removed upon the petition of the settlor or any current beneficiary, if the court determines that removal is in the best interest of the beneficiaries as a whole, another corporate entity that is qualified to be a trustee has agreed to serve as trustee, and the trust instrument does not forbid such removal.
- 5. Louisiana Revised Statute 9:1961 – The requirement that a trustee of a "spray trust" exercise the discretion of an average reasonable man has been removed.
- 6. Louisiana Revised Statute 9:2026 (2) – The proper court may order the termination or modification of the trust if the market value of the trust is less than \$100,000.00, and in relation to the cost of administration of the trust, the continuance of the trust unchanged would defeat or substantially impair the purposes of the trust. The market

value amount was increased from \$25,000.00 to \$100,000.00.

7. Louisiana Revised Statute 9:2030 – The combination of two or more trusts is now permitted in certain situations. Section 2030 of the Trust Code allowing division of trusts has been expanded to allow a trustee to combine two or more trusts into one trust. Furthermore, trusts that are divided or combined need not have identical terms if the combination or division does not impair the rights of any beneficiary or adversely affect the accomplishment of the purposes of the trust.
8. Louisiana Revised Statute 9:2045 – A settlor who has reserved the right to revoke a trust may delegate that right only by an express statement in the trust instrument or in a power of attorney executed in authentic form referring to the trust. This represents a change in the law. Previously the right to revoke could not be delegated by the settlor to another.
9. Louisiana Revised Statute 9:1891 – The Trust Code was previously amended to allow for "dynasty trusts" through the class trust mechanism. That language for dynasty trusts has been removed and now classes may only be created for certain groups including children, grandchildren, great grandchildren, nieces, nephews, grandnieces, grandnephews and great grandnieces and great grandnephews, or a combination thereof.
10. Louisiana Revised Statute 9:2086 – A corporate trustee is not permitted to purchase for a trust shares of its own stock, bonds or other securities.  
  
However, the law has now been changed to provide that a trustee may retain any such securities, together with any rights pertaining thereto, if acquired other than by purchase by that trustee.
11. Louisiana Revised Statute 9:2087 – A trustee is now permitted to delegate the performance of certain acts, including the performance of acts that he cannot reasonably be required to perform personally, the selection of specific investments by acquiring mutual funds, and the investment and asset management functions that a prudent trustee of comparable skills could properly delegate under the circumstances.
12. Louisiana Revised Statute 9:2090 – A trustee shall administer the trust as a prudent person would administer it. In satisfying this standard, the trustee must exercise reasonable care and skill, considering the purposes, terms, distribution requirements and other circumstances of the trust. Unless the trust instrument provides otherwise, the trustee shall invest and manage trust property as a prudent investor. In satisfying the standard, the trustee shall consider the purposes, terms, distribution requirements and other circumstances of the trust. A trustee's investment and management decisions are to be evaluated in the context of the trust property as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the

- trust. In investing within the limitations of the foregoing standard, the trustee is authorized to retain and acquire every kind of property.
13. Louisiana Revised Statute 9:2142 – New rules are enacted with the respect to the allocations of income and principal as well as charging of expenditures to income and principal.
  14. Louisiana Revised Statutes 9:2262.1-2262.4 – Certain foreign trusts are now recognized under Louisiana Law and if the appropriate requirements are met these foreign trusts can convey title to immovable property owned in the State of Louisiana.
  15. Louisiana Revised Statutes 9:2058-2163 – The trustee may be given the power to make an adjustment between principal and income when the interest of one or more beneficiaries is defined by reference to the income of the trust, and the trustee determines that after taking into account the allocations for the year that the adjustment is necessary in order for the trustee to satisfy his duty to be fair and reasonable to all of the beneficiaries, taking into account the purposes of the trust.
  16. Louisiana Civil Code Article 2997 – In order for an agent to make an inter vivos donation either outright or to a new or existing trust or other custodial arrangement, authority must be expressly granted in the power of attorney or mandate.
  17. Louisiana Revised Statute 9:2088 – A trustee of a revocable trust only has the duty to account to the settlor.

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