

2020 Regular Session  
HOUSE BILL NO. 125  
BY REPRESENTATIVE GREGORY MILLER

# ACT No. 19

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Articles 897, 1495, and 1505(A) and (B) and Code of  
3 Civil Procedure Articles 2952 and 3396.18(A), to enact Civil Code Article 1495.1,  
4 and to repeal Part 1 of Chapter 4 of Title 9 of the Louisiana Revised Statutes of 1950,  
5 comprised of R.S. 9:2401, relative to successions; to modernize terminology; to  
6 provide for the calculation of the legitime; to provide for the calculation of the active  
7 mass of a succession; to provide for the independent administration of a succession;  
8 to provide for the sealing of a detailed descriptive list in a succession without  
9 administration; to repeal the Uniform Wills Law; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Civil Code Articles 897, 1495, and 1505(A) and (B) are hereby amended  
12 and reenacted and Civil Code Article 1495.1 is hereby enacted to read as follows:

13 Art. 897. Ascendant's right to inherit immovables donated to descendant.

14 Ascendants, to the exclusion of all others, inherit the immovables given by  
15 them to their children or their descendants of a more remote degree who died without  
16 ~~posterity~~ descendants, when these objects are found in the succession.

17 If these objects have been alienated, and the price is yet due in whole or in  
18 part, the ascendants have the right to receive the price. They also succeed to the right  
19 of reversion on the happening of any event which the child or descendant may have  
20 inserted as a condition in his favor in disposing of those objects.

21 Revision Comments - 2020

22 The term "posterity" as used in the first paragraph of Article 897 has been  
23 replaced with the term "descendants," as "posterity" is no longer defined in the Civil  
24 Code. Under the Civil Code of 1870, the term "posterity" was defined to mean "all  
25 the descendants in the direct line." Article 3556(24) (1870). It was deleted in 1999.

26 \* \* \*

1 Art. 1495. Amount of forced portion and disposable portion

2 Donations *inter vivos* and *mortis causa* may not exceed three-fourths of the  
 3 property of the donor if he leaves, at his death, one forced heir, and one-half if he  
 4 leaves, at his death, two or more forced heirs. The portion reserved for the forced  
 5 heirs is called the forced portion and the remainder is called the disposable portion.

6 ~~Nevertheless, if the fraction that would otherwise be used to calculate the~~  
 7 ~~legitime is greater than the fraction of the decedent's estate to which the forced heir~~  
 8 ~~would succeed by intestacy, then the legitime shall be calculated by using the~~  
 9 ~~fraction of an intestate successor.~~

10 Art. 1495.1. Calculation of the legitime

11 To determine the legitime of a forced heir when all forced heirs are of the  
 12 first degree, the division of the forced portion is made by heads.

13 When representation occurs for purposes of forced heirship, the division is  
 14 made by roots among those qualifying as forced heirs or being represented. Within  
 15 each root, any subdivision is also made by roots in each branch, with those  
 16 qualifying as forced heirs by representation taking by heads.

17 Nevertheless, if the fraction that would otherwise be used to calculate the  
 18 legitime is greater than the fraction of the decedent's estate to which the forced heir  
 19 would succeed by intestacy, then the legitime shall be calculated by using the  
 20 fraction of an intestate successor.

21 Revision Comments - 2020

22 (a) This Article provides a definitive statement as to how to calculate an  
 23 individual forced heir's legitime. In that vein, it should be read in conjunction with  
 24 Article 1495, which provides the method of calculation of the forced portion, i.e., the  
 25 amount to which all forced heirs are collectively entitled.

26 (b) The first paragraph of this Article is applicable when all forced heirs are  
 27 forced heirs of the first degree. When one or more forced heirs is a forced heir by  
 28 representation, the second paragraph specifies the method by which the legitime is  
 29 calculated. Both the first and the second paragraphs of this Article are subject to the  
 30 limitation provided in the third paragraph.

31 (c) The second paragraph of this Article closes a gap that has long existed  
 32 in Louisiana law, namely, how to calculate the legitime of a forced heir grandchild.  
 33 Under this Article, the forced portion is initially calculated by assessing the number  
 34 of descendants who are forced heirs in their own right or who are forced heirs by  
 35 virtue of being represented by their descendants. The legitime is then calculated by  
 36 roots and within each root by heads, but only among those who qualify as forced

1 heirs by representation. Descendants of those who are treated as forced heirs under  
 2 this Article but do not themselves qualify as forced heirs by representation are not  
 3 considered for purposes of calculation of the legitime. By way of example, A may  
 4 have two predeceased children B and C, neither of whom qualified as a forced heir  
 5 in his own right. B has a child D, who is a forced heir by representation, and C has  
 6 three children, E, F, and G, but only E and F qualify as forced heirs by  
 7 representation. Under this example, the calculation of the forced portion would be  
 8 made at the generational level of B and C because B and C are both represented by  
 9 forced heirs although neither B nor C is a forced heir in his own right. Consequently,  
 10 the forced portion would be 1/2. B's root (or his 1/4 share) would be distributed to D,  
 11 his child who is a forced heir by representation. C's root (or his 1/4 share) would be  
 12 divided equally between E and F, but not G, as E and F are the only forced heirs by  
 13 representation in C's root.

14 (d) The third paragraph of this Article specifies the limitation commonly  
 15 known as the Greenlaw rule, which has been moved from Article 1495 to this  
 16 Article. This revision has not disturbed its applicability in the ordinary case where  
 17 the legitime share of a forced heir of the first degree is reduced to an intestate share.  
 18 Rather, this Article clarifies that the Greenlaw rule is also applicable to the share of  
 19 a forced heir by representation and may, in some instances, serve to reduce the  
 20 legitime fraction of a forced heir by representation to that of an intestate successor.  
 21 Whenever the Greenlaw rule applies, the reduction in the fraction used to calculate  
 22 the legitime of a forced heir correspondingly reduces the overall forced portion to  
 23 which all of the forced heirs are collectively entitled.

24 \* \* \*

25 Art. 1505. Calculation of disposable portion on mass of succession

26 A. To determine the reduction to which the donations, either *inter vivos* or  
 27 *mortis causa*, are subject, an aggregate is formed of all property belonging to the  
 28 donor or testator at the time of his death; the sums due by the estate are deducted  
 29 from this aggregate amount; to that is fictitiously added the property disposed of by  
 30 donation *inter vivos* within three years of the date of the donor's death, according to  
 31 its value at the time of the donation.

32 B. ~~The sums due by the estate are deducted from this aggregate amount, and~~  
 33 ~~the disposable quantum is calculated~~ determined on the ~~balance~~ above calculation,  
 34 taking into consideration the number of forced heirs.

35 \* \* \*

36 Revision Comments - 2020

37 This revision corrects a mistake that has long existed in Louisiana law  
 38 regarding the calculation of the mass of the succession for purposes of forced  
 39 heirship. Paragraph A of the prior version of Article 1505 declared that in  
 40 ascertaining the reduction to which donations are subject, an aggregate is formed of  
 41 all of the decedent's property and certain donations *inter vivos* are fictitiously added.  
 42 Paragraph B then provided that the "sums due by the estate" were to be subtracted  
 43 from the aggregate amount formed in Paragraph A. This language was derived from  
 44 Article 922 of the French Civil Code, which has been characterized as "not clearly

1 express[ing] the intention of the legislation." Aubry & Rau, Droit Civil Français:  
 2 Testamentary Successions and Gratuitous Dispositions § 684 n.15. Specifically, the  
 3 order of calculation suggested by the prior version of Article 1505 proved  
 4 problematic in instances in which the value of the property left at death is less than  
 5 the debts. In such a case, the value of debts must be subtracted prior to adding  
 6 fictitiously certain donations inter vivos. After all, "the sum [that] the donees are  
 7 permitted to keep can [not] be affected by the payment of the debts[] because  
 8 creditors cannot profit by the reduction ..." Id. See also Philippe Malaurie et Claude  
 9 Brenner, Droit des Successions et des Libéralités 431 (8th ed. 2018). The current  
 10 revision makes clear that the proper method of computing the succession mass is to  
 11 deduct the debts of the succession from the aggregate of the extant property. Only  
 12 after the "net estate" is calculated does one "fictitiously add[] the property disposed  
 13 of by donation inter vivos within three years of the date of the donor's death,  
 14 according to its value at the time of the donation." Article 1505(A). In light of the  
 15 above, it should also be clear that when the decedent's estate is insolvent and the  
 16 amount of debts exceeds the assets, the "net estate" is considered to be zero, and the  
 17 succession mass for forced heirship purposes is based solely upon the donations inter  
 18 vivos that are fictitiously added back. See Malaurie et Brenner, supra, at 431.

19 Section 2. Code of Civil Procedure Articles 2952 and 3396.18(A) are hereby  
 20 amended and reenacted to read as follows:

21 Art. 2952. Descriptive list of property, if no inventory

22 A. If no inventory of the property left by the deceased has been taken, any  
 23 heir, legatee, or other interested party shall file in the succession proceeding a  
 24 detailed; descriptive list, sworn to and subscribed by him, of all items of property  
 25 composing the succe`ssion of the deceased, stating the actual cash value of each item  
 26 at the time of the death of the deceased.

27 B. The detailed descriptive list shall be sealed upon the request of an heir or  
 28 legatee.

29 C. If the detailed descriptive list is sealed, a copy shall be provided to the  
 30 decedent's universal successors and surviving spouse. Upon motion of any  
 31 successor, surviving spouse, or creditor of the estate, the court may furnish relevant  
 32 information contained in the detailed descriptive list regarding assets and liabilities  
 33 of the estate.

34 Comments - 2020

35 This revision extends the procedure adopted in 2017 in the context of  
 36 independent administration to successions in which an heir is sent into possession  
 37 without an administration of the succession. For the reasons explained in the  
 38 Comments to Article 3396.18, the detailed descriptive list may be filed under seal.

39 \* \* \*

1 Art. 3396.18. Inventory or sworn descriptive list

2 A. Before the succession can be closed, a judgment of possession rendered,  
3 and the independent administrator discharged, there ~~must~~ shall be filed an inventory  
4 or sworn detailed descriptive list of assets and liabilities of the estate verified by the  
5 independent administrator.

6 \* \* \*

7 Comments - 2020

8 This revision clarifies the law by definitively stating that the rendition of a  
9 judgment of possession is still necessary even when a succession is independently  
10 administered. The 2017 amendments did not intend to repeal the requirement of a  
11 judgment of possession, even though independent administrators have "all the rights,  
12 powers, authorities, privileges, and duties of a succession representative provided in  
13 Chapters 4 through 12" of Title II of Book VI of the Louisiana Code of Civil  
14 Procedure. See Article 3395.15. Nothing in this Article affects the rendition of a  
15 partial judgment of possession pursuant to Articles 3362 or 3372.

16 Section 3. Part 1 of Chapter 4 of Title 9 of the Louisiana Revised Statutes of 1950  
17 is hereby repealed in its entirety.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

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

2020 Regular Session  
HOUSE BILL NO. 126  
BY REPRESENTATIVE GREGORY MILLER

# ACT No. 20

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Article 477 and to repeal R.S. 9:2948, relative to bond for  
3 deed contracts; to provide for ownership of property for purposes of the homestead  
4 exemption; to repeal unconstitutional law; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Civil Code Article 477 is hereby amended and reenacted to read as  
7 follows:

8 Art. 477. Ownership; content

9 ~~A.~~ Ownership is the right that confers on a person direct, immediate, and  
10 exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose  
11 of it within the limits and under the conditions established by law.

12 ~~B. A buyer and occupant of a residence under a bond for deed contract is the~~  
13 ~~owner of the thing for purposes of the homestead exemption granted to other~~  
14 ~~property owners pursuant to Article VII, Section 20(A) of the Constitution of~~  
15 ~~Louisiana. The buyer under a bond for deed contract shall apply for the homestead~~  
16 ~~exemption each year.~~

17 Section 2. R.S. 9:2948 is hereby repealed in its entirety.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

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

SENATE BILL NO. 153

BY SENATORS FOIL, ALLAIN, BARROW, BERNARD, CATHEY, CLOUD, CONNICK, CORTEZ, FESI, HARRIS, HENRY, HEWITT, JACKSON, MCMATH, MILLIGAN, MORRIS, PRICE, REESE, SMITH, WARD AND WOMACK AND REPRESENTATIVE AMEDEE (On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Articles 355 and 356, relative to continuing tutorship; to  
3 provide for the filing of a petition; to provide for the appointment of tutors; to  
4 provide for the appointment of co-tutors; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Civil Code Articles 355 and 356 are hereby amended and reenacted to  
7 read as follows:

8 Art. 355. Petition for continuing or permanent tutorship

9 When a person above the age of fifteen possesses less than two-thirds of the  
10 intellectual functioning of a person of the same age with average intellectual  
11 functioning, evidenced by standard testing procedures administered by competent  
12 persons or other relevant evidence acceptable to the court, the parents of such person,  
13 or the person entitled to custody or tutorship if one or both parents are dead,  
14 incapacitated, ~~or an absent person~~ **or absent persons**, or if the parents are judicially  
15 separated or divorced **or have never been married to each other**, may, with the  
16 written concurrence of the coroner of the parish of the intellectually disabled person's  
17 domicile, petition the court of that district to place such person under a continuing  
18 tutorship which shall not automatically end at any age but shall continue until  
19 revoked by the court of domicile. The petitioner shall not bear the coroner's costs or  
20 fees associated with securing the coroner's concurrence.

21 Art. 356. Title of proceedings; procedural rules; ~~parents as tutor and undertutor~~  
22 **parent to be named tutor**

23 The title of the proceedings shall be Continuing Tutorship of (Name of  
24 Person), A Person with an Intellectual Disability.

1 (1) When the person to be placed under the continuing tutorship is above the  
 2 age of fifteen, and under the age of majority, the proceeding shall be conducted  
 3 according to the procedural rules established for ordinary tutorships.

4 (2) When the person to be placed under the continuing tutorship is above the  
 5 age of majority, the proceeding shall be conducted according to the procedural rules  
 6 established for interdictions.

7 (3) ~~Upon the petition of both~~ **When the** parents of the ~~mentally deficient~~  
 8 person ~~during their marriage one parent shall be named as tutor and the other as~~  
 9 ~~undertutor~~ **to be placed under the continuing tutorship are married to each other**  
 10 **and petition jointly, the court shall appoint the parents as co-tutors,** unless for  
 11 good reasons the judge ~~good cause the court~~ decrees otherwise.

12 **(4) When the parents of the person to be placed under the continuing**  
 13 **tutorship are married to each other but do not petition jointly, the court shall**  
 14 **appoint either a petitioning parent as tutor or both individually petitioning**  
 15 **parents as co-tutors, in accordance with the best interest of the child.**

16 **(5) Upon the petition of a parent of the person to be placed under the**  
 17 **continuing tutorship, the court shall, unless good cause requires otherwise,**  
 18 **appoint as tutor the petitioning parent who is:**

19 **(a) The surviving parent, if one parent is dead.**

20 **(b) The parent awarded custody during minority of the person to be**  
 21 **placed under the continuing tutorship, if the parents are divorced or judicially**  
 22 **separated.**

23 **(c) The parent who was tutor or tutrix during minority, if the parents**  
 24 **were never married to each other.**

25 Revision Comments - 2020

26 (a) Subparagraph (5) incorporates Louisiana's child custody rules. See, e.g.,  
 27 Articles 131 through 135. Although there are no provisions of law addressing  
 28 custody of an adult descendant, for the purposes of this Article, the custodial  
 29 determination made during minority informs the naming of a tutor for a major placed  
 30 under continuing tutorship.



1                   (b) See also Article 273 (requiring an undertutor in all cases). It may be  
2 appropriate for the court to name one parent tutor and the other undertutor under this  
3 Article.

4                   (c) Under Subparagraph (5)(b), a parent with sole custody who petitions may  
5 be named tutor of the person to be placed under continuing tutorship. Likewise,  
6 parents with joint custody may be named co-tutors if each petitions. The rule  
7 established here is intended to approximate that applicable to tutorship during  
8 minority. See, e.g., Article 250 (making parents joint custody co-tutors unless  
9 otherwise ordered by the court).

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

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

2020 Regular Session  
HOUSE BILL NO. 274

# ACT No. 254

BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Civil Code Article 3344(A)(introductory paragraph) and R.S. 35:6 and to enact R.S. 9:2760 and Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 35:621 through 630, relative to remote online notarization; to provide for recordation of tangible copies of electronic acts; to provide for performance of remote online notarization; to provide for limitations relative to remote online notarization; to provide for definitions; to provide for rulemaking; to provide for duties of notaries public; to provide for recordkeeping; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Article 3344(A)(introductory paragraph) is hereby amended and reenacted to read as follows:

Art. 3344. Refusal for failure of original signature or proper certification; effect of recordation; necessity of proof of signature recordation of a duplicate

A. ~~The~~ Except as otherwise provided by law, the recorder shall refuse to record:

\* \* \*

Section 2. R.S. 9:2760 is hereby enacted to read as follows:

§2760. Recordation of electronic record in tangible form

The recorder shall not refuse to record a tangible copy of an electronic record on the ground that it does not bear the original signature of a party if a notary public or other officer before whom it was executed certifies that the tangible copy is an accurate copy of the electronic record.

1 Section 3. R.S. 35:6 is hereby amended and reenacted to read as follows:

2 §6. Foreign notaries; acts and other instruments, effect

3 All acts passed before any notary public and two witnesses in the District of  
 4 Columbia, or any state of the United States other than Louisiana, except those  
 5 performed by remote online notarization, shall be authentic acts and shall have the  
 6 same force and effect as if passed before a notary public in Louisiana.

7 Section 4. Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, to be  
 8 comprised of R.S. 35:621 through 624 and 626 through 630, is hereby enacted to read as  
 9 follows:

10 CHAPTER 10. REMOTE ONLINE NOTARIZATION

11 §621. Short title

12 This Chapter may be cited as the "Remote Online Notarization Act".

13 §622. Definitions

14 A. In this Chapter:

15 (1) "Communication technology" means an electronic device or process that  
 16 allows substantially simultaneous communication by sight and sound.

17 (2) "Credential analysis" means a process through which the authenticity of  
 18 an individual's government-issued identification credential is evaluated by another  
 19 person through review of public and proprietary data sources.

20 (3) "Identity proofing" means a process through which the identity of an  
 21 individual is affirmed by another person by either of the following means:

22 (a) Dynamic knowledge-based authentication, such as a review of personal  
 23 information from public or proprietary data sources.

24 (b) Analysis of biometric data, such as facial recognition, voiceprint analysis,  
 25 or fingerprint analysis.

26 (4) "Remote online notarial act" means an instrument executed before a  
 27 notary public by means of communication technology that meets the standards  
 28 adopted under this Chapter.

1           (5) "Remote online notarization" means the process through which an  
 2           instrument is executed before a notary public by means of communication  
 3           technology that meets the standards adopted under this Chapter.

4           B. The definitions of "electronic", "electronic record", "electronic signature",  
 5           and "record" as provided by the Louisiana Uniform Electronic Transactions Act, R.S.  
 6           9:2601 et seq., apply in this Chapter.

7           §623. Legal recognition of remote online notarial acts

8           A. Except as otherwise provided in Subsections B and C of this Section, a  
 9           remote online notarial act that meets the requirements of R.S. 35:625 through 627  
 10           satisfies any requirement that a party appear before a notary public at the time of the  
 11           execution of the instrument. In all other respects, a remote online notarial act shall  
 12           comply with other applicable laws governing the manner of the execution of that act.

13           B. The following instruments shall not be executed by remote online  
 14           notarization:

15                   (1) Testaments or codicils thereto.

16                   (2) Trust instruments or acknowledgments thereof.

17                   (3) Donations inter vivos.

18                   (4) Matrimonial agreements or acknowledgments thereof.

19                   (5) Acts modifying, waiving, or extinguishing an obligation of final spousal  
 20           support or acknowledgments thereof.

21           C. Remote online notarization may not be used to execute an authentic act  
 22           as defined in Civil Code Article 1833. Except as otherwise provided in Subsection  
 23           B of this Section, an act that fails to be authentic as a result of being executed by  
 24           remote online notarization may still be valid as an act under private signature or an  
 25           acknowledged act.

26           D. This Chapter supplements and does not repeal, supersede, or limit the  
 27           provisions of the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq.

1           §624. Standards for remote online notarization

2                   A. The secretary of state shall, by rule adopted in accordance with the  
3                   Administrative Procedure Act, develop and maintain standards for the  
4                   implementation of this Chapter.

5                   B. In developing standards for remote online notarization, the secretary of  
6                   state shall form a stakeholder committee that shall include but need not be limited  
7                   to representatives of the Louisiana Land Title Association, the Louisiana Association  
8                   of Independent Land Title Agents, the Louisiana Notary Association, the Louisiana  
9                   Bankers Association, the Louisiana Clerks of Court Association, the Louisiana State  
10                   Bar Association, the Louisiana Public Tag Association, and the Louisiana State Law  
11                   Institute.

12                   C. The rules shall be adopted prior to February 1, 2022, and may thereafter  
13                   be modified, amended, or supplemented with or without the input of the stakeholder  
14                   committee.

15   \*       \*       \*

16           §626. Location of notary, parties, and witnesses; location of remote online notarial  
17                   act

18                   A. A notary public physically located in any parish of this state in which the  
19                   notary has the power to exercise the function of a notary public may perform a  
20                   remote online notarization for a party who is not in the physical presence of the  
21                   notary and who may be located in or outside this state. A witness to a remote online  
22                   notarial act shall be in the physical presence of the party.

23                   B. A remote online notarial act is deemed to be executed in any parish of this  
24                   state where any party is physically located at the time of the remote online  
25                   notarization. If no party was physically located in this state at the time of the remote  
26                   online notarization, the remote online notarial act is deemed to be executed in the  
27                   parish where the notary public is physically located at the time of the remote online  
28                   notarization.

1           §627. Procedure for performing remote online notarization

2                   A. At the time of a remote online notarization, the notary public shall verify  
3           the identity of any party or witness appearing remotely, both through use of  
4           communication technology and by one of the following means:

5                   (1) The notary public's personal knowledge of the individual.

6                   (2) A process that includes all of the following:

7                   (a) Remote presentation by the individual of a government-issued  
8           identification credential, such as a passport or driver's license, that contains the  
9           signature and a photograph of the individual.

10                  (b) Credential analysis.

11                  (c) Identity proofing.

12                  B. The notary public shall do all of the following:

13                  (1) Include in the remote online notarial act a statement that it is a remote  
14           online notarial act.

15                  (2) Attach to or cause to be logically associated with the remote online  
16           notarial act the notary public's electronic signature, together with all other  
17           information required to be included in the act by other applicable law.

18                  (3) Digitally sign the remote online notarial act in a manner that renders any  
19           subsequent change or modification of the remote online notarial act to be evident.

20           §628. Duties of the notary

21                   The notary public shall take reasonable steps to ensure both of the following:

22                   (1) The communication technology used in the performance of a remote  
23           online notarization is secure from unauthorized interception.

24                   (2) The electronic record before the notary public is the same electronic  
25           record in which the party made a statement or on which the party executed or  
26           adopted an electronic signature.

27           §629. Records of remote online notarizations

28                   A. The notary public shall do all of the following:

1           (1) Maintain electronic copies capable of being printed in a tangible medium  
2           of all remote online notarial acts for at least ten years after the date of the remote  
3           online notarization.

4           (2) Maintain an audio and video recording of each remote online notarization  
5           for at least ten years after the date of the remote online notarization.

6           (3) Take reasonable steps to secure the records required to be maintained by  
7           this Section from corruption, loss, destruction, and unauthorized interception or  
8           alteration.

9           B. The notary public may designate a custodian to maintain the electronic  
10          records required by Subsection A of this Section, provided that the notary public has  
11          unrestricted access to the electronic records and the custodian meets any standards  
12          established by the secretary of state for the maintenance of electronic records.

13          §630. No variation by agreement

14          The provisions of this Chapter may not be varied by agreement.

15          Section 5. R.S. 35:625 is hereby enacted to read as follows:

16          §625. Notaries authorized to perform remote online notarization

17          A. Any regularly commissioned notary public who holds a valid notarial  
18          commission in the state of Louisiana is hereby authorized to perform remote online  
19          notarizations.

20          B. The provisions of this Section shall cease to be effective on February 1,  
21          2022.

22          Section 6. R.S. 35:625.1 is hereby enacted to read as follows:

23          §625.1. Notaries authorized to perform remote online notarization

24          A. Only a regularly commissioned notary public who holds a valid notarial  
25          commission in the state of Louisiana may be authorized by the secretary of state to  
26          perform remote online notarization.

27          B. In order to obtain authorization to perform remote online notarization, a  
28          notary public shall submit an application to the secretary of state in a format  
29          prescribed by the secretary of state, complete any course of instruction required by

1           the secretary of state, and satisfy any other requirements imposed by rules adopted  
2           by the secretary of state.

3           C. The authority to perform remote online notarization shall continue as long  
4           as the notary public is validly commissioned and the secretary of state has not  
5           revoked the notary public's authority to perform remote online notarization.

6           Section 7. This Section and Sections 1, 2, 3, 8, 9, and 10 of this Act shall become  
7 effective on August 1, 2020.

8           Section 8.(A) Section 4 of this Act shall become effective upon the later of  
9 enactment of the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116<sup>th</sup> Congress)  
10 or August 1, 2020.

11           (B) If the SECURE Notarization Act is not enacted prior to February 1, 2022,  
12 Section 4 of the Act shall become effective on February 1, 2022.

13           Section 9.(A) Section 5 of this Act is contingent upon the enactment of the SECURE  
14 Notarization Act (H.R. 6364 or S. 3533 of the 116<sup>th</sup> Congress).

15           (B) If the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116<sup>th</sup> Congress)  
16 is enacted, Section 5 of this Act shall become effective upon the later of the enactment of  
17 the H.R. 6364 or S. 3533 of the 116<sup>th</sup> Congress or August 1, 2020.

18           Section 10. Section 6 of this Act shall become effective on February 1, 2022.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

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



2020 Regular Session  
HOUSE BILL NO. 594

# ACT No. 281

BY REPRESENTATIVE SEABAUGH

1 AN ACT

2 To amend and reenact Civil Code Article 811 and Code of Civil Procedure Articles 4607,  
3 4621, 4622, 4624, 4625, 4626, 4627, 4629, and 4643 and to enact Code of Civil  
4 Procedure Article 4626.1, relative to property; to provide for partitions by private  
5 sale; to provide for absentee co-owners; to provide for publication notice; to provide  
6 for petitions, trials, and judgments of partitions by private sale; to provide for the  
7 appointment of an attorney; to provide for an effective date; and to provide for  
8 related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Civil Code Article 811 is hereby amended and reenacted to read as  
11 follows:

12 Art. 811. Partition by licitation or by private sale

13 When the thing held in indivision is not susceptible to partition in kind, the  
14 court shall decree a partition by licitation or by private sale and the proceeds shall  
15 be distributed to the co-owners in proportion to their shares. In the event that one or  
16 more of the co-owners are absentees or have not consented to a partition by private  
17 sale, the court may set the terms of the sale and order a partition by private sale.

18 Section 2. Code of Civil Procedure Articles 4607, 4621, 4622, 4624, 4625, 4626,  
19 4627, 4629, and 4643 are hereby amended and reenacted and Code of Civil Procedure  
20 Article 4626.1 is hereby enacted to read as follows:

21 Art. 4607. Partition by licitation or by private sale

22 When a partition is to be made by licitation, the sale shall be conducted at  
23 public auction and after the advertisements required for judicial sales under  
24 execution. When a partition is to be made at private sale without the consent of all

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 co-owners, the sale shall be for not less than two-thirds of the appraised value of the  
2 property and shall be made by a court-appointed representative, who may be a co-  
3 owner, after the advertisements required for judicial sales under execution are made.

4 All counsel of record, including curators appointed to represent absentee defendants,  
5 and persons appearing in proper person shall be given notice of the sale date. At any  
6 time prior to the sale, the parties may agree upon a nonjudicial partition.

7 \* \* \*

8 Art. 4621. Partition by licitation or private sale

9 When one of the co-owners of property sought to be partitioned is an  
10 absentee, the partition may be effected by licitation or by private sale, as provided  
11 in this Chapter, whether the property is divisible in kind or not.

12 Art. 4622. Petition

13 The petition for the partition of property in which an absentee owns an  
14 interest, under the articles of this Chapter, shall allege the facts showing that the  
15 absent and unrepresented defendant is an absentee, as defined in Article 5251, shall  
16 describe the property sought to be partitioned and allege the ownership interests  
17 thereof, and shall be supported by an affidavit of the petitioner or of his counsel that  
18 the facts alleged in the petition are true. If the partition is to be made by private sale,  
19 the petition shall describe the primary terms of the proposed sale, identify the  
20 proposed purchaser, if any, disclose whether the proposed purchaser is related to any  
21 co-owner, and disclose to the petitioning co-owners whether any costs associated  
22 with the sale will be paid to any person related to the petitioning co-owners within  
23 the fourth degree or a juridical entity in which the co-owner has a direct or indirect  
24 financial interest.

25 \* \* \*

26 Art. 4624. Publication of notice

27 Notice of the institution of the proceeding shall be published at least once in  
28 the parish where the partition proceeding is instituted, in the manner provided by  
29 law. This notice shall set forth the title and docket number of the proceeding, the  
30 name and address of the court, ~~and~~ a description of the property sought to be

1 partitioned, and the terms of the private sale and shall notify the absent defendant  
 2 that the plaintiff is seeking to have the property partitioned by licitation or by private  
 3 sale, and that the absent defendant has fifteen days from the date of the publication  
 4 of notice, or of the initial publication of notice if there is more than one publication,  
 5 to answer the plaintiff's petition.

6 Art. 4625. Trial; judgment ordering sale

7 Except as otherwise provided in Article 4630, if the petitioner proves on the  
 8 trial of the proceeding that he is a co-owner of the property and entitled to the  
 9 partition thereof and that the defendant is an absentee who owns an interest therein,  
 10 the court shall render judgment ordering either the public sale of the property for  
 11 cash by the sheriff to effect a partition, after the advertisement required by law for  
 12 a sale under execution: or the private sale of the property for cash by the court-  
 13 appointed representative to effect a partition, after the advertisement required by law  
 14 for a sale under execution.

15 The judgment shall determine the absentee's share in the proceeds of the sale,  
 16 and award a reasonable fee to the attorney appointed to represent him to be paid from  
 17 the absentee's share of the proceeds of the sale.

18 Art. 4626. Judgment ordering reimbursement or payment of amounts due co-owner  
 19 out of proceeds of public sale

20 A judgment ordering the public sale of property to effect a partition under the  
 21 provisions of this Chapter shall order, out of the proceeds of such sale, all of the  
 22 following:

23 (1) The reimbursement to a co-owner of the amount proven to be due ~~him~~  
 24 the co-owner for the payment of taxes on the property, and the expenses of  
 25 preservation ~~thereof, and~~ of the property.

26 (2) The payment to a co-owner of the amount proven to be due ~~him~~ the co-  
 27 owner by another co-owner who has received and retained the fruits and revenues  
 28 of the property.

1           Art. 4626.1. Judgment ordering reimbursement or payment of amounts due co-  
2                   owner and payment and allocation of costs of private sale out of proceeds of  
3                   sale

4           A judgment ordering the private sale of property to effect a partition under  
5           the provisions of this Chapter shall order, out of the proceeds of such sale, all of the  
6           following:

7                   (1) The reimbursement to a co-owner of the amount proven to be due the co-  
8                   owner for the payment of taxes on the property and the expenses of preservation of  
9                   the property.

10                   (2) The payment to a co-owner of the amount proven to be due the co-owner  
11                   by another co-owner who has received and retained the fruits and revenues of the  
12                   property.

13                   (3)(a) The payment of reasonable costs related to the sale, including real  
14                   estate commissions, brokerage fees, appraisal costs, payments associated with the  
15                   release of encumbrances and other customary closing costs, and the allocation of  
16                   such costs to one or more co-owners.

17                   (b) The court in rendering judgment shall consider whether the costs  
18                   associated with the sale will be paid to any person related to the co-owners within  
19                   the fourth degree or a juridical entity in which the co-owner has a direct or indirect  
20                   financial interest.

21           Art. 4627. Effect of judgment and sale

22                   The judgment ordering the public sale ~~or private sale~~ of the property to effect  
23                   a partition, and the sale made in compliance therewith, has the same force and effect  
24                   as to the absentee, his succession representative and heirs, as if he had been served  
25                   personally with process and the judgment had been rendered against him personally.  
26                   Thereafter, the absentee, his succession representative and heirs are precluded from  
27                   asserting any right, title, or interest in the property partitioned.

28   \*           \*           \*

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1 Art. 4629. Articles applicable to partition by licitation or private sale

2 Article 4603, the first paragraph of Article 4605, and Articles 4607 and 4614  
3 are applicable to a partition by licitation or a partition by private sale under the  
4 provisions of this Chapter.

5 \* \* \*

6 Art. 4643. Appointment of attorney for incompetent when interests conflict

7 In any partition of property, whether in kind, ~~or~~ or by licitation, or by private  
8 sale, and whether judicial or conventional, of which an incompetent is a co-owner,  
9 and the interests of the incompetent conflict with those of his legal representative,  
10 undertutor, or undercurator, as the case may be, the court shall appoint an attorney  
11 at law to represent and act for the incompetent in the partition. If two or more  
12 incompetent co-owners whose interests conflict have the same legal representative,  
13 undertutor, or undercurator, the court shall appoint an attorney at law to represent  
14 and act for each of these incompetents in the partition.

15 For the purposes of the partition, the attorney at law so appointed shall act in  
16 lieu of, and has all of the power and authority of, the legal representative, undertutor,  
17 or undercurator referred to in the first paragraph hereof.

18 Section 3. This Act shall become effective upon signature by the governor or, if not  
19 signed by the governor, upon expiration of the time for bills to become law without signature  
20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
21 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
22 effective on the day following such approval.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

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