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12:00—1:30 P.M.

Non-Probate Transfers

Baton Rouge Bar Association
Middleton Bar Center

A. FEDERAL ESTATE TAX ISSUES

1. The federal estate tax exemption (applicable exclusion amount) is \$5,450,000 for decedent's dying in 2016. This exemption is subject to an annual cost of living adjustment. The increase for 2016 was \$20,000, while the increases for 2014 and 2015 were \$90,000 for each year. See IRC § 2010.
2. Any unused federal estate tax exemption of a decedent may be "carried over" to the surviving spouse, but a federal estate tax return must be filed to claim this carryover. This is also called "portability". If the surviving spouse remarries, the surviving spouse's estate cannot claim the unused exemption carryover from the estate of that first deceased spouse. See IRC § 2010. Are you advising clients of the option to claim portability?
3. The highest federal estate rate is forty (40%) percent. See IRC § 2001.
4. What is included in the "gross estate" for federal estate tax purposes? See IRC § 2031(a) below:

Sec. 2031. Definition of gross estate.

(a) General.

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

5. The decedent's gross estate includes life insurance proceeds payable on the life of the decedent (a) receivable by the decedent's executor or (b) receivable by all other beneficiaries under policies on the life of the decedent with respect to which the decedent possessed at the time of his death any of the "incidents of ownership," exercisable either alone or in conjunction with any other person. See IRC § 2042.
6. If a decedent transfers a life insurance policy on his life within three (3) years of his death, the policy proceeds are included in his gross estate for federal estate tax purposes. See IRC § 2035.

7. Property passing to a surviving spouse (a) in outright ownership, or (b) subject to a lifetime usufruct in favor of the surviving spouse, or (c) wherein the surviving spouse is entitled for life to all the income from the property, payable at least annually, can qualify for the unlimited federal estate tax marital deduction. See IRC § 2056.

B. FEDERAL INCOME TAX ISSUES

1. Generally, the receipt of life insurance proceeds is not subject to federal income taxes. With certain exceptions, however, where a life insurance policy has been “transferred for value,” the proceeds received in excess of the consideration paid and subsequent premiums paid are included in gross income. See IRC § 101.
2. The federal income taxation of annuities is provided for under IRC § 72.
3. Property acquired from a decedent will have an income tax basis in the hands of the transferee equal to the property’s fair market value at the date of death. A surviving spouse’s community property interest is also subject to this basis adjustment. Basis adjustment does not apply to assets in accounts, such as 401K plans, IRAs, or annuities. See IRC § 1014.

C. **FORCED HEIRSHIP**

1. La. C.C. art. 1505 provides as follows:

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

A. To determine the reduction to which the donations, either *inter vivos* or *mortis causa*, are subject, an aggregate is formed of all property belonging to the donor or testator at the time of his death; to that is fictitiously added the property disposed of by donation *inter vivos* within three years of the date of the donor's death, according to its value at the time of the donation.

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

C. Neither the premiums paid for insurance on the life of the donor nor the proceeds paid pursuant to such coverage shall be included in the above calculation. Moreover, the value of such proceeds at the donor's death payable to a forced heir, or for his benefit, shall be deemed applied and credited in satisfaction of his forced share.

D. Employer and employee contributions under any plan of deferred compensation adopted by any public or governmental employer or any plan qualified under Sections 401 or 408 of the Internal Revenue Code, and any benefits payable by reason of death, disability, retirement, or termination of employment under any such plans, shall not be included in the above calculation, nor shall any of such contributions or benefits be subject to the claims of forced heirs. However, the value of such benefits paid or payable to a forced heir, or for the benefit of a forced heir, shall be deemed applied and credited in satisfaction of his forced share.

D. LIFE INSURANCE AND ANNUITIES

1. Life insurance in Louisiana is treated as “*sui generis*”, that is, of its own kind, in a class by itself, or a legal classification that exists independently of other categorizations.
2. Sometimes life insurance companies will offer a “checkbook” instead of a “check” in payment of the proceeds.
3. Interest will accrue on the non-payment of life insurance proceeds. La. R.S. 22:908 provides as follows:

22:908. Interest on life insurance benefits

Interest on benefits of a life insurance policy shall begin to accrue twenty days from the date of receipt of due proof of death by the insurer. The rate of interest shall be calculated at the same rate paid on deposits with the insurer. This Section shall not apply to any accidental death or dismemberment policy claim or to any insurer that markets under the Home Service Marketing distribution method and issues a majority of its policies on a weekly or monthly basis. This Section shall not deprive the beneficiary of any greater benefits due under the life insurance policy.

4. If the insured and the beneficiary die simultaneously, then the proceeds shall be distributed as if the insured survived the beneficiary, unless otherwise provided in the policy. La. R.S. 22:911 provides as follows:

22:911. Payment of proceeds; simultaneous deaths

Where the individual insured and the beneficiary designated in a life insurance policy or policy insuring against accidental death have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, unless otherwise expressly provided in the policy.

5. Louisiana law provides for significant protection from creditors for life insurance proceeds, including not only the debts of the insured, but also for certain debts of the beneficiary. La. R.S. 22:912 provides as follows:

A. (1) The lawful beneficiary, assignee, or payee, including the insured's estate, of a life insurance policy or endowment policy, shall be entitled to the proceeds and avails of the policy against the creditors and representatives of the insured and of the person effecting the policy or the estate of either, and against the heirs and legatees of either person, and such proceeds and avails shall also be exempt from all liability for any debt of the beneficiary, payee, or assignee or estate, existing at the time the proceeds or avails are made available for his own use. For purposes of this Subsection, the proceeds and avails of the policy include the cash surrender value of the policy.

(2) The exemption authorized in Paragraph (1) of this Subsection from seizure under any writ, mandate, or process issued by any court of competent jurisdiction, including any bankruptcy proceedings, shall not apply to that portion of the cash surrender value, or loan value of any life insurance policy, endowment policy, or annuity contract payable upon surrender during the lifetime of the insured or annuitant which exceeds the sum of thirty-five thousand dollars if such policy or contract was issued within nine months of issuance of such writ, mandate, or process or the filing of a voluntary or involuntary bankruptcy proceeding under the United States Code. However, an insurer shall be liable only for such amounts that exceed the thirty-five thousand dollar exemption which are in the insurer's possession at the time the insurer receives, at its home office, written notice by or on behalf of a creditor of claims being made against such value or interest with specification of the amount claimed. The insurer shall have no obligation to determine the validity or the accuracy of the amount of the claim and shall be relieved of further liability of any kind with respect to the monies paid upon request of a creditor. An insurer shall be entitled to be paid by preference and priority over the claim of any seizing creditor the balance of any bona fide loan to the insured or owner which is secured by such interest or value in the policy or contract.

B. (1) The lawful beneficiary, assignee, or payee, including the annuitant's estate, of an annuity contract shall be entitled to the proceeds and avails of the contract against the creditors and representatives of the annuitant or the person effecting the contract, or the estate of either, and against the heirs and legatees of either person, saving the rights of forced heirs, and the proceeds and avails shall also be exempt from all liability for any debt of the beneficiary, payee, or assignee or estate, existing at the time the proceeds or avails are made available for his own use.

(2) The term "annuity contract" shall include any contract which:

(a) Is issued by a life insurance company licensed to provide the contract in the state in which it was issued at the time of issue.

(b) States on its face or anywhere within the terms of the contract that it is an "annuity" including but not limited to an immediate, deferred, fixed, equity indexed, or variable annuity, irrespective of current pay status or any other definition of "annuity" in Louisiana law.

(c) Provides the contract owner the ability to defer United States income taxes on any interest earned and not distributed to the owner.

(d) Transfers some risk of financial loss to the insurance company for financial consideration.

(e) Was approved as an annuity contract by the Department of Insurance of the state in which it was issued prior to issue.

C. The lawful beneficiary designated in an education savings account depositor's agreement to receive account funds in the event of the account owner's death, including the account owner's estate, of the funds contained in an education savings account established pursuant to R.S. 17:3095 shall be entitled to the proceeds and avails of the education savings account against the creditors and representatives of the account owner or the person effecting the account, or the estate of either, and against the heirs and legatees of either person, except the rights of forced heirs, and the proceeds and avails shall also be exempt from all liability for any debt of the beneficiary or estate existing at the time the proceeds and avails are made available for his own use.

D. (1) The provisions of Subsections A, B, and C of this Section shall apply:

(a) Whether or not the right to change the beneficiary is reserved or permitted in the policy, contract, or education savings account depositor's agreement.

(b) Whether or not the policy, contract, or education savings account depositor's agreement is made payable to the person whose life is insured, to his estate, or to the estate of an annuitant or to the estate of an education savings account owner if the beneficiary, assignee, or payee shall predecease the person.

(2) This Subsection shall not be construed so as to defeat any policy or contract provision which provides for disposition of proceeds in the event the beneficiary, assignee, or payee shall predecease the insured, annuitant, or education savings account owner.

E. No person shall be compelled to exercise any rights, powers, options, or privileges under any policy, contract, or education savings account depositor's agreement.

F. There shall be excepted from the provisions of this Section a debt secured by a pledge of a policy, any rights under the policy that may have been assigned, and any advance payments made on or against the policy.

6. Query: What about creditor protection for income or appreciation on the insurance proceeds?
7. La. R.S. 22:913 provides as follows:

22:913. Policies payable to estate; effect of renunciation

In all policies of life or endowment insurance and in all annuity contracts where the estate of the insured or annuitant is a beneficiary or payee, the widow, or heir, or heirs of the insured or annuitant decedent shall be entitled to the proceeds of the policies or contracts according to the laws of distribution affecting the succession of the decedent even though they have renounced his succession with the same effect as if the renunciation had not taken place.

8. There is no automatic revocation of a spouse as beneficiary under Louisiana law in the event of divorce as to a life insurance policy or retirement plan beneficiary designation. See La. Civil Code art. 1608(5) for revocation of any testamentary disposition to a divorced spouse and revocation of any testamentary designation.

9. Some states have specific disclaimer (renunciation) laws with respect to life insurance policies and retirement plan accounts. For renunciation of succession assets, see La. Civil Code arts. 963-966.
10. If A and B own a life insurance policy on the life of C, and A dies before C, who succeeds to A's interest in the life insurance policy? You will need to review the policy first. Some policies provide for a right of survivorship in favor of a co-owner or co-owners.
11. An annuity is a tax deferred contractual arrangement wherein an individual deposits money under a non-deductible arrangement, but the earnings and growth are not taxed until required distributions are made subject to tax rules under IRC § 72.
12. Annuities are non-probate assets and do pass by way of beneficiary designation. Non-retirement plan or commercial annuities are subject to inclusion in the calculation of the forced portion. Non-retirement plan or commercial annuities do not come under IRC § 401 or § 408.

E. PAYABLE ON DEATH ACCOUNTS: BANKS, AND ASSOCIATIONS ACCOUNTS

1. Louisiana law provides for "payable on death" bank and association accounts as provided below. These laws have seen a number of changes over the years. Initially, the "beneficiary" had to have a certain family relationship to the depositor. That requirement was removed in 2009. Now, there is no family relationship requirement. The title of such account must include the terms "in trust for", "as trustee for", or "payable on death to". Previously, the "payable on death" account had to be established by the depositor by an authentic act (act passed before a notary public and two witnesses). Now, the 2016 Regular Legislative Session amends the laws below to provide that the account may be established by authentic act or "an act under private signature executed in the presence of an officer or a branch manager" of the bank or association "and two additional persons, stating the names of one or more beneficiaries". Now, as of August 1, 2016, La. R.S. 6:314 as to banks provides as follows:

A. Upon the death of a depositor who has deposited a sum in any bank account evidencing an intention that upon the death of the depositor, the funds shall belong to one or more named beneficiaries of the depositor, the bank may pay the deposit, together with the dividends or interest accruing thereto, to the named beneficiaries for whom the deposit was made. The depositor shall give to the depository bank an affidavit in authentic form or an act under private signature executed in the presence of an officer or a branch manager of the depository bank and two additional persons, stating the names of one or more beneficiaries. The bank may conclusively rely on this affidavit or act for the disbursal of funds. Upon receiving a death certificate, the bank may disburse funds to the named beneficiaries.

B. The title of such an account must include the terms "in trust for", "as trustee for", or "payable on death to", such beneficiary or beneficiaries. Such beneficiaries must be specifically named in the deposit account records of the bank.

C. Repealed by Acts 2009, No. 499, § 2.

D. (1) When an account described in Subsection A of this Section is established by more than one depositor, the respective interests of each depositor shall be deemed equal to that of each other depositor, unless otherwise stated in the bank's deposit account records.

(2) When an account described in Subsection A of this Section is established for more than one beneficiary, the respective interests of each shall be deemed equal to that of each other beneficiary, unless otherwise stated in the bank's deposit account records.

E. No bank paying a beneficiary in accordance with this Section shall be liable to the estate or any heir of the decedent nor shall the account holder be liable for any estate, inheritance, or succession taxes which may be due the state, and delivery of the funds shall constitute a full and complete discharge of the bank for the payment or delivery so made and shall relieve the bank from all adverse claims thereto by a person claiming as a surviving or former spouse or a successor to such a spouse. No tax collector, creditor, heir, legatee, personal representative, or any other person shall have any right or cause of action against the financial institution on account of such payment, and R.S. 47:2410 shall not apply to such cases.

F. The provisions of this Section shall apply notwithstanding the fact the decedent designates a beneficiary by last will and testament. The provisions of this Section shall not prohibit any right of forced heirship or the collation or collection of funds due any spouse, heir, legatee, creditor, or other person having rights or claims to funds of the deceased depositor.

Now, as of August 1, 2016, La. R.S. 6:766.1 as to associations provides as follows:

A. Upon the death of a depositor who has deposited a sum in any account evidencing an intention that upon the death of the depositor, the funds shall belong to one or more named beneficiaries of the depositor, the association may pay the deposit, together with the dividends or interest accruing thereto, to the named beneficiaries for whom the deposit was made. The depositor shall give to the association an affidavit in authentic form or an act under private signature executed in the presence of an officer or a branch manager of the association and two additional persons, stating the names of one or more beneficiaries. The association may conclusively rely on this affidavit or act for the disbursement of funds. Upon receiving a death certificate, the association may disburse funds to the named beneficiaries.

B. The title of such an account must include the terms "in trust for", "as trustee for", or "payable on death to", such beneficiary or beneficiaries. Such beneficiaries must be specifically named in the deposit account records of the bank.

C. Repealed by Acts 2009, No. 499, § 2.

D. (1) When an account described in Subsection A of this Section is established by more than one depositor, the respective interests of each depositor shall be deemed equal to that of each other depositor, unless otherwise stated in the association's account records.

(2) When an account described in Subsection A of this Section is established for more than one beneficiary, the respective interests of each shall be deemed equal to that of each other beneficiary, unless otherwise stated in the association's deposit account records.

E. No association paying a beneficiary in accordance with this Section shall be liable to the estate or any heir of the decedent nor shall the account holder be liable for any estate, inheritance, or succession taxes which may be due the state, and delivery of the funds shall constitute a full and complete discharge of the association for the payment or delivery so made and shall relieve the association from all adverse claims thereto by a person claiming as a surviving or former spouse or a successor to such a spouse.

F. The provisions of this Section shall apply notwithstanding the fact the decedent designates a beneficiary by last will and testament.

F. PAYABLE ON DEATH ACCOUNTS: CREDIT UNIONS

1. As to credit union accounts, there is no requirement for an authentic act or act under private signature in order to establish a payable on death account. Also, there is no requirement to include any language in the account such as "in trust for" or "payable on death to". Act 64 (House Bill 724) of the 2016 Regular Legislative Session removed these two requirements. Note the language in La. R.S. 6:653.1 providing for these accounts for credit unions provides for the "permissive" language of "may pay".
La. R.S. 6:653.1 provides as follows:

A. Upon the death of a member who has deposited a sum in any federal or state credit union account evidencing an intention that upon the death of the member, the funds shall belong to the named beneficiary or beneficiaries of the member, the federal or state credit union may pay the share account, together with the dividends or accruing interest, to the named beneficiaries for whom the deposit was made, and the federal or state credit union may rely conclusively thereon. Upon receiving a death certificate, the credit union may disburse funds to the named beneficiaries. Such beneficiaries shall be specifically named in the share account records of the federal or state credit union.

B. Repealed by Acts 2016, No. 64, § 2.

C. Repealed by Acts 2009, No. 499, § 2.

D. (1) When a share account described in Subsection A of this Section is established by more than one member, the respective interests of each member shall be deemed equal to that of each other member, unless otherwise stated in the federal or state credit union's share account records.

(2) When a share account described in Subsection A of this Section is established for more than one beneficiary, the respective interests of each shall be deemed equal to that of each other beneficiary, unless otherwise stated in the federal or state credit union share account records.

E. No federal or state credit union paying a beneficiary in accordance with this Section shall be liable to the estate or any heir of the decedent nor shall the share account holder be liable for any estate, inheritance, or succession taxes which may be due the state, and delivery of the funds shall constitute a full and complete discharge of the federal or state credit union for the payment or delivery so made and shall relieve the federal or state credit union from all adverse claims thereto by a person claiming as a surviving or former spouse or a successor to such a spouse.

F. The provisions of this Section shall apply notwithstanding the fact the decedent designates a beneficiary by last will and testament.

A copy of House Bill 724 provides as follows:

BY REPRESENTATIVE PRICE

AN ACT

To amend and reenact R.S. 6:653.1(A) and (B); relative to trust deposits payable to beneficiaries; to repeal provisions requiring authentic form when naming beneficiaries; to repeal provisions requiring the use of certain terms with respect to credit union share accounts; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 6:653.1(A) and (B) are hereby amended and reenacted to read as follows:

§653.1. Trust deposits; death of depositor, payment

A. Upon the death of a member who has deposited a sum in any federal or state credit union account evidencing an intention that upon the death of the member, the funds shall belong to the named beneficiary or beneficiaries of the member, the federal or state credit union may pay the share account, together with the dividends or accruing interest ~~accruing thereto~~, to the named beneficiaries for whom the deposit was made, and the federal or state credit union may rely conclusively thereon. ~~The member shall, at the time such share account is established, give to the federal or state credit union an affidavit in authentic form stating the names of one or more beneficiaries. The credit union may conclusively rely on this affidavit for the disbursement of funds.~~ Upon receiving a death certificate, the credit union may disburse funds to the named beneficiaries.

B. ~~The title of such a share account must include the terms "in trust for", "as trustee for", or "payable on death to", such beneficiary or beneficiaries.~~ Such beneficiaries ~~must~~ shall be specifically named in the share account records of the federal or state credit union.

* * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 724 Original

2016 Regular Session

Price

Abstract: Makes changes to law applicable to share accounts of credit unions for which a member may make deposits payable to beneficiaries.

Present law provides that the member of a federal or state credit union may deposit funds into a share account with the intention to make the deposited funds payable to certain beneficiaries upon the death of the member. Proposed law retains present law.

Present law requires the member to provide, by affidavit in authentic form, the names of the beneficiaries to the respective credit union. Proposed law deletes present law.

Present law requires the title of the share account to include the terms "in trust for", "as trustee for", or "payable on death to", such beneficiary or beneficiaries. Proposed law deletes present law.

Present law requires for beneficiaries to be specifically named in the share account records of the federal or state credit union. Proposed law retains present law.

(Amends R.S. 6:653.1(A) and (B))

G. INDIVIDUAL RETIREMENT ACCOUNTS (IRAs)

1. On death, IRAs pass by way of beneficiary designation and are non-probate assets. IRAs are provided for under IRC § 408 and, as such, are not included in determining the calculation of the forced portion. See La. C.C. art. 1505. IRAs are not ERISA plans.
2. If the IRA account holder's surviving spouse is the beneficiary of the IRA, then the surviving spouse may create a new IRA, called a "spousal rollover" account, and then administer the account as the survivor's own account. This allows the survivor to name a new beneficiary and to defer having to take required minimum distributions (RMD) until after the surviving spouse reaches age 70-1/2.
3. What if a child of the IRA account holder is the beneficiary—do they have any options? Yes, that beneficiary may take an immediate distribution or "stretch" distributions from the IRA based on that beneficiary's life expectancy. This is an excellent way to defer income taxes, and to continue tax deferred growth.
4. A spouse is not required to be named as beneficiary of an IRA, but many IRA custodians require a spouse who is not named as beneficiary of the IRA to consent, in writing, to naming the non-spouse beneficiary. This is especially true in community property states.
5. Upon the death of the IRA account holder, make certain that the RMD for the year of death of the account holder has been distributed.
6. A charity can be the beneficiary of an IRA. This may allow for both income tax and estate tax savings.
7. A trust can be the beneficiary of an IRA, but you must consider RMD issues and income tax issues. For 2016, the federal income tax rate for trusts with taxable income above \$12,400 is 39.6%. The 2016 tax rates and brackets for trusts are as follows:

<u>Marginal Rate</u>	<u>Taxable Income</u>
15%	0 - \$2,550
25%	\$2,551 - \$5,950
28%	\$5,951 - \$9,050
35%	\$9,051 - \$12,400
39.6%	over \$12,400

In contrast, a single individual does not reach the 39.6% rate until taxable income exceeds \$415,050 for 2016.

Suppose an IRA account holder creates a trust with current spouse as income beneficiary and account holder's children from a prior marriage as the principal beneficiaries. Assume this trust is named as the beneficiary of the IRA. Upon the death of the IRA account holder, the RMD will be computed based on the life expectancy of the oldest beneficiary of the trust. What amounts are to be distributed to the surviving spouse as income beneficiary of the trust?—the RMD amount?—the income earned by the IRA?—other?

8. Naming your “estate” as beneficiary of an IRA is not a wise thing to do.
9. La. R.S. 9:2449 provides as follows concerning the release of claims against an IRA trustee, custodian or insurance company:

9:2449. Individual retirement accounts; payment of benefits

A. Any benefits payable by reason of death from an individual retirement account established in accordance with the provisions of 26 U.S.C. 408, as amended, shall be paid as provided in the individual retirement account agreement to the designated beneficiary of the account. Such payment shall be a valid and sufficient release and discharge of the account holder for the payment or delivery so made and shall relieve the trustee, custodian, insurance company or other account fiduciary from all adverse claims thereto by a person claiming as a surviving or former spouse or a successor to such a spouse.

B. The provisions of this Section shall apply even when the decedent designates a beneficiary by last will and testament.

C. Repealed by Acts 2010, No. 175, § 6.

10. Roth IRAs are provided for under IRC § 408A. Query—are Roth IRAs included in the forced portion calculations under La. Civil Code art. 1505?
11. Roth IRAs are like traditional IRAs except for certain differences. A major difference is that no deduction is allowed for a contribution, but

distributions are not subject to income tax. There are certain eligibility requirements. No RMDs are required for the Roth IRA account holder.

12. What about the claims of creditors against IRAs? La. R.S. 13:3881(D) provides as follows:

D. (1) Except as provided in Paragraph (2) of this Subsection, the following shall be exempt from all liability for any debt except alimony and child support: all pensions, all tax-deferred arrangements, annuity contracts, and all proceeds of and payments under all tax-deferred arrangements and annuity contracts, as defined in Paragraph (3) of this Subsection.

(2) No contribution to a tax-deferred arrangement or to an annuity contract, as defined in Paragraph (3) of this Subsection, shall be exempt if made less than one calendar year of the date of filing for bankruptcy, whether voluntary or involuntary, or the date writs of seizure are filed against the tax-deferred arrangement or annuity contract. A transfer from one tax-deferred arrangement to another or from one annuity contract to another shall not be considered a contribution for purposes of this Paragraph.

(3) The term "tax-deferred arrangement" includes all individual retirement accounts or individual retirement annuities of any variety or name, whether authorized now or in the future in the Internal Revenue Code of 1986, or the corresponding provisions of any future United States income tax law, including balances rolled over from any other tax-deferred arrangement as defined herein, money purchase pension plans, defined benefit plans, defined contribution plans, Keogh plans, simplified employee pension (SEP) plans, simple retirement account (SIMPLE) plans, Roth IRAs, or any other plan of any variety or name, whether authorized now or in the future in the Internal Revenue Code of 1986, or the corresponding provisions of any future United States income tax law, under which United States income tax on the tax-deferred arrangement is deferred. The term "annuity contract" shall have the same definition as defined in R.S. 22:647(B).

H. RETIREMENT PLANS—401K PLANS, PROFIT SHARING PLANS, PENSION PLANS

1. Retirement plans such as pension plans, profit sharing plans, and 401K plans are non-probate assets and pass by way of beneficiary form. If no beneficiary form is executed, then one must look to the terms of the plan as to the beneficiary.
2. These retirement plans are created under IRC § 401 and are commonly referred to as ERISA plans. Since the retirement plans are created under IRC § 401, the accounts are not included in the calculation of the forced heirship portion.
3. ERISA contains an anti-alienation provision for retirement plans. See 29 U.S.C. 1036(d)(1) which provides:

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

See IRC § 401(a)(13)(A) which provides:

(A) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated.

An exception to these rules is provided for Qualified Domestic Relations Orders (QDROs).

4. Because these retirement plans are ERISA plans, a surviving spouse must consent, in writing, to someone other than the surviving spouse being named as beneficiary. See IRC § 417. This came into federal law as part of the Retirement Equity Act of 1984. These retirement plans may allow for a one (1) year marriage requirement before the spouse must be the beneficiary, but most plans do not provide this exception.
5. What effect does a pre-nuptial agreement have on the requirement of spousal consent to name someone other than the spouse as beneficiary?
6. If you plan to work with clients in this area, a good resource is a book by Natalie B. Choate, Life and Death Planning for Retirement Benefits, 7th Edition, 2011 (2016 Pocket Part). Also see www.ataxplan.com.

I. 529 PLANS

1. A 529 Plan offers an excellent strategy to save for a child's college education. Contributions can be made to a State-sponsored plan (Louisiana has the START plan) or an individual plan through a bank, brokerage or insurance company. While there is no deduction for the contribution, the account grows tax deferred. Furthermore, the earnings and gains are not subject to income taxes if used for post-secondary education purposes. A donor can "front load" a 529 Plan with five (5) years of contributions equaling the federal annual gift tax exclusion amount. The donor can withdraw the funds from the 529 Plan, subject to income tax on the earnings and a 10% penalty on the earnings. Despite this withdrawal right, the amount in the account is not included in the donor's federal taxable estate, except for any "unvested" five year front loaded contributions. Additionally, the donor may change the beneficiary and may name a successor custodian.
2. Are the amounts in a 529 Plan subject to the forced heirship portion calculation?

J. STOCKS, MUTUAL FUNDS AND SECURITIES ACCOUNTS

1. Louisiana law does not recognize "transfer on death", "payable on death", "survivorship" accounts or "joint tenancy" accounts for securities. However, this does not stop out of state brokerage, financial, mutual fund or securities firms from setting up securities accounts in this manner. Recently, Fidelity Investments sent letters to some of their Louisiana customers indicating that these customers had "chosen" an ownership option of their account that was not recognized in Louisiana and that the option should be changed. Vanguard provides their "payable on death" option without discussion of Louisiana's non-recognition.
2. In 2016, House Bill No. 72, **WHICH DID NOT BECOME LAW**, was introduced as to proposed legislation concerning transfer on death of securities: The proposed legislation is provides as follows:

BY REPRESENTATIVE PEARSON

1 AN ACT

2 To enact Chapter 4 of Code Title I of Code Book III of Title 9 of the Louisiana Revised

3 Statutes of 1950, to be comprised of R.S. 9:1711 through 1722, relative to

4 investment securities; to provide for uniform transfer on death of securities; to

5 provide definitions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Chapter 4 of Code Title I of Code Book III of Title 9 of the Louisiana

8 Revised Statutes of 1950, comprised of R.S. 9:1711 through 1722, is hereby enacted to read

9 as follows:

10 CHAPTER 4. UNIFORM TRANSFER ON DEATH

11 SECURITY REGISTRATION ACT

12 §1711. Definitions

13 In this Chapter, unless the context otherwise requires:

14 (1) "Beneficiary form" means a registration of a security which indicates the

15 present owner of the security and the intention of the owner regarding the person

16 who will become the owner of the security upon the death of the owner.

17 (2) "Devisee" means any person designated in a will to receive a disposition

18 of real or personal property.

19 (3) "Heirs" means those persons, including the surviving spouse, who are

20 entitled in an intestate succession to the property of a decedent.

1 (4) "Person" means an individual, a corporation, an organization, or other
2 legal entity.

3 (5) "Personal representative" includes an executor, administrator, successor,
4 personal representative, special administrator, and any other person who performs
5 substantially the same function under the law governing their status.

6 (6) "Property" includes both real and personal property or any interest
7 therein and means anything that may be the subject of ownership.

8 (7) "Register", including its derivatives, means to issue a certificate showing
9 the ownership of a certificated security or, in the case of an uncertificated security,
10 to initiate or transfer an account showing ownership of securities.

11 (8) "Registering entity" means a person who originates or transfers a security
12 title by registration, and includes a broker maintaining security accounts for
13 customers and a transfer agent or other person acting for or as an issuer of securities.

14 (9) "Security" means a share, participation, or other interest in property, in
15 a business, or in an obligation of an enterprise or other issuer, and includes a
16 certificated security, an uncertificated security, and a security account.

17 (10) "Security account" means (a) a reinvestment account associated with
18 a security, a securities account with a broker, a cash balance in a brokerage account,
19 cash, interest, earnings, or dividends earned or declared on a security in an account,
20 a reinvestment account, or a brokerage account, whether or not credited to the
21 account before the owner's death, or (b) a cash balance or other property held for or
22 due to the owner of a security as a replacement for or product of an account security,
23 whether or not credited to the account before the owner's death.

24 (11) "State" includes any state of the United States, the District of Columbia,
25 the Commonwealth of Puerto Rico, and any territory or possession subject to the
26 legislative authority of the United States.

27 §1712. Registration in beneficiary form; sole or joint tenancy ownership

28 Only individuals whose registration of a security shows sole ownership by
29 one individual or multiple ownership by two or more with right of survivorship,

1 rather than as tenants in common, may obtain registration in beneficiary form.
2 Multiple owners of a security registered in beneficiary form hold as joint tenants
3 with right of survivorship, as tenants by the entireties, or as owners of community
4 property held in survivorship form, and not as tenants in common.

5 §1713. Registration in beneficiary form; applicable law

6 A security may be registered in beneficiary form if the form is authorized by
7 this or a similar statute of the state of organization of the issuer or registering entity,
8 the location of the registering entity's principal office, the office of its transfer agent
9 or its office making the registration, or by this or a similar statute of the law of the
10 state listed as the owner's address at the time of registration. A registration governed
11 by the law of a jurisdiction in which this or similar legislation is not in force or was
12 not in force when a registration in beneficiary form was made is nevertheless
13 presumed to be valid and authorized as a matter of contract law.

14 §1714. Origination of registration in beneficiary form

15 A security, whether evidenced by certificate or account, is registered in
16 beneficiary form when the registration includes a designation of a beneficiary to take
17 the ownership at the death of the owner or the deaths of all multiple owners.

18 §1715. Form of registration in beneficiary form

19 Registration in beneficiary form may be shown by the words "transfer on
20 death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation
21 "POD", after the name of the registered owner and before the name of a beneficiary.

22 §1716. Effect of registration in beneficiary form

23 The designation of a TOD beneficiary on a registration in beneficiary form
24 has no effect on ownership until the owner's death. A registration of a security in
25 beneficiary form may be canceled or changed at any time by the sole owner or all
26 then surviving owners without the consent of the beneficiary.

27 §1717. Ownership on death of owner

28 On the death of a sole owner or the last to die of all multiple owners,
29 ownership of securities registered in beneficiary form passes to the beneficiary or

1 beneficiaries who survive all owners. On proof of death of all owners and
2 compliance with any applicable requirements of the registering entity, a security
3 registered in beneficiary form may be re-registered in the name of the beneficiary or
4 beneficiaries who survived the death of all owners. Until division of the security after
5 the death of all owners, multiple beneficiaries surviving the death of all owners hold
6 their interests as tenants in common. If no beneficiary survives the death of all
7 owners, the security belongs to the estate of the deceased sole owner or the estate of
8 the last to die of all multiple owners.

9 §1718. Protection of registering entity

10 A. A registering entity is not required to offer or to accept a request for
11 security registration in beneficiary form. If a registration in beneficiary form is
12 offered by a registering entity, the owner requesting registration in beneficiary form
13 assents to the protections given to the registering entity by this Chapter.

14 B. By accepting a request for registration of a security in beneficiary form,
15 the registering entity agrees that the registration will be implemented on death of the
16 deceased owner as provided in this Chapter.

17 C. A registering entity is discharged from all claims to a security by the
18 estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the
19 security in accordance with R.S. 9:1717 and does so in good faith reliance (i) on the
20 registration, (ii) on this Chapter, and (iii) on information provided to it by affidavit
21 of the personal representative of the deceased owner, or by the surviving beneficiary
22 or by the surviving beneficiary's representatives, or other information available to the
23 registering entity. The protections of this Chapter do not extend to a re-registration
24 or payment made after a registering entity has received written notice from any
25 claimant to any interest in the security objecting to implementation of a registration
26 in beneficiary form. No other notice or other information available to the registering
27 entity affects its right to protection under this Chapter.

1 D. The protection provided by this Chapter to the registering entity of a
2 security does not affect the rights of beneficiaries in disputes between themselves
3 and other claimants to ownership of the security transferred or its value or proceeds.

4 §1719. Nontestamentary transfer on death

5 A. In this Section, "nonprobate transfer" means a transfer described in
6 Subsection B of this Section by an owner whose last domicile was in this state.

7 B. A transfer on death resulting from a registration in beneficiary form is
8 effective by reason of the contract regarding the registration between the owner and
9 the registering entity and this Chapter and is not testamentary.

10 C. A transferee of a nonprobate transfer is subject to liability to any probate
11 estate of the decedent for allowed claims against that estate and statutory allowances
12 to the decedent's spouse and children to the extent the estate is insufficient to satisfy
13 those claims and allowances. The liability of a nonprobate transferee may not
14 exceed the value of nonprobate transfers received by that transferee.

15 D. Nonprobate transferees are liable for the insufficiency described in
16 Subsection C of this Section in the following order of priority:

17 (1) A transferee designated in the decedent's will or any other governing
18 instrument, as provided in the instrument.

19 (2) The trustee of a trust serving as the principal nonprobate instrument in
20 the decedent's estate plan as shown by its designation as devisee of the decedent's
21 residuary estate or by other facts or circumstances, to the extent of the value of the
22 nonprobate transfer received.

23 (3) Other nonprobate transferees, in proportion to the values received.

24 E. A provision made in one instrument may direct the apportionment of the
25 liability among the nonprobate transferees taking under that or any other governing
26 instrument. If a provision in one instrument conflicts with a provision in another, the
27 later one prevails.

1 F. Upon due notice to a nonprobate transferee, the liability imposed by this
2 Section is enforceable in proceedings in this state, whether or not the transferee is
3 located in this state.

4 G. A proceeding under this Section may not be commenced unless the
5 personal representative of the decedent's estate has received a written demand for the
6 proceeding from the surviving spouse or a child, to the extent that statutory
7 allowances are affected, or a creditor. If the personal representative declines or fails
8 to commence a proceeding after demand, a person making demand may commence
9 the proceeding in the name of the decedent's estate, at the expense of the person
10 making the demand and not of the estate. A personal representative who declines in
11 good faith to commence a requested proceeding incurs no personal liability for
12 declining.

13 H. A proceeding under this Section shall be commenced within one year
14 after the decedent's death, but a proceeding on behalf of a creditor whose claim was
15 allowed after proceedings challenging disallowance of the claim may be commenced
16 within sixty days after final allowance of the claim.

17 I. Unless a written notice asserting that a decedent's estate is insufficient to
18 pay allowed claims and statutory allowances has been received from the decedent's
19 personal representative, a trustee receiving a nonprobate transfer is released from
20 liability under this Section with respect to any assets distributed to the trust's
21 beneficiaries. Each beneficiary to the extent of the distribution received becomes
22 liable for the amount of the trustee's liability attributable to those assets received by
23 the beneficiary.

24 §1720. Terms, conditions, and forms for registration

25 A. A registering entity offering to accept registrations in beneficiary form
26 may establish the terms and conditions under which it will receive requests (1) for
27 registrations in beneficiary form, and (2) for implementation of registrations in
28 beneficiary form, including requests for cancellation of previously registered TOD
29 beneficiary designations and requests for re-registration to effect a change of

1 beneficiary. The terms and conditions so established may provide for proving death,
2 avoiding or resolving any problems concerning fractional shares, designating
3 primary and contingent beneficiaries, and substituting a named beneficiary's
4 descendants to take in the place of the named beneficiary in the event of the
5 beneficiary's death. Substitution may be indicated by appending to the name of the
6 primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes."
7 This designation substitutes a deceased beneficiary's descendants who survive the
8 owner for a beneficiary who fails to so survive, the descendants to be identified and
9 to share in accordance with the law of the beneficiary's domicile at the owner's death
10 governing inheritance by descendants of an intestate. Other forms of identifying
11 beneficiaries who are to take on one or more contingencies, and rules for providing
12 proofs and assurances needed to satisfy reasonable concerns by registering entities
13 regarding conditions and identities relevant to accurate implementation of
14 registrations in beneficiary form, may be contained in a registering entity's terms and
15 conditions.

16 B. The following are illustrations of registrations in beneficiary form which
17 a registering entity may authorize:

18 (1) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S.
19 Brown Jr.

20 (2) Multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT
21 TEN TOD John S. Brown Jr.

22 (3) Multiple owners-primary and secondary (substituted) beneficiaries: John
23 S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q.
24 Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.
25 §1721. Short title; rules of construction

26 A. This Chapter shall be known as and may be cited as the "Uniform TOD
27 Security Registration Act."

- 1 B. This Chapter shall be liberally construed and applied to promote its
 2 underlying purposes and policy and to make uniform the laws with respect to the
 3 subject of this Chapter among states enacting it.
- 4 C. Unless displaced by the particular provisions of this Chapter, the
 5 principles of law and equity supplement its provisions.
- 6 §1722. Application of Chapter
- 7 This Chapter applies to registrations of securities in beneficiary form made
 8 before or after January 1, 2017, by decedents dying on or after January 1, 2017.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 72 Original

2016 Regular Session

Pearson

Abstract: Provides for transfer of certain investment securities upon the death of the owner.

Proposed law adopts the Uniform Transfer on Death Security Registration Act which provides for the transfer of certain securities to a beneficiary on the death of the owner of such securities.

Proposed law provides for registration of securities in beneficiary form and defines "beneficiary form" to be a registration of a security, which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner. Provides that the designation of a "transfer on death" beneficiary has no effect on ownership until the owner's death.

Proposed law provides that upon death of the owner, ownership of the securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive or to the estate of the deceased owner if no such beneficiaries survive.

Proposed law provides that the transfer on death resulting from registration of securities in beneficiary form is effective as a contract between the owner and the registering entity and is not to be considered testamentary.

Proposed law applies to registrations of securities in beneficiary form made before or after Jan. 1, 2017, by decedents dying on or after Jan. 1, 2017.

(Adds R.S. 9:1711-1722)

K. OUT OF STATE REAL PROPERTY

1. Out of state real property is subject to the law of that jurisdiction. That law may provide for joint tenancy or a right of survivorship. Ask your client for a copy of their deed or act of acquisition because the provisions in these instruments may override provisions in a will.

L. TRUSTS

1. We see more and more attorney advertising for the “living trust” to avoid probate or transform probate assets into non-probate assets. What should we advise our clients as to what these trusts will or will not do for their heirs?
2. Under La. C.C. art. 1608(5), divorce revokes bequests to a former spouse and fiduciary appointments, (unless otherwise provided in the testament). La. R.S. 9:2047 provides as follows with respect to divorce and the revocation of provisions in *inter vivos* trusts that may be revoked.

R.S. 9:2047. Revocation of inter vivos trusts under divorce.

A. A divorce of the settlor revokes any provision that may be revoked or modified by the settlor in an inter vivos trust designating or appointing the settlor’s former spouse unless expressly provided otherwise in the trust instrument or in a judgment or a property settlement agreement.

B. A trustee with no actual knowledge of the divorce, judgment, or property settlement agreement is not liable for actions taken in good faith regarding the settlor’s former spouse.

3. 2016 Trust Legislation.
 - a. Under prior La. R.S. 9:1973, the settlor of an irrevocable trust could provide (except as to the legitime in trust) that the interest of an original or a substitute principal beneficiary who dies without descendants during the term of the trust or at its termination, vested in some other person or persons, each of whom would be a substitute beneficiary. Under an amendment to La. R.S. 9:1973, an irrevocable trust may provide that the interest of an original or a substitute

principal beneficiary vests in one or more of the beneficiary's descendants upon the death of the beneficiary either during the term of the trust or at its termination.

- b. Under an amendment to La. R.S. 9:2092, if the trust instrument contains a transfer of immovable property or other property, the title to which must be recorded in order to affect third persons, a trustee shall file the trust instrument for record in the parish in which the property is located. These same rules apply to a foreign trust under amendments to La. R.S. 9:2262.2.

4. Louisiana law allows for "spendthrift" provisions in trusts.

- a. La. R.S. 9:1725(7) provides as follows:

9:1725. Definitions

Except when the context clearly indicates otherwise, as used in this Code:

(7) "Spendthrift trust," when used without other qualifying words, means a trust under which alienation by a beneficiary of an interest in income or principal is restricted to the full extent permitted by this Code.

- b. La. R.S. 9:2002 as follows:

9:2002. Restraint upon alienation

The trust instrument may provide that the interest of a beneficiary shall not be subject to voluntary or involuntary alienation by a beneficiary. A restraint upon voluntary alienation by a beneficiary is valid. But a restraint upon involuntary alienation by a beneficiary is subject to the limitations prescribed by this sub-part.

- c. La. R.S. 9:2004 provides as follows:

9:2004. Seizure by creditor; general rule

A creditor may seize only:

(1) An interest in income or principal that is subject to voluntary alienation by a beneficiary.

(2) A beneficiary's interest in income and principal, to the extent that the beneficiary has donated property to the trust, directly or indirectly. A beneficiary will not be deemed to have donated property to a trust merely because he fails to exercise a right of withdrawal from the trust.

d. La. R.S. 9:2005 provides as follows:

9:2005. Seizure by creditor; special claims

Notwithstanding any stipulation in the trust instrument to the contrary, the proper court, in summary proceedings to which the trustee, the beneficiary, and the beneficiary's creditor shall be parties, may permit seizure of any portion of the beneficiary's interest in trust income and principal in its discretion and as may be just under the circumstances if the claim is based upon a judgment for:

(1) Alimony, or maintenance of a person whom the beneficiary is obligated to support;

(2) Necessary services rendered or necessary supplies furnished to the beneficiary or to a person whom the beneficiary is obligated to support; or

(3) Damages arising from a felony criminal offense committed by the beneficiary which results in a conviction or a plea of guilty.

e. La. R.S. 9:2007 provides as follows:

9:2007. Use of words "spendthrift trust"

A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a "spendthrift trust" is sufficient to restrain alienation by a beneficiary of the interest to the maximum extent permitted by this Sub-part.

M. SMALL SUCCESSIONS—JUDICIAL PROCEEDING UNNECESSARY

1. Under La. C.C.P. arts. 3421 and 3431, if a Louisiana domiciled decedent dies intestate leaving property in Louisiana valued at \$75,000 or less, then the succession may proceed by affidavit, without judicial proceedings.
2. The affidavit procedure may be used for out of state decedents even if they have a will.
3. Remember to attach a certified copy of the decedent's Death Certificate to the affidavit for recording in the conveyance records if immovable property is involved. See La. C.C.P. art. 3434C(1).

N. HEALTH SAVINGS ACCOUNTS

1. A health saving account (HSA) is a tax exempt trust or custodial account that an individual can set up with a qualified HSA trustee to pay or reimburse certain qualified medical expenses. The interest or other earnings on the assets in the account grow tax free. See IRS Publication 969.
 - a. Qualified medical expenses are those expenses that would qualify for the medical and dental expense deduction. Also, non-prescription medicines (other than insulin) are not considered qualified medical expenses for HSA purposes. A medicine or drug will be a qualified medical expense for HSA purposes only if the medicine or drug:
 - (1) requires a prescription,
 - (2) is available without a prescription (an over-the-counter medicine or drug) and you get a prescription for it, or (3) is insulin.
 - b. You cannot treat insurance premiums as qualified medical expenses unless the premiums are for:
 - (1) Long-term care insurance;
 - (2) Health care continuation coverage (such as coverage under COBRA);
 - (3) Health care coverage while receiving unemployment compensation under federal or state law;

(4) Medicare and other health care coverage if you are 65 or older (other than premiums for a Medicare supplemental policy, such as Medigap).

The premiums for long-term care insurance (item (1)) that you can treat as qualified medical expenses are subject to limits based on age and are adjusted annually.

- c. You should choose a beneficiary when you set up your HSA. What happens to that HSA when you die depends on whom you designate as the beneficiary.

Spouse is the designated beneficiary. If your spouse is the designated beneficiary of your HSA, it will be treated as your spouse's HSA after your death.

Spouse is not the designated beneficiary. If your spouse is not the designated beneficiary of your HSA:

- The account stops being an HSA, and
- The fair market value of the HSA becomes taxable to the beneficiary in the year in which you die.

If your estate is the beneficiary, the value is included on your final income tax return.

- d. Query—are HSA's included in the forced portion calculation under La. Civil Code art. 1505?

M. U.S. SAVINGS BONDS

Clearly U.S. savings bonds are non-probate assets that pass by way of beneficiary designation. Federal law will control on the payment. You may see joint ownership or payable on death. Despite U.S. Supreme Court cases and Louisiana cases, there are still forced heirship and community property law questions – even through federal law controls on payment.

P. ESTATE TAX APPORTIONMENT

1. Assume that Ben has a probate estate of \$10 million and an IRA with \$5 million. Ben dies in 2016 when the federal estate tax exemption is \$5,450,000. Ben has a valid handwritten will that names his son Little Joe to receive his entire succession and names you as executor. The will does not provide anything else. Ben's other son Hoss is named as beneficiary of the IRA. Who owes the federal estate tax? Under La. R.S. 9:2431-2439, the estate tax will be "apportioned" between Little Joe and Hoss based on the value of the interest of each in relation to the total value of the estate. The executor can sue Hoss to recover the estate tax due by Hoss. Could Ben have provided in his will that he allocated his federal estate tax exemption to Hoss to the extent needed to exempt the IRA proceeds from federal estate tax? Yes, see La. R.S. 9:2432.

Q. QUASI PROBATE/NON-PROBATE PROPERTY AND MISCELLANEOUS ISSUES

1. Under La. R.S. 9:1513 and La. R.S. 9:1514, banks and credit unions may pay a surviving spouse up to \$10,000 from a community account or an account solely in the name of the decedent upon the surviving spouse providing an affidavit that the total funds withdrawn do not exceed \$10,000, without any court proceedings, order or judgment.
2. Under La. R.S. 9:1515, an employer may pay the surviving spouse any wages, sick leave, annual leave, or other benefits due a deceased employee (absent divorce proceedings) without any order, judgment or court proceeding. If there is no surviving spouse, the payment may be made to any major child of the deceased employee.
3. La. C.C.P. art. 3136 provides for the filing of a detailed descriptive list in the succession record. Should this financial information be made public? The Louisiana Law Institute, which is studying this issue, has not made a recommendation to the Louisiana Legislature.