

2015 Regular Session

SENATE BILL NO. 134

BY SENATOR PEACOCK (On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FAMILY LAW. Provides for parental authority of married persons, obligations of children, parents, and other ascendants, and provisional custody by mandate. (1/1/16)

AN ACT

1
2 To amend and reenact Chapter 5 of Title VII of Book I of the Civil Code, consisting of Civil
3 Code Articles 215 through 245, to consist of Articles 221 through 235, Titles VII and
4 VII-A of Book VII of the Code of Civil Procedure, consisting of Articles 4501, 4502,
5 4521 and 4522, to consist of Articles 4501 and 4521, Code of Civil Procedure
6 Articles 683, 732, and 2592, and R.S. 9:571, 572, and 951 through 954, and to enact
7 Chapter 6 of Title VII of Book I of the Civil Code to be comprised of Civil Code
8 Articles 236 through 239, Code of Civil Procedure Article 74.6, R.S. 9:573, and
9 Chapter 3-A of Code Title VIII of Code Book I of Title 9 of the Louisiana Revised
10 Statutes of 1950, to consist of R.S. 9:961 and 962, relative to parental authority of
11 married persons, the obligations of children, parents, and other ascendants, and
12 provisional custody by mandate; to provide for the authority of married fathers and
13 mothers over their minor child; to provide for the rights and obligations of married
14 parents of minor children; to provide for the obligations of minor children; to provide
15 for the authority of a married parent to administer, alienate, encumber, or lease the
16 property of his minor child, or to compromise a claim of his minor child, or to incur
17 an obligation of his minor child; to provide for the delivery of the property of the

1 child to the child at the termination of parental authority; to provide for an
 2 accounting of the administration of the parents to the child; to provide for the
 3 delegation of parental authority; to provide for the termination of parental authority;
 4 to provide for the obligations of a child regardless of age; to provide for the
 5 reciprocal obligations of descendants and ascendants; to provide for the suppression
 6 of Civil Code Articles relative to the duties of parents toward their illegitimate
 7 children and relative to the duties of illegitimate children toward their parents; to
 8 provide for venue for actions to seek court approval by parents during marriage; to
 9 provide for proper party plaintiff and proper party defendant for unemancipated
 10 minors; to provide for summary proceedings for certain actions; to provide for the
 11 administration of minor's property during marriage of parents; to provide for the
 12 administration of a court judgment in favor of a minor; to provide for limitations on
 13 actions between an unemancipated minor child, his parents, a person having parental
 14 authority of the unemancipated minor child, or the tutor of the unemancipated minor
 15 child; to provide for acts that may be performed without court approval by a person
 16 having parental authority; to provide for a redesignation of a Section relative to
 17 uncontested paternity proceedings; to provide for provisional custody by mandate;
 18 to direct the Louisiana State Law Institute to replace Comment (b) under Code of
 19 Civil Procedure Article 684; to provide for an effective date; and to provide for
 20 related matters.

21 Be it enacted by the Legislature of Louisiana:

22 Section 1. Chapter 5 of Title VII of Book I of the Civil Code, consisting of Articles
 23 215 through 245, to consist of Articles 221 through 235, is hereby amended and reenacted,
 24 and Chapter 6 of Title VII of Book I of the Civil Code, to consist of Articles 236 through
 25 239, is hereby enacted to read as follows:

26 BOOK I. OF PERSONS

27 * * *

28 TITLE VII. PARENT AND CHILD

29 * * *

1 CHAPTER 5. ~~OF PARENTAL AUTHORITY~~ **OF MARRIED PERSONS**2 SECTION 1 ~~OF THE DUTIES OF PARENTS TOWARDS THEIR LEGITIMATE~~
3 CHILDREN, AND OF THE DUTIES OF LEGITIMATE CHILDREN TOWARDS
4 THEIR PARENTS5 ~~Art. 215. Filial honor and respect.~~6 ~~A child, whatever be his age, owes honor and respect to his father and~~
7 ~~mother.~~8 ~~Art. 216. Parental authority.~~9 ~~A child remains under the authority of his father and mother until his~~
10 ~~majority or emancipation.~~11 ~~In case of difference between the parents, the authority of the father prevails.~~12 ~~Art. 217. Filial obedience.~~13 ~~As long as the child remains under the authority of his father and mother, he~~
14 ~~is bound to obey them in every thing which is not contrary to good morals and the~~
15 ~~laws.~~16 ~~Art. 218. Parental custody and correction.~~17 ~~An unemancipated minor can not quit the parental house without the~~
18 ~~permission of his father and mother, who have the right to correct him, provided it~~
19 ~~be done in a reasonable manner.~~20 ~~Art. 219. Parental appointment of tutors.~~21 ~~The father and mother have a right to appoint tutors to their children, as is~~
22 ~~directed in the title: Of Minors, of their Tutorship and Emancipation.~~23 ~~Art. 220. Delegation of parental authority.~~24 ~~Fathers and mothers may, during their life, delegate a part of their authority~~
25 ~~to teachers, schoolmasters and others to whom they intrust their children for their~~
26 ~~education, such as the power of restraint and correction, so far as may be necessary~~
27 ~~to answer the purposes for which they employ them.~~28 ~~They have also the right to bind their children as apprentices.~~29 ~~Art. 221. Parental administration of child's estate.~~

1 ~~The father is, during the marriage, administrator of the estate of his minor~~
 2 ~~children and the mother in case of his interdiction or absence during said interdiction~~
 3 ~~or absence.~~

4 ~~He or she shall be accountable both for the property and revenues of the~~
 5 ~~estates the use of which he or she is not entitled to by law and for the property only~~
 6 ~~of the estate the usufruct of which the law gives him or her.~~

7 ~~This administration ceases at the time of the majority or emancipation of the~~
 8 ~~children, and also ceases upon judicial separation from bed and board either of the~~
 9 ~~father from the mother or of the mother from the father.~~

10 SECTION 1. GENERAL PRINCIPLES OF PARENTAL AUTHORITY

11 Art. 221. Authority of married parents

12 The father and mother who are married to each other have parental
 13 authority over their minor child during the marriage.

14 Revision Comments - 2015

15 (a) This Article introduces the subject of parental authority, which exists
 16 during the marriage of the parents. The Articles in this Chapter establish a regime,
 17 or system of rules, governing the relationship of parent and child. The Articles that
 18 follow not only prescribe rights and responsibilities of parents to their children and
 19 children to their parents but also provide instruction concerning the proper conduct
 20 of good children and good parents.

21
 22 (b) Parental authority as used in this Article does not refer to the authority
 23 of a parent in its broad sense, that is the authority that lasts throughout the lives of
 24 both parent and child (see C.C. Art. 236 (Rev. 2015), but instead refers to such
 25 authority in its limited sense that lasts until the majority or emancipation of the child,
 26 or the termination of the marriage of the child's parents. See C.C. Art. 235 (Rev.
 27 2015).

28
 29 (c) Fathers and mothers enjoy parental authority over their child during their
 30 marriage, with a few exceptions. See C.C. Arts. 232 and 234 (Rev. 2015). Compare
 31 C.C. Art. 216 (1870). By contrast, if the father and mother of the minor child never
 32 married or if they divorced, the regime of tutorship exists rather than the regime of
 33 parental authority. C.C. Arts. 256 and 246 (1870).

34 Art. 222. Representation of minor

35 Parental authority includes representation of the child and the right to
 36 designate a tutor for the child.

37 Revision Comments - 2015

38 (a) This Article makes explicit that parental authority includes representation
 39 of the child. Despite the reference in the title to representation, C.C. Art. 235 (1870)

1 provided simply that fathers and mothers may "appear for [their minor children] in
 2 court in every kind of civil suit..." The Code of Civil Procedure recognizes the
 3 father and the mother as the proper parties plaintiff and defendant for their minor
 4 child. C.C.P. Arts. 683, 732, and 4501. However, C.C. Art. 235 (1870) did not
 5 contain a general rule of parental representation of the minor in juridical acts but
 6 instead referred only to the parents' acceptance of any donation made to their child.
 7 C.C. Art. 1472 (Rev. 1991).

8
 9 (b) Representation means that the parent may represent the minor child in
 10 "legal relations." C.C. Art. 2985 (Rev. 1997). See W. Holmes and S. Symeonides,
 11 "Representation, Mandate, and Agency: A Kommentar on Louisiana's New Law,"
 12 73 Tul. L. Rev. 1087 (1999). Of course, only the child may enter into some legal
 13 relations, such as marriage (C.C. Art. 92 (Rev. 1987) and Ch.C. Arts. 1543 et seq.),
 14 making a will (C.C. Art. 1476 (Rev. 1991)), and other legal relations subject to
 15 exceptions made by law (see e.g., R.S. 40:1299.35.5). See also *Carey v. Population*
 16 *Services, International*, 41 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d. 675 (1977).

17
 18 (c) Parental authority includes the right of a parent to designate a
 19 testamentary" tutor as permitted by C.C. Art. 257 (1870). The designation can be
 20 made by authentic act as well as by testament. See C.C. Art. 219 (1870).

21 ~~Art. 223. Parental usufruct on minor child's property~~

22 ~~Parents have during marriage the enjoyment of the property of their children~~
 23 ~~until their majority or emancipation.~~

24 ~~This usufruct is nonalienable and exempt from seizure.~~

25 **Art. 223. Rights and obligations of parental authority**

26 **Parental authority includes rights and obligations of physical care,**
 27 **supervision, protection, discipline, and instruction of the child.**

28 Revision Comments - 2015

29 (a) This Article introduces the rights and obligations of parents over the
 30 person of their child. Principal among these rights and obligations is the physical
 31 care of the minor, this right and obligation that was implicit under C.C. Art. 218
 32 (1870). The right to physical care of the child reflects the parents' paramount right
 33 to custody of their child, recognized in the jurisprudence. See *Reinhardt v.*
 34 *Reinhardt*, 720 So. 2d 78, 79 (La.App. 1 Cir. 1998), writs denied 745 So. 2d 22
 35 (1999); *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).
 36 Furthermore, this right makes possible in a practical way the rights and obligations
 37 of supervision, protection, and instruction.

38
 39 (b) The parental rights and obligations of supervision and instruction provide
 40 the means of performing the parents' obligation of moral and material direction of
 41 the child. See C.C. Art. 99 (Rev. 1987). The right to physical care of the child
 42 assures parents the opportunity to supervise and instruct their child and to provide
 43 for their child's health and safety.

44
 45 (c) C.C. Art. 235 (1870) imposed an obligation upon the parents to protect
 46 their child but contained no language explicitly creating a right of protection. This
 47 revision incorporates both a parental right and obligation to protect the child.

48 ~~Art. 224. Obligations resulting from parents' usufruct~~

1 ~~The obligations resulting from this enjoyment shall be:~~

2 ~~1. The same obligations to which usufructuaries are subjected;~~

3 ~~2. To support, to maintain and to educate their children according to their~~
 4 ~~situation in life.~~

5 **SECTION 2. OBLIGATIONS OF PARENTS**

6 **Art. 224. Parental obligation of support and education**

7 **Parents are obligated to support, maintain, and educate their child. The**
 8 **obligation to educate a child continues after minority as provided by law.**

9 Revision Comments - 2015

10 (a) This Article is the first of three Articles imposing obligations upon the
 11 parents toward their child and third persons. The obligation of parents to support and
 12 maintain their minor child under this Article is identical to its predecessor, C.C. Art.
 13 227 (1870), but distinguishable from the obligation of parents who enjoyed a
 14 usufruct over their child's property under C.C. Art. 224 (1870). Parents with a
 15 usufruct over their minor child's property were obligated to support and maintain
 16 their child "according to their situation in life." C.C. Art. 224 (1870). Nevertheless,
 17 C.C. Art. 227 (1870) was interpreted as imposing a responsibility upon parents to
 18 support their child in accordance with their standard of living during their marriage.
 19 See Comment (c) to C.C. Art. 141 (Rev. 1993).

20
 21 (b) The parents' obligation to educate their minor child continues after
 22 minority for a child who "is a full-time student in good standing in a secondary
 23 school or its equivalent, has not attained the age of nineteen, and is dependent upon
 24 either parent" and when the child "has a developmental disability, as defined in R.S.
 25 28:451.2, until he attains the age of twenty-two, as long as the child is a full-time
 26 student in a secondary school." This does not change prior law. See C.C. Art. 230
 27 (1870); R.S. 9:315.22(C) and (D).

28
 29 (c) Although a parent is obligated to support, maintain, and educate his
 30 minor child, the unemancipated child may not enforce the obligation against any
 31 person who has parental authority. R.S. 9:571 (Rev. 2015). Nevertheless, in a
 32 proceeding for divorce, or while the spouses are living separate and apart, a spouse
 33 who seeks custody of a child may also assert a claim for child support. C.C. Art. 105
 34 (Rev. 1990), Arts. 141-142 (Rev. 1993); R.S. 9:315-315.26. See also R.S. 9:291
 35 (claim for child support if living separate and apart).

36 **Art. 225. Parental liability for child's offenses and quasi-offenses**

37 **Parents are responsible for damage occasioned by their child as provided**
 38 **by law.**

39 Revision Comment - 2015

40 This Article does not change the law; it merely replaces C.C. Art. 237 (1870)
 41 and recognizes the liability of parents for damage "occasioned by their minor child"
 42 as provided in C.C. Art. 2318. This liability rests upon the authority of the parents
 43 over the person of their child--the rights to and obligations of the physical care,
 44 supervision, protection, discipline, and instruction of the child. See C.C. Art. 223

1 (Rev. 2015) and *Turner v. Bucher*, 308 So.2d 270 (La. 1975).

2 ~~Art. 226. Parent's usufruct in child's estate; exceptions~~

3 This usufruct shall not extend to any estate, which the children may acquire
4 by their own labor and industry, nor to such estate as is given or left them under the
5 express condition that the father and mother shall not enjoy such usufruct. Neither
6 shall such usufruct extend to such estate as is given the children by donation inter
7 vivos unless such estate shall have been donated by written act and the right to such
8 usufruct has been provided for therein.

9 **Art. 226. Parental obligation of direction**

10 **Parents have a moral obligation to provide moral, social, and material**
11 **direction for their child.**

12 Revision Comments -- 2015

13 (a) Parents assume the moral obligation of providing moral, social, and
14 material direction to their child. C.C. Art. 99 (Rev. 1987) explains that, by marrying,
15 spouses mutually assume the moral and material direction of their children.

16
17 (b) Moral direction includes instruction and exhortation concerning moral
18 obligations and common moral principles. Social direction is more expansive and
19 contemplates, for example, instruction concerning acceptable conduct within the
20 broader community and the necessity of considering and balancing the needs of
21 others and the community against the individual's desires. Instruction concerning
22 basic economic matters, such as living within one's means, falls within the purview
23 of material direction.

24
25 (c) C.C. Art. 223 implicitly and Art. 228 (Rev. 2015) explicitly impose
26 obligations upon the child to obey his parents and upon the parent to instruct his
27 child, with the concomitant right to correct the child in a reasonable manner, all for
28 the purpose of assuring a legally practical means of accomplishing the parents'
29 obligation to provide direction for their child.

30 ~~Art. 227. Parental support and education of children:~~

31 ~~Fathers and mothers, by the very act of marrying, contract together the~~
32 ~~obligation of supporting, maintaining, and educating their children.~~

33 **SECTION 3. OBLIGATIONS OF CHILDREN**

34 **Art. 227. Parental control**

35 **A child owes assistance to his parents and may not quit a family**
36 **residence without the consent of both parents, except as otherwise provided by**
37 **law.**

Revision Comments - 2015

(a) The explicit obligation a child owes to assist his father and mother is new. Assistance includes, at the least, the personal care of an ill or infirm parent, just as the obligation of assistance reciprocally assumed by spouses includes such responsibility. C.C. Art. 98 (Rev. 1987), Revision Comment (c). In addition, assistance more broadly defined includes cooperating and participating in the daily tasks required for the efficient functioning of the family and other responsibilities that are consistent with the purposes and goals of family life. This obligation of assistance, however, does not include monetary support.

(b) As long as the minor is unemancipated, he may not leave the family home without the consent of both parents for the purpose of establishing a residence separate from his parents. "Quit" does not refer to a temporary absence. On this point, this Article makes no change in the law. C.C. Art. 218 (1870).

~~Art. 228. Marriage settlement or advancement~~

~~A child has no right to sue either his father or mother for the purpose of obtaining a marriage settlement or other advancement.~~

Art. 228. Child's obligation of obedience; parental correction

A child shall obey his parents in all matters not contrary to law or good morals. Parents have the right and obligation to correct and discipline the child in a reasonable manner.

Revision Comments - 2015

(a) This Article restates the substance of C.C. Art. 217 (1870). The child's obligation of obedience serves as the foundation for the parental right of correction. See C.C. Art. 223 (Rev. 2015).

(b) Consistently with its predecessor, C.C. Art. 218 (1870), the second sentence of this Article bestows upon parents the right to correct their child in a reasonable manner. This right to correct is essential to compliance with the parental obligations of physical care, supervision, protection, and instruction. Since acculturation of children occurs principally within the family, the law recognizes the necessity of reasonable discipline by those who love the child to instill character, self-discipline, and virtue.

~~Art. 229. Reciprocal alimentary duties of ascendants and descendants~~

~~Children are bound to maintain their father and mother and other ascendants, who are in need, and the relatives in the direct ascending line are likewise bound to maintain their needy descendants, this obligation being reciprocal. This reciprocal obligation is limited to life's basic necessities of food, clothing, shelter, and health care, and arises only upon proof of inability to obtain these necessities by other means or from other sources.~~

SECTION 4. AUTHORITY OVER THE PROPERTY OF THE CHILD**Art. 229. Administration of the property of the child**

Each parent has the right and the obligation to administer the property of the child. The parent must do so as a prudent administrator and is answerable for any damage caused by his fraud, fault, default, or neglect. An action for failure to perform this obligation is subject to a liberative prescription of five years that commences to run from the day the child attains the age of majority.

Revision Comments - 2015

(a) This Article departs from its predecessor by granting the right to administer the minor child's property to either parent. Under C.C. Art. 221 (1870), the father was the administrator of the minor's estate unless he was interdicted or absent (an absent person under C.C. Art. 47 (Rev. 1990)). See also C.C.P. Art. 683 (as amended 2012) and Art. 732 (as amended 2004), which as a general rule made the father the proper party plaintiff and defendant for the minor child during the existence of parental authority. Upon enactment in 1987, however, C.C. Art. 99 recognized that parental authority was to be exercised equally. See 1987 Revision Comment to C.C. Art. 99 (Rev. 1987).

(b) The standard of care imposed upon the parent who administers the minor child's property is that of a prudent administrator, and the administration must be for the benefit of the minor child. Usufructuaries (C.C. Art. 576), spouses who are co-owners of former community property (C.C. Art. 2369.3), managers under a *negotiorum gestio* (C.C. Art. 2295), and tutors (C.C.P. Art. 4262) are subject to the same standard. Furthermore, this Article imposes the standard of care in the context of the principle that the property be administered for the benefit of the child. In this respect, the responsibility of the parents resembles the responsibility of those who administer the property of another, such as the trustee who has a duty to administer the trust solely in the interest of the beneficiary; R.S. 9:2082.

Consistent with the standard of care imposed upon the parent who administers the minor's property, this Article imposes liability upon the administering parent "for any damage caused by his fraud, fault, default, or neglect." Similar language appears in C.C. Art. 576 (liability of usufructuary to the naked owner) and Art. 2369.3 (liability of a spouse to the other spouse for failure to manage former community property prudently).

(c) Acts of administration differ from acts of alienation, encumbrance, or lease. The ability of the parents to act alone without court approval in matters affecting the minor child's property depends upon the nature of the act: either parent may *administer* the child's property without court supervision; a parent may *dispose* of the child's property only with prior court approval (See C.C. Art. 230 [Rev. 2015]), except as otherwise provided by law (see R.S. 9:572 (Rev. 2015)). Administration contemplates preservation or protection of acquired rights or the exploitation of them without changing the substantial character of the minor's patrimony as a whole. Disposition is any other act that is not administration.

In the different, yet analogous, regime of tutorship, the Code of Civil Procedure contains detailed articles governing when the tutor needs court approval.

1 Nevertheless, those articles do not provide a complete solution to the problem of
 2 distinguishing between the two types of acts: some acts that require court approval
 3 are purely administrative. Other acts are of such gravity that a requirement of court
 4 approval might be expected; yet there is no legislation specifically requiring it. This
 5 Article clearly contemplates a difference between administration and disposition that
 6 more nearly reflects the classic distinction. See Katherine Shaw Spaht, *Family Law*
 7 *in Louisiana*, 714-715 (2000).

8 ~~Art. 230. Scope of alimentary obligation~~

9 ~~A. By alimony we understand what is necessary for the nourishment,~~
 10 ~~lodging, and support of the person who claims it.~~

11 ~~B.(1) It includes the education, when the person to whom the alimony is due~~
 12 ~~is a minor, or when the person to whom alimony is due is a major who is a full-time~~
 13 ~~student in good standing in a secondary school, has not attained the age of nineteen,~~
 14 ~~and is dependent upon either parent.~~

15 ~~(2) It includes the education, when the person to whom the alimony is due~~
 16 ~~has not attained the age of twenty-two and has a developmental disability as defined~~
 17 ~~in R.S. 28:381.~~

18 **Art. 230. Alienation, encumbrance, or lease of the property of the child;**
 19 **expenditure of fruits**

20 **Either parent may alienate, encumber, or lease the property of the child,**
 21 **compromise a claim of the child, or incur an obligation of the child for his**
 22 **education, support, and maintenance only with prior court approval, except as**
 23 **otherwise provided by law.**

24 **Nevertheless, a parent may expend, without court approval, the fruits of**
 25 **the child's property for the shared benefit of the family, excluding major**
 26 **children not living in the household, or for the expenses of the child's household**
 27 **or property.**

28 Revision Comments - 2015

29 (a) In contrast to Article 229 referring to acts of administration, this Article,
 30 as a general proposition, requires the parent to obtain prior court approval in the
 31 manner provided by C.C.P. Art. 4501 (Rev. 2015), if the act contemplated by the
 32 parent is an alienation, encumbrance, or lease of the minor child's property, including
 33 the compromise of a claim of the child, or of the act includes incurring an obligation
 34 of the child. All such acts must be for the purpose of education, support, or
 35 maintenance of the child. See C.C. Art. 224 (Rev. 2015).

36 The procedure for obtaining court approval is intended to provide protection
 37

1 to the minor child. See C.C.P. Arts. 4271 and 4501 (Rev. 2015). If a parent does not
 2 obtain court approval of a transaction when approval is required, the transaction is
 3 relatively null. See C.C. Arts. 2031 and 2033 (Rev. 1984); *Snowden v. Huey P. Long*
 4 *Memorial Hospital*, 581 So.2d 287 (La.App. 3 Cir. 1991). See also *Succession of*
 5 *Hellmers*, 637 So.2d 1302 (La.App. 4 Cir. 1994); and *Carter v. Fenner*, 136 F.3d
 6 1000 (5 Cir. 1998).

7
 8 (b) R.S. 9:572 (Rev. 2015) permits a parent to take certain actions without
 9 prior court approval, such as alienation of the minor's movable property if the sum
 10 received does not exceed \$15,000.

11
 12 (c) A major exception to the requirement of court approval for alienation of
 13 the minor's property is the expenditure of fruits of the minor's property for two
 14 purposes - expenses of the child's household, such as electricity, water, rent, or for
 15 the shared benefit of the family. "Family" as used in this Article is *family* in its
 16 limited sense under C.C. Art. 3506 (12), which consists of "father, mother, and
 17 children." Nonetheless, this Article further restricts the meaning of *family* to exclude
 18 major children not living in the household, even though they are included within the
 19 broad definition of "children" in Article 3506 (8).

20
 21 (d) The second paragraph of this Article is intended as a substitute for the
 22 former parental right of enjoyment, which was a form of usufruct enjoyed by parents
 23 during the existence of parental authority. See C.C. Arts. 223-226 (1870). Prior law
 24 restricted the type of property of the minor child subject to the right of enjoyment,
 25 by excluding, for example, property earned by the minor's own labor and industry
 26 or donated to the minor (C.C. Art. 226 (1870)). But property subject to the parents'
 27 enjoyment made them the owners of the fruits of the property. As a consequence of
 28 being owner of the fruits produced from such property of the minor child, the parents
 29 could expend those fruits as they saw fit, for any purpose. This Article changes the
 30 law: although it does *not* create a parental right of enjoyment subject to the rules of
 31 the law of usufruct, it does permit the parents to use the fruits from all of the minor's
 32 property but only for limited purposes which are described in the Article.

33
 34 (e) Code of Civil Procedure Article 4521 (Rev. 2015) contains further
 35 protection, in the interest of the minor, when his property consists of a judgment or
 36 settlement, as in the case of the minor child's personal injury recovery. The court has
 37 authority to order the funds from a minor's personal injury recovery to be deposited
 38 in the registry of the court, to be expended only for certain authorized purposes, or
 39 to be placed in trust. In addition the court has authority to impose other restrictions
 40 upon the use and withdrawal of such funds as it deems necessary to protect the
 41 interest of the minor child in accordance with the provisions of C.C.P. Article 4521
 42 (Rev. 2015).

43
 44 (f) The right of parents to expend the fruits of the child's property for
 45 authorized purposes without court approval under this Article is forfeited if one of
 46 the parents is declared unworthy to succeed and his child inherits under the
 47 provisions of C.C. Art. 946(B).

48 ~~Art. 231. Basis for granting alimony.~~

49 ~~Alimony shall be granted in proportion to the wants of the person requiring~~
 50 ~~it, and the circumstances of those who are to pay it.~~

51 **Art. 231. Parents' obligation to deliver and account**

52 **Parents are bound to deliver to the child his property at termination of**

1 **parental authority.**

2 **Parents shall also give an account of their administration when ordered**
 3 **by the court. The action to compel an accounting is subject to a liberative**
 4 **prescription of five years that commences to run from the day the child attains**
 5 **the age of majority.**

6 Revision Comments - 2015

7 (a) At termination of parental authority for a cause provided in C.C. Art. 235
 8 (Rev. 2015), the parents are obligated to deliver to the child his property in their
 9 possession and/or under their control. In addition they are bound to "give an account
 10 of their administration...." just as a tutor must. See C.C.P. Art. 4392. For example,
 11 they must explain what happened to the child's property that is no longer in their
 12 possession or under their control and for what purpose any proceeds were expended.
 13

14 (b) The action instituted by the child to obtain an accounting from the
 15 parents at termination of parental authority is a summary proceeding. See C.C.P.
 16 Art. 2592(9) (Rev. 2015).
 17

18 (c) The action to enforce the obligation to deliver the child's property is not
 19 subject to liberative prescription. See Yiannopoulos, Property (Civ.L.Treat., vol. 2),
 20 Section 279, at 557-558 (4th ed. 2001). In contrast, the action by the child to compel
 21 an accounting is a personal action that prescribes in five years from the day the child
 22 attains the age of majority.
 23

24 (d) The obligations of the parents contained in this Article are governed by
 25 general principles of the law of obligations in determining if the obligation of the
 26 parents is joint or solidary (C.C. Arts. 1786-1788, 1794-1806 (Rev. 1984)), and if
 27 joint, whether divisible or indivisible (C.C. Art. 1789 (Rev. 1984)).

28 ~~Art. 232. Reduction of alimony or discharge from payment~~

29 ~~When the person who gives or receives alimony is replaced in such a~~
 30 ~~situation that the one can no longer give, or that the other is no longer in need of it,~~
 31 ~~in whole or in part, the discharge from or reduction of the alimony may be sued for~~
 32 ~~and granted.~~

33 **SECTION 5. PERSON HAVING PARENTAL AUTHORITY AND**
 34 **OF ITS DELEGATION AND SUSPENSION**

35 **Art. 232. Parental authority**

36 **Either parent during the marriage has parental authority over his child**
 37 **unless otherwise provided by law.**

38 **Under extraordinary circumstances, such as if one parent is mentally**
 39 **incompetent, interdicted, or imprisoned, or is an absent person, the other parent**

1 has exclusive authority.

2 Revision Comments - 2015

3 (a) Under this Article, which changes the law in part, parental authority may
 4 be exercised by either parent. The predecessor of this Article, Civil Code Article 216
 5 (1870), acknowledged that parents shared this authority, but "[i]n the case of
 6 difference between the parents, the authority of the father prevails." Nevertheless,
 7 the jurisprudence never applied the Article strictly. See *Wood v. Beard*, 290 So.2d
 8 675 (La. 1974). Article 99 of the Civil Code, which was later legislation enacted in
 9 1987, provides that spouses by the act of marrying "*mutually* assume the moral and
 10 material direction of the family, *exercise parental authority*, and assume the moral
 11 and material obligations resulting therefrom." The Revision Comment to C.C. Art.
 12 99 (Rev. 1987) explains that that Article "states a general principle of equality
 13 between the spouses in the moral and material direction of the family." This Article
 14 explicitly recognizes the general principle of equality of the parents in the exercise
 15 of parental authority by permitting either parent acting alone to exercise any facet of
 16 this authority, with certain specified exceptions. See the second paragraph of this
 17 Article and C.C. Art. 234 (Rev. 2015).

18
 19 (b) An instance under this Article for the exercise of one parent's exclusive
 20 authority occurs when there are extraordinary circumstances, such as the mental
 21 incompetence, commitment, or imprisonment of the other parent or the other parent
 22 is an absent person under C.C. Art. 47 (Rev. 1990). The illustrative list of
 23 extraordinary circumstances is similar to that contained in C.C. Art. 2355 (Rev.
 24 1979).

25
 26 The list of extraordinary circumstances in this Article differs from that
 27 contained in C.C. Art. 2355 (Rev. 1979) in the following respect: this Article
 28 includes interdiction of a parent. Interdiction may be full or limited. If a parent has
 29 been fully interdicted (see C.C. Art. 389 [Rev. 2000]), the second paragraph of this
 30 Article applies. If the interdiction of a parent is limited (see C.C. Art. 390 [Rev.
 31 2000]), the second paragraph applies only if the judgment of limited interdiction
 32 places parental authority in his curator. See C.C. Art. 395 (Rev. 2000), which
 33 distinguishes the effect of a full and a limited interdiction.

34 ~~Art. 233. Duty to receive in home in lieu of alimony payments~~

35 ~~If the person, whose duty it is to furnish alimony, shall prove that he is unable~~
 36 ~~to pay the same, the judge may, after examining into the case, order that such person~~
 37 ~~shall receive in his house, and there support and maintain the person to whom he~~
 38 ~~owes alimony.~~

39 **Art. 233. Delegation of parental authority**

40 **Parents may delegate all or a part of their parental authority to others**
 41 **as provided by law.**

42 **Parents delegate a part of their parental authority to teachers and others**
 43 **to whom they entrust their child for his education, insofar as may be necessary.**

44 Revision Comments - 2015

1 (a) As under prior law, parents may delegate all or a part of their parental
2 authority. This revision recognizes the right of parents to delegate their authority
3 under the following circumstances: (1) upon execution of a mandate granting
4 provisional custody under the provisions of and for the purposes contained in R.S.
5 9:951-954; (2) upon a voluntary transfer of custody to other responsible adults under
6 the provisions of Children's Code Articles 1510 et seq.; (3) upon an express grant of
7 authority to a person with whom the parent places the child, for example, a
8 babysitter, neighbor, or grandparent; or (4) when the circumstances are such that it
9 is customary for parents to delegate a part of their authority, for example, the child's
10 overnight visits in the homes of friends.

11
12 (b) C.C. Art. 220 (1870) permitted parents to delegate a part of their
13 authority to teachers and others to whom they entrusted their children for education.
14 This revision recognizes that by virtue of the provisions of R.S. 17:223 (discipline
15 of pupils; suspension from school; corporeal punishment), parents by the very act of
16 enrolling their children in school in effect *do* delegate a part of their authority to
17 teachers and others for the purpose of educating their child. The Article thus
18 accomplishes a legal delegation of parental authority implicit in the provisions of
19 Title 17 of the Revised Statutes.

20
21 (c) A delegation of parental authority does not relieve a parent of liability for
22 a child's offenses or quasi-offenses under C.C. Art. 225 (Rev. 2015) and Art. 2318
23 (Rev. 2008). See C.C. Art. 2318 (Rev. 2008).

24 ~~Art. 234. Parental choice to receive child at home in lieu of alimony payments~~

25 ~~The judge shall pronounce likewise whether the father or mother who may~~
26 ~~offer to receive, support and maintain the child, to whom he or she may owe~~
27 ~~alimony, in his or her house, shall be dispensed in that case from the obligation of~~
28 ~~paying for it elsewhere.~~

29 **Art. 234. Parental authority; custody award**

30 **Parental authority continues during marriage, unless modified by a**
31 **judgment awarding custody to one parent, by a joint custody implementation**
32 **order, or by a judgment awarding custody to a third person.**

33 **An ascendant, other than a parent, who is awarded custody has parental**
34 **authority. The authority of a third person who is awarded custody, other than**
35 **an ascendant, is governed by the rules of tutorship, unless modified by court**
36 **order.**

37 Revision Comments - 2015

38 (a) This Article is new. It provides that the general rule that parental
39 authority continues until the parents' marriage terminates unless modified by court
40 order. A court order of custody modifying parental authority may be rendered during
41 the marriage pursuant to a rule to show cause while the parents are living separate
42 and apart (R.S. 9:291) or after a petition for divorce has been filed (C.C. Arts. 105,
43 131, and 136). A custody award may also be made in a proceeding for a judicial

1 separation in a covenant marriage See R.S. 9:308(D).

2
3 (b) The reference to a modification by a joint custody implementation order
4 includes the possibility of the designation under R.S. 9:335(B) of a domiciliary
5 parent, a term that is defined as the parent with whom the child primarily resides.
6 This designation necessarily modifies parental authority because the "domiciliary
7 parent" has sole authority to make all decisions affecting the child unless the
8 implementation order specifically modifies this authority. If no domiciliary parent
9 is named but the implementation order is detailed and provides for decision-making
10 by one or both parents as contemplated by R.S. 9:335(A), the order modifies parental
11 authority. If no domiciliary parent is designated and no specific allocation of
12 decision-making authority is contained in a joint custody implementation order,
13 parental authority is unmodified according to R.S. 9:335(C).

14
15 (c) The reference to a modification by a judgment awarding custody to one
16 parent contemplates the possibility that a custody award to one parent conveying
17 authority over the child can modify parental authority. A sole custody award to one
18 parent may be modified by the provisions of a court order and affect the authority of
19 the custodial parent. The terms of the judgment determine the extent to which
20 parental authority is modified.

21
22 (d) For a parent without parental authority because of a sole custody award
23 to the other parent or the provisions of a joint custody implementation order, certain
24 rights and obligations nonetheless continue. For example, a parent awarded
25 visitation under the provisions of C.C. Art. 136(A) may discipline and correct the
26 child absent a contradictory provision in the court order of visitation. Likewise, the
27 noncustodial parent remains obligated to support, maintain and educate the child, an
28 obligation that is often enforced by a child support award under C.C. Art. 141 and
29 R.S. 9:315 et seq. These rights and obligations attach to parenthood, more generally,
30 and are not limited to a narrower concept of parental authority.

31
32 (e) If the court awards custody of the child to a third person during the
33 existence of parental authority, as it may under C.C. Art. 133, the general principle
34 adopted by this Article is that, with one narrow exception, the third person has the
35 authority of a tutor under C.C. Arts. 246 et seq. The only exception to this general
36 principle is for ascendants, other than a parent, awarded custody of the child. An
37 ascendant awarded custody of a minor child during the existence of parental
38 authority exercises such authority. Although the ascendant with custody has the
39 *authority* of a parent, the custody award to the ascendant does not displace the
40 obligation owed by a parent to the child to support, maintain, and educate the child,
41 C.C. Art. 224 (Rev. 2015) nor does the ascendant assume a more onerous obligation
42 of support than the reciprocal obligation imposed by C.C. Art. 237 (Rev. 2015) owed
43 by all ascendants and descendants to each other.

44 ~~Art. 235. Parental protection and representation of children in litigation~~

45 ~~Fathers and mothers owe protection to their children, and of course they may,~~
46 ~~as long as their children are under their authority, appear for them in court in every~~
47 ~~kind of civil suit, in which they may be interested, and they may likewise accept any~~
48 ~~donation made to them.~~

49 **SECTION 6. TERMINATION OF PARENTAL AUTHORITY**

50 **Art. 235. Termination of parental authority**

1 **Parental authority terminates upon the child's attaining the age of**
 2 **majority, upon the child's emancipation, or upon termination of the marriage**
 3 **of the parents of the child.**

4 Revision Comment - 2015

5 (a) This Article does not change the law: parental authority terminates when
 6 the child reaches majority or is emancipated, or when the marriage of the parents
 7 terminates. See C.C. Arts. 221 and 246 (1870) and C.C. Art. 101 (Rev. 1990).

8
 9 (b) Parental authority also terminates upon a judgment of separation from
 10 bed and board in a covenant marriage (R.S. 9:309). Parental authority is suspended
 11 upon the appointment of a guardian under the Children's Code (Ch.C. Art. 682) or
 12 upon the rendition of some other judgment by public law which removes the child
 13 from the care and custody of his parents or interferes with either or both parents'
 14 authority over their child. See, e.g., C.C. Art. 234 (Rev. 2015); *Williams v. City of*
 15 *Baton Rouge*, 252 La. 770, 214 So. 2d 138 (La. 1968); *Redd v. Bohannon*, 166 So.
 16 2d 362 (La. App 3 Cir. 1964).

17
 18 (c) Parental authority lasts until the child reaches majority at eighteen years
 19 or is emancipated. A child may be emancipated by judicial emancipation, marriage,
 20 or authentic act. See C.C. Arts. 365-369 (Rev. 2008).

21 ~~Art. 236. Justification of parent's assault in defense of children~~

22 ~~Fathers and mothers may justify themselves in an action begun against them~~
 23 ~~for assault and battery, if they have acted in the defense of the persons of their~~
 24 ~~children.~~

25 **CHAPTER 6. OBLIGATIONS OF CHILDREN AND PARENTS**

26 **AND OTHER ASCENDANTS**

27 **Art. 236. Filial honor and respect**

28 **A child regardless of age owes honor and respect to his father and**
 29 **mother.**

30 Revision Comment - 2015

31 The duty of a child to honor and respect his parents is not limited to the
 32 minority of a child. See C.C. Art. 215 (1870). Although no direct sanction for the
 33 breach of this obligation exists, the purpose of this Article is both hortatory and
 34 instructive as to the conduct of a good child of any age. Of course, if the child is a
 35 forced heir and the disrespectful act is sufficiently extreme, the parent is permitted
 36 to disinherit the child. See C.C. Arts. 1617 and 1621 (Rev. 2001).

37 ~~Art. 237. Parents' liability for offenses or quasi-offenses of children~~

38 ~~Fathers and mothers are answerable for the offenses or quasi-offenses~~
 39 ~~committed by their children, in the cases prescribed under the title: *Of*~~

1 *Quasi-Contracts, and of Offenses and Quasi-Offenses.*

2 **Art. 237. Obligation of providing the basic necessities of life; ascendants and**
3 **descendants; exceptions**

4 **Descendants are bound to provide the basic necessities of life to their**
5 **ascendants who are in need, upon proof of inability to obtain these necessities**
6 **by other means or from other sources, and ascendants are likewise bound to**
7 **provide for their needy descendants, this obligation being reciprocal.**

8 **This obligation is strictly personal and is limited to the basic necessities**
9 **of food, clothing, shelter, and health care.**

10 **This obligation is owed by descendants and ascendants in the order of**
11 **their degree of relationship to the obligee and is joint and divisible among**
12 **obligors. Nevertheless, if the obligee is married, the obligation of support owed**
13 **by his descendants and ascendants is secondary to the obligation owed by his**
14 **spouse.**

15 Revision Comments - 2015

16 (a) This Article contains the provisions of former C.C. Art. 229 (Rev. 1979).
17 It imposes a reciprocal lifetime obligation upon ascendants and descendants,
18 relationships determined in accordance with C.C. Arts. 899-901, to provide the basic
19 necessities of life, which explicitly are limited to food, clothing, shelter and health
20 care. This obligation exists only when the obligee proves that he is unable to obtain
21 these necessities "by other means" or "from other sources."
22

23 (b) The needs of the obligee, referred to in C.C. Art. 238 (Rev. 2015), are to
24 be measured by the basic necessities of life explicitly delineated in this Article as
25 food, clothing, shelter, and basic or essential health care.
26

27 (c) The phrase "by other means" includes the capital resources and the
28 earning capacity of the obligee. See *Levy v. Levy*, 536 So.2d 742 (La.App. 3 Cir.
29 1988); *Landeché v. Airhart*, 372 So.2d 598 (La.App. 4 Cir. 1979).
30

31 (d) The phrase "from other sources" includes public assistance.
32

33 (e) For the first time this Article provides a ranking of those descendants and
34 ascendants who owe this reciprocal, lifetime obligation. Furthermore, this Article
35 also directs that, if the obligee is married, the obligation of support owed by one
36 spouse to the other (see C.C. Art. 98 (Rev. 1987)) primes the limited obligation owed
37 by ascendants and descendants. See *Matheny v. Matheny*, 205 La. 869, 18 So.2d 324
38 (La. 1944); *Lyons v. Landry*, 293 So.2d 674 (La.App 1 Cir. 1974); *McCole v.*
39 *McCole*, 383 So.2d 55 (La.App 2 Cir. 1980); and *Simon v. Simon*, 127 So.2d 769
40 (La.App. 3 Cir. 1961). The ranking of obligors imposes the obligation first upon the
41 spouse, then upon the descendants and ascendants closest in degree of relationship
42 to the obligee. To determine the closest in degree of relationship to the obligee, see
43 C.C. Arts. 900 and 901 (Rev. 1981).

1 (f) This Article specifically provides that this obligation is strictly personal,
2 not heritable (see C.C. Arts. 1766 and 1765 (Rev. 1984)) and as a consequence may
3 not be enforced by a third person. This Article is explicit that the obligation is joint
4 and divisible among obligors, not solidary. See C.C. Arts. 1786, 1788, 1789, and
5 1790 (Rev. 1984).

6 ~~SECTION 2--OF THE DUTIES OF PARENTS TOWARD THEIR~~
7 ~~ILLEGITIMATE CHILDREN, AND OF THE DUTIES OF ILLEGITIMATE~~
8 ~~CHILDREN TOWARD THEIR PARENTS~~

9 ~~Art. 238. Illegitimate children, freedom from parental authority.~~

10 ~~Illegitimate children generally speaking, belong to no family, and have no~~
11 ~~relations; accordingly they are not submitted to the paternal authority, even when~~
12 ~~they have been legally acknowledged.~~

13 **Art. 238. Amount of support**

14 **The amount of support shall be determined in accordance with the needs**
15 **of the obligee, as limited under the preceding Article, and the means of the**
16 **obligor.**

17 Revision Comments - 2015

18 (a) This Article incorporates the content of former C.C. Art. 231 (1870),
19 which contained the general rules for the award of alimony.

20 (b) C.C. Arts. 233 and 234 (1870) have been suppressed.

21 ~~Art. 239. Reciprocal duties between parents and illegitimate children~~

22 ~~Nevertheless nature and humanity establish certain reciprocal duties between~~
23 ~~fathers and mothers and their illegitimate children.~~

24 **Art. 239. Modification or termination of support**

25 **The amount of support may be modified if the circumstances of the**
26 **obligor or the obligee materially change and shall be terminated if it has become**
27 **unnecessary.**

28 Revision Comment - 2015

29 This Article incorporates the provisions of C.C. Art. 232 (1870), which
30 provided for the change or termination of an alimony award if the need of the obligee
31 or the ability of the obligor to pay changed or the award became unnecessary. See
32 Comment (a) to C.C. Art. 238 (Rev. 2015) and C.C. Art. 142 (Rev. 2001), Art. 114
33 (Rev. 2001), and Art. 115 (Rev. 1997).

34 ~~Art. 240. Reciprocal duty to furnish alimony~~

1 Fathers and mothers owe alimony to their illegitimate children, when they are
2 in need;

3 ~~Illegitimate children owe likewise alimony to their father and mother, if they~~
4 ~~are in need, and if they themselves have the means of providing it.~~

5 ~~Art. 241. Illegitimate child's claim for alimony from parents' heirs.~~

6 ~~Illegitimate children have a right to claim this alimony, not only from their~~
7 ~~father and mother, but even from their heirs after their death.~~

8 ~~Art. 242. Conditions governing claim to alimony~~

9 ~~But in order that they may have a right to sue for this alimony, they must:~~

10 ~~1. Have been legally acknowledged by both their father and mother, or by~~
11 ~~either of them from whom they claim alimony; or they must have been declared to~~
12 ~~be their children by a judgment duly pronounced, in cases in which they may be~~
13 ~~admitted to prove their paternal or maternal descent;~~

14 ~~2. They must prove in a satisfactory manner that they stand absolutely in~~
15 ~~need of such alimony for their support.~~

16 ~~Art. 243. Termination of duty to pay alimony~~

17 ~~The obligation of giving such alimony ceases, when the illegitimate child is~~
18 ~~able to earn his subsistence by labor, or whenever his father or mother have [has]~~
19 ~~caused him to be instructed in an art, trade or profession fit to procure him a~~
20 ~~sufficient livelihood, unless some continual sickness or infirmity prevents such child~~
21 ~~from working for his subsistence.~~

22 ~~The debt of alimony ceases likewise to be due from the estate of the father~~
23 ~~or mother of the illegitimate child whenever either of them has provided during his~~
24 ~~or her life a sufficient maintenance for his or her illegitimate child, or have made to~~
25 ~~him donations or other advantages which may be sufficient for that purpose.~~

26 ~~Art. 244. Other rules concerning alimony~~

27 ~~The other rules established respecting alimony to be granted to legitimate~~
28 ~~children, take place likewise with respect to illegitimate children, except so far as~~
29 ~~they may be contrary to the foregoing provisions.~~

1 ~~Art. 245. Custody of illegitimate children acknowledged by both parents~~

2 ~~In a proceeding in which custody of an illegitimate child formally~~
3 ~~acknowledged by both parents is sought by both parents, and in proceedings for~~
4 ~~change of custody after an original award, custody shall be awarded in accordance~~
5 ~~with the provisions on custody incident to divorce contained in Title V of this Book.~~

6 Section 2. Titles VII and VII-A of Book VII of the Code of Civil Procedure,
7 consisting of Articles 4501, 4502, 4521 and 4522, to consist of Articles 4501 and 4521, and
8 Code of Civil Procedure Articles 683, 732 and 2592 are hereby amended and reenacted, and
9 Code of Civil Procedure Article 74.6 is hereby enacted, to read as follows:

10 **Art. 74.6. Actions to seek court approval by parents during marriage**

11 **During the marriage of a minor's parents, an action to seek court**
12 **approval to alienate, encumber, or lease the property of the minor, incur an**
13 **obligation of the minor, or compromise a claim of the minor may be brought in**
14 **the domicile of the minor, or if the parents seek to compromise a claim of the**
15 **minor in a pending action, in that action.**

16 * * *

17 Art. 683. Unemancipated minor

18 A. An unemancipated minor ~~does not have the~~ **has no** procedural capacity
19 to sue.

20 B. ~~Except as otherwise provided in Article 4431, the tutor is the proper~~
21 ~~plaintiff to sue to enforce a right of an unemancipated minor, when one or both of~~
22 ~~the parents are dead, the parents are divorced or judicially separated, or the minor is~~
23 ~~born outside of marriage.~~ **All persons having parental authority over an**
24 **unemancipated minor must join as proper plaintiffs to sue to enforce a right of**
25 **the minor, unless a joint custody implementation order otherwise applies.**
26 **Nevertheless, with permission of the court, any person having parental**
27 **authority may represent the minor whenever the other person having parental**
28 **authority fails or refuses to do so.**

29 C. The father, as administrator of the estate of his minor child, is the proper

1 ~~plaintiff to sue to enforce a right of an unemancipated minor who is born of the~~
 2 ~~marriage of parents who are not divorced or judicially separated. The mother, as the~~
 3 ~~administratrix of the estate of her minor child, is the proper plaintiff in such an~~
 4 ~~action, when the father is mentally incompetent, committed, interdicted, imprisoned,~~
 5 ~~or an absentee. Moreover, with permission of the judge, the mother may represent~~
 6 ~~the minor whenever the father fails or refuses to do so; and in any event she may~~
 7 ~~represent the minor under the conditions of the laws on the voluntary management~~
 8 ~~of another's affairs. **During tutorship, the tutor is the proper plaintiff to sue to**~~
 9 ~~**enforce a right of the unemancipated minor.**~~

10 D. Notwithstanding the provisions of ~~Paragraph A, B, or C, **above,**~~ an
 11 attorney appointed by the court having jurisdiction over an unemancipated minor
 12 who is in the legal custody of the Department of Children and Family Services is the
 13 proper plaintiff to sue to enforce a right of an unemancipated minor. Upon
 14 application of the tutor or ~~parent~~ **a person having parental authority** who would
 15 otherwise be the proper plaintiff to sue pursuant to Paragraph B or C **of this Article,**
 16 the court shall appoint or substitute as the proper plaintiff the best qualified among
 17 the tutor, ~~parent,~~ **a person having parental authority,** or ~~the~~ appointed attorney.

18 Revision Comments - 2015

19 (a) This Article changes the law in part. Under this Article, while the regime
 20 of parental authority is in existence, all persons having parental authority must join
 21 as plaintiffs to file suit to enforce the right of an unemancipated minor. Either parent
 22 during the marriage has parental authority of the child unless extraordinary
 23 circumstances exist, such as if one parent is mentally incompetent, committed,
 24 interdicted, imprisoned, or is an absent person. See C.C. Art. 232 (Rev. 2015).
 25 Additionally, an ascendant of the minor, other than the parent, who is awarded
 26 custody during the marriage of the parents, has parental authority. See C.C. Art. 234
 27 (Rev. 2015). Therefore, under this revision, all persons having parental authority
 28 must be joined, but one person may act alone if extraordinary circumstances exist,
 29 see C.C. Art. 232, or with court approval when the other person fails or refuses to
 30 act. Under prior law, the father was the proper plaintiff to sue and only if the father
 31 was mentally incompetent, committed, interdicted, imprisoned, or an absent person
 32 was the mother the proper plaintiff to sue. See Article 683 (as amended prior to
 33 2015).

34
 35 (b) The failure to join all persons having parental authority can be raised by
 36 the peremptory exception of nonjoinder of a party. See C.C.P. Art. 927.

37 * * *

38
 39 Art. 732. Unemancipated minor

1 A. An unemancipated minor has no procedural capacity to be sued.

2 B. ~~Except as otherwise provided in Article 4431, the tutor appointed by a~~
3 ~~court of this state is the proper defendant in an action to enforce an obligation against~~
4 ~~an unemancipated minor, when one or both of the parents are dead, the parents are~~
5 ~~divorced or judicially separated, or the minor is born outside of the marriage. If such~~
6 ~~a minor has no tutor, the action may be brought against the minor, but the court shall~~
7 ~~appoint an attorney at law to represent him.~~ **Any person having parental authority**
8 **over an unemancipated minor is a proper defendant in an action to enforce an**
9 **obligation against the minor.**

10 C. ~~The father, as administrator of the estate of his minor child, is the proper~~
11 ~~defendant in an action to enforce an obligation against an unemancipated minor who~~
12 ~~is born of the marriage of parents who are living and not divorced or judicially~~
13 ~~separated. The mother, as the administratrix of the estate of her minor child, is the~~
14 ~~proper defendant in such an action, when the father is mentally incompetent,~~
15 ~~committed, interdicted, imprisoned, or an absentee. Moreover, with permission of~~
16 ~~the judge, the mother may represent the minor whenever the father fails or refuses~~
17 ~~to do so.~~ **During tutorship, the tutor is the proper defendant in an action to**
18 **enforce an obligation against the unemancipated minor. If a minor has no**
19 **tutor, the action may be brought against the minor, but the court shall appoint**
20 **an attorney to represent him until a tutor is appointed for the minor.**

21 D. Notwithstanding the provisions of ~~Paragraph A, B, or C~~ **above**, an
22 attorney appointed by the court having jurisdiction over an unemancipated minor
23 who is in the legal custody of the Department of Children and Family Services is the
24 proper defendant in an action to enforce an obligation against an unemancipated
25 minor. Upon application of the tutor or ~~parent~~ **person having parental authority**
26 who would otherwise be the proper defendant to be sued pursuant to Paragraph B or
27 **C of this Article**, the court shall appoint or substitute as the proper defendant the
28 best qualified among the tutor, ~~parent~~ **a person having parental authority**, or ~~the~~
29 appointed attorney.

1 Revision Comments - 2015

2 This Article changes the law in part. When parents are married, any person
3 having parental authority can be the proper defendant in an action to enforce an
4 obligation against an unemancipated minor. Either parent during the marriage has
5 parental authority of the child unless extraordinary circumstances exist. See C.C.
6 Art. 232 (Rev. 2015). Additionally, an ascendant of the minor, other than the parent,
7 who is awarded custody during the marriage of the parents, has parental authority.
8 See C.C. Art. 234 (Rev. 2015). Under prior law, the father was the proper party to
9 be sued and only if the father was mentally incompetent, committed, interdicted,
10 imprisoned, or an absent person was the mother the proper party to sue. See Article
11 732 (as amended prior to 2015).

12 * * *

13 Art. 2592. Use of summary proceedings

14 Summary proceedings may be used for trial or disposition of the following
15 matters only:

16 (1) An incidental question arising in the course of judicial proceedings,
17 including the award of and the determination of reasonableness of attorney fees.

18 (2) An application for a new trial.

19 (3) An issue which may be raised properly by an exception, contradictory
20 motion, or rule to show cause.

21 (4) An action against the surety on a judicial bond after judgment has been
22 obtained against the principal, or against both principal and surety when a summary
23 proceeding against the principal is permitted.

24 (5) The homologation of a judicial partition, of a tableau of distribution or
25 account filed by a legal representative, or of a report submitted by an auditor,
26 accountant, or other expert appointed by the court; and an opposition to any of the
27 foregoing, to the appointment of a legal representative, or to a petition for authority
28 filed by a legal representative.

29 (6) A habeas corpus, mandamus, or quo warranto proceeding.

30 (7) The determination of the rank of mortgages, liens, and privileges on
31 property sold judicially, and of the order of distribution of the proceeds thereof.

32 (8) The original granting of, subsequent change in, or termination of custody,
33 visitation, and support for a minor child; support for a spouse; injunctive relief;
34 support between ascendants and descendants; use and occupancy of the family home

1 or use of community movables or immovables; or use of personal property.

2 (9) **An action to compel an accounting at termination of parental**
3 **authority; and an action to seek court approval to alienate, encumber, or lease**
4 **the property of a minor, to incur an obligation of a minor, or to compromise the**
5 **claim of a minor.**

6 (10) An action to annul a probated testament under Article 2931.

7 ~~(10)~~(11) An action to enforce the right to a written accounting provided for
8 in R.S. 9:2776.

9 ~~(11)~~(12) An action for dissolution or specific performance of a compromise
10 entered pursuant to Article 1916(B) or by consent judgment.

11 ~~(12)~~(13) All other matters in which the law permits summary proceedings
12 to be used.

13 Revision Comments - 2015

14 An action under Paragraph (9) of this Article may also be brought ex parte
15 when the undertutor concurs in the recommendation made by the tutor. See C.C.P.
16 Art. 4271. If the undertutor fails to concur in the tutor's recommendation, the tutor
17 may proceed by summary proceedings against the undertutor. Id.

18 * * *

19 BOOK VII. SPECIAL PROCEEDINGS

20 * * *

21 TITLE VII. ADMINISTRATION OF MINOR'S PROPERTY DURING MARRIAGE
22 OF PARENTS

23 ~~Art. 4501. Father or mother as administrator of minor's property~~

24 ~~A. When both parents are alive and not divorced or judicially separated,~~
25 ~~property belonging to a minor may be sold or mortgaged, a claim of a minor may be~~
26 ~~compromised, and any other step may be taken affecting his interest, in the same~~
27 ~~manner and by pursuing the same forms as in case of a minor represented by a tutor,~~
28 ~~the father or the mother when the father is mentally incompetent, committed,~~
29 ~~interdicted, or is an absentee, occupying the place of and having the powers of a~~
30 ~~tutor.~~

31 ~~B. Whenever the action of an undertutor would be necessary, an undertutor~~

1 ~~ad hoc shall be appointed by the court, who shall occupy the place of and have the~~
 2 ~~powers of an undertutor.~~

3 **Art. 4501. Rights of parents during marriage over minor's property**

4 **A. Except as otherwise provided by law, during marriage, the parents**
 5 **shall seek court approval to alienate, encumber, or lease the property of the**
 6 **minor, incur an obligation of the minor, or compromise a claim of the minor,**
 7 **in the same manner and using the same procedure as a tutor. The parents shall**
 8 **petition jointly, unless one parent is mentally incompetent, interdicted, or**
 9 **imprisoned, or is an absent person, in which case the other parent shall petition**
 10 **alone. One parent may also petition alone, with permission of the court, if the**
 11 **other parent fails or refuses to do so.**

12 **B. An ascendant having parental authority shall be considered a parent**
 13 **for the purposes of this Article.**

14 Revision Comments - 2015

15 (a) This Article changes the law in part. In this Article, when parents are
 16 married, the parents must seek court approval to alienate, encumber, or lease
 17 property of the minor, incur an obligation of the minor, or compromise a claim of the
 18 minor. Under prior law, the father brought the action unless he was mentally
 19 incompetent, committed, imprisoned, or an absent person, in which case the mother
 20 brought the action. C.C.P. Arts. 4501 and 4502 (as amended prior to 2015). Venue
 21 for the action is found in Art. 74.6 (Rev. 2015).

22
 23 (b) The reference to exceptions otherwise provided by law in Paragraph A
 24 of this Article includes the acts that parents may perform without court approval
 25 found in R.S. 9:572 (Rev. 2015).

26
 27 (c) If an ascendant is granted custody during the existence of a marriage, that
 28 person has parental authority and will be considered a parent for purposes of this
 29 Article. See C.C. Art. 234 (Rev. 2015).

30 ~~Art. 4502. Right of mother to represent minor~~

31 ~~The mother shall have the authority of the father during such time as the~~
 32 ~~father is mentally incompetent, committed, interdicted, imprisoned, or an absentee.~~
 33 ~~Moreover, with permission of the judge, the mother may represent the minor~~
 34 ~~whenever the father fails or refuses to do so; and in any event she may represent the~~
 35 ~~minor under the conditions of the laws on the voluntary management of another's~~
 36 ~~affairs.~~

1 TITLE VII-A. ADMINISTRATION OF COURT JUDGMENT IN FAVOR OF
2 MINOR

3 ~~Art. 4521. Judgment in favor of a minor; court order~~

4 ~~Whenever a court renders a monetary judgment or a judgment of possession~~
5 ~~of property in favor of a minor, the court may include in the judgment such orders~~
6 ~~as the court deems necessary to ensure that the funds or property adjudicated to the~~
7 ~~minor are used, administered, and conserved to the benefit of the minor, including~~
8 ~~but not limited to placing it into the registry of the court, in trust in accordance with~~
9 ~~the Louisiana Trust Code, or into a structured settlement in accordance with Article~~
10 ~~4522.~~

11 **Art. 4521. Payments to minor**

12 **A. When a minor is to be paid funds as the result of a judgment or**
13 **settlement, the court may order any of the following: (1) that the funds be paid**
14 **directly into the registry of the court for the minor's account, to be withdrawn**
15 **only upon approval of the court, or (2) that the funds be invested directly in an**
16 **investment approved by the court, or (3) that the funds be placed in trust in**
17 **accordance with the Louisiana Trust Code and the provisions of Article 4275.1,**
18 **or (4) that the funds be paid under a structured settlement agreement that**
19 **provides for periodic payments and is underwritten by a financially responsible**
20 **entity that assumes responsibility for future payments, or (5) any combination**
21 **of Subparagraphs (1) through (4) of this Paragraph of this Article.**

22 **B. In determining whether a proposed periodic payment schedule is in**
23 **the best interest of the minor, the court shall consider the following factors:**

24 **(1) Age and life expectancy of the minor.**

25 **(2) Current and anticipated financial needs of the minor.**

26 **(3) Income and estate tax implications.**

27 **(4) Impact on eligibility for government benefits.**

28 **(5) Present value of the proposed payment arrangement and the method**
29 **by which the value is calculated.**

1 Revision Comment - 2015

2 This Article expounds and consolidates its predecessor articles. See C.C.P.
3 Arts. 4521 and 4522 (as amended prior to 2015). Like its predecessors, this Article
4 provides options to the court to protect the minor when he is paid funds pursuant to
5 a judgment or settlement.

6 ~~Art. 4522. Judgment in favor of minor; structured settlement~~

7 ~~A. Whenever the court renders a monetary judgment in favor of a minor, the~~
8 ~~court may order that the money be paid under a structured settlement agreement~~
9 ~~which provides for periodic payments and is underwritten by a financially~~
10 ~~responsible entity that assumes responsibility for future payments.~~

11 ~~B. In determining whether a proposed payment schedule is in the best~~
12 ~~interest of the minor, the court shall consider the following factors:~~

13 ~~(1) Age and life expectancy of the minor.~~

14 ~~(2) Current and anticipated financial needs of the minor.~~

15 ~~(3) Income and estate tax implications.~~

16 ~~(4) Impact on eligibility for government benefits.~~

17 ~~(5) Present value of proposed payment arrangement and the method by~~
18 ~~which the value is calculated.~~

19 Section 3. R.S. 9:571, 572 and 951 through 954 are hereby amended and reenacted,
20 and R.S. 9:573 and Chapter 3-A of Code Title VIII of Code Book I of Title 9 of the
21 Louisiana Revised Statutes of 1950, to consist of R.S. 9:961 and 962, are hereby enacted,
22 to read as follows:

23 §571. ~~General rule that child may not sue parent~~ **Actions between parent, person**
24 **having parental authority, or tutor and child**

25 ~~The child who is not emancipated cannot sue:~~

26 ~~(1) Either parent during the continuance of their marriage, when the parents~~
27 ~~are not judicially separated; or~~

28 ~~(2) The parent who is entitled to his custody and control, when the marriage~~
29 ~~of the parents is dissolved, or the parents are judicially separated.~~

30 **A. No parent may sue his unemancipated minor child. No other person**
31 **having parental authority over the minor may sue him.**

1 **B. An unemancipated minor may not sue any person having parental**
2 **authority over him.**

3 **C. An unemancipated minor may not sue his tutor. The tutor may not**
4 **sue the minor.**

5 Revision Comments - 2015

6 (a) This provision applies during the existence of parental authority, and
7 subsequently during the existence of tutorship.

8 (b) C.C. Art. 234 (Rev. 2015) contemplates the possibility that a third person
9 may be awarded custody of the child during the marriage of his parents. That
10 person, if an ascendant, exercises parental authority; but if that person is not an
11 ascendant, that person exercises the rights of a tutor.

12 (c) No parent may sue his unemancipated minor child, regardless of whether
13 the parent has parental authority. This rule is an absolute bar, which is unilateral.
14 Therefore, if a parent does not have parental authority, the minor may sue the parent
15 even though the parent may not sue the child. In contrast, other persons having
16 parental authority may not sue the unemancipated minor child and vice versa, a bar
17 that is reciprocal.

18 (d) The direct action statute, R.S. 22:1269(B)(1)(d), permits the parent or the
19 child who is injured by the other in an offense or quasi-offense by the other to sue
20 the insurer directly.

21 (e) This procedural bar to suit between a minor child and his parents or other
22 persons having parental authority constitutes a denial of a *right* of action not a cause
23 of action which is substantive. Thus, after the procedural bar to suit no longer exists
24 under the circumstances provided for in this statute a substantive *cause* of action may
25 be asserted by the child against his parents and other persons having parental
26 authority over him, all of whom may assert a cause of action against the child.

27 **§572. Person having parental authority; acts that may be performed without**
28 **court approval**

29 **A person having parental authority may perform the following acts**
30 **without court approval:**

31 **(1) Alienate any movable property of the minor if the sum to be received**
32 **does not exceed fifteen thousand dollars.**

33 **(2) Encumber any property of the minor as security for his obligation**
34 **if the secured obligation does not exceed fifteen thousand dollars.**

35 **(3) Compromise a cause of action of the minor if the sum or value of the**
36 **property to be paid or received does not exceed fifteen thousand dollars,**
37 **excluding court costs, attorney fees, and other expenses.**

1 (4) Make usual or customary donations of the corporeal, movable
 2 property of the minor, if the value of the minor's property transferred by the
 3 donation does not exceed one thousand dollars and the minor's property
 4 donated without court approval during parental authority does not exceed a
 5 total of fifteen thousand dollars.

6 (5) Obligate the minor if the obligation does not exceed fifteen thousand
 7 dollars.

8 ~~§572~~ §573. Uncontested paternity proceedings; proof by affidavit; adoption of court
 9 rules

10 The court vested with jurisdiction may provide, by local rule, that in
 11 uncontested proceedings to establish paternity, proof may be submitted by affidavit.

12 * * *

13 CHAPTER 3. PROVISIONAL CUSTODY BY MANDATE OF PERSONS

14 HAVING PARENTAL AUTHORITY

15 ~~§951. Provisional custody by mandate; conferring~~

16 A. ~~Parents acting jointly or, in the event of divorce, or separation from bed~~
 17 ~~and board, or illegitimacy, the natural tutor, tutrix, or cotutors acting jointly, or a~~
 18 ~~grandparent awarded custody, may authorize any person of legal age to provide for~~
 19 ~~the care, custody, and control of a minor child.~~

20 B. ~~For purposes of this Chapter, any person who could qualify as a natural~~
 21 ~~tutor, tutrix, or cotutor pursuant to Section 2 of Chapter 1 of Title VIII of Book I of~~
 22 ~~the Louisiana Civil Code may confer provisional custody by mandate of a child~~
 23 ~~lawfully within his care, custody, and control, although he has not judicially~~
 24 ~~qualified for the office of natural tutor, tutrix, or cotutor.~~

25 C. ~~Provisional custody by mandate may not be conferred upon a parent or~~
 26 ~~other person previously denied custody by court order.~~

27 §951. Provisional custody by mandate of persons having parental authority;
 28 delegation

29 A person having parental authority over a child may delegate the

provisional custody of that child by written mandate to any natural person.

Revision Comments - 2015

(a) This provision differs from its predecessor, R.S. 9:951, in that it applies only during the existence of parental authority under C.C. Arts. 221 through 235 (Rev. 2015) while the parents of a child are married. When parental authority terminates or a third person other than an ascendant is awarded custody of the child during parental authority as C.C. Art. 234 (Rev. 2015) recognizes to be a possibility, R.S. 9:961 (Rev. 2015) applies.

(b) Even though this provision only applies during the existence of parental authority, ascendants awarded custody of a child during the marriage of his parents have parental authority (see C.C. Art. 234, second paragraph, (Rev. 2015), and are extended the same opportunity as parents to delegate custody of the child by provisional mandate. This changes the law.

(c) Provisional custody by mandate is temporary. See R.S. 9:952 (Rev. 2015).

§952. Duration of provisional custody; termination

A. The mandate of provisional custody shall be effective for the ~~duration of time provided therein,~~ **term stipulated,** but in no case shall it **the stated term shall not** exceed one year from the date of execution.

B. Regardless of the ~~duration provided above,~~ **term stipulated,** the mandate of provisional custody shall terminate:

(1) When revoked by ~~either parent, by a natural tutor or tutrix, by either natural cotutor, or by a grandparent awarded custody~~ **any person having parental authority.**

(2) When the agent **mandatary** resigns or otherwise renounces the mandate.

(3) Fifteen days after the death of ~~either parent, natural tutor or tutrix, natural cotutor, or grandparent awarded custody~~ **any person having parental authority.**

(4) Upon the qualification of a court appointed tutor or provisional tutor.

§953. ~~Functions, powers, and duties of agent~~ **Authority of the mandatary**

~~In addition to the general functions, powers, and duties accorded to tutors pursuant to Chapter 8 of Title VI of Book VII of the Code of Civil Procedure, except those that require court approval, a mandate of child custody may provide for the health, education, and welfare of the child, which, if so indicated, may include the following:~~

1 **A mandate of provisional custody of a child may provide for the health,**
2 **education, and welfare of the child, including the following:**

3 (1) Consenting to and authorizing such medical care, treatment, or surgery
4 as may be ~~deemed~~ necessary for the health, safety, and welfare of the child.

5 (2) Enrolling the child in such schools or educational institutions as may be
6 ~~deemed~~ necessary for his ~~due~~ and proper education.

7 (3) Disciplining the child in such reasonable manner as may be necessary for
8 his proper rearing, supervision, and training.

9 (4) Doing and performing all other such acts as may be necessary for the
10 shelter, support, and general welfare of the child.

11 §954. Statutory form

12 ~~The following is a suggested form which may be used by a parent, natural~~
13 ~~tutor, tutrix, or cotutors acting jointly, or a grandparent awarded custody, to confer~~
14 ~~the power of provisional custody for the care, custody, and control of the named~~
15 ~~minor child as authorized herein:~~

16 ~~PROVISIONAL CUSTODY BY MANDATE~~

17 ~~STATE OF LOUISIANA~~

18 ~~PARISH OF _____~~

19 ~~BE IT KNOWN THAT on this ___ day of _____, 20___, before me,~~
20 ~~the undersigned notary, and in the presence of the competent witnesses hereinafter~~
21 ~~named and undersigned:~~

22 ~~Personally came and appeared:~~

23 ~~(affiant's name, marital status, and mailing address), who is the (parent(s), or, in the~~
24 ~~event of divorce, separation, or illegitimacy, the natural (co)tutor or tutrix), or~~
25 ~~grandparent awarded custody of (minor child(ren)) who, by these presents make,~~
26 ~~name, constitute, and appoint (agent's name and mailing address) and grant~~
27 ~~provisional custody of the above named child(ren), to provide for the health,~~
28 ~~education, and welfare of the child as provided by the law on Provisional Custody~~
29 ~~by Mandate, specifically including the authority to:~~

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~~INITIAL ALL APPLICABLE PROVISIONS:~~

~~_____ (1) Consent to and authorize such medical care, treatment, or surgery as may be deemed necessary for the health, safety, and welfare of the child.~~

~~_____ (2) Enroll the child in such schools or educational institutions as may be deemed necessary for his due and proper education.~~

~~_____ (3) Discipline the child in such reasonable manner as may be necessary for his proper rearing, supervision, and training.~~

~~_____ (4) Do and perform all other such acts as may be necessary for the shelter, support, and general welfare of the child.~~

~~This Provisional Custody by Mandate will continue to be effective until _____, 20 __, or one year from date hereof, whichever period is shorter.~~

~~I agree that any third party who receives a copy of this document may rely upon the authority granted the agent as indicated herein and may act in reliance on such authority. Revocation or termination by operation of law is not effective as to a third party until he has actual knowledge thereof. I agree to indemnify and hold harmless the third party for any claims that arise against him because of reliance on this Provisional Custody by Mandate.~~

~~The undersigned agent does hereby accept the provisional custody of the children named herein.~~

~~THUS DONE AND PASSED at _____, state of _____, in the presence of _____ and _____, competent witnesses, who sign these presents with the appearers and me, notary, after due reading of the whole.~~

~~WITNESSES:~~

(Parent, Tutor, Tutrix, or Grandparent awarded custody)

(Other parent, Cotutor, or Grandparent awarded custody)

(Agent)

NOTARY PUBLIC

The following is a suggested form that may be used by a person having parental authority to delegate the provisional custody of the named child:

PROVISIONAL CUSTODY BY MANDATE

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN THAT on this _____ day of _____, 20____, before me, the undersigned notary, and in the presence of the competent witnesses hereinafter named and undersigned:

Personally came and appeared:

(*affiant's name, marital status, and mailing address*), who is the (*person(s) having parental authority*) of (*child(ren)*) and who, by these presents makes, names, constitutes, and appoints (*mandatary's name and mailing address*) and grants provisional custody of each of the above named children, to provide for the health, education, and welfare of each child as provided by the law on Provisional Custody by Mandate, specifically including the authority to:

INITIAL ALL APPLICABLE PROVISIONS:

(1) Consent to and authorize such medical care, treatment, or surgery as may be necessary for the health, safety, and welfare of each child.

(2) Enroll each child in such schools or educational institutions as may be necessary for his proper education.

(3) Discipline each child in such reasonable manner as may be necessary for his proper rearing, supervision, and training.

(4) Do and perform all other such acts as may be necessary for the shelter, support, and general welfare of each child.

This Provisional Custody by Mandate will continue to be effective until _____, 20____, or one year from date hereof, whichever period is shorter.

I agree that any third party who receives a copy of this document may rely upon the authority granted the mandatary as indicated herein and may act in reliance on such authority. I agree to indemnify and hold harmless the third party for any claims that arise against him because of reliance on this Provisional Custody by Mandate.

The undersigned mandatary does hereby accept the provisional custody of each child named herein.

THUS DONE AND PASSED at _____, state of _____, in the presence of the undersigned, competent witnesses, who sign these presents with the appearer(s) and me, notary, after due reading of the whole.

WITNESSES:

(Person having parental authority)

(Other person having parental authority)

(Mandatory)

NOTARY PUBLIC

Revision Comment - 2015

The provisional custody by mandate as provided in R.S. 9:951 (Rev. 2015) need not be in authentic form, only in writing, even though this "suggested form" does provide for the signatures of two witnesses and the notary. See C.C. Art. 1833 (Rev. 1984).

CHAPTER 3-A. PROVISIONAL CUSTODY BY MANDATE OF A TUTOR

OR GRANDPARENT WITH CUSTODY

§961. Provisional custody by mandate of a natural tutor or cotutors with custody, but not yet judicially qualified, or a grandparent awarded custody of a child; delegation

A natural tutor or cotutors with custody, but not yet judicially qualified, or a grandparent awarded custody of a child after parental authority terminates, may delegate the provisional custody of that child by written mandate to any natural person, subject to the same rules governing the duration of the mandate and the authority and obligations of the mandatory as those governing the provisional custody by mandate of persons having parental authority.

Revision Comments - 2015

(a) This provision expands and clarifies its predecessor, R.S. 9:951. Authority to execute the mandate is extended to a grandparent awarded custody by the court even if not appointed tutor. It clarifies prior law by limiting the tutor authorized to execute the mandate to the tutor with custody of the minor child, not a tutor with administration of the minor's property only.

(b) The provisional custody by mandate of natural tutors and cotutors and grandparents with custody is to be subject in all respects, including duration and content, to the provisions governing a mandate of provisional custody granted by parents. See R.S. 9:951 (Rev. 2015).

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§962. Statutory form

The following is a suggested form that may be used by a natural tutor or cotutors with custody, but not yet judicially qualified, or a grandparent awarded custody of a child to delegate to any natural person the custody of the named child:

THE FOLLOWING FORM IS ALL NEW
PROVISIONAL CUSTODY BY MANDATE

STATE OF LOUISIANA

PARISH OF

BE IT KNOWN THAT on this day of _____, 20____, before me, the undersigned notary, and in the presence of the competent witnesses hereinafter named and undersigned:

Personally came and appeared:

(*affiant's name, marital status, and mailing address*), who is the (*natural tutor or cotutors with custody, but not yet judicially qualified, or a grandparent awarded custody*) of (*minor child(ren)*) and who, by these presents makes, names, constitutes, and appoints (*mandatary's name and mailing address*) and grants provisional custody of each of the above named child(ren), to provide for the health, education, and welfare of each child as provided by the law on Provisional Custody by Mandate, specifically including the authority to:

INITIAL ALL APPLICABLE PROVISIONS:

(1) Consent to and authorize such medical care, treatment, or surgery as may be necessary for the health, safety, and welfare of each child.

(2) Enroll each child in such schools or educational institutions as may be necessary for his proper education.

(3) Discipline each child in such reasonable manner as may be necessary for his proper rearing, supervision, and training.

(4) Do and perform all other such acts as may be necessary for the shelter, support, and general welfare of each child.

This Provisional Custody by Mandate will continue to be effective until _____, 20____, or one year from date hereof, whichever period is shorter.

I agree that any third party who receives a copy of this document may rely upon the authority granted the mandatary as indicated herein and may act in reliance on such authority. I agree to indemnify and hold harmless the third party for any claims that arise against him because of reliance on this Provisional Custody by Mandate.

The undersigned mandatary does hereby accept the provisional custody of each child named herein.

THUS DONE AND PASSED at _____, state of _____

1 _____, **in the presence of the undersigned, competent witnesses,**
 2 **who sign these presents with the appearer(s) and me, notary, after due reading**
 3 **of the whole.**

4
 5 **WITNESSES:**

6 _____
 7
 8 **(Natural tutor or cotutors with custody, but**
 9 **not yet judicially qualified, or a**
 10 **grandparent awarded custody)**

11
 12 _____
 13 **(Other Cotutor or Undertutor)**

14
 15 _____
 16 **(Mandatory)**

17
 18 _____
 19 **NOTARY PUBLIC**
 20

21
 22 Revision Comment - 2015

23 The provisional custody by mandate as provided in R.S. 9:961 (Rev. 2015)
 24 need not be in authentic form, only in writing, even though this "suggested form"
 25 does provide for the signatures of two witnesses and a notary. See C.C. Art. 1833
 26 (Rev. 1984).

27 Section 4. The Louisiana State Law Institute is hereby directed to prepare, revise,
 28 and update any Comment as necessary to reflect the provisions of this legislation as enacted.

29 Section 5. This Act shall become effective on January 1, 2016.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

SB 134 Engrossed

2015 Regular Session

Peacock

Present law (C.C. Art. 215) provides that a child, whatever be his age, owes honor and respect to his father and mother.

Proposed law (C.C. Art. 236) retains present law.

Present law (C.C. Art. 216) provides that a child remains under the authority of his father and mother until his majority or emancipation and in case of difference between the parents, the authority of the father prevails.

Proposed law (C.C. Arts. 221, 232, 234, and 235) revises present law to provide that a married father and a mother share parental authority over their minor child, unless modified in accordance with law, until the child attains the age of majority or is emancipated, or upon termination of the marriage of the parents of the child.

Present law (C.C. Art. 217) provides that as long as the child remains under the authority of his father and mother, he is bound to obey them in everything which is not contrary to good

morals and the laws.

Proposed law (C.C. Art. 228) retains present law.

Present law (C.C. Art. 218) provides that an unemancipated minor cannot quit the parental house without the permission of his father and mother, who have the right to correct him, provided it be done in a reasonable manner.

Proposed law (C.C. Arts. 227 and 223) retains present law.

Present law (C.C. Art. 219) provides that the father and mother have a right to appoint tutors to their children.

Proposed law (C.C. Art. 222) retains present law.

Present law (C.C. Art. 220) provides that fathers and mothers may delegate a part of their authority to teachers and other persons.

Proposed law (C.C. Art. 233) retains present law.

Present law (C.C. Art. 221) provides for the parental administration of a child's estate by the father and in some cases by the mother, during their marriage, until the child attains the age of majority or is emancipated.

Proposed law (C.C. Art. 229, 230, and 231) provides that each parent has the right and the obligation to administer the property of their unemancipated minor child in accordance with law, until the termination of parental authority.

Present law (C.C. Art. 223) provides that parents have during marriage a usufruct over the property of their unemancipated minor child.

Proposed law (C.C. Arts. 229, 230, and 231) provides for the rights and obligations of parents who administer the property of their unemancipated minor child.

Present law (C.C. Art. 224) provides for the obligations resulting from the parents' usufruct over the property of their unemancipated minor child.

Proposed law (C.C. Arts. 229, 230, and 231) provides for the rights and obligations of parents who administer the property of their unemancipated minor child.

Present law (C.C. Art. 226) provides for exceptions to the parents' usufruct over the property of their unemancipated minor child.

Proposed law suppresses the present law of C.C. Art. 226.

Present law (C.C. Art. 227) provides that fathers and mothers, by the very act of marrying, contract together the obligation of supporting, maintaining, and educating their children.

Proposed law (C.C. Arts. 223, 224, and 226) retains present law.

Present law (C.C. Art. 228) provides that a child has no right to sue either parent for a marriage settlement or other advancement.

Proposed law (R.S. 9:571) provides that an unemancipated minor child may not sue any person having parental authority over him.

Present law (C.C. Art. 229) provides for the reciprocal alimentary duties of ascendants and descendant.

Proposed law (C.C. Art. 237) retains present law.

Present law (C.C. Art. 230) provides for the scope of the alimentary obligation.

Proposed law (C.C. Arts. 237, 238, 239, and 224) retains present law.

Present law (C.C. Art. 231) provides that the alimony shall be granted in proportion to the wants of the person requiring it, and the circumstances of those who are to pay it.

Proposed law (C.C. Art. 238) retains present law.

Present law (C.C. Art. 232) provides for the reduction of alimony or the discharge from payment.

Proposed law (C.C. Art. 239) retains present law.

Present law (C.C. Art. 233) provides that if the obligor cannot pay alimony, the judge may require that the obligor receive the obligee in his house and maintain him.

Proposed law suppresses present law.

Present law (C.C. Art. 234) provides that a father or mother may offer to receive and support a child in his or her house and be dispensed with paying alimony.

Proposed law suppresses present law.

Present law (C.C. Art. 235) provides that fathers and mothers owe protection to their children and may appear for them in court.

Proposed law (C.C. Arts. 223 and 222) retains present law.

Present law (C.C. Art. 236) provides that fathers and mothers may justify themselves in an action against them for assault and battery if they have acted in defense of their children.

Proposed law (C.C. Art. 223) provides that parents have the right and obligation to protect their child.

Present law (C.C. Art. 237) provides that fathers and mothers are answerable for the offenses and quasi-offenses of their children.

Proposed law (C.C. Art. 225) retains present law.

Present law (C.C. Arts. 238 through 245) provides for the duties of parents toward their illegitimate children and for the duties of illegitimate children toward their parents.

Proposed law suppresses present law.

Proposed law (C.C.P. Art. 74.6) is new. Proposed law provides for venue for actions to seek court approval by parents during marriage.

Present law (C.C.P. Art. 683) provides for proper party plaintiff for an unemancipated minor.

Present law (C.C.P. Art. 683(C)) provides that the father is the proper plaintiff to sue to enforce a right of an unemancipated minor and provides for exceptions to this rule.

Proposed law (C.C.P. Art. 683(B)) provides that all persons having parental authority of an unemancipated minor must join as proper plaintiffs to sue to enforce a right of an unemancipated minor and provides for exceptions to this rule.

Present law (C.C.P. Art. 732) provides for proper party defendant for an unemancipated minor. Present law (C.C.P. Art. 732(C)) provides that the father is the proper defendant in an action to enforce an obligation against an unemancipated minor and provides for exceptions to this rule.

Proposed law (C.C.P. Art. 732(B)) provides that any person having parental authority of an unemancipated minor is a proper defendant in an action to enforce an obligation against a minor.

Present law (C.C.P. Art. 2592) provides for summary proceedings.

Proposed law (C.C.P. Art. 2592(9)) provides that summary proceedings may be used for trial or disposition of an action to compel an accounting at termination of parental authority; an action to seek court approval to alienate, encumber, or lease the property of a minor, incur an obligation of a minor, or compromise the claim of a minor.

Present law (C.C.P. Art. 4501) provides that when married, a father or the mother under specific circumstances, may use the same forms and procedures as a tutor to sell or mortgage the property of a minor, or compromise a claim of the minor, or take any step affecting the interest of the minor.

Proposed law (C.C.P. Art. 4501) retains present law in part. Proposed law (C.C.P. Art. 4501) revises present law to provide that the parents shall seek court approval to act for a minor and provides exceptions to this rule. Proposed law (C.C.P. Art. 4501) also provides that an ascendant having parental authority shall be considered a parent for the purposes of proposed law.

Present law (C.C.P. Art. 4502) provides for when a mother can act for or represent her child.

Proposed law suppresses present law, because the rights of a mother have been provided for in proposed law (C.C.P. 4501).

Present law (C.C.P. Arts. 4521 and 4522) provides for the administration of court judgments in favor of a minor.

Proposed law (C.C.P. Art. 4521) provides for the combination of the principles of present law and for additional protections for a minor.

Present law (R.S. 9:571) provides that a child who is not emancipated cannot sue either parent during the marriage of the parents or the parent who has custody when the marriage of the parents is dissolved or the parents are judicially separated.

Proposed law (R.S. 9:571) provides that a parent, a person having parental authority, and a tutor may not sue the unemancipated minor child. Proposed law further provides that the unemancipated minor child may not sue a person having parental authority or his tutor.

Proposed law (R.S. 9:572) is new. Proposed law provides a list of the acts which a person having parental authority may perform without court approval.

Proposed law (R.S. 9:573) is a redesignation of present law (R.S. 9:572).

Present law (R.S. 9:951-954) provides for provisional custody by mandate.

Proposed law (R.S. 9:951-962) revises present law of provisional custody by mandate to provide for separate rules for persons having parental authority and for tutors.

Proposed law (Section 4 of this Act) directs the Louisiana State Law Institute to prepare, revise, and update any Comment as necessary to reflect the provisions of proposed law as

enacted.

Effective January 1, 2016.

(Amends C.C. Arts. 221, 223, 224, 226-239, C.C.P. Arts. 683, 732, 2592, 4501, and 4521, and R.S. 9:571, 572, 951, 952, 953, and 954; adds C.C. Arts. 222 and 225, C.C.P. Art. 74.6, and R.S. 9:573, 961, and 962; repeals C.C. Arts. 215-220 and 240-245 and C.C.P. Arts. 4502 and 4522)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the engrossed bill

1. Adds the phrase "or property" to indicate that a parent may expend, without court approval, the fruits of the child's property for the expenses of the child's household *or* property (not only the child's household, as the original bill read).
2. Removes the word "committed" to provide that, under extraordinary circumstances, such as if one parent is mentally incompetent, interdicted, or imprisoned, or is an absent person, the other parent has exclusive parental authority over his child.
3. Removes the word "committed" so that proposed law provides that, during marriage, the parents shall petition jointly to seek court approval to alienate, encumber, or lease the property of the minor, incur an obligation of the minor, or compromise a claim of the minor, in the same manner and using the same procedure as a tutor, except that such petitions may be brought by one parent alone if the other parent is mentally incompetent, interdicted, or imprisoned, or is an absent person.
4. Removes proposed specific revisions to existing Comments, and instead provides that the Louisiana State Law Institute is directed to prepare, revise, and update any Comment as necessary to reflect the provisions of proposed law as enacted.