

French Civil Code

BOOK I. Of Persons.

Decreed 25th of March, 1803. Promulgated the 2d of April.

TITLE X.

Of Minority, Guardianship, and Emancipation

Decreed 26th of March, 1803. Promulgated the 5th of April.

CHAPTER I.

Of Minority.

388. A minor is an individual of either sex who has not yet accomplished the age of twenty-one years.

CHAPTER II.

Of Guardianship.

SECTION I.

Of the Guardianship of Father and Mother.

389. The father is, during marriage, administrator of the personal effects of his Children being minors. He is accountable, as far as regards property and rents, for such effects as he has not the enjoyment of; and, as regards property, only for such whereof the law allows him the usufruct.

390. After the dissolution of marriage occurring by the natural or civil death of one of the parties, the guardianship of children being minors, and not emancipated, belongs absolutely to the survivor of the father and mother.

391. The father shall be at liberty, nevertheless, to nominate to the mother surviving and being guardian, a special council, without whose concurrence she shall not have power to do any act relative to the guardianship. If the father specify the acts for which the council shall be nominated, the guardian shall be competent to do other acts without assistance.

392. This nomination of council shall only be made in one of the modes following:

1st. By act of last will;

2d. By a declaration made either before the justice of peace, assisted by his registrar, or before notaries.

393. If at the time of the husband's decease, his wife is with child, a curator for the unborn issue shall be named by a family council. At the birth of the child the mother shall become guardian thereof, and the curator shall be its deputy guardian in full right.

394. The mother is not bound to accept the guardianship; nevertheless, and in case she refuses it, she must discharge the duties thereof until she have caused a guardian to be appointed.

395. If a mother being guardian desires to marry again, she is required before the act of marriage to convoke a family-council, who shall decide whether the guardianship

ought to be continued to her. In defect of such convocation she shall lose the guardianship entirely; and her new husband shall be jointly and severally responsible for all the consequences of the guardianship which she shall have unduly continued.

396. When the family council, being duly convoked, shall continue the guardianship to the mother, it shall of necessity assign to her, as a conjoint guardian, her second husband, who shall with his wife become jointly and severally responsible for the administration subsequent to the marriage.

SECTION II.

Of the Guardianship appointed by the Father or Mother.

397. The individual right of choosing as guardian a relation, or even a stranger, belongs only to the father or mother who shall last die.

398. This right cannot be exercised except in the form prescribed by article 392, and subject to the modifications and exceptions hereinafter mentioned.

399. A wife remarried and not continued in her guardianship of the children of her first marriage, cannot choose them a guardian.

400. When the mother remarried and continued in the guardianship, shall have made choice of a guardian for the children of her former marriage, such choice shall only be valid as far as it shall be confirmed by the family-council.

401. The guardian elected by the father or the mother is not bound to accept the guardianship, if he be not in other respects within the class of persons, whom in default of such special election the family-council might have charged with it.

SECTION III.

Of the Guardianship of Ancestors.

402. Where a guardian has not been chosen for a minor by his father or mother who died last, the guardianship belongs of right to his paternal grandfather; and in default of such to his maternal grandfather, and so ascending, in such manner as that the paternal ancestor shall, in all cases, be preferred to the maternal ancestor in the same degree.

403. Where, in default of the paternal grandfather, and likewise of the maternal grandfather of the minor, an equal claim shall appear to be established between two ancestors of a higher degree, who shall both belong to the paternal line of the minor, the guardianship shall pass of right to such of the two as shall be found to be paternal grandfather of the father of the minor.

404. If the same competition take place between two great-grandfathers of the maternal line, the nomination shall be made by the family-council, who shall, nevertheless, only have power to choose one of such two ancestors.

SECTION IV.

Of Guardianship appointed by the Family-Council.

405. When a child a minor, and not emancipated, shall be without father or mother, or guardian elected by his father or mother, or without male ancestors, as also when the guardian of one of the descriptions above-mentioned, shall find himself either within the case of the exclusions hereinafter described, or validly excused, the nomination of a guardian shall be provided for by a family-council.

406. This council shall be convoked either on the requisition and care of the relations of the minor, of his creditors, or of other parties interested, or even officially and on the prosecution of the justice of the peace at the domicil of the minor. Any person may

declare before this justice of the peace, the fact which shall give occasion to the nomination of a guardian.

407. The family-council shall be composed, exclusive of the justice of the peace, of six relations or connexions, taken as well from the commune where the guardianship shall be opened, as within the distance of two myriameters, half on the father's side, and half on the mother's side, and according to the order of proximity in each line.

The relation shall be preferred to the connexion in the same degree; and amongst relations of the same degree, the elder to the younger.

408. The brothers-german of the minor, and the husbands of sisters-german, are alone excepted from the limitation of the number laid down in the preceding article. If they are six, or above, they shall all be members of the family council, which they shall compose alone, with the widows of ancestors, and ancestors validly excused, if there be any. If they are in number too few, the other relations shall be summoned only for the purpose of completing the council.

409. When the relations or connexions of either line shall find themselves insufficient in number on the spot, or within the distance pointed out by article 407, the justice of the peace shall summon either relations or connexions residing at greater distances, or within the same commune, citizens known as having had habitual friendly intercourse with the father or the mother of the minor.

410. The justice of the peace is at liberty, even when there shall be on the spot a sufficient number of relations or connexions, to give permission to summon, at whatever distance they may be domiciliated, relations or connexions nearer in degree, or of the same degree as the relations and connexions present; in such manner however that it shall operate to withdraw some of the last, and without exceeding the number directed in the preceding articles.

411. The interval for appearance shall be regulated by the justice of the peace on a day fixed, but in such manner that there shall always be an interval of three days at the least between the notification of the summons, and the day appointed for the assembling of the council, although all the parties summoned shall reside within the commune, or within the distance of two myriameters. As often as any among the parties summoned shall be found to reside beyond that distance, the interval shall be augmented by one day for every three myriameters.

412. The relations, connexions, or friends thus convened, shall be bound to appear in person, or cause themselves to be represented by especial proxy. The proxy can only represent one person.

413. Every relation, connexion, or friend convoked, and who without lawful excuse shall fail to appear, shall incur a fine not exceeding fifty francs, and which shall be awarded without appeal by the justice of the peace.

414. If there be sufficient excuse, and it shall appear convenient either to wait for the absent member, or to supply his place; in such case, as in every other where the interest of the minor shall appear to require it, it shall be lawful for the justice of the peace to adjourn the assembly, or to postpone it.

415. This assembly shall be held as of right at the house of the justice of the peace, unless he himself shall point out another place of meeting.

The presence of three-fourths at least of the members convoked shall be necessary in order to their deliberations.

416. The justice of the peace shall preside over the family-council, and shall have therein

a deliberative voice, and the casting vote in case of division.

417. When a minor, residing in France, shall possess property in the colonies, or vice versa, special administration of his property shall be given to a supplementary guardian. In this case the guardian and supplementary guardian shall be independent, and not responsible to each other in regard to the discharge of their respective functions.

418. The guardian shall act and administer, in this capacity, from the day of his nomination, if it took place in his presence; if otherwise, from the day on which it was notified to him.

419. Guardianship is a personal charge, which does not pass to the heirs of the guardian. They shall only be responsible for the conduct of their predecessor; and if they are of age, they shall be bound to continue it until the nomination of a new guardian.

SECTION V.

Of the Supplementary Guardian.

420. In every guardianship there shall be a supplementary guardian, nominated by the family-council. His functions shall consist in acting for the interests of the minor, when they shall be in opposition to those of the guardian.

421. When the functions of guardian shall devolve upon a person described under Section 1, 2, or 3, of the present chapter, such guardian is bound, before entering upon his functions, to convoke a family-council, composed as is pointed out in Section 4, for the purpose of nominating a supplementary guardian. If he intermeddle with the management before he has complied with this formality, the family-council convened, either on the requisition of the relations, creditors, or other parties interested, or officially by the justice of the peace, may, if there be fraud on the part of the guardian, withdraw him from the guardianship without prejudice to the indemnities due to the minor.

422. In other guardianships, the nomination of supplementary guardian shall have place immediately after that of guardian.

423. In no case shall the guardian vote for the nomination of supplementary guardian, who shall be selected, except in the case of brothers-german, in that of two lines to which the guardian shall not belong.

424. The supplementary guardian shall not supply entirely the place of the guardian, when the guardianship shall become vacant, or when it shall be abandoned by absence; but he shall be bound in such case, under pain of damages which may accrue therefrom to the minor, to urge the nomination of a new guardian.

425. The functions of supplementary guardian shall cease at the same period as the guardianship.

426. The regulations contained in sections 6 and 7 of the present chapter, shall apply to supplementary guardians. Nevertheless the guardian shall not be at liberty to urge the deprivation of the supplementary guardian, nor to vote in family councils, which shall be convened for that object.

SECTION VI.

Of the Causes which excuse from Guardianship.

427. Persons excused from guardianship are,
Members of authorities established by titles 2, 3, and 4, of the constitutional act;
The judges of the court of cassation, the commissioner-general of government, and his

substitutes, in the same court;

The commissioners of the national accounts;

The prefects;

All citizens, exercising a public function in a department different from that in which the guardianship is established.

428. Equally exempted from guardianship are,

Military men in active service, and all other citizens who are in the discharge of a commission from government beyond the territory of the republic.

429. If the commission be unauthenticated and contested, the exemption shall not be pronounced until after the government shall have explained itself through the medium of the minister for the department within which the commission alleged as excuse shall lie.

430. Citizens of the description contained in the preceding articles, who have accepted guardianship subsequently to the functions, services, and commissions, which exempt from it, shall not be permitted for such a cause to procure their discharge therefrom.

431. Those, on the contrary, on whom the functions, services, and commissions, shall have been imposed, subsequently to the acceptance and exercise of guardianship, may, if unwilling to continue it, cause a family-council to be convoked within one month, and take measures therein for supplying their place. If, at the expiration of these functions, services, and commissions, the new guardian claim his discharge, or the ancient one demand his guardianship again, it may be restored to the latter by a family-council.

432. No citizen, not being a relation or connection, can be compelled to accept guardianship, except in the case where there shall not be, within the distance of four myriameters, relations or connexions in condition to undertake the guardianship.

433. Every individual who has completed his sixty-fifth year may refuse to become a guardian. He who previously to this age shall have been nominated such, may, at seventy years, cause himself to be discharged from the guardianship.

434. Every individual attacked with a grievous sickness, being duly proved, is exempted from guardianship. He may moreover cause himself to be discharged therefrom, if this infirmity has come upon him since his nomination.

435. Two guardianships are, in the case of all persons, a sufficient excuse for not accepting a third. The husband or father who shall be already charged with one guardianship, shall not be bound to accept a second, other than that of his children.

436. They who have five lawful children are exempted from every guardianship other than that of such children. Children who have died in active service in the armies of the republic shall be always reckoned as operating such exemption.

Other children being dead shall not be reckoned, except so far as they shall themselves have left children in actual existence.

437. The event of children born during guardianship shall not authorize its resignation.

438. If the guardian nominated be present at the deliberation which imposes on him the guardianship, he shall be bound forthwith, and on pain of being excluded from all ulterior objection, to propose his excuses, on which the family-council shall deliberate.

439. If the guardian nominated has not assisted at the deliberation which imposed upon him the guardianship, he may cause a family-council to be convoked in order to deliberate on his excuses. His proceedings on this subject shall take place within an interval of three days, commencing with the intimation which shall have been given

him of his nomination; this interval shall be augmented by one day for three myriameters of distance from the place of his domicile to that of the opening of the guardianship: this interval past, he shall not be heard.

440. If his excuses are rejected he may make application to the courts to have them admitted; but he shall be bound, during the litigation, to act as guardian provisionally.

441. If he succeed in causing himself to be exempted from the guardianship, they who shall have rejected his excuses shall be condemned in costs of suit. If he fail, he shall himself be condemned therein.

SECTION VII.

Of Incapacity, Exclusion and Deprivation of Guardianship.

442. Persons incapable of being guardians or members of family-councils are,

1st. Minors, except the father or the mother;

2d. Interdicted persons;

3d. Women, except the mother and female ancestors;

4th. All those who have, or whose father or mother has, with the minor a suit, in which the estate of such minor, his fortune, or a considerable portion of his property, is brought in question.

443. Condemnation to an afflictive or infamous punishment imports absolutely an exclusion from guardianship. It imports in like manner deprivation, in a case where the question is respecting a guardianship previously conferred.

444. Excluded also from guardianship, and deprivable if already in the exercise of it are,

1st. Persons guilty of notorious misconduct;

2d. Those whose management thereof betrays incapacity or want of fidelity.

445. No individual who shall have been excluded or deprived of a guardianship, can be a member of a family-council.

446. As often as there shall be ground for the deprivation of a guardian, it shall be pronounced by a family council, convoked at the instance of the supplementary guardian, or officially by the justice of the peace. Such guardian shall not be at liberty to neglect calling such convocation, when formally required thereto by one or more relations or connexions of the minor, of the degree of cousin-german or of still nearer degrees.

447. Every resolution by a family-council which shall pronounce the expulsion or deprivation of a guardian, shall recite its motives, and shall not be made until the guardian shall have been heard or summoned.

448. If the guardian concur in the resolution, mention shall be thereof made, and the new guardian shall enter immediately upon his functions. If he object, the supplementary guardian shall sue for a confirmation of the resolution before the court of first instance, which shall decree, saving the right of appeal. The guardian excluded or deprived may himself, in such case, summon the supplementary guardian in order to procure himself to be confirmed in his guardianship.

449. The relations or connexions who shall have required the convocation, may become parties in the cause, which shall be carried on and judged as an urgent affair.

SECTION VIII.

Of the Guardian's Administration.

450. The guardian shall have the care of the person of the minor, and shall represent him in all civil acts. He shall deal with his property like a good father of a family, and shall

answer in damages for the consequences of his mismanagement. He must not buy the property of the minor, nor take it on lease, unless the family-council have authorized the supplementary guardian to let it him to hire, nor accept an assignment of any claim or credit against his ward.

451. Within ten days following that of his nomination, duly notified to him, the guardian shall require the removal of seals, if any have been affixed, and shall proceed immediately to make an inventory of the goods of the minor, in presence of the supplementary guardian. If any thing be due to him from the minor, he must declare it in his inventory, on pain of forfeiture, and this on the requisition which the public officer shall be bound to make thereon to him, and whereof mention shall be made in the statement.
452. Within the month following the close of the inventory, the guardian shall cause to be sold at an auction, held by a public officer in presence of the supplementary guardian, and after bills or notices, of which mention shall be made in the statement of sale, all the moveable goods other than those which the family-council shall have authorized him to preserve in kind.
453. The father and mother, as long as they have the personal and legal enjoyment of the property of the minor, are excused from selling the moveable goods, if they prefer preserving them in order to their restoration in kind. In this case they shall cause an estimate to be made, at their own expense, of their just value, by an experienced person named by the supplementary guardian, and who shall be sworn before the justice of the peace. They shall render the estimated value of such of the moveable goods as they are unable to produce in kind.
454. At the period of entering upon the exercise of every guardianship, other than that of the father and mother, the family-council shall regulate by observation, and according to the importance of the property administered, the amount of the minor's annual expense, as well as that of the administration of his property. The same act shall specify whether the guardian is authorized to procure the assistance in his management of one or more private administrators, paid by salaries and acting under his responsibility.
455. The council shall determine positively the sum at which the obligation on the tutor shall commence, of employing the surplus of the revenues above the expenditure; this employment must be made within the interval of six months, which past, the guardian shall become debtor for interest in default of employing it.
456. If the guardian have not caused the sum at which the employment shall commence to be determined by a family-council, he shall, after the interval expressed in the preceding article, become debtor for the interest of the whole sum unemployed, however small it may be.
457. The guardian, even though father or mother, may not borrow for the minor, nor alienate, nor mortgage his immovable property, without being authorized thereto by a family-council. This authority shall not be accorded except in case of an absolute necessity, or an evident advantage. In the first case the family-council shall not grant its authority, until it shall have been proved, by a succinct account presented by the guardian, that the money, personal effects, and revenues of the minor, are insufficient. The family-council shall point out, in all cases, the immovable property which ought to be sold by preference, and all the conditions which it shall deem useful.
458. The resolutions of the family-council relative to this object shall not be executed until after the guardian shall have demanded and obtained confirmation thereof before the civil court of first instance, which shall decree thereon in the chamber of council,

and after having heard the commissioner of government.

459. The sale shall be made publicly, in presence of the supplementary guardian, at an auction held by a member of the civil court, or by a notary appointed for this purpose, and after the publication of three notices, in three consecutive weeks, in the usual place within the district.
460. The formalities required by articles 457 and 458, in order to the alienation of the property of a minor, do not apply to the cases in which a judgment shall have directed an auction on the application of a coproprietor indivisibly. Provided only in such case that the auction do not take place except in the form prescribed by the preceding article; strangers shall, of necessity, be admitted thereto.
461. The guardian shall not be at liberty to accept or to repudiate a succession fallen to the minor, without a previous authority from the family-council. The acceptance shall only take place under the benefit of the inventory.
462. In a case where a succession repudiated in the name of the minor shall not have been accepted by another, it may be resumed either by the guardian, authorized to this end by a new resolution of the family-council, or by the minor himself when arrived at full age, but in the state in which it shall be found at the time of the resumption, and without power to impeach any sales and other acts which shall have legally taken place during the interval.
463. A donation made to the minor shall not be accepted by the guardian, except with the authority of a family-council. It shall have, with regard to the minor, the same effect as with regard to an adult.
464. No guardian shall be at liberty to bring an action respecting real claims of the minor, nor to acquiesce in a demand relative to such claims, without the authority of a family-council.
465. The same authority shall be necessary to a guardian in order to claim a partition; but it is competent to him without such authority to answer a claim for partition directed against the minor.
466. In order to obtain from it the whole effect which would follow as against adults, the partition should be made by an officer of law, and should be preceded by an estimate made by experienced persons named by the civil court of the place of opening the succession.
Such experienced persons, after having taken an oath well and faithfully to fulfil their office, before the president of the same court, or another judge delegated by him, shall proceed to the division of the inheritance and the formation of lots, which shall be taken by chance, and in the presence either of a member of the court, or of a notary commissioned by him, who shall make distribution of the lots. Every other partition shall be considered merely as provisional.
467. The guardian shall not be at liberty to compound for the minor, until he shall be thereto authorized by the family-council, and under the direction of three juriconsults, appointed by the commissioner of government in the court of first instance. No composition shall be valid, except so far as it shall have been confirmed by the court of first instance, after having heard the commissioner of government.
468. The guardian who shall have causes of grievous dissatisfaction respecting the conduct of the minor, may lay his complaints before a family-council, and if thereto authorized by such council, may claim the confinement of the minor, conformably to what has been decreed on this subject under the title "*Of Paternal Power.*"

SECTION IX.

Of the Accounts of the Guardianship.

469. Every guardian is accountable for his management at the close of it.
470. Every guardian other than the father and mother may be required, even during the guardianship, to submit to the supplementary guardian accounts of the situation of his charge, at such periods as the family-council shall deem it proper to fix upon, provided, nevertheless, that the guardian shall not be bound to furnish more than one of them each year. These accounts of situation shall be drawn up and remitted free of charge on unstamped paper and without any legal formality.
471. The final account of the guardianship shall be rendered at the expense of the minor, when he shall have reached his full age, or obtained his emancipation. The guardian shall advance the expenses. The guardian shall be allowed therein every charge satisfactorily verified, and the object of which shall be useful.
472. Any agreement which may happen between the guardian and the minor on his coming of age, shall be null, unless preceded by the rendering of a detailed account, and the production of vouchers; the whole verified by the receipt of the auditors, ten days at least before such agreement.
473. If the account afford ground for disputes, they shall be prosecuted and determined like other disputes on a civil matter.
474. The sum to which the balance of the account due from the guardian shall amount, shall carry interest without demand, to be computed from the close of the account. The interest on what shall be due to the guardian from the minor, shall only run from the day of the demand of payment subsequent to the close of the account.
475. Every action by a minor against his guardian, relative to the transactions of the guardianship, ceases by prescription after ten years, computing from the majority.

CHAPTER III.

Of Emancipation.

476. The minor is emancipated to all intents and purposes by marriage.
477. The minor, even though not married, may be emancipated by his father, or, in default of father, by his mother, when he shall have attained the full age of fifteen years.
This emancipation shall be effected by the simple declaration of the father or mother, received by the justice of the peace, assisted by his registrar.
478. A minor left without father or mother may like-wise be emancipated, if the family-council judge him capable thereof, provided only he have accomplished his eighteenth year.
In such case the emancipation shall result from the resolution which shall have authorized it, and from the declaration of the justice of the peace, as president of the family-council, made in the same act, that the minor is emancipated.
479. When the guardian shall not have taken any measures for the emancipation of the minor, of which mention is made in the preceding article, and when one or more relations, or connexions of such minors of the degree of cousin-german, or of other nearer degrees, shall judge him capable of being emancipated, they may require the justice of the peace to convoke the family-council in order to deliberate on this subject. The justice of the peace is bound to yield his assent to this requisition.

480. The accounts of the guardianship shall be rendered to the minor emancipated, assisted by a curator, who shall be nominated for him by the family-council.
481. A minor emancipated shall make leases, whose duration shall not exceed nine years; he shall receive his revenues and shall therefore give discharge, and shall do all acts consisting only of pure administration, without being liable in respect of such acts in all cases in which an adult would not be so himself.
482. He shall not bring a real action or be defendant therein, even to receive and give discharge for a personal capital, without the assistance of a curator, who in the last case shall take charge of the employment of the capital received,
483. A minor emancipated is not permitted to borrow, under any pretext, without a resolution of the family-council, confirmed by the civil court, after having heard the commissioner of government.
484. He shall not be permitted to sell or alienate his immoveable property, or to do any other act than those of pure administration, without observing the forms prescribed to an unemancipated minor. With regard to obligations contracted by him in the way of purchases or otherwise, they shall be reducible in case of excess; the courts shall on this subject take into consideration the fortune of the minor, the good or bad faith of the persons who shall have contracted with him, the utility or inutility of the expenses.
485. Every emancipated minor, whose engagements shall have been reduced by virtue of the preceding article, may be deprived of the benefit of emancipation, which shall be recovered by him in pursuing the same forms as those which shall have taken place in conferring it upon him.
486. The minor shall re-enter into guardianship from the day on which his emancipation shall have been revoked, and so continue until his majority shall be accomplished.
487. The minor emancipated, who enters into trade, is reputed an adult for the acts relative to such trading.