

Cabinet Brahin

Société d'avocats au Barreau de Nice
1 rue Louis Gassin - 06300 Nice
Tel : +33 (0)4 93 83 08 76 – Fax : +33 (0)4 93 18 14
37

www.brahin-avocats.com

nicolas.brahin@brahin-avocats.com

Nicolas Brahin

DESS Droit Bancaire et Financier
Université Paris I (Panthéon-Sorbonne)

Céline Zekri

DEA Droit Immobilier Public et Privé, ICH Paris
Université de Nice

Avocats au Barreau de Nice

Correspondant organique de :

Legipass

8, rue Auber - 75009 PARIS
www.legipass.com

Finn Larsen Advokatfirma

Algade 43, 1 - 4000 Roskilde -Danemark
www.advokat-firma.dk

Horizons China Corporate advisory

1801 Lippo Plaza, 222, Huaihai Middle Road
Huangpu, SHANGAI PR China 200021
www.horizons-advisory.com

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ADVOKATFIRMA I FRANKRIG / LAWYERS OFFICE IN FRANCE

By email:
Number of pages: 4

Nice, 2016

Object:

Please find below our note on the executor (“exécuteur testamentaire”) in France.

The executor (« exécuteur testamentaire ») in France:

The article 1025 of the French Civil Code (“Code civil”) states that:

“The testator can name one or several executors that benefit of the full civil capacity to ensure and handle the execution of his wishes.

The Executor that has accepted is mission is bound to accomplish it.

The powers of the executor are not transferable in case of death.”

1. **The executor’s obligation to accomplish his mission:**

As judged by the law previous to the 23rd of June 2006 legislation, the executor that has replaced himself by a third party to accomplish his mission personally handed to him, has committed an offence justifying his removal from office by the Court (Seine first instance court “TGI” May 19th 1962).

Cabinet BRAHIN Société d’Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE

E-mail: info@brahin-avocats.com

www.Brahin-avocats.com

BUREAU PRINCIPAL inscrit au Barreau de NICE (CP 427)
1, RUE LOUIS GASSIN - 06300 NICE FRANCE

BUREAU SECONDAIRE inscrit au Barreau de MONTPELLIE
14, Rue Ernest Michel – 34000 MONTPELLIER

The executor's mandate can be revoked by the Court for serious reasons.

If the executor refuses his mission, a third party cannot replace him if not he will be held liable.

According to article 1025 subparagraph 2, the executor is bound to accomplish his mission from the moment he accepts it except if he is replaced by the Court or if the appointment of an administrator limits his powers.

He must report in the six months of the execution of his mission, article 1031 of the French civil code (« Code civil »).

2. Possible conflict of power with a procedural representative (“mandataire”):

The power of the executor can compete with those of a procedural representative (“mandataire”) in charge of administering the inheritance, in particular when his mission is not to monitor but to proceed to the execution of the deceased's wills.

Therefore, when the deceased has nominated a procedural representative (« mandataire ») posthumous to the effect of administering and handling all or part of the inheritance, this representative will exercise his powers subject to the powers conferred by the executor (Article 812 subparagraph 1 of the French civil code).

As a result of this hierarchy, the posthumous procedural representative (“le mandataire”) cannot exercise his management and administration powers on inheritance assets under mandate of the damages of those entrusted to the executor.

The latter can exercise his powers without the possibility for the procedural representative to oppose himself.

For example, if the posthumous procedural representative (“mandataire”) rents an inheritance building whilst the executor duly authorized wishes to sell it (article 1030-1 of the French civil code), this conflict is settled in favor of the executor.

This rule is put in place to respect the last will of the testator and the confidence he has placed in the executor.

It is also justified by the consideration that the procedural representative (“mandataire”) can administer the hereditary property only if the devolution decided by the testator has been followed (Report of the National Assembly n° 2850, p.268. Senate report n°343, p.253).

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3. Conflicts with other inheritance procedural representatives (“mandataires successoraux”):

Even if the judge has designated a procedural representative (“mandataire”) to temporarily administer the inheritance due to inertia, deficiency or negligence from one or several successors in this administration resulting from disagreements, conflict of interests or complexity of the inheritance situation (article 831-2 of the French civil code), he can only act to the extent compatible with the executor’s powers article 813-2 of the French civil code.

It must be understood that the successors cannot oppose the executor’s powers by entrusting the inheritance administration to a procedural representative (“mandataire”) designated by an agreement according to article 813 of the French civil code.

The judge can maintain the executor in his monitoring functions during the duration of the execution of the will, however, in the event of a forced execution, he cannot subject the executor to his functions more than three years.

4. Banned resignation except under strict conditions:

The executor must suitably execute his mission, at the risk of damages, judicial revocation (article 1026 of the French civil code), or the appointment of judicial administrator that would limit his powers.

However, some regularly accepted events are capable of prematurely ending his mission although limited: the death of the executor, his incapacity, or his removal from office. As a result, the executor can himself end his mission.

The subparagraph 2 of article 1025 of the French Civil Code confirms it as it foresees that if he has accepted it, he has to accomplish his mission, if necessary a judicial administrator can be appointed as accepted in case-law (French Civil court 15th February 1965).

His resignation will not be possible except if he has obtained his removal from office by the judge.

The executor’s mission can be terminated by the Court due to serious reasons (article 1026 of the French civil code).

This new article has consecrated the case-law. The French first instance court can terminate the executor’s mission for example if the accomplishment of his task jeopardizes his health, his negligence, a conflict with the successors (National Assembly report p270), or that causes him damage (Senate report p 254).

The demand for removal of office can emanate from the executor himself (especially for health reasons), his successors (especially in case of conflict), or legatees (“légataire”) and creditors (especially in case of negligence).

The case-law will have to determine what is meant by “serious reasons” justifying a removal of office.

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5. Executor's liability:

If the civil liability (“reponsabilité civile”) of the executor can in theory be borne without having to wait for the end of his mission, it is in practice in its continuation that his liability is the most likely to be engaged at the request of any person interested in the execution of the will (especially a legatee).

The executor can also be criminally liable for breach of trust or theft (articles 1025 to 1034).

The executor takes on the same liability as a procedural representative’s (“mandataire”) (article 1033 subparagraph 3 of the French civil code) for free (article 1033-1 of the French civil code).

His negligence should be appreciated with more leniency than if he was paid (article 1992 of the French civil code).

His responsibility will on the other hand be assimilated to the one of an employed procedural representative (“mandataire”) even if he is awarded by a “diamond” as settled by case-law.

The resignation must not be unexpected subject to the executor’s liability.

I hope this will help you better understand the file.

Best regards,

Nicolas BRAHIN
Avocat au Barreau de Nice
nicolas.brahin@brahin-avocats.com

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