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December 30, 2004

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Hon. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

ATTN: Mary M. Fitzgerald, Esq.  
Assistant Chief, Video Division  
Media Bureau

**Re:** Aerco Broadcasting Corporation  
San Juan, PR  
Application for Involuntary Transfer of Control  
BTC-20020130ACC (Involuntary Transfer)  
WQBS (AM), San Juan, PR (Facility ID#: 573)  
WSJU-TV, San Juan, PR (Facility ID#4077)

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Dear Ms. Fitzgerald:

Our client, Aerco Broadcasting Corporation, has requested that we render an opinion regarding the administration of a decedent's estate when no testament or last will was executed.

Under Puerto Rico law, succession is defined as the transmission of rights and obligations of the deceased to his heirs, providing that it can be granted by the execution of a will or, in its absence, by provision of law. Puerto Rico Civil Code, Articles 599, 604, 31 P.R. Laws Ann. § 2081, 2086. The purpose of executing a will is to provide, among others, for the administration of the decedent's estate. One way to provide for such administration is to appoint an executor. The executor is the person or persons appointed by the testator, judge or designated by law, to assure that decedent's wishes, as established in the will, are fulfilled and, in some cases, to take charge of the administration and conservation of the property of the estate. 2 EFRAÍN GONZÁLEZ TEJERA, DERECHO DE SUCESIONES: LA SUCESIÓN TESTAMENTARIA 536 (2002).

Mary M. Fitzgerald, Esq.  
December 30, 2004  
Page 2

The testator may appoint one or more persons to act as executors. Puerto Rico Civil Code, Article 814, 31 P.R. Laws Ann. § 2511. Once an executor is appointed in the will, at the moment of death, the executor is vested with all the powers conferred by the testator in the will as long as such powers are not contrary to law. Puerto Rico Civil Code, Article 823, 31 P.R. Laws Ann. § 2521. The case may be, however, that no will exists.

The succession by provision of law exists when a person dies without executing a will, or when the will is declared null or invalid. Puerto Rico Civil Code, Article 875, 31 P.R. Laws Ann. § 2591. In the event of a succession by provision of law, the heirs must request from the court to be designated as heirs in a process called "Declaration of Heirs". Puerto Rico Civil Procedure Code, Article 552, 32 P.R. Laws Ann. § 2301. After the issue of the court's writ, the declared heirs will be in charge of the administration of the estate and are responsible for the distributions to the heirs. To wit, if no last will was executed, the persons in charge of the administration of the estate are the declared heirs. Puerto Rico Civil Code, Article 833, 31 P.R. Laws Ann. § 2530; 2 EFRAÍN GONZÁLEZ TEJERA, DERECHO DE SUCESIONES: LA SUCESIÓN TESTAMENTARIA 558 (2002).

Based on the foregoing, we conclude that in the absence of a duly executed will, the duties of the executor must be carried out by the heirs designated in the writ of Declaration of Heirs. This does not preclude that the heirs designate any of the heirs to act as an administrator and representative of the estate. For your ease of reference, attached to this opinion we have included copies of the cited articles of the Puerto Rico Civil Code and the Puerto Rico Civil Procedure Code.

Respectfully,

  
Antonio Escudero Viera

AEV/yv

Enclosures

APPLICABLE PUERTO RICO PROVISIONS

Article 599 of the Puerto Rico Civil Code, 31 P.R. Laws Ann. § 2081.

Succession is the transmission of the rights and obligations of a deceased person to his heirs.

Article 604 of the Puerto Rico Civil Code, 31 P.R. Laws Ann. § 2086.

Succession is granted either by the will of the man as expressed in a will or, in its absence, by provision of law. The first is called testamentary, the second legal succession. It may also be bestowed partly by will of man and partly by provision of law.

Article 814 of the Puerto Rico Civil Code, 31 P.R. Laws Ann. § 2511.

A testator may appoint one or more executors.

Article 823 of the Puerto Rico Civil Code, 31 P.R. Laws Ann. § 2521.

Executors of wills shall have all the powers expressly conferred upon them by the testator and which are not contrary to law.

Article 875 of the Puerto Rico Civil Code, 31 P.R. Laws Ann. § 2591.

Legitimate succession takes place:

(1) If a person dies without a will, or with a void will or [one] which may have lost its validity subsequently.

(2) When the will does not contain the designation of heirship to all or part of the property, or does not dispose of all that belongs to the testator. In such case, legitimate succession shall take place only with

regard to the property of which the testator has not disposed.

(3) When the condition imposed for the designation of heirship is lacking, or if the heir dies before the testator, or repudiates the inheritance, without having a substitute, and there being no right of accretion.

(4) When the heir designated is disqualified to succeed.

**Article 552 of the Puerto Rico Civil Procedure Code, 32 P.R. Laws Ann. § 2301.**

In case of intestate succession, or of the nullity of a will, those who may have an interest in the inheritance may petition the Court of First Instance of the last domicile of the decedent, or of the place where his property is situated, for the issuance of the corresponding order of heir's declaration.

(1) The petition shall state, under oath, the death of the person whose succession is claimed;

(2) that according to the best information and belief of the petitioner, who shall state the sources of such information and the grounds for such belief, the said decedent died without leaving a will; that due search and inquiry have been made and that none has been found, or if he left a will, that same has been declared void;

(3) the names and domiciles of persons who are entitled to the heirship or succession.

The judge to whom the petition has been presented shall examine in the shortest time possible the documental proof on which the petitioner based his grounds, and the negative certificate of the Registry of Wills of the Supreme Court, and from the result thereof, shall issue the proper order without the need of holding a hearing; or he may discretionally request additional proof or set a date for a hearing if he deems it proper. Said order shall be issued without prejudice to a third party, unless it relates to forced heirs.

When the heir's declaration has been solicited in favor of a collateral relative within the sixth degree, if the judge has reason to believe that there exist other kin equally or less remote from the decedent and the value of the estate exceeds five thousand dollars (\$5,000), the judge may, in his discretion, order the publication of a notice announcing the death of the decedent and the names and degrees of kinship of those who claim the inheritance, and calling upon those who consider themselves equally or better entitled to such inheritance to make their appearance and file their claims within a fixed period. Such notices shall be published for a term fixed by order of the judge in a newspaper of general circulation published in the Commonwealth of Puerto Rico. Upon the expiration of the term designated in the notice, which term must be reckoned from the date of the last publication of the notice, the judge upon the acceptance of the proof, shall make an order, as provided by law in such cases naming the persons entitled to the inheritance. Claimants who make their appearance in answer to the notice must set forth in writing and under oath their relationship with the decedent under whom they claim the right of inheritance, in the absence of any document establishing the same.

**Article 833 of the Puerto Rico Civil Code, 31 P.R. Laws Ann. §2530.**

In the cases of the foregoing section, and in case the executor has not accepted the office, the execution of the will of the testator shall devolve upon the heirs.

PART IV. SUCCESSIONS

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*Chapter 215. General Provisions*

SECTION ANALYSIS

- 2081. Succession defined
- 2082. —Additional meaning
- 2083. What included in succession
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- 2085. Rights transmitted from moment of death
- 2086. Succession as testamentary or legal
- 2087. Testamentary succession defined
- 2088. Legitimate or legal succession defined
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- 2090. Inheritance defined
- 2091. Heir and legatee defined
- 2092. How heirs succeed

**§ 2081. Succession defined**

Succession is the transmission of the rights and obligations of a deceased person to his heirs.—Civil Code, 1930, § 599.

HISTORY

**Derivation.**

Civil Code, 1902, § 664a; Civil Code of Louisiana, art. 871.

ANNOTATIONS

1. **Generally.** Our laws of succession are based on the criterion that the legal position occupied by the deceased shall be kept unaltered as much as possible by setting the heir in his place. Feliciano Suárez, *Ex parte*, 1986, 117 D.P.R. 402.

Although certain rights of personality and of family relationship are nontransferable, as are certain patrimonial rights and rights of public character (duties and

tion status is governed by the law in force at the time of the birth of the person whose status is in question. *Martínez v. Widow of Martínez*, 1963, 88 P.R.R. 429.

The substantive rights involved in a hereditary partition are determined and governed by the laws which prevail at the time of the predecessor's death, and other laws which might be in effect at the time of the partition are not applicable, even though in the latter the rights acquired thereunder are not recognized or otherwise regulated. *Ex parte Cortés*, 1962, 86 P.R.R. 111.

#### § 2086. Succession as testamentary or legal

Succession is granted either by the will of the man as expressed in a will or, in its absence, by provision of law.

The first is called testamentary, the second legal succession.

It may also be bestowed partly by will of man and partly by provision of law.—Civil Code, 1930, § 604.

##### HISTORY

##### Derivation.

Civil Code, 1902, § 666; Spanish Civil Code, art. 658.

##### ANNOTATIONS

1. **Generally.** Succession, be it testate or intestate, is one of the ways or means of acquiring and transferring property and other rights and obligations of the deceased. *Feliciano Suárez*, *Ex parte*, 1986, 117 D.P.R. 402.

#### § 2087. Testamentary succession defined

Testamentary succession is that which results from the institution of any heir or heirs contained in a will executed in accordance with law.—Civil Code, 1930, § 605.

##### HISTORY

##### Derivation.

Civil Code, 1902, § 666a; Civil Code of Louisiana, art. 876.

##### ANNOTATIONS

1. **Generally.** Succession, be it testate or intestate, is one of the ways or means of acquiring and transferring property and other rights and obligations of the deceased. *Feliciano Suárez*, *Ex parte*, 1986, 117 D.P.R. 402.

#### § 2088. Legitimate or legal succession defined

Legitimate or lawful succession is that which the law has established in favor of the nearest relatives of the deceased.—Civil Code, 1930, § 606.

##### HISTORY

##### Derivation.

Civil Code, 1902, § 666b; Civil Code of Louisiana, art. 877.

##### ANNOTATIONS

1. **Generally.** Succession, be it testate or intestate, is one of the ways or means of acquiring and transferring property and other rights and obligations of the deceased. *Feliciano Suárez*, *Ex parte*, 1986, 117 D.P.R. 402.

Should he die before accepting the legacy, leaving several heirs, one of them may accept and another repudiate the part pertaining to him in the legacy.—Civil Code, 1930, § 811.

## HISTORY

## Derivation.

Civil Code, 1902, § 863; Spanish Civil Code, art. 889.

## § 2501. —Different legacies

The legatee of two legacies, one of which is onerous, cannot renounce the latter and accept the former. If both are either onerous or gratuitous, he is free to accept all of them or repudiate the one he wishes.

The heir who is at the same time a legatee may renounce the inheritance and accept the legacy or renounce the latter and accept the former.—Civil Code, 1930, § 812.

## HISTORY

## Derivation.

Civil Code, 1902, § 864; Spanish Civil Code, art. 890.

## § 2502. Debts and charges when entire estate distributed in legacies

If the entire estate is distributed in legacies, the debts and charges of the same shall be charged to the legatees, pro rata, in proportion to their shares, unless the testator should have provided otherwise.—Civil Code, 1930, § 813.

## HISTORY

## Derivation.

Civil Code, 1902, § 865; Spanish Civil Code, art. 891.

*Subchapter XI. Executors*

## § 2511. Number of executors

A testator may appoint one or more executors.—Civil Code, 1930, § 814.

## HISTORY

## Derivation.

Civil Code, 1902, § 866; Spanish Civil Code, art. 892.

## ANNOTATIONS

1. **Generally.** The executor is the person designated by the testator to execute his last will. *González Muñiz, ex parte*, 1991, C.A. 91-52.

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**§ 2521. Powers when not specially determined by testator**

Should the testator not have specially determined the powers of the executors they shall have the following:

(1) To dispose and pay the suffrages, and funeral expenses of the testator in accordance with the provisions made by him in his will and, in their absence, according to the customs of the town.

(2) To pay, with the knowledge and consent of the heir, the cash legacies.

(3) To carefully see to the execution of the other provisions of the will and maintain, when just, its validity in and out of court.

(4) To take the necessary precautions for the preservation and custody of the property, with the intervention of the heirs who may be present.—Civil Code, 1930, § 824.

HISTORY

Derivation.

Civil Code, 1902, § 876; Spanish Civil Code, art. 902.

ANNOTATIONS

- Administration, 2
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- Capacity to sue, 9
- Collection of debts, 7
- Partition of estate, 5
- Payment of legacies, 8
- Possession of property, 6
- Powers generally, 1

1. **Powers generally.** By "necessary precautions" are meant the temporary measures taken to avoid loss or deterioration of the goods. *González Muñiz, ex parte*, 1991, C.A. 91-52.

In this jurisdiction executorship is not considered as a juridical entity distinct from the heirs it represents. *Paine v. Secretary of the Treasury*, 1962, 85 P.R.R. 787.

When no special powers are conferred on the executors by the testator, they have only those powers enumerated in sections 2521 and 2522 of this title. *Crehore v. Registrar*, 1915, 22 P.R.R. 30.

In a deed of dissolution of a commercial partnership, the deceased partner should be represented by his heirs, which in this case were his mother and his wife who, as such, are the only heirs to the rights the deceased partner had in the said partnership, they being his real representatives, and not the testamentary executor who only has power to execute the acts which he is authorized by law to perform and by such express dispositions as are contained in the will. *Successors of L. Villamil & Co. v. Registrar*, 1910, 16 P.R.R. 721.

Under section 2520 of this title, executors of wills have all the powers expressly conferred upon them by the testator and which are not contrary to law. *Mollfulleda v. Ramos*, 1903, 3 P.R.R. 239.

See also annotations under section 2092 of this title.

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Chapter 223. Intestate Succession

Subchapter I. General Provisions

SECTION ANALYSIS

- 2591. When legitimate succession takes place
- 2592. Disposition of inheritance in absence of testamentary heirs
- 2593. Disqualifications in intestate succession

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- 2602. Direct and collateral lines
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- 2623. Division per stirpes
- 2624. Representation when children of brothers or sisters survive
- 2625. Representation not lost by renunciation of inheritance
- 2626. Representation of living person

Subchapter I. General Provisions

§ 2591. When legitimate succession takes place

Legitimate succession takes place:

- (1) If a person dies without a will, or with a void will or [one] which may have lost its validity subsequently.
- (2) When the will does not contain the designation of heirship to all or part of the property, or does not dispose of all that belongs to the testator. In such case legitimate succession shall take place only with regard to the property of which the testator has not disposed.

(3) When the condition imposed for the designation of heirship is lacking, or if the heir dies before the testator, or repudiates the inheritance, without having a substitute, and there being no right of accretion.

(4) When the heir designated is disqualified to succeed.—Civil Code, 1930, § 875.

## HISTORY

## Derivation.

Civil Code, 1902, § 886; Spanish Civil Code, art. 912.

## ANNOTATIONS

1. **Generally.** Intestate succession is that collection of standards of law established in the Civil Code to regulate the distribution of the estate of a person who dies without a will or with a will which is partly or totally void. *Fernández Franco v. Castro Cardoso*, 1987, 119 D.P.R. 154.

Applying the general principles of the Civil Code, benefits from the Teachers' Retirement Fund (life annuity) which are part of the inheritance because no beneficiary was named belong to the heir designated in the will; as in this case none was designated, a legitimate or intestate succession should be open with regard to this property of which the testator has not disposed. 1958 Op. Sec. Jus. No. 69.

2. **Judicial administration.** Judicial administration lies in an intestate succession or when the will, if any, is not valid and the legitimate or intestate succession takes place, among other cases, when the will is void or when it does not contain the designation of heirship to all or part of the property; this happens when there is preterition. *Cortés v. Cortés*, 1952, 73 P.R.R. 643.

### § 2592. Disposition of inheritance in absence of testamentary heirs

In the absence of testamentary heirs, the law gives the inheritance, according to the rules hereafter set forth, to the legitimate and natural relatives of the deceased, to the widower or widow, and to the Commonwealth of Puerto Rico.—Civil Code, 1930, § 876; Const., art. IX, § 4, eff. July 25, 1952.

## HISTORY

## Derivation.

Civil Code, 1902, § 887; Spanish Civil Code, art. 913.

## Codification.

"People" was changed to "Commonwealth" pursuant to the Constitution.

## Cross references.

All children to have same rights as legitimate children with respect to their parents and to the estate left by the latter, see section 441 of this title.

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3. **Federal law** 3202(e) as amended Veterans' Benefit Act extinguished when survived by he For Veterans' "State" includes

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§ 878.

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Civil Code, 1902

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*Chapter 195. Declaration of Heirship*

SECTION ANALYSIS

- 2301. Procedure for declaration of heirship
- 2302. Trial of adverse claims

**§ 2301. Procedure for declaration of heirship**

In case of intestate succession, or of the nullity of a will, those who may have an interest in the inheritance may petition the Court of First Instance of the last domicile of the decedent, or of the place where his property is situated, for the issuance of the corresponding order of heir's declaration.

(1) The petition shall state, under oath, the death of the person whose succession is claimed;

(2) that according to the best information and belief of the petitioner, who shall state the sources of such information and the grounds for such belief, the said decedent died without leaving a will; that due search and inquiry have been made and that none has been found, or if he left a will, that same has been declared void;

(3) the names and domiciles of persons who are entitled to the heirship or succession.

The judge to whom the petition has been presented shall examine in the shortest time possible the documental proof on which the petitioner based his grounds, and the negative certificate of the Registry of Wills of the Supreme Court, and from the result thereof, shall issue the proper order without the need of holding a hearing; or he may discretionally request additional proof or set a date for a hearing if he deems it proper. Said order shall be issued without prejudice to a third party, unless it relates to forced heirs.

When the heir's declaration has been solicited in favor of a collateral relative within the sixth degree, if the judge has reason to believe that there exist other kin equally or less remote from the decedent and the value of the estate exceeds five thousand dollars (\$ 5,000), the judge may, in his discretion, order the publication of notice announcing the death of the decedent and the names and degrees of kinship of those who claim the inheritance, and calling upon those who consider themselves equally or better entitled to such inheritance to make their appearance and file their claims within a fixed period. Such notices shall be published for a term fixed by order of the judge in a newspaper of general circulation published in the Commonwealth of Puerto Rico. Upon the expiration of the term designated in the notice, which term must be reckoned from the date of the last publication of the notice, the judge upon the acceptance of the proofs, shall make an order, as provided by law in such cases naming the persons

entitled to the inheritance. Claimants who make their appearance in answer to the notice must set forth in writing and under oath their relationship with the decedent under whom they claim the right of inheritance, in the absence of any document establishing the same.—Code Civil Proc., 1933, § 552; July 23, 1974, No. 203, Part 2, p. 98.

## HISTORY

**Source.**

Act Mar. 9, 1905, p. 137, § 19.

**Codification.**

"Superior Court" was changed to "Court of First Instance" pursuant to Reorg. Plan No. 1 of July 28, 1994, known as the "1994 Judiciary Act", §§ 22-23n of Title 4.

Term "district court" was changed to "part of the Superior Court" pursuant to Act July 24, 1952, No. 11, p. 30.

**Amendments—1974.**

Act 1974 eliminated subsection (4); amended fifth paragraph generally; and, in the sixth paragraph, changed the value of the property from \$ 1,000 to \$ 5,000, in first sentence, and inserted "of general circulation" after "in a newspaper" in second sentence.

**Statement of motives.**

See Laws of Puerto Rico:

July 23, 1974, No. 203, Part 2, p. 98.

**Cross references.**

Registry of Wills, see § 2121 et seq. of Title 4.

## ANNOTATIONS

1. Generally.
2. Competence.
3. Petitioners.
4. Other proceedings.

**1. Generally.** The declaration of heirship is always granted without prejudice to a third person with a better right. *Vélez v. Franqui*, 82 P.R.R. 735 (1961).

Where in an action brought to determine the status and the general hereditary rights of some heirs because of total preterition of one of them in the will in question, the intestate succession takes place, the court may, in its summary judgment which ended the suit, decree not only who are the heirs with right to inherit but also that the partition of the hereditary estate be made in a judicial administration which is the adequate proceeding to effect said partition. *Cortés v. Cortés*, 73 P.R.R. 643 (1952).

Only for actions founded on a hereditary right is the declaration of heirship required. *Díaz v. Water Resources Authority*, 71 P.R.R. 872 (1950).

The question of whether a decedent was unmarried at the time he purchased a property cannot be determined within an ex parte proceeding for the ascertainment and determination of his heirs, where it appears from the registry of property that he was married at that time. *Lind v. Registrar*, 66 P.R.R. 140 (1946).

Those who desire to enforce their rights as heirs of a deceased against others who were declared heirs judicially do not need to file independent suit. The controversy can and should be decided within the proceeding for declaration of heirs already filed. *Jaca v. Cruz*, 55 P.R.R. 28 (1939).

Where a declaration of heirship is sought that the court should constitute a default judgment. P.R.R. 30 (1932)

In a case of informalities prescribed by judicial administration.

For general provisions of law established.

**2. Competence.** Competence of the court situated in Puerto Rico where the property is concerned.

In a proceeding for declaration of heirship, the jurisdiction of the district court of first instance is exclusive, for instituting the proceeding in the proper district.

**3. Petitioners.** Competence of the court as daughter of a decedent to challenge not in favor of the court.

Where the beneficiary of another person's heirship based on property of the decedent's.

A decedent's whose rights as heirship respect to property survived him.

In heirship proceedings, document attached to the petition. *Vincenty*, 39 P.R.R.

The mere admission of brothers of the petitioners, as parties should be that the deceased that he left no other petitioners. Ex parte.

Upon examination of the petitioner should be and that the fact is unknown, all of the family relations. Ex parte Mora.

Only where the decedent or has secured.

## ANNOTATIONS

1. **Generally.** The executor having been granted his letters testamentary on September 1, 1937, and an extension of one year having been granted to him by the testator, under section 2524 of this title, the executorship terminated at the expiration of such extension, on September 1, 1939, and there was nothing in the record to show that the heirs and legatees, by common consent, had extended such term under section 2525 of this title. *Mercado v. District Court*, 1943, 62 P.R.R. 350, affirmed 152 F.2d 86 (1948), certiorari denied 328 U.S. 837 (1948).

2. **Removal.** In the absence of express provisions in the Civil Code, the following constitute just causes for the removal of an executor from his office: (a) those which make one incompetent to discharge the duties of such position; (b) those which make one incompetent to exercise the civil rights; (c) misconduct in the execution of his functions, (d) the malicious use—to the prejudice of those called to the inheritance—of powers they do not have, and (e) negligence and poor administration which—even admitting that the office is granted for the time necessary to execute the will—is inferred from an excessive term without even having performed the inventory and appraisal of the hereditary estate. *Alejandro v. Superior Court*, 1972, 100 P.R.R. 599.

The documentary and oral evidence presented to prove the allegations in a motion for removal of the executor and commissioner in partition of the estate from his position as such—documents in a court case and the mentioned officer's testimony—having been examined, the Court concludes that said evidence does not support the findings of fact or "just causes for removal" on which the trial judge relied to deprive said executor and commissioner in partition of his office. *Id.*

An open will in which the executor and commissioner in partition of the estate was designated, having been contested by certain heirs, the fact that he [the executor] has not come out in defense of the will does not constitute serious negligence, misconduct, or bad faith, or that he violated the testamentary or legal obligations of said executor, or that he violated the trust which the predecessor deposited on him by appointing him executor of his last will, or that said executor or commissioner in partition became unworthy to act as such—just causes for the removal of an executor and commissioner in partition from his position—when said officer—who was not a defendant in the suit of nullity—as soon as he became aware of the action, consulted his attorney who advised him not to intervene in the suit until he was judicially notified of the same, making him a defendant. *Id.*

### § 2530. Execution of will by heirs

In the cases of the foregoing section, and in case the executor has not accepted the office, the execution of the will of the testator shall devolve upon the heirs.—Civil Code, 1930, § 833.

## HISTORY

**Derivation.**

Civil Code, 1902, § 885; Spanish Civil Code, art. 911.

## ANNOTATIONS

1. **Generally.** [For future use.]
2. **Termination of executorship.** Since upon expiration of the term fixed by the testator for the executorship, without any extension therefor being granted by judicial authority or by the heirs and legatees, said executorship terminates ipso jure,