

2023 Regular Session

# ACT No. 271

HOUSE BILL NO. 298

BY REPRESENTATIVES HUGHES, BOYD, JEFFERSON, TRAVIS JOHNSON, KNOX,  
NELSON, AND FREEMAN

1 AN ACT

2 To amend and reenact Children's Code Articles 1004(A), 1004.1, 1015, 1015.1, 1016(A),  
3 1037(B), and 1039(B) and Civil Code Article 137(A), to enact Children's Code  
4 Articles 1004.2 and 1015.2, and to repeal Children's Code Article 1004(I), relative  
5 to the termination of parental rights; to provide for the authorization to file a petition  
6 for termination; to provide that the conviction and commission of a sex offense  
7 leading to the conception of the child is grounds for termination of parental rights;  
8 to provide for the petitioner's right to counsel; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Children's Code Articles 1004(A), 1004.1, 1015, 1015.1, 1016(A),  
11 1037(B), and 1039(B) are hereby amended and reenacted and Children's Code Articles  
12 1004.2 and 1015.2 are hereby enacted to read as follows:

13 Art. 1004. Petition for termination of parental rights; authorization to file

14 A. At any time, including in any hearing in a child in need of care  
15 proceeding, the court on its own motion may order the filing of a petition on any  
16 ground authorized by Article 1015 or 1015.1.

17 \* \* \*

18 Art. 1004.1. Petition for termination of parental rights; child conceived as a result  
19 of a sex offense

20 At any time, including prior to or during an adoption proceeding, when a  
21 child is conceived as the result of the conviction or commission of a sex offense as  
22 defined in R.S. 15:541, the victim of the sex offense may petition to terminate the

1 rights of the perpetrator of the sex offense. Termination shall result in the loss of all  
 2 parental rights of the perpetrator regarding the child, including any rights to custody,  
 3 visitation, and contact, as well as any right to intervene in such action. The  
 4 termination shall not affect the inheritance rights of the child. The perpetrator shall  
 5 be cast in judgment for all court costs.

6 Art. ~~1004.1~~. 1004.2. Termination of rights; children in state custody

7 The department shall file and pursue to judgment in the trial court a petition  
 8 to terminate the parental rights of the parent or parents if the child has been in state  
 9 custody for seventeen of the last twenty-two months, unless the department has  
 10 documented in the case plan a compelling reason why filing is not in the best interest  
 11 of the child.

12 \* \* \*

13 Art. 1015. Grounds; termination of parental rights

14 The grounds for termination of parental rights are:

- 15 (1) Conviction of murder of the child's other parent.
- 16 (2) Unjustified intentional killing of the child's other parent.
- 17 ~~(3) Conviction of a sex offense as defined in R.S. 15:541 by the natural~~  
 18 ~~parent which resulted in the conception of the child.~~

19 ~~(4)~~(3) Misconduct of the parent toward this child or any other child of the  
 20 parent or any other child which constitutes extreme abuse, cruel and inhuman  
 21 treatment, or grossly negligent behavior below a reasonable standard of human  
 22 decency, including but not limited to the conviction, commission, aiding or abetting,  
 23 attempting, conspiring, or soliciting to commit any of the following:

- 24 (a) Murder.
- 25 (b) Unjustified intentional killing.
- 26 (c) Aggravated crime against nature as defined by R.S. 14:89.1(A)(2).
- 27 (d) Rape.
- 28 (e) Sodomy.
- 29 (f) Torture.
- 30 (g) Starvation.

1 (h) A felony that has resulted in serious bodily injury.

2 (i) Abuse or neglect which is chronic, life-threatening, or results in gravely  
3 disabling physical or psychological injury or disfigurement.

4 (j) Abuse or neglect after the child is returned to the parent's care and  
5 custody while under department supervision, when the child had previously been  
6 removed for his safety from the parent pursuant to a disposition judgment in a child  
7 in need of care proceeding.

8 (k) The parent's parental rights to one or more of the child's siblings have  
9 been terminated due to neglect or abuse, prior attempts to rehabilitate the parent have  
10 been unsuccessful, and the court has determined pursuant to Article 672.1, that  
11 current attempts to reunite the family are not required.

12 (l) Sexual exploitation or abuse, which shall include, but is not limited to acts  
13 which are prohibited by R.S. 14:43.1, 43.2, 46.3, 80, 81, 81.1, 81.2, 82.1(A)(2), 89,  
14 and 89.1.

15 (m) Human trafficking when sentenced pursuant to the provisions of R.S.  
16 14:46.2(B)(2) or (3).

17 ~~(5)~~(4) Abandonment of the child by placing him in the physical custody of  
18 a nonparent, or the department, or by otherwise leaving him under circumstances  
19 demonstrating an intention to permanently avoid parental responsibility by any of the  
20 following:

21 (a) For a period of at least four months as of the time of the hearing, despite  
22 a diligent search, the whereabouts of the child's parent continue to be unknown.

23 (b) As of the time the petition is filed, the parent has failed to provide  
24 significant contributions to the child's care and support for any period of six  
25 consecutive months.

26 (c) As of the time the petition is filed, the parent has failed to maintain  
27 significant contact with the child by visiting him or communicating with him for any  
28 period of six consecutive months.

29 ~~(6)~~(5) Unless sooner permitted by the court, at least one year has elapsed  
30 since a child was removed from the parent's custody pursuant to a court order; there

1 has been no substantial parental compliance with a case plan for services which has  
 2 been previously filed by the department and approved by the court as necessary for  
 3 the safe return of the child; and despite earlier intervention, there is no reasonable  
 4 expectation of significant improvement in the parent's condition or conduct in the  
 5 near future, considering the child's age and his need for a safe, stable, and permanent  
 6 home.

7 ~~(7)~~(6) The child is in the custody of the department pursuant to a court order  
 8 or placement by the parent; the parent has been convicted and sentenced to a period  
 9 of incarceration of such duration that the parent will not be able to care for the child  
 10 for an extended period of time, considering the child's age and his need for a safe,  
 11 stable, and permanent home; and despite notice by the department, the parent has  
 12 refused or failed to provide a reasonable plan for the appropriate care of the child  
 13 other than foster care.

14 ~~(8)~~(7) The relinquishment of an infant pursuant to Chapter 13 of Title XI of  
 15 this Code.

16 ~~(9) The commission of a sex offense as defined in R.S. 15:541 by the natural~~  
 17 ~~parent which resulted in the conception of the child.~~

18 ~~(10)~~(8) The child is in the custody of the department pursuant to a court  
 19 order for at least one year, unless sooner permitted by the court, and the identity of  
 20 the child's father remains unknown and all the following have occurred:

21 (a) In the course of investigating the case and providing services to the  
 22 family the department has been unable to learn the identity of the father.

23 (b) No party to the proceedings or the mother, if not a party, is able to  
 24 provide a first and last name of a putative father or alias sufficient to provide a  
 25 reasonable possibility of identification and location.

26 (c) The department has obtained all of the following:

27 (i) A certified copy of the child's birth certificate with no one indicated  
 28 thereon as the father of the child, or the father listed has been determined not to be  
 29 the biological father of the child.

1 (ii) A recent certificate from the putative father registry indicating that no  
2 person is listed or registered as the child's father.

3 (iii) A recent certificate from the clerk of court in the parish in which the  
4 child was born indicating that no acknowledgment with respect to this child has been  
5 recorded.

6 Art. 1015.1. Grounds; termination of parental rights of perpetrator of a sex offense

7 Parental rights of a natural parent may be terminated in cases where there is  
8 a conviction or commission of a sex offense as defined in R.S. 15:541 by that natural  
9 parent which resulted in the conception of the child.

10 ~~Art. 1015.1.~~ 1015.2. Termination of parental rights, certain grounds; costs and fees

11 A. A petitioner shall not be required to prepay nor be cast with court costs  
12 or costs of service or subpoena for the filing of the petition pursuant to Article  
13 ~~1015(3) or (9)~~ 1015.1. The clerk of court shall immediately file and process the  
14 petition, regardless of the ability of the petitioner to pay court costs.

15 B. All court costs, attorney fees, costs of enforcement and modification  
16 proceedings, costs of appeals, evaluation fees, and expert witness fees incurred in  
17 filing, maintaining, or defending any proceeding under Article ~~1015(3) or (9)~~ 1015.1  
18 shall be paid by the perpetrator of the sex offense, including all costs of medical and  
19 psychological care for the sexually abused adult, or for the child conceived as a  
20 result of the sex offense.

21 Art. 1016. Right to counsel

22 A.(1) The child and the identified parent shall each have the right to be  
23 represented by separate counsel in a termination proceeding brought in accordance  
24 with this Title. Neither the child nor anyone purporting to act on behalf of the child  
25 may be permitted to waive the child's right to counsel.

26 (2) For actions brought under Article 1015.1, the court shall have discretion  
27 to decide under the circumstances for each case whether to appoint counsel for the  
28 child. In no event shall the petitioner of such action or the minor child be required  
29 to interact with the respondent as a condition to pursue termination under this  
30 Article. Any counsel acting on behalf of the child shall not require a petitioner to

1 make the child available for any visitation or conversation with the respondent or the  
2 respondent's family and shall not require any nonoffending petitioner to take classes  
3 or provide updates on the child. A petitioner shall have the right to seek an  
4 expedited suspensive appeal for any violation of this Article.

5 \* \* \*

6 Art. 1037. Findings and contents of termination judgment; form

7 \* \* \*

8 B.(1) When the court finds that the alleged grounds set out in any Paragraph  
9 of Article 1015 or 1015.1 are proven by the evidentiary standards required by Article  
10 1035 and that it is in the best interests of the child, it shall order the termination of  
11 the parental rights of the parent against whom the allegations are proven. The court  
12 shall enter written findings on both issues. The consideration of best interests of the  
13 child shall include consideration of the child's attachment to his current caretakers.

14 (2) When the grounds for termination set forth in Article 1015.1 have been  
15 established, it shall be considered in the best interests of the child for the parental  
16 rights of the perpetrator to be terminated.

17 \* \* \*

18 Art. 1039. Other dispositions

19 \* \* \*

20 B.(1) If the court finds that the alleged grounds are not proven in accordance  
21 with the evidentiary standards set forth in Article 1035 or if the court finds that  
22 termination of parental rights is not in the best interests of the child, it shall enter  
23 written findings on both issues and may:

24 ~~(1)~~(a) Dismiss the petition.

25 ~~(2)~~(b) Reinstate the parent to full care and custody of the child.

26 ~~(3)~~(c) If the child has been previously adjudicated as a child in need of care,  
27 reinstate that proceeding pursuant to Title VI.

28 ~~(4)~~(d) Upon a showing of sufficient facts, adjudicate the child in need of care  
29 in accordance with Title VI.

1                   ~~(5)(e)~~ Upon a showing of sufficient facts, adjudicate the family in need of  
2 services in accordance with Title VII.

3                   ~~(6)(f)~~ Make any other disposition that is in the best interest of the child.

4                   (2) In actions based on Article 1015.1, if the court finds the alleged grounds  
5 are not proven, then any determination of custody, visitation, contact, and all other  
6 parental rights of the alleged perpetrator shall be determined in a separate action  
7 independent of the termination proceeding.

8   \*       \*       \*

9                   Section 2. Civil Code Article 137(A) is hereby amended and reenacted to read as  
10 follows:

11                   Art. 137. Denial of visitation; ~~felony rape~~ sex offense; death of a parent

12                                   A. In a proceeding in which visitation of a child is being sought by a parent,  
13 if the child was conceived through the commission of a ~~felony rape~~ sex offense as  
14 provided by R.S. 15:541, the parent who committed the ~~felony rape~~ sex offense shall  
15 be denied visitation rights and contact with the child.

16   \*       \*       \*

17                   Section 3. Children's Code Article 1004(I) is hereby repealed in its entirety.

18                   Section 4. This Act shall become effective upon signature by the governor or, if not  
19 signed by the governor, upon expiration of the time for bills to become law without signature  
20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
21 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
22 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

2023 Regular Session  
HOUSE BILL NO. 176

# ACT No. 401

BY REPRESENTATIVE JEFFERSON

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Civil Code Article 525 and to enact Civil Code Article 520, relative to transfer of ownership of movable property; to provide for transfer of ownership by merchants; to provide for the effect of various provisions of the Civil Code; to provide for registered movables; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Article 525 is hereby amended and reenacted and Civil Code Article 520 is hereby enacted to read as follows:

Art. 520. Transfer of ownership by merchant

Except as otherwise provided by legislation, a transferee in good faith and for fair value acquires ownership of a corporeal movable from a transferor who is not the owner only if the transferor has possession of the thing with consent of the owner, is a merchant customarily selling similar things, and transfers the thing in the regular course of the transferor's business.

Revision Comments - 2023

(a) This provision is new. It sets forth a limited exception to the rule that the transfer of a thing of another does not convey ownership. See Article 2452. It does so by formulating a rule that is consistent with the doctrine of entrustment found in the Uniform Commercial Code. See U.C.C. Sections 2-403(2) and 2A-305(2). The



1 rule formulated by this Article is also consistent with the French doctrine of *la*  
 2 *possession vaut titre*, but only as applied to certain transfers. See French Civil Code  
 3 Article 2276. The purpose of this Article is to protect a good faith purchaser for  
 4 value who acquires a movable from a transferor who has possession of the thing with  
 5 the owner's consent, but only when the transferor is a merchant customarily selling  
 6 similar things and the transfer is in the regular course of the transferor's business.

7 (b) The protection that this Article affords to a transferee of a movable in  
 8 good faith, for fair value, and in the regular course of business is similar to the  
 9 protections afforded to a "buyer in the ordinary course of business" as that term is  
 10 used in the Uniform Commercial Code. See R.S. 10:1-201(b)(9); U.C.C. Sections  
 11 1-201(b)(9) and 2A-103(1)(a). Under that definition, neither a dation en paiement  
 12 nor a transfer in bulk is a sale to a buyer in the ordinary course of business.  
 13 Similarly, under this Article, neither a dation en paiement nor a transfer in bulk is a  
 14 sale in the regular course of the transferor's business.

15 (c) Louisiana courts have, in the past, occasionally applied the doctrine of  
 16 equitable estoppel to bar an owner's action for revendication against a good faith  
 17 purchaser of a movable who purchased it from a person to whom the owner  
 18 voluntarily delivered possession. According to that jurisprudence, the owner who  
 19 clothes the possessor with every possible indicium of ownership must bear the loss  
 20 when the possessor transfers the thing to a good faith purchaser. *Theriac v.*  
 21 *McKeever*, 405 So. 2d 354 (La. App. 2 Cir. 1981); *James v. Judice*, 140 So. 2d 169  
 22 (La. App. 3 Cir. 1962); *Flatte v. Nichols*, 96 So. 2d 477 (La. 1957); *William Frantz*  
 23 *& Co. v. Fink*, 52 So. 131 (La. 1909). While the courts' use of the doctrine of  
 24 equitable estoppel is in line with the Uniform Commercial Code's entrustment  
 25 doctrine and the French principle of *la possession vaut titre*, the approach formulated  
 26 by this Article is more predictable than the prior jurisprudence. This Article  
 27 displaces the doctrine of equitable estoppel in this context by declaring that, except  
 28 as otherwise provided by legislation, one who has possession of a corporeal movable  
 29 with the owner's consent may transfer its ownership to another only if the  
 30 requirements of this Article are met.

31 (d) The requirement that the transferor have possession with the owner's  
 32 consent negates the application of this Article to lost or stolen things. The owner's  
 33 right to recover lost or stolen things from a possessor is governed by Articles 521  
 34 and 524.

35 (e) In the absence of a rule like the one set forth in this Article, Louisiana  
 36 courts have erroneously applied Article 524, which by its very terms applies only to  
 37 lost or stolen movables, to the transfer of a movable by a person who has possession  
 38 of the thing with the owner's consent. See *Livestock Producers, Inc. v. Littleton*, 748  
 39 So. 2d 537 (La. App. 2 Cir. 1999); *Louisiana Lift & Equipment, Inc. v. Eizel*, 770  
 40 So. 2d 859 (La. App. 2 Cir. 2000). Unless otherwise provided by legislation, if the  
 41 requirements of this Article are not satisfied, the transfer of a corporeal movable by  
 42 a person who has possession of it with the owner's consent does not transfer  
 43 ownership, and the owner may recover the movable from the transferee without  
 44 reimbursing the purchase price, even if the transferee is in good faith.

45 (f) This Article does not affect the law of mandate. Quite apart from this  
 46 provision, a mandatary in possession of a corporeal movable belonging to the  
 47 principal may have actual or apparent authority to transfer its ownership to another.

48 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Art. 525. Registered movables.

2 ~~The provisions of this Chapter do not apply to movables that are~~ Movables  
3 ~~required by law to be registered in public records~~ are subject to the provisions of this  
4 Chapter.

5 Revision Comments - 2023

6 This provision fills a gap in the law. Former Article 525 declared: "The  
7 provisions of this Chapter do not apply to movables that are required by law to be  
8 registered in public records." However, neither the former article nor any other  
9 provision stated in the affirmative what law governed transfers of registered  
10 movables in lieu of this Chapter. Although sellers of motor vehicles are required to  
11 comply with the Vehicle Certificate of Title Law, R.S. 32:701 et seq., the Vehicle  
12 Certificate of Title Law does not contain provisions addressing the transfer of  
13 ownership of motor vehicles. Louisiana courts have held consistently that the  
14 Vehicle Certificate of Title Law does not require transfer of the certificate of title to  
15 a vehicle in order for the sale to be a valid one and that the sale of a vehicle is not  
16 affected by non-compliance with the Vehicle Certificate of Title Law.  
17 *Transportation Equipment Co. v. Dabdoub*, 69 So. 2d 640 (La. Ct. App. 1954); *Flatte*  
18 *v. Nichols*, 96 So. 2d 477 (La. 1957); *Shanks v. Callahan*, 232 So. 2d 306 (La. App.  
19 1 Cir. 1969); *Tarver v. Tarver*, 242 So. 2 374 (La. App. 2 Cir. 1970); *Robinson v.*  
20 *Jackson*, 255 So. 2d 846 (La. App. 2 Cir. 1971); *Theriac v. McKeever*, 405 So. 2d  
21 354 (La. App. 2 Cir. 1981); *Wright v. Barnes*, 541 So. 2d 977 (La. App. 2 Cir. 1989);  
22 *Maloney v. State Farm Ins. Co.*, 583 So. 2d 12 (La. App. 4 Cir. 1991); *Biggs v.*  
23 *Prewitt*, 669 So. 2d 441 (La. App. 1 Cir. 1995); *Lambert v. Ray Brandt Dodge, Inc.*,  
24 31 So. 3d 1108 (La. App. 5 Cir. 2010). Nevertheless, failure to comply with the  
25 Vehicle Certificate of Title Law is not without consequence. For example, the  
26 purchaser's failure to obtain a certificate of title to the vehicle in accordance with the  
27 Vehicle Certificate of Title Law prevents the purchaser from acquiring a "marketable  
28 title." R.S. 32:706. In addition, a person's knowing failure to comply with disclosure  
29 provisions of the Vehicle Certificate of Title Law may expose that person to criminal

1           and/or civil liability. See, e.g., R.S. 32:706.1. Notwithstanding those and other  
2           obligations imposed by the Vehicle Certificate of Title Law upon parties involved  
3           in the transfer of vehicles, the provisions of this Chapter govern the transfer of  
4           ownership of such vehicles.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

2023 Regular Session  
HOUSE BILL NO. 220

# ACT No. 421

BY REPRESENTATIVE PRESSLY

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Civil Code Articles 531 and 3440 and Code of Civil Procedure Articles 1061, 3651, 3653 through 3655, 3656(A), 3657 through 3662, and 3669, relative to actions to determine ownership or possession; to provide with respect to petitory actions, possessory actions, actions for declaratory judgments to determine ownership, and similar proceedings; to provide for proof of ownership of immovables; to provide with respect to precarious possession; to provide for reconventional demands; to provide with respect to cumulation of actions; to provide with respect to disturbances in fact and in law; to provide with respect to possession and admissibility of title; to provide for relief and appeals; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 531 and 3440 are hereby amended and reenacted to read as follows:

Art. 531. Proof of ownership of immovable.

One ~~who claims~~ claiming the ownership of an immovable against another who has been in possession of the immovable for one year after having commenced possession in good faith and with just title or who has been in possession of the immovable for ten years ~~must~~ shall prove that he has acquired ownership from a previous owner or by acquisitive prescription. ~~If neither party is in possession~~ In all other cases, he need only prove a better title.

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Revision Comments - 2023

(a) The 2023 revision of this Article changes substantially the burden of proof imposed upon a person claiming the ownership of an immovable against another who is in possession. Prior to the revision, this Article provided that in such cases, the claimant's burden of proof was to prove that he had acquired ownership from a prior owner or by acquisitive prescription. This burden of proof, which has often been characterized as the requirement of proving "title good against the world," applied even when the defendant was a usurper who had no title at all. See *Pure Oil Co. v. Skinner*, 294 So. 2d 797 (La. 1974). Application of that rule could lead to obvious inequities by allowing a usurper who was in possession for only one year to prevail against a party who might have been in possession for many years previously under a title that suffered from only minor defects. See *Pure Oil Co. v. Skinner*, 294 So. 2d 797, 799 (La. 1974) (Summers, J., dissenting).

(b) The 2023 revision narrows the circumstances in which the person claiming ownership must prove that he acquired ownership from a prior owner or by acquisitive prescription. As revised, the Article provides that this onerous burden of proof applies only when the defendant has been in possession for one year after having commenced possession in good faith and with just title or when the defendant has been in possession for ten years, regardless of whether in good faith or with just title. Where neither of these circumstances applies, the burden imposed upon the claimant is merely to prove a better title than that of the defendant.

(c) The good faith and just title mentioned in this Article are identical to the good faith and just title necessary to start the running of the acquisitive prescription of ten years under Article 3475. "Good faith" is used in this Article with the meaning given in Articles 3480 and 3481. By the express wording of this Article, the defendant's good faith is measured only at the commencement of his possession. This is analogous to the rule that applies under Article 3482 for purposes of the accrual of the acquisitive prescription of ten years.

(d) The 2023 revision does not change the rule that a common author in title is presumed to be the previous owner. See Article 532; *Weaver v. Hailey*, 416 So. 2d 311 (La. App. 3 Cir. 1982). The presumption is rebuttable. See Article 532, comment (b).

\* \* \*

Art. 3440. Protection of precarious possession

Where there is a disturbance of possession, the possessory action is available to a precarious possessor, such as a lessee ~~or a depositary~~, against anyone except the person for whom he possesses.

Section 2. Code of Civil Procedure Articles 1061, 3651, 3653 through 3655, 3656(A), 3657 through 3662, and 3669 are hereby amended and reenacted to read as follows:

Art. 1061. Actions pleaded in reconventional demand; compulsory

A. The defendant in the principal action may assert in a reconventional demand any causes of action ~~which he~~ that the defendant may have against the

1 plaintiff in the principal action, even if these two parties are domiciled in the same  
2 parish and regardless of connexity between the principal and reconventional  
3 demands.

4 B. ~~The defendant in the principal action,~~ Except as otherwise provided in  
5 Article 3657, and except in an action for divorce under Civil Code Article 102 or 103  
6 or in an action under Civil Code Article 186, the defendant in the principal action  
7 shall assert in a reconventional demand all causes of action that ~~he~~ the defendant may  
8 have against the plaintiff that arise out of the transaction or occurrence that is the  
9 subject matter of the principal action.

10 \* \* \*

11 Art. 3651. Petitory action

12 The petitory action is one brought by a person who claims the ownership of,  
13 but who ~~is not in possession~~ does not have the right to possess, of immovable  
14 property or of a real right therein, against another who is in possession or who claims  
15 the ownership thereof adversely, to obtain judgment recognizing the plaintiff's  
16 ownership.

17 Comments - 2023

18 According to the Civil Code, possession is a matter of fact, but the right to  
19 possess arises from possession for over a year and, once acquired, is lost if the  
20 possessor is evicted and does not recover possession within one year of the eviction.  
21 Civil Code Articles 3422 and 3434. For purposes of this Chapter, Code of Civil  
22 Procedure Article 3660 defines "possession" as possession in fact, rather than the  
23 right to possess, but this Article, among others, used the term "in possession" where  
24 the right to possess, rather than factual possession, was intended. The 2023 revision  
25 of this Article clarifies that a petitory action is brought by one who does not have the  
26 right to possess. A person who still has the right to possess even though he might  
27 have lost actual possession within the past year should bring a possessory action  
28 against the person who evicted him, rather than a petitory action under this Article.

29 \* \* \*

30 Art. 3653. Same; proof of title; immovable

31 A. To obtain a judgment recognizing his ownership of immovable property  
32 or real right therein, the plaintiff in a petitory action shall:

33 (1) Prove that he has acquired ownership from a previous owner or by  
34 acquisitive prescription, if the court finds that the defendant ~~is~~ has been in possession

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1           ~~thereof, or~~ for one year after having commenced possession in good faith and with  
 2           just title or that the defendant has been in possession for ten years.

3                   (2) Prove a better title thereto than the defendant, ~~if the court finds that the~~  
 4           ~~latter is not in possession thereof~~ in all other cases.

5                   B. When the titles of the parties are traced to a common author, ~~he~~ the  
 6           common author is presumed to be the previous owner.

7   Comments - 2023

8                   (a) The 2023 revision of this Article changes substantially the burden of  
 9           proof imposed upon the plaintiff in a petitory action when the defendant has the right  
 10          to possess. Prior to the revision, this Article provided that, if the defendant in a  
 11          petitory action was in possession, the plaintiff's burden of proof was to prove that he  
 12          had acquired ownership from a prior owner or by acquisitive prescription. This  
 13          burden of proof, which has often been characterized as the requirement of proving  
 14          "title good against the world," applied even when the defendant was a usurper who  
 15          had no title at all. See *Pure Oil Co. v. Skinner*, 294 So. 2d 797 (La. 1974).  
 16          Application of that rule could lead to obvious inequities by allowing a usurper who  
 17          was in possession for only one year to prevail in a petitory action against a party who  
 18          might have been in possession for many years previously under a title that suffered  
 19          from only minor defects. See *Pure Oil Co. v. Skinner*, 294 So. 2d 797, 799 (La.  
 20          1974) (Summers, J., dissenting).

21                  (b) The 2023 revision narrows the circumstances in which the plaintiff in a  
 22          petitory action must prove that he acquired ownership from a prior owner or by  
 23          acquisitive prescription. As revised, the Article provides that this onerous burden  
 24          of proof applies only when the defendant has been in possession for one year after  
 25          having commenced possession in good faith and with just title or when the defendant  
 26          has been in possession for ten years, regardless of whether in good faith or with just  
 27          title. Where neither of these circumstances applies, the plaintiff's burden in the  
 28          petitory action is merely to prove a better title than that of the defendant.

29                  (c) The good faith and just title mentioned in this Article are identical to the  
 30          good faith and just title necessary to start the running of the acquisitive prescription  
 31          of ten years under Civil Code Article 3475. "Good faith" is used in this Article with  
 32          the meaning given in Civil Code Articles 3480 and 3481. By the express wording  
 33          of this Article, the defendant's good faith is measured only at the commencement of  
 34          his possession. This is analogous to the rule that applies under Civil Code Article  
 35          3482 for purposes of the accrual of the acquisitive prescription of ten years.

36                  (d) The 2023 revision does not change the rule that a common author in title  
 37          is presumed to be the previous owner. See Civil Code Article 532; *Weaver v.*  
 38          *Hailey*, 416 So. 2d 311 (La. App. 3 Cir. 1982). The presumption is rebuttable. See  
 39          Civil Code Article 532, comment (b).

40                  (e) Prior to its 2023 revision, this Article contained another example of the  
 41          use of the term "possession" with a meaning different from that given to the term in  
 42          Article 3660. See, e.g., *Griffin v. Daigle*, 769 So. 2d 720 (La. App. 1 Cir. 2000)  
 43          (explaining that the words "in possession" as formerly used in this Article required  
 44          that the defendant have had corporeal possession for at least one year or civil  
 45          possession for the same period of time preceded by corporeal possession). This  
 46          inconsistency in terminology was eliminated in the 2023 revision.

1 Art. 3654. Proof of title in action for declaratory judgment, concursus,  
 2 expropriation, or similar proceeding

3 When the issue of ownership of immovable property or of a real right therein  
 4 is presented in an action for a declaratory judgment, or in a concursus, expropriation,  
 5 or similar proceeding, or when the issue of the ownership of funds that are deposited  
 6 in the registry of the court and ~~which that~~ belong to the owner of the immovable  
 7 property or of the real right therein is so presented, the court shall render judgment  
 8 ~~in favor of the party~~ as follows:

9 (1) ~~Who~~ If the party who would be entitled to the possession of the  
 10 immovable property or real right therein in a possessory action has been in  
 11 possession for one year after having commenced possession in good faith and with  
 12 just title or has been in possession for ten years, the court shall render judgment in  
 13 favor of that party, unless the adverse party proves that he ~~has acquired ownership~~  
 14 ~~from a previous owner or by acquisitive prescription,~~ or would be entitled to a  
 15 judgment recognizing his ownership in a petitory action under Article 3653(A)(1).

16 (2) ~~Who~~ In all other cases, the court shall render judgment in favor of the  
 17 party who proves better title to the immovable property or real right therein, ~~when~~  
 18 ~~neither party would be entitled to the possession of the immovable property or real~~  
 19 ~~right therein in a possessory action.~~

20 Comments - 2023

21 The 2023 revisions to this Article are intended to conform the burden of  
 22 proof in a declaratory judgment action or other proceeding in which ownership is at  
 23 issue to the burden of proof that applies under revised Article 3653 in a petitory  
 24 action. As with a petitory action, if one party has been in possession for one year  
 25 after having commenced possession in good faith and with just title or has been in  
 26 possession for ten years, even in the absence of good faith or just title, that party will  
 27 prevail, unless the adverse party proves that he acquired ownership from a prior  
 28 owner or by acquisitive prescription.

29 Art. 3655. Possessory action

30 The possessory action is one brought by the possessor or precarious possessor  
 31 of immovable property or of a real right therein to be maintained in his possession  
 32 of the property or enjoyment of the right when he has been disturbed, or to be  
 33 restored to the possession or enjoyment thereof when he has been evicted.



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Comments - 2023

The 2023 revision of this Article recognizes and complements a previous amendment to the Civil Code granting a precarious possessor, such as a lessee, the right to bring a possessory action against anyone other than the person for whom the precarious possessor possesses. See Civil Code Article 3440.

Art. 3656. Same; parties; venue

A. A ~~plaintiff in a~~ possessory action ~~shall~~ may be brought by one who possesses for himself. A person entitled to the use or usufruct of immovable property, and one who owns a real right therein, possesses for himself. A ~~predial lessee~~ possessory action may also be brought by a precarious possessor against anyone except the person for whom he possesses for and in the name of his lessor, and not for himself.

\* \* \*

Comments - 2023

(a) The 2023 revision of this Article recognizes and complements a previous amendment to the Civil Code granting a precarious possessor, such as a lessee, the right to bring a possessory action against anyone other than the person for whom the precarious possessor possesses. See Civil Code Article 3440.

(b) The statement in this Article that a usufructuary possesses for himself means that the usufructuary has standing to bring a possessory action and does not imply that a usufructuary can prescribe against the naked owner without taking the steps required to terminate precarious possession under Civil Code Articles 3439 and 3478.

Art. 3657. Same; cumulation with petitory action ~~prohibited~~ or declaratory judgment action; conversion into or separate petitory action by defendant reconventional demand or separate suit asserting ownership or title

A. The plaintiff ~~may~~ shall not cumulate the possessory action with either the petitory and the possessory actions in the same suit or plead them in the alternative, and when he does so he waives the possessory action or a declaratory judgment action to determine ownership. If the plaintiff ~~brings~~ does so, the possessory action; ~~and without dismissing it and prior to judgment therein institutes the petitory action, the possessory action is abated~~ does not abate, but the defendant may object to the cumulation by asserting a dilatory exception. If, before executory judgment in the possessory action, the plaintiff institutes the petitory action or a declaratory judgment action in a separate suit, the possessory action abates.

1            B. When, ~~except as provided in Article 3661(1)-(3)~~, the defendant in a  
 2            possessory action asserts title in himself, in the alternative or otherwise, ~~he~~ the  
 3            defendant does not thereby ~~converts the suit~~ convert the possessory action into a  
 4            petitory action, ~~and judicially confesses~~ or judicially confess the possession of the  
 5            plaintiff in the possessory action, but the defendant's assertions of title shall be  
 6            considered in defense of the possessory action only for the purposes stated in Article  
 7            3661(B).

8            C. Unless the plaintiff in the possessory action seeks an adjudication of his  
 9            ownership, the defendant shall not file a reconventional demand asserting a petitory  
 10           action or declaratory judgment action to determine ownership. If, before executory  
 11           judgment in a possessory action, the defendant therein institutes a petitory action or  
 12           a declaratory judgment action to determine ownership in a separate suit he files  
 13           against the plaintiff in the possessory action, the ~~plaintiff~~ defendant in the ~~petitory~~  
 14           possessory action judicially confesses the possession of the ~~defendant therein~~  
 15           plaintiff in the possessory action.

Comments - 2023

17            (a) The 2023 amendment of this Article preserves the rule of noncumulation  
 18            of the possessory and petitory actions and expands the rule to prohibit cumulation  
 19            of the possessory action with a declaratory judgment action to determine ownership.  
 20            At the same time, the amendment lessens the consequences for the plaintiff of an  
 21            improper cumulation and eliminates the judicial confession of the plaintiff's  
 22            possession that previously arose from the defendant's assertions of title in a  
 23            possessory action.

24            (b) Prior to the 2023 amendment of this Article, if the plaintiff cumulated the  
 25            possessory action with the petitory action, the possessory action simply abated.  
 26            Under the revised Article, when the plaintiff cumulates the possessory action with  
 27            a petitory action or with a declaratory judgment action to determine ownership, the  
 28            possessory action does not abate, but the defendant has the right to object to the  
 29            improper cumulation by filing a dilatory exception. See Article 926(A)(7). Upon  
 30            sustaining the exception, the court may order separate trials or may order the plaintiff  
 31            to elect which action he desires to pursue, as provided in Articles 464 and 465. If not  
 32            raised through a timely dilatory exception, the objection of improper cumulation is  
 33            waived. See Article 926(B).

34            (c) If, rather than cumulating the possessory action with a petitory or  
 35            declaratory judgment action, the plaintiff in the possessory action files a separate  
 36            action to determine ownership while the possessory action is pending, the possessory  
 37            action abates, but the plaintiff by doing so makes no confession of the defendant's  
 38            possession.

1 (d) Prior to the 2023 revision, the consequences for a defendant who asserted  
 2 title in himself in response to a possessory action were grave. Not only did his  
 3 assertions of title convert the possessory action into a petitory action in which he  
 4 became the plaintiff, but they also constituted a judicial confession of the other  
 5 party's possession, thus triggering the onerous burden under Article 3653 of proving  
 6 title good against the world. This harsh penalty has been removed. The defendant's  
 7 assertions of title in a possessory action no longer convert the action into a petitory  
 8 action or constitute a judicial confession of the plaintiff's possession; however, the  
 9 defendant's assertions of title are considered in defense of the possessory action only  
 10 for the limited purposes specified in Article 3661(B)(1) through (3). Thus, the  
 11 defendant cannot divert the focus of a possessory action from the issue of possession  
 12 to the often more complicated issue of ownership through the simple expedient of  
 13 injecting issues of ownership in his pleadings.

14 (e) Unless the plaintiff in a possessory action has sought an adjudication of  
 15 his ownership, the defendant is not permitted to assert a claim of ownership by  
 16 reconvention. If the defendant asserts ownership by instituting a separate suit before  
 17 judgment in the possessory action becomes executory, he judicially confesses the  
 18 possession of the plaintiff in the possessory action. This judicial confession does not  
 19 arise, however, if it is the plaintiff in the possessory action who institutes the  
 20 separate suit to determine ownership while the possessory action is pending and the  
 21 defendant reconvenes in that separate suit to assert his own claim of ownership.

22 Art. 3658. Same; requisites

23 To maintain the possessory action the ~~possessor must~~ plaintiff shall allege  
 24 and prove ~~that~~ all of the following:

25 (1) ~~He~~ The plaintiff had possession or precarious possession of the  
 26 immovable property or real right therein at the time the disturbance occurred;

27 (2) ~~He~~ The plaintiff and his ancestors in title, or the person for whom the  
 28 plaintiff possesses precariously and that person's ancestors in title, had such  
 29 possession quietly and without interruption for more than a year immediately prior  
 30 to the disturbance, unless evicted by force or fraud;

31 (3) The disturbance was one in fact or in law, as defined in Article 3659;  
 32 ~~and.~~

33 (4) The possessory action was instituted within a year of the disturbance.

34 Comments - 2023

35 The 2023 amendments to this Article recognize that a precarious possessor  
 36 may bring a possessory action. The precarious possessor himself need not have  
 37 exercised his precarious possession for a full year prior to the disturbance; it suffices  
 38 if the person for whom he possesses precariously, or that person's ancestors in title,  
 39 have had possession for a year.

1 Art. 3659. Same; disturbance in fact and in law defined

2 A. Disturbances of possession ~~which~~ that give rise to the possessory action  
 3 are of two kinds: disturbance in fact and disturbance in law.

4 B. A disturbance in fact is an eviction, or any other physical act ~~which~~ that  
 5 prevents the possessor of immovable property or of a real right therein from enjoying  
 6 his possession quietly, or ~~which~~ that throws any obstacle in the way of that  
 7 enjoyment.

8 C. A disturbance in law is the occurrence or existence of any of the  
 9 following adversely to the possessor of immovable property or a real right therein:

10 (1) The execution, recordation, or registry, or continuing existence of record  
 11 after the possessor or his ancestors in title acquired the right to possess, of any  
 12 instrument ~~which~~ that asserts or implies a right of ownership or right to the  
 13 possession of the immovable property or ~~of~~ a real right therein, ~~or any.~~

14 (2) The continuing existence of record of any instrument that asserts or  
 15 implies a right of ownership or right to the possession of the immovable property or  
 16 a real right therein, unless the instrument was recorded before the possessor and his  
 17 ancestors in title commenced possession.

18 (3) Any other claim or pretension of ownership or right to the possession  
 19 ~~thereof~~ of the immovable property or a real right therein, whether written or oral,  
 20 except when asserted in an action or proceeding, ~~adversely to the possessor of such~~  
 21 property or right.

22 Comments - 2023

23 (a) The 2023 amendments to this Article clarify when a disturbance in law  
 24 must arise, in relation to the time that the plaintiff enters into possession or acquires  
 25 the right to possess, in order for the disturbance to form the basis of a possessory  
 26 action.

27 (b) Under Subparagraph (C)(1) of this Article, the plaintiff in a possessory  
 28 action or his ancestors in title must have acquired the right to possess before the  
 29 execution, recordation, or registry of an instrument that is claimed to constitute a  
 30 disturbance in law. Thus, the plaintiff cannot complain that a previously recorded  
 31 instrument, such as a prior conveyance in favor of the defendant, constitutes a  
 32 disturbance in law of his possession. Similarly, under Subparagraph (C)(2), the  
 33 continuing existence of record of an adverse instrument does not constitute a  
 34 disturbance in law if the instrument was recorded before the possessor and his  
 35 ancestors in title commenced possession.

1 (c) The temporal difference between Subparagraph (C)(1) (which refers to  
 2 the time the plaintiff acquired the right to possess) and Subparagraph (C)(2) (which  
 3 refers to the earlier point in time at which the plaintiff commenced possession) is  
 4 intentional. Until the plaintiff has been in possession for one year, he is not entitled  
 5 to complain of any kind of disturbance in law. After the one-year period has  
 6 accrued, the plaintiff is entitled to complain of the execution and recordation of new  
 7 adverse instruments, as Subparagraph (C)(1) provides, and may also complain of the  
 8 continuing existence of record of instruments that were recorded during that one-year  
 9 period and that, on account of their continuing existence of record after the accrual  
 10 of the one-year period, constitute a continuing disturbance of his possession. In no  
 11 event is the plaintiff permitted to claim that an instrument recorded before he  
 12 commenced possession is a disturbance of his possession.

13 (d) The reason that the continuing existence of record of an adverse  
 14 instrument constitutes a distinct disturbance in law is to prevent a possessor from  
 15 losing the right to complain of an instrument that was recorded after he commenced  
 16 possession but more than one year before he brings the possessory action. Without  
 17 such a rule, his right to bring the possessory action would be lost under Article  
 18 3658(4) for failure to institute the action within one year of the recordation of the  
 19 instrument, even though he may have had no reason to suspect that an adverse  
 20 instrument had been recorded. Because the continuing existence of record is a  
 21 continuing disturbance, the one-year prescriptive period under Article 3658(4) for  
 22 bringing a possessory action complaining of this disturbance in law effectively does  
 23 not commence to run under these circumstances. See Roy O. Martin Lumber Co.,  
 24 Inc. v. Lemoine, 381 So. 2d 915 (La. App. 3 Cir. 1980). See also Ree Corp. v.  
 25 Shaffer, 260 So. 2d 307, 313 (La. 1972) (Tate, J., concurring).

26 Art. 3660. Same; possession

27 A. A person is in possession of immovable property or of a real right therein,  
 28 within the intendment of the articles of this Chapter, when ~~he~~ the person has the  
 29 corporeal possession thereof, or civil possession thereof preceded by corporeal  
 30 possession by him or his ancestors in title, and possesses for himself or precariously  
 31 for another, whether in good or bad faith, or even as a usurper.

32 B. Subject to the provisions of Articles 3656 and 3664, a person who claims  
 33 the ownership of immovable property or of a real right therein possesses through his  
 34 lessee, through another who occupies the property or enjoys the right under an  
 35 agreement with him or his lessee, or through a person who has the use or usufruct  
 36 thereof to which his right of ownership is subject.

37 Comments - 2023

38 The 2023 amendment of this Article retains the rule that, for purposes of this  
 39 Chapter, "possession" means possession in fact, rather than the right to possess,  
 40 except where the right to possess is expressly stated. Consistent with the changes  
 41 made to Articles 3655, 3656, and 3658, the amended Article recognizes that  
 42 precarious possession for another person constitutes possession for purposes of this  
 43 Chapter.

1 Art. 3661. Same; title not at issue; limited admissibility of evidence of title

2 A. In the possessory action, the ownership or title of the parties to the  
3 immovable property or real right therein is not at issue.

4 B. No evidence of ownership or title to the immovable property or real right  
5 therein shall be admitted except to prove any of the following:

6 (1) The possession thereof by a party as owner;

7 (2) The extent of the possession thereof by a party; ~~or~~ and his ancestors in  
8 title.

9 (3) The length of time in which a party and his ancestors in title have had  
10 possession thereof.

11 Comments - 2023

12 The 2023 amendment to this Article clarifies that a person is entitled to use  
13 evidence of ownership for purposes of proving not only the extent of his own  
14 possession, but also the extent of possession of his ancestors in title. See Civil Code  
15 Article 3442.

16 Art. 3662. Same; relief ~~which~~ that may be granted successful plaintiff in judgment;  
17 appeal

18 A. A judgment rendered for the plaintiff in a possessory action shall:

19 (1) Recognize ~~his~~ the plaintiff's right to the possession of the immovable  
20 property or real right therein, and restore him to possession thereof if he has been  
21 evicted, or maintain him in possession thereof if the disturbance has not been an  
22 eviction;

23 (2) Order the defendant to assert his adverse claim of ownership of the  
24 immovable property or real right therein in a petitory action to be filed within ~~a delay~~  
25 ~~to be fixed by the court not to exceed~~ sixty days after the date the judgment becomes  
26 executory, or be precluded thereafter from asserting the ownership thereof, if the  
27 plaintiff has prayed for ~~such~~ this relief and this relief is not precluded by Paragraph  
28 B of this Article.; ~~and~~

29 (3) Award ~~him~~ the plaintiff the damages to which he is entitled and for  
30 which he has prayed for.

1 B. A judgment in a possessory action shall not grant the relief described in  
 2 Subparagraph (A)(2) of this Article against the state or against a defendant who  
 3 appeared in the action only through an attorney appointed to represent him under  
 4 Article 5091.

5 C. A suspensive appeal from the judgment rendered in a possessory action  
 6 may be taken within the delay provided in Article 2123, and a devolutive appeal may  
 7 be taken from ~~such~~ the judgment only within thirty days of the applicable date  
 8 provided in Article 2087(A).

9 Comments - 2023

10 (a) Among the substantive changes made to this Article by the 2023 revision,  
 11 Subparagraph (A)(2) provides that the delay within which the losing defendant can  
 12 be ordered to file a petitory action, where that relief was prayed for by the prevailing  
 13 plaintiff, is fixed in all cases at sixty days. This relief is not available against a  
 14 defendant who appeared in the action only through an attorney appointed to represent  
 15 him under Article 5091. Nevertheless, the prevailing plaintiff is not without a  
 16 remedy to obtain a determination of ownership when the defendant has appeared in  
 17 the possessory action in that manner; the plaintiff can institute his own declaratory  
 18 judgment action against the defendant and, depending on the circumstances, may be  
 19 entitled to have an attorney again appointed to defend the absentee defendant in the  
 20 declaratory judgment action.

21 (b) The 2023 revision removes the constitutional infirmity in this Article  
 22 noted by the Supreme Court in Todd v. State, through Dept. of Natural Resources,  
 23 456 So. 2d 1340 (La. 1983), amended 474 So. 2d 430 (La. 1985), in which the court  
 24 held that, although a possessory action can be brought against the state, the relief  
 25 allowed under Subparagraph (A)(2) of this Article is a form of liberative prescription  
 26 that cannot run against the state under Article XII, Section 13 of the Constitution of  
 27 Louisiana.

28 (c) A judgment rendered in violation of Paragraph B of this Article is subject  
 29 to annulment under Article 2004.

30 \* \* \*

31 Art. 3669. Possessory action unavailable between owner of mineral servitude and  
 32 owner of dependent mineral royalty

33 In the event of a dispute between the owner of a mineral servitude and the  
 34 owner of a mineral royalty burdening or alleged to burden the servitude in question,  
 35 the possessory action is unavailable to either party, and the only available real action  
 36 is the petitory action. The burden of proof on the plaintiff in ~~such an~~ the petitory  
 37 ~~action is that which must be borne by the plaintiff in a petitory action when neither~~  
 38 ~~party is in possession~~ to prove a better title than that of the defendant.

CODING: Words in struck-through type are deletions from existing law; words underscored are additions.

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Comments - 2023

Prior to its revision in 2023, this Article provided that the plaintiff's burden of proof in a petitory action contemplated by this Article was that which applies when neither party is in possession. Rather than following this indirect approach, the 2023 revision states more plainly and directly what the burden of proof is in such an action: it is to prove a better title.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_