

Regular Session, 2001

HOUSE BILL NO. 1049

BY REPRESENTATIVE MURRAY

PROPERTY/IMMOVABLE: Provides relative to the acquisition of blighted property by acquisitive prescription

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AN ACT

To enact Subpart B-1 of Part I of Chapter 1 of Code Title XXIV of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:5633, relative to the improvement of blighted property; to provide for the ownership of an immovable which has been declared blighted; to provide for the improvement of the property by the possessor; to provide for acquisitive prescription of three years under certain circumstances; to provide certain requisites and procedures for acquiring blighted property; to provide for security interests; to provide for certain causes of action, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart B-1 of Part I of Chapter 1 of Code Title XXIV of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:5633 is hereby enacted to read as follows:

1                                    SUBPART B-1. THREE YEARS

2                    §5633. Blighted property; acquisitive prescription

3                    A. Ownership of an immovable may be acquired by the  
4                    prescription of three years without the need of just title or possession  
5                    in good faith. The requisites for the acquisitive prescription of three  
6                    years are as follows:

7                    (1) The land and all improvements thereon shall have been  
8                    declared or certified blighted after an administrative hearing, pursuant  
9                    to R.S. 13:2575 or 2576.

10                   (2) The following shall be filed in the conveyance records for  
11                   the parish where the immovable property is situated:

12                   (a) An affidavit by the possessor stating the name and address  
13                   of the possessor, stating the intention of the possessor to take corporeal  
14                   possession of the immovable property for the possessor's own account  
15                   in accordance with this Section, stating that such corporeal possession  
16                   shall commence no sooner than sixty calendar days from the date of  
17                   filing of the affidavit and stating the full legal description of the  
18                   immovable property intended to be possessed; and

19                   (b) There shall be annexed to and filed with the affidavit  
20                   described in Subparagraph (A)(2)(a) of this Section a certified copy of  
21                   the judgment declaring or certifying the property as blighted and the  
22                   following certificate or proof:

23                   (i) In the event an appeal has not been timely filed in the district  
24                   court appealing the judgment or declaration of blight, a certificate of  
25                   the clerk of court of the district court showing that thirty days have  
26                   elapsed since the date of the judgment or declaration of blight and

1           certifying that an appeal has not been filed in the district court  
2           appealing the judgment or declaration of blight; or

3           (ii) In the event an appeal has been timely filed in the district  
4           court appealing the judgment or declaration of blight, a certificate of  
5           the clerk of court certifying that the district court has affirmed the  
6           judgment declaring or certifying the property as blighted or the case has  
7           been abandoned and showing that more than sixty days have elapsed  
8           from either:

9           (aa) The expiration of the delay for applying for a new trial or  
10           judgment notwithstanding the verdict, as provided by Code of Civil  
11           Procedure Articles 1974 and 1811, and certifying that such application  
12           was not filed within such delays as allowed by law, or

13           (bb) The date of the mailing of notice of the refusal of the  
14           district court to grant a timely application for a new trial or judgment  
15           notwithstanding the verdict as provided by Code of Civil Procedure  
16           Article 1914, in the event an application for a new trial or judgment  
17           notwithstanding the verdict was timely filed as provided by Code of  
18           Civil Procedure Articles 1974 and 1811;

19           and further certifying that no order has been rendered or signed by such  
20           district court allowing an appeal from such judgment of the district  
21           court to the respective appellate court of this state.

22           (iii) If, within the time allowed by Code of Civil Procedure  
23           Article 2087 or 2123, an order is rendered or signed by such district  
24           court allowing an appeal from the judgment of the district court to the  
25           respective appellate court of this state, a certificate of the clerk of the  
26           court of appeal certifying either that the appeal has been abandoned, or

1           that the judgment of the court of appeal affirming the district court has  
2           become final and definitive in accordance with Code of Civil Procedure  
3           Article 2166 may be filed in lieu of the certificate required by Items  
4           (A)(2)(b)(i) or (ii) of this Section.

5           (iv) In the event the Supreme Court of Louisiana grants an  
6           application for certiorari to review such judgment of the court of  
7           appeal, written proof that the Supreme Court of Louisiana has affirmed  
8           such judgment of the court of appeal and that a writ of certiorari to the  
9           United States Supreme Court has not been made within the time  
10           allowed for such application may be filed in lieu of the certificates  
11           required by Items (A)(2)(b)(i) or (ii) of this Section.

12           (v) In the event an application for certiorari to review such  
13           judgment of the Supreme Court is timely filed, proof that such  
14           application was denied may be filed in lieu of the certificates required  
15           by Items (A)(2)(b)(i) or (ii) of this Section.

16           (vi) In the event the United States Supreme Court grants an  
17           application for certiorari to review such judgment of the Supreme Court  
18           of Louisiana, written proof that the United States Supreme Court has  
19           affirmed such judgment of the Supreme Court of Louisiana may be  
20           filed in lieu of the certificates required by Items (A)(2)(b)(i) or (ii) of  
21           this Section.

22           (vii) In the event the clerk of the district court fails or refuses to  
23           issue any certificates required by this Section within ten days following  
24           a written request for same, the requesting party may cause the clerk of  
25           court to be cited summarily by a court of competent jurisdiction to  
26           show good cause why the certificate has not been issued. If the court

1        shall deem that good cause has not been shown, the clerk of court shall  
2        pay all reasonable attorney fees and costs incurred by the party  
3        bringing such rule.

4                (3) On the same date that the judgment, certificate of proof and  
5        affidavit are filed as described in Paragraph (A)(2) of this Section, said  
6        judgment, certificate or proof and affidavit shall be sent certified mail,  
7        return receipt requested, to the address of the owner shown on the tax  
8        rolls of the assessor and to all parties having an interest in the  
9        immovable, as shown by the mortgage and conveyance records, at the  
10       address of each party as may be reasonably ascertained.

11               (4) On the same date that the judgment, certificate or proof and  
12       affidavit are filed as described in Paragraph (A)(2) of this Section, a  
13       notice shall be affixed in a prominent location of the immovable,  
14       stating the name and address of the possessor, stating that the possessor  
15       intends to take corporeal possession of the immovable for the  
16       possessor's own account and stating the date that the notice is so  
17       affixed.

18               (5) Within seventy calendar days after the date on which the  
19       affidavit described in Subparagraph (A)(2)(a) of this Section is filed in  
20       the conveyance records as required by Paragraph (A)(2) of this  
21       Section, the possessor shall request from the recorder of mortgages a  
22       mortgage certificate, setting forth the full legal description of the  
23       immovable property, to be run in the name of the owner of the  
24       immovable property for a period of time commencing with the date of  
25       the acquisition of the immovable property by the said owner and ending

1           sixty days following the date of the filing of the affidavit described in  
2           Subparagraph (A)(2)(a) of this Section.

3           (6) The possessor shall take corporeal possession peaceably and  
4           no sooner than the date the mortgage certificate described in Paragraph  
5           (A)(5) of this Section is generated by the recorder of mortgages and no  
6           later than thirty calendar days following the date of such generation.

7           (7) The following shall be filed in the conveyance records for  
8           the parish where the immovable property is situated within ten days  
9           after the possessor has taken corporeal possession of the immovable  
10          property:

11          (a) An affidavit by the possessor stating the name and address  
12          of the possessor, stating that the possessor has taken corporeal  
13          possession of the immovable for the possessor's own account, stating  
14          the date that the possessor took corporeal possession, stating the acts  
15          taken by the possessor to effect corporeal possession and stating the  
16          full legal description of the immovable; and

17          (b) There shall be annexed to and filed with the affidavit  
18          described in Subparagraph (A)(7)(a) of this Section the mortgage  
19          certificate of the recorder of mortgages described in Paragraph (A)(5)  
20          of this Section, showing that sixty days have elapsed from the date of  
21          the filing of the affidavit described in Subparagraph (A)(2)(a) of this  
22          Section and showing that no notice of lis pendens has been filed against  
23          the immovable property and that the immovable property has not been  
24          seized under a writ of fieri facias or seizure and sale.

25          (8) On the same date that the affidavit and certificate are filed  
26          as described in Paragraph (A)(7) of this Section, said affidavit and

1 certificate shall be sent certified mail return receipt requested, to the  
2 address of the owner shown on the tax rolls of the assessor and to all  
3 parties having an interest in the immovable, as shown by the mortgage  
4 and conveyance records, at the address of each party as may be  
5 reasonably ascertained.

6 (9) On the same date that the affidavit and certificate are filed  
7 as described in Paragraph (A)(7) of this Section, a notice shall be  
8 affixed in a prominent location on the immovable, stating the name  
9 and address of the possessor, stating that the possessor has taken  
10 corporeal possession of the immovable for the possessor's own account  
11 and stating the date that the possessor took corporeal possession.

12 (10) All ad valorem taxes, interest, and penalties due and  
13 payable shall be paid in full.

14 (11) If there are any improvements on the immovable, they shall  
15 be demolished or certificates of use and occupancy shall be obtained  
16 within two hundred seventy calendar days after the date that corporeal  
17 possession was taken.

18 B. In the event a judgment is rendered finding that a violation  
19 of any public health, housing, fire code, environmental or historic  
20 district ordinance of the municipality where the property is situated has  
21 occurred with respect to the immovable after the date that the possessor  
22 took corporeal possession, or should any possessor seeking to acquire  
23 hereunder fail to satisfy any of the requisites for acquisitive  
24 prescription listed in Subsection A of this Section, then possession and  
25 the running of prescription and the effect of the affidavits hereunder  
26 shall cease, and all rights which may have accrued thereunder shall be

1        null and void ab initio. The fact that there has been no judgment  
2        rendered finding that any such violation has occurred on the immovable  
3        after the date that the possessor took corporeal possession may be  
4        established by an affidavit of a hearing officer appointed pursuant to  
5        R.S. 13:2575 or 2576.

6                C. The possessor may not demolish any structure on the  
7        immovable unless the hearing officer appointed pursuant to R.S.  
8        13:2575 or 2576 finds the structure to be a public nuisance and unless  
9        the possessor obtains all permits required by law. Any garage, shed,  
10       barn, house, building, or structure shall be deemed to be a public  
11       nuisance if:

12                (1) By reason of being dilapidated, decayed, unsafe or  
13        unsanitary, the public nuisance is detrimental to health, morals, safety,  
14        public welfare, and the well-being of the community, endangers life  
15        or property or is conducive to ill health, delinquency, and crime.

16                (2) By reason of being a fire hazard.

17                (3) By reason of the conditions which require its continued  
18        vacancy, the public nuisance and its surrounding grounds are not  
19        reasonably or adequately maintained, thereby causing deterioration and  
20        creating a blighting influence or condition on nearby properties and  
21        thereby depreciating the value, use, and enjoyment to such an extent  
22        that is harmful to the public health, welfare, morals, safety, and the  
23        economic stability of the area, community, or neighborhood in which  
24        such a public nuisance is located.

25                D. If the possessor has met the requisites listed in Subsection A  
26        of this Section, the possessor shall not be liable to the owner of the



1 immovable for any tortious act related to the possession of the  
2 possessor which may have occurred on or after the date that corporeal  
3 possession was taken, including but not limited to trespass and  
4 demolition of the improvements, and such possessor shall not be  
5 subject to criminal prosecution for trespass upon the immovable or for  
6 demolition of the improvements. However, nothing provided in this  
7 Subsection shall prevent the owner from instituting and prosecuting a  
8 real action against the possessor pursuant to Code of Civil Procedure  
9 Article 3651 et seq., or prevent any party having a security interest in  
10 the immovable from enforcing the security interest.

11 E. In the event that the owner is successful in bringing a real  
12 action against the possessor pursuant to Code of Civil Procedure  
13 Article 3651 et seq., the owner shall reimburse the possessor for all ad  
14 valorem taxes, interest, and penalties paid by the possessor on the  
15 immovable, the value of the improvements made or done on the  
16 immovable by the possessor after the date that corporeal possession  
17 was taken, and the cost of any repairs, rehabilitation, maintenance,  
18 removal, or demolition to the extent not otherwise included in the value  
19 of the improvements. To prove the cost of repairs, rehabilitation,  
20 maintenance, removal, or demolition made or done on the immovable,  
21 the possessor shall provide written receipts for the payments of said  
22 costs from the persons who performed the work or from whom the  
23 materials were purchased. In the event that the owner contests the  
24 validity of such documentation, appraisers shall be appointed and shall  
25 proceed in the manner set forth in R.S. 47:2223 to determine the cost  
26 of said repairs, rehabilitation, maintenance, removal, or demolition.

1                   F. If the possessor has met the requisites listed in Subsection A  
 2                   of this Section, the expenses described in Subsection E of this Section  
 3                   shall be secured by a first lien superior to all prior and subsequent  
 4                   mortgages, judgments, and liens on the immovable.

5                   G. The provisions of this Section shall be strictly construed.

6                   H. The provisions governing acquisitive prescription of ten  
 7                   years and of thirty years apply to the prescription of three years to the  
 8                   extent that their application is consistent with the prescription of three  
 9                   years.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

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Murray

HB No. 1049

**Abstract:** Provides for the procedures and requisites to obtain ownership of an immovable which has been declared blighted and which has been improved by the possessor and for the acquisitive prescription of three years without the need of just title or possession in good faith.

Proposed law provides that ownership of an immovable which has been declared blighted and which has been improved by the possessor may be acquired by prescription of three years without the need of just title or possession in good faith.

Proposed law provides the following requisites for the acquisitive prescription of three years:

- (1) The land and all improvements thereon shall have been declared or certified blighted after an administrative hearing.
- (2) An affidavit with the judgment or certification that the property is blighted shall be filed in the conveyance records for the parish where the immovable property is situated.
- (3) On the date the judgment or certificate is filed, notice shall be sent to the owner as shown on the tax records and to all parties having an interest in the immovable.

- (4) On the date the judgment or certificate is filed, a notice shall be affixed in a prominent location of the immovable.
- (5) The possessor shall request a mortgage certificate, setting forth the full legal description of the immovable property, to be run in the name of the owner of the immovable property.
- (6) The possessor shall take corporeal possession peaceably and no sooner than the date the mortgage certificate is generated and no later than thirty calendar days following the date of such generation.
- (7) The mortgage certificate and an affidavit by the possessor stating the name and address of the possessor, stating that the possessor has taken corporeal possession of the immovable, stating the date that the possessor took corporeal possession, stating the acts taken by the possessor to effect corporeal possession and stating the full legal description of the immovable shall be filed in the conveyance records for the parish where the immovable property is situated within 10 days after the possessor has taken corporeal possession of the immovable property.
- (8) On the same date that the affidavit and certificate are filed, the affidavit and certificate shall be sent certified mail return receipt requested, to the address of the owner shown on the tax rolls of the assessor and to all parties having an interest in the immovable.
- (9) On the same date that the affidavit and certificate are filed, a notice shall be affixed in a prominent location on the immovable, stating the name and address of the possessor, stating that the possessor has taken corporeal possession of the immovable for the possessor's own account and stating the date that the possessor took corporeal possession.
- (10) All ad valorem taxes, interest, and penalties due and payable shall be paid in full.
- (11) Any improvements shall be demolished or certificates of use and occupancy shall be obtained within 270 calendar days after the date that corporeal possession was taken.

Proposed law provides that in the event a judgment is rendered finding that a violation of any public health, housing, fire code, environmental, or historic district ordinance of the municipality where the property is situated has occurred after the date that the possessor took corporeal possession, possession and the running of prescription and the effect of the affidavits shall cease, and all rights which may have accrued shall be null and void.

Proposed law provides that the possessor may not demolish any structure on the immovable unless the hearing officer finds the structure to be a public nuisance and unless the possessor obtains all permits required by law.

Proposed law provides that any garage, shed, barn, house, building, or structure shall be deemed to be a public nuisance if it may endanger the health,

life, limb, or property of any person, or cause any hurt, harm, damages, injury, or loss because of certain enumerated conditions R.S. 9:5633(C)(1)-(3).

Proposed law provides that in the event the owner is successful in bringing a real action against the possessor, the owner shall reimburse the possessor for all ad valorem taxes, interest, and penalties paid by the possessor on the immovable, the value of the improvements made or done on the immovable by the possessor after the date that corporeal possession was taken, and the cost of any repairs, rehabilitation, maintenance, removal, or demolition to the extent not otherwise included in the value of the improvements.

Proposed law provides that if the possessor has met the listed requisites, the expenses shall be secured by a first lien superior to all prior and subsequent mortgages, judgments, and liens on the immovable.

Proposed law shall be strictly construed.

Proposed law provides that the rules governing acquisitive prescription of 10 years and of 30 years apply to the prescription of three years to the extent that their application is compatible with proposed law.

(Adds R.S. 9:5633)