

Regular Session, 2014

SENATE BILL NO. 89

BY SENATOR PEACOCK (On Recommendation of the Louisiana State Law Institute)

PRIVILEGES/LIENS. Provides for revisions to the Civil Code and Revised Statutes that pertain to security, pledge, and recordation.

1 AN ACT
2 To amend and reenact Title XX of Book III of the Civil Code, to be comprised of Articles
3 3133 through 3140, Civil Code Articles 3346, 3354, 3355, 3356, 3357, 3358, 3361,
4 3362, 3363, 3365, 3366, 3367, and 3368, the heading of Part IV of Chapter 1 of
5 Code Title XX-A of Code Book III of Title 9 of the Louisiana Revised Statutes of
6 1950, R.S. 9:4401 and 5386, and R.S. 10:9-102(a)(2), to enact Title XX-A of Book
7 III of the Civil Code to consist of Articles 3141 through 3175, R.S. 9:4402 and 4403,
8 to repeal Civil Code Articles 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, and
9 3184, to authorize the Louisiana State Law Institute to add Comments for Civil Code
10 Articles 3359 and 3364, to authorize the Louisiana State Law Institute to amend or
11 to provide headings in the Civil Code and the Louisiana Revised Statutes of 1950,
12 relative to security, pledge, and registry; to provide for the liability of an obligor for
13 his obligation; to provide for ratable treatment of creditors; to provide for limitations
14 upon recourse; to provide for a definition of security; to provide for personal or real
15 security; to provide for kinds of security; to provide for the law governing a security
16 interest; to provide for the nullity of an agreement of forfeiture; to provide for the
17 general provisions of pledge; to provide a definition of pledge; to provide for

1 property susceptible of pledge; to provide for the pledge of property susceptible of
2 encumbrance by a security interest; to provide for the accessory nature of pledge; to
3 provide for the preference afforded by pledge; to provide for obligations for which
4 pledge may be given; to provide for pledge securing an obligation that is not for the
5 payment of money; to provide for pledge securing an obligation of another person;
6 to provide the formal requirements of a contract of pledge; to provide for the
7 acceptance of a pledge; to provide for who has the power to pledge; to provide for
8 the pledge of a thing not owned; to provide the general requirements for
9 effectiveness of pledge against third persons; to provide for effectiveness against
10 third persons of the pledge of the lease of an immovable; to provide for effectiveness
11 against third persons of the pledge of other obligations; to provide for the pledgee's
12 right of retention; to provide for the indivisibility of pledge; to provide for the
13 enforcement of a pledge of a movable; to provide for fruits of thing pledged; to
14 provide for the pledge of the obligation of a third person; to provide for performance
15 by an obligor of a pledged obligation; to provide for defenses available to the obligor
16 of a pledged obligation; to provide for a clause prohibiting pledge; to provide for the
17 modification of a contract from which a pledge obligation arises; to provide for the
18 attachment of pledge obligations arising under modified or substituted contract; to
19 provide for modification as default by pledgor; to provide that pledgee is not bound
20 for pledgor's obligations; to provide for the requirements of a contract of the pledge
21 of the lessor's rights in the lease of an immovable and its rents; to provide for the
22 effectiveness of a pledge of the lessor's rights in the lease of an immovable and its
23 rents against third persons; to provide for a pledge contained in act of mortgage; to
24 provide for pledge of all or part of the leases of an immovable; to provide for pledge
25 of mineral payments by owner of land or holder of mineral servitude; to provide for
26 accounting to other pledgees for rent collected; to provide for the prohibition of a
27 judicial sale of the lessor's rights in the lease of an immovable and its rents; to
28 provide for the applicability of the general rules of Chapter 1 of Title XX-A of Book
29 III of the Civil Code to the pledge of the lessor's rights in the lease of an immovable

1 and its rents when no special provision is made in Chapter 2 of Title XX-A of Book
2 III of the Civil Code; to provide for the place of recordation of instrument creating,
3 establishing, or relating to a mortgage or privilege over an immovable, or the pledge
4 of the lessor's rights in the lease of an immovable and its rents and the duty of
5 recorder; to provide for the general provisions of mortgage records; to provide for
6 the applicability of Chapter 2 of Title XXII-A of Book III of the Civil Code to
7 mortgages, privileges, and pledges; to provide for a mortgage, pledge, or privilege
8 affecting property in several parishes; to provide for transfers, amendments, and
9 releases; to provide for a general rule of duration of the recordation of an instrument
10 creating a mortgage, pledge, or evidencing a privilege; to provide for the duration of
11 recordation of certain mortgages, pledges, and privileges; to provide for the duration
12 of recordation of judicial mortgages; to provide for the effect of amendment; to
13 provide for the method of reinscription; to provide for the exclusiveness of the
14 method of reinscription; to provide for the effect of timely recordation of notice of
15 reinscription; to provide for the effect of notice recorded after cessation of effect of
16 recordation; to provide for the form and content of cancellation upon written request;
17 to provide for the cancellation of recordation after effect of recordation has ceased;
18 to provide for cancellation of judicial mortgage arising from judgment that has
19 prescribed; to provide for the pledge of leases and rents of an immovable; to provide
20 for the pledge of the lessor's rights in the lease of an immovable and its rents; to
21 provide for the right of pledgee to cash proceeds of rent; to provide for transitional
22 filing rules for assignments of leases and rents recorded prior to January 1, 2015; to
23 provide for mortgage to include pledge of mortgagor's rights to insurance; to provide
24 a definition of an account for Chapter 9 of Title 10 of the Louisiana Revised Statutes
25 of 1950; to provide authorization for the Louisiana State Law Institute to add
26 Comments for Civil Code Articles 3359 and 3364; to provide authorization for the
27 Louisiana State Law Institute to amend or to provide headings in the Civil Code and
28 the Louisiana Revised Statutes of 1950; to provide for an effective date; and to
29 provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. Title XX of Book III of the Civil Code, comprised of Articles 3133
3 through 3140, and Civil Code Articles 3346, 3354, 3355, 3356, 3357, 3358, 3361, 3362,
4 3363, 3365, 3366, 3367, and 3368 are hereby amended and reenacted and Title XX-A of
5 Book III of the Civil Code, comprised of Articles 3141 through 3175, is hereby enacted to
6 read as follows:

7 ~~TITLE XX. OF PLEDGE~~

8 ~~Art. 3133. Pledge, definition~~

9 ~~The pledge is a contract by which one debtor gives something to his creditor~~
10 ~~as a security for his debt.~~

11 ~~Art. 3133.1. Relation to Chapter 9 of the Louisiana Commercial Laws~~

12 ~~This Title shall apply to pledges of movables that are delivered prior to the~~
13 ~~time Chapter 9 of the Louisiana Commercial Laws becomes effective, including~~
14 ~~without limitation those pledges that may secure future obligations and lines of~~
15 ~~credit, as well as to pledges entered into on or after the time Chapter 9 of the~~
16 ~~Louisiana Commercial Laws becomes effective that are exempt or otherwise~~
17 ~~excluded from coverage thereunder.~~

18 ~~Art. 3134. Kinds of Pledge~~

19 ~~There are two kinds of pledge:~~

20 ~~The pawn.~~

21 ~~The antichresis.~~

22 ~~Art. 3135. Pawn and antichresis distinguished~~

23 ~~A thing is said to be pawned when a movable thing is given as a security; and~~
24 ~~the antichresis, when the security given consists in immovables.~~

25 ~~CHAPTER 1. GENERAL PROVISIONS~~

26 ~~Art. 3136. Obligations enforceable by pledge~~

27 ~~Every lawful obligation may be enforced by the auxiliary obligation of~~
28 ~~pledge.~~

29 ~~Art. 3137. Conditional obligation as basis for pledge~~

1 ~~If the principal obligation be conditional, that of the pledge is confirmed or~~
2 ~~extinguished with it.~~

3 ~~Art. 3138. Effect of nullity of principal obligation~~

4 ~~If the obligation is null, so also is the pledge.~~

5 ~~Art. 3139. Natural obligation as basis for pledge~~

6 ~~The obligation of pledge annexed to an obligation which is purely naturel, is~~
7 ~~rendered valid only when the latter is confirmed and becomes executory.~~

8 ~~Art. 3140. Object of principal obligation~~

9 ~~Pledge may be given not only for an obligation consisting in money, but also~~
10 ~~for one having any other object; for example, a surety. Nothing prevents one person~~
11 ~~from giving a pledge to another for becoming his surety with a third.~~

12 ~~Art. 3141. Pledge for debt of another~~

13 ~~A person may give a pledge, not only for his own debt, but for that of another~~
14 ~~also.~~

15 ~~Art. 3142. Things susceptible of being pledged~~

16 ~~A debtor may give in pledge whatever belongs to him.~~

17 ~~But with regard to those things, in which he has an ownership which may be~~
18 ~~divested or which is subjected to incumbrance, he can not confer on the creditor, by~~
19 ~~the pledge, any further right than he had himself.~~

20 ~~Art. 3143. Pledgor's rights at date of pledge~~

21 ~~To know whether the thing given in pledge belonged to the debtor, reference~~
22 ~~must be had to the time when the pawn was made.~~

23 ~~Art. 3144. Subsequent acquisition of ownership of thing pledged~~

24 ~~If at the time of the contract the debtor had not the ownership of the thing~~
25 ~~pledged, but has acquired it since, by what tile soever, his ownership shall relate~~
26 ~~back to the time of the contract, and the pledge shall stand good.~~

27 ~~Art. 3145. Pledge of property of another, necessity for consent of owner~~

28 ~~One person may pledge the property of another, provided it be with the~~
29 ~~express or tacit consent of the owner.~~

1 ~~Art. 3146. Implied consent of owner~~

2 ~~But this tacit consent must be inferred from circumstances, so strong as to~~
3 ~~have [leave] no doubt of the owner's intention; as if he was present at the making of~~
4 ~~the contract, or if he himself delivered to the creditor the thing pawned.~~

5 ~~Art. 3147. Binding effect of pledge of thing of another~~

6 ~~Although the property of another can not be given in pledge without his~~
7 ~~consent, yet so long as the owner refrains from claiming it, the debtor who has given~~
8 ~~it in pledge, can not seek to have it restored until his debt has been entirely~~
9 ~~discharged.~~

10 ~~Art. 3148. Pledge by fiduciaries, authorization required~~

11 ~~Tutors of minors and curators of persons under interdiction, curators of~~
12 ~~vacant estates and of absent heirs, testamentary executors and other administrators~~
13 ~~named or confirmed by a judge, can not give in pledge the property confided to their~~
14 ~~administration, without being expressly authorized in the manner prescribed by law.~~

15 ~~Art. 3149. Pledge by mandatary, authorization~~

16 ~~An attorney can not give in pledge the property of his principal without the~~
17 ~~consent of the latter, or an express power to that effect.~~

18 ~~Nevertheless, where the power of attorney contains a general authority to~~
19 ~~mortgage the property of the principal, this power includes that of giving it in pledge.~~

20 ~~Art. 3150. Pledges by cities and other corporations~~

21 ~~The property of cities and other corporations can only be given in pledge,~~
22 ~~according to the rules and subject of [to] the restrictions prescribed on that head by~~
23 ~~their respective acts of incorporation.~~

24 ~~Art. 3152. Delivery and possession of thing pledged~~

25 ~~It is essential to the contract of pledge that the creditor be put in possession~~
26 ~~of the thing given to him in pledge, and consequently that actual delivery of it be~~
27 ~~made to him, unless he has possession of it already by some other right.~~

28 ~~Art. 3153. Delivery of incorporeal rights~~

29 ~~But this delivery is only necessary with respect to corporeal things; as to~~

1 ~~stocks, bonds, policies of life insurance, or other written obligations, so pledged, and~~
2 ~~such pledge so made, except as hereinafter provided with regard to life insurance~~
3 ~~policies, shall without further formalities be valid as well against third persons as~~
4 ~~against the pledgor thereof, if made in good faith.~~

5 ~~(2)(a) All pledges may be made by private writing of any kind if only the~~
6 ~~intention to pledge be shown in writing, but all pledges, except of a life insurance~~
7 ~~policy in favor of the insurer, must be accompanied by actual delivery.~~

8 ~~(b) The pledge of a life insurance policy must also be evidenced by a written~~
9 ~~assignment thereof as security to the pledgee and by delivery of the pledge or~~
10 ~~assignment to the insurer and, unless the beneficiary thereof may be changed upon~~
11 ~~the sole request of the insured, or unless pledge or assignment without the consent~~
12 ~~of the beneficiary be specifically provided for in the policy, must be accompanied~~
13 ~~by the consent of any named beneficiary who is not the insured or his estate.~~

14 ~~C. (1) Whenever a pledge of any instrument or item of the kind listed in this~~
15 ~~Article is made or has been made to secure a particular loan or debt, or to secure~~
16 ~~advances to be made up to a certain amount, and, if so desired or provided, to secure~~
17 ~~any other obligations or liabilities of the pledgor or any other person, to the pledgee,~~
18 ~~or its successor, then existing or thereafter arising, up to the limit of the pledge, such~~
19 ~~as may be included in a cross-collateralization clause, and the pledged instrument or~~
20 ~~item remains and has remained in the hands of the pledgee or its successor, the~~
21 ~~instrument or item may remain in pledge to the pledgee or its successor, or without~~
22 ~~withdrawal from the hands of the pledgee or its successor, be repledged to the~~
23 ~~pledgee or its successor to secure at any time any renewal or renewals of the original~~
24 ~~loan or any part thereof or any new or additional loans, even though the original loan~~
25 ~~has been reduced or paid, up to the total limit which it was agreed should be secured~~
26 ~~by the pledge, and, if so desired or provided, to secure any other obligations or~~
27 ~~liabilities of the pledgor or any other person to the pledgee or its successor, then~~
28 ~~existing or thereafter arising, up to the limit of the pledge, without any added~~
29 ~~notification or other formality, and the pledge shall be valid as well against third~~

1 ~~persons as against the pledgor thereof, if made in good faith; and such renewals,~~
2 ~~additional loans and advances or other obligations or liabilities shall be secured by~~
3 ~~the collateral to the same extent as if they came into existence when the instrument~~
4 ~~or item was originally pledged and the pledge was made to secure them.~~

5 ~~(2) Such cross-collateralization clauses include but are not limited to pledges~~
6 ~~securing obligations of more than one person; pledges securing more than one~~
7 ~~obligation or future obligations; or any combination of these, whether such~~
8 ~~obligations are direct or indirect, absolute or contingent, liquidated or unliquidated,~~
9 ~~or otherwise. Such clauses are not and never have been against the public policy of~~
10 ~~Louisiana.~~

11 ~~D. (1) The assignment or transfer of the principal obligation does not:~~
12 ~~extinguish the pledge; constitute a new pledge or issuance; or affect the retroactive~~
13 ~~effect given by this Article for obligations to the original pledgee or its successor. In~~
14 ~~all cases, if the pledge at the time of its delivery, issuance, or reissuance was~~
15 ~~intended to secure obligations that may arise in the future, the pledge relates back to~~
16 ~~the time of delivery, issuance, or reissuance if and when such future obligations are~~
17 ~~incurred, as long as the pledgee, the pledgee's agents, or the pledgee's successors~~
18 ~~have maintained possession of the pledged item.~~

19 ~~(2) Such future obligations include but are not limited to:~~

20 ~~(a) Lines of credit;~~

21 ~~(b) Situations where monies have been advanced, paid in whole or in part,~~
22 ~~one or more times, and readvanced pursuant to one or more obligations that the~~
23 ~~pledge was given to secure; or~~

24 ~~(c) Situations in which the pledgor or any other persons could not have~~
25 ~~required the pledgee or its successors to advance funds under one or more~~
26 ~~obligations that the pledge was given to secure.~~

27 ~~E. The delivery of property on deposit in a warehouse, cotton press, or on~~
28 ~~storage with a third person, or represented by a bill of lading, shall pass to the~~
29 ~~pledgee by the mere delivery of the warehouse receipt, cotton press receipt, bill of~~

1 ~~lading, or storage receipt, showing the number, quantity or weight of the thing~~
2 ~~pledged; and such pledge so made, without further formalities, shall be valid as well~~
3 ~~against third persons as against the pledgor thereof, if made in good faith. Such~~
4 ~~receipts shall be valid and binding in the order of time in which they are issued for~~
5 ~~the number, quantity, or weight of the things pledged, if there should not be enough~~
6 ~~to meet all receipts so issued.~~

7 ~~F. Nothing herein contained shall be construed to repeal any part of Title 9,~~
8 ~~Sections 4301 to 4382, both inclusive of the Louisiana Revised Statutes of 1950.~~

9 ~~Art. 3159. Act of pledge in favor of banks~~

10 ~~Act of pledge in favor of any banks in this State, whether State banks or~~
11 ~~National banks, shall be considered as forming authentic proof, if they have been~~
12 ~~passed before the cashiers of those banks, and contain such description of the objects~~
13 ~~given in pledge, as is required by the preceding Article.~~

14 ~~Art. 3162. Delivery to creditor or to third person~~

15 ~~In no case does this privilege subsist on the pledge, except when the thing~~
16 ~~pledged, if it be a corporeal movable or the evidence of the credit if it be a note or~~
17 ~~other instrument under private signature, has been actually put and remained in the~~
18 ~~possession of the creditor, or of a third person agreed on by the parties.~~

19 ~~Art. 3163. Partial payment of debt secured by pledge of several things~~

20 ~~When several things have been pawned, the owner can not retake one of these~~
21 ~~without satisfying the whole debt, though he offers to pay a certain amount of it in~~
22 ~~proportion to the thing which he wishes to get.~~

23 ~~Art. 3164. Right of retention until payment of debt~~

24 ~~The creditor who is in possession of the pledge, can only be compelled to~~
25 ~~return it, but when he has received the whole payment of the principal as well as the~~
26 ~~interest and costs.~~

27 ~~Art. 3165. Rights of pledgee on default of debtor; procedure~~

28 ~~The creditor cannot, in case of failure of payment, dispose of the pledge; but~~
29 ~~when there have been pledges of stock, bonds or other property, for the payment of~~

1 ~~any debt or obligation, it shall be necessary before such stocks, bonds or other~~
2 ~~property so pledged shall be sold for the payment of the debt, for which such pledge~~
3 ~~was made, that the holder of such pledge be compelled to obtain a judgment in the~~
4 ~~ordinary course of law, and the same formalities in all respects shall be observed in~~
5 ~~the sale of property so pledged as in ordinary cases; but in all pledges of movable~~
6 ~~property, or rights, or credits, stocks, bonds or other movable property, it shall be~~
7 ~~lawful for the pledger to authorize the sale or other disposition of the property~~
8 ~~pledged, in such manner as may be agreed upon by the parties without the~~
9 ~~intervention of courts of justice; provided, that all existing pledges shall remain in~~
10 ~~force and be subject to the provisions of this act.~~

11 ~~Art. 3166. Ownership of thing pledged~~

12 ~~Until the debtor be divested from his property (if it is the case), he remains~~
13 ~~the proprietor of the pledge, which is in the hands of the creditor only as a deposit~~
14 ~~to secure his privilege on it.~~

15 ~~Art. 3167. Pledgee's liability for loss or decay of thing pledge; reimbursement of~~
16 ~~expenses of preservation~~

17 ~~The creditor is answerable agreeably to the rules which have been established~~
18 ~~under the title: Of Conventional Obligations, for the loss or decay of the pledge~~
19 ~~which may happen through his fault.~~

20 ~~On his part, the debtor is bound to pay to the creditor all the useful and~~
21 ~~necessary expenses which the latter has made for the preservation of the pledge.~~

22 ~~Art. 3168. Ownership of fruits of thing pledged~~

23 ~~The fruits of the pledge are deemed to make a part of it, and therefore they~~
24 ~~remain, like the pledge, in the hands of the creditor; but he can not appropriate them~~
25 ~~to his own use; he is bound, on the contrary, to give an account of them to the debtor,~~
26 ~~or to deduct them from what may be due to him.~~

27 ~~Art. 3169. Imputation of interest earned by credit pledged~~

28 ~~If it is a credit which has been given in pledge, and if this credit brings~~
29 ~~interest, the creditor shall deduct this interest from those which may be due to him;~~

1 ~~Art. 3175. Acquisitive prescription of pledge impossible~~

2 ~~The creditor can not acquire the pledge by prescription, whatever may be the~~
3 ~~time of his possession.~~

4 ~~CHAPTER 3. OF ANTICHRESIS~~

5 ~~Art. 3176. Necessity for written instrument; rights acquired by creditor~~

6 ~~The antichresis shall be reduced to writing.~~

7 ~~The creditor acquires by this contract the right of reaping the fruits or other~~
8 ~~revenues of the immovables to him given in pledge, on condition of deducting~~
9 ~~annually their proceeds from the interest, if any be due him, and afterwards from the~~
10 ~~principal of his debt.~~

11 ~~Art. 3177. Taxes, annual charges and repairs~~

12 ~~The creditor is bound, unless the contrary be agreed on, to pay the taxes, as~~
13 ~~well as the annual charges of the property which have been given to him in pledge.~~

14 ~~He is likewise bound, under penalty of damages, to provide for the keeping~~
15 ~~and useful and necessary repairs of the pledged estate, saving himself the right of~~
16 ~~levying on their fruits and revenues all the expenses respecting such charges.~~

17 ~~Art. 3178. Reclamation of property by debtor; return by creditor~~

18 ~~The debtor can not, before the full payment of the debt, claim the enjoyment~~
19 ~~of the immovables which he has given in pledge.~~

20 ~~But the creditor who wishes to free himself from the obligations mentioned~~
21 ~~in the preceding articles, may always, unless he has renounced this right, compel the~~
22 ~~debtor to retake the enjoyment of his immovable.~~

23 ~~Art. 3179. Ownership of property pledged; rights of creditor upon default of debtor~~

24 ~~The creditor does not become owner of the pledged immovable by failure of~~
25 ~~payment at the stated time; any clause to the contrary is null, and in this case it is~~
26 ~~only lawful for him to sue his debtor before the court in order to obtain a sentence~~
27 ~~against him, and to cause the objects which have been put in his hands in pledge to~~
28 ~~be seized and sold.~~

29 ~~Art. 3180. Agreement that fruits or revenues be compensated with interest~~

1 non-technical sense that was different from the security device known as pledge. See
2 Slovenko, *Of Pledge*, 33 Tul. L. Rev. 59, 62-63 (1958).

3 (b) This Article does not imply that all of an obligor's creditors will have an
4 immediate right to share in the proceeds of each sale of the obligor's property. In the
5 case of a voluntary sale of property, the obligor retains whatever portion of the price
6 remains after satisfying those creditors having secured rights in the thing sold, and
7 both the price that he retains, and anything he may later acquire with it, form part of
8 his patrimony that remains available to his creditors for satisfaction of the
9 obligations owed to them. Even in the case of the enforcement of a mortgage or
10 other security in a thing, the proceeds from the sale that remain after payment of the
11 claims of the seizing creditor and those holding inferior security rights in the thing
12 are delivered to the obligor, rather than to his other creditors. See C.C.P. Art. 2373.

13 **Art. 3135. Limitations upon recourse**

14 **A written contract may provide that the obligee's recourse against the**
15 **obligor is limited to particular property or to a specified class or kind of**
16 **property.**

17 Revision Comments - 2014

18 (a) This Article is new. It expands a concept that was introduced by the
19 1991 revision of the Articles on mortgage. A similar provision is found in Article
20 2645 of the Québec Civil Code.

21 (b) When a contract limits an obligee's recourse to certain property, the
22 limitation serves as an exception to the provisions of Article 3134 (Rev. 2014), and
23 the obligee has no right to have the obligation owed to him satisfied from the
24 obligee's other property.

25 (c) An obligee's right of recourse may be limited to the security given for the
26 performance of the obligation owed to the obligee. Under this Article, however, an
27 obligee's right of recourse could be limited to specified property of the obligor even
28 if the obligee holds no security at all.

29 (d) The limitation contemplated by this Article may be made either by
30 identifying the property against which the obligee will have recourse or, inversely,
31 by identifying property against which the obligee will have no recourse. The
32 property may be identified with specificity or by employing general classifications
33 of property, such as those found in Articles 448 (Rev. 1978) and 2335 (Rev. 1979).

34 **Art. 3136. Security defined**

35 **Security is an accessory right established by legislation or contract over**
36 **property, or an obligation undertaken by a person other than the principal**
37 **obligor, to secure performance of an obligation. It is accessory to the obligation**
38 **it secures and is transferred with the obligation without a special provision to**
39 **that effect.**

40 Revision Comments - 2014

41 (a) This Article is new, but it furthers the concepts stated in Article 1913
42 (Rev. 1984), which identifies certain types of security agreements as examples of
43 accessory contracts. This Article is broader in its scope, however, because it is not
44 limited to rights established by contract. For instance, privileges, which are

1 established only by law and never by contract, are a form of security.

2 (b) The concept of security arises in numerous other Articles found
3 throughout the Civil Code. See, e.g., C.C. Arts. 474 (Rev. 1978); 571 (Rev. 1976;
4 Amended 2004); 573 and 624 (Rev. 1976; Amended 2010); 1499 (Rev. 1996;
5 Amended 2003); 1514 (Rev. 1996; Amended 2003); 1783, 1884, 1887, 1891, 1913,
6 and 2023 (Rev. 1984); 2557 and 2569 (Rev. 1993); 3047, 3053, 3054, 3062, 3068,
7 and 3070 (Rev. 1987).

8 (c) When security consists of rights over property, it is a preference
9 authorized or established by legislation and thus constitutes an exception to the
10 ratable treatment principle of Article 3134 (Rev. 2014).

11 **Art. 3137. Personal or real security**

12 **Security is personal or real.**

13 **It is personal when it consists of an obligation undertaken to secure**
14 **performance of the obligation of another.**

15 **It is real when it consists of a right of preference established over**
16 **property of the obligor or of a third person to secure performance of an**
17 **obligation.**

18 Revision Comments - 2014

19 (a) This Article is new, but it is not intended to change the law. On the
20 distinction between real and personal security, see Slovenko, *Of Pledge*, 33 Tul. L.
21 Rev. 59, 60 (1958).

22 (b) Suretyship is personal security. Security consisting of a right over
23 property, such as mortgage, pledge, security interest, or privilege, is real security.

24 (c) Forms of real security are not necessarily real rights. Many privileges do
25 not constitute real rights, even though they are a form of real security. See *Liquid*
26 *Carbonic Corporation v. Leger*, 169 So. 170 (La. App. 1st Cir. 1936). See also
27 *Planiol et Ripert, Traité élémentaire de droit Civil, Volume 2, Part 2, No. 2548, 2618*
28 *(1939)*(English translation by the Louisiana State Law Institute, 1959);
29 *Yiannopoulos, Real Rights in Louisiana and Comparative Law: Part 1, 23 La. Law*
30 *Rev. 161, 223 (1963).*

31 **Art. 3138. Kinds of security**

32 **Kinds of security include suretyship, privilege, mortgage, and pledge.**

33 **A security interest established to secure performance of an obligation is also a**
34 **kind of security.**

35 Revision Comments - 2014

36 (a) This Article is new, but it is not intended to change the law.

37 (b) Article 3184 of the Louisiana Civil Code of 1870 defined lawful causes
38 of preferences to include only privilege and mortgage. Those lawful causes of
39 preference are forms of security that are mentioned in this Article along with
40 privileges and security interests, as well as the contract of suretyship, which is a form
41 of personal security.

42 (c) The list contained in this Article is merely illustrative. Other forms of
43 security exist, such as a pignorative contract in the form of a sale with a right of

1 redemption in favor of a seller who remains in possession. See C.C. Art. 2569 (Rev.
2 1993); *Latiolais v. Breaux*, 154 La. 1006, 98 So. 620 (La. 1924); *Jackson v. Golson*,
3 91 So.2d 394 (La. App. 2d Cir. 1956).

4 (d) This Article gives express recognition to the concept of security interest,
5 which has been the exclusive means of creating security by contract in most kinds
6 of movable property since Louisiana's adoption of Chapter 9 of the Uniform
7 Commercial Code effective January 1, 1990. See Acts 1988, No. 528 and Acts 1989,
8 No. 135, enacting Chapter 9 of Title 10 of the Louisiana Revised Statutes of 1950.
9 The definition of "security interest" in the Uniform Commercial Code, however, is
10 broader than interests in movable property intended as security; it also includes
11 outright sales of certain kinds of property, such as accounts receivable. See R.S.
12 10:1-201(35). Only those security interests established for the purpose of securing
13 an obligation qualify as "security" under this Title.

14 **Art. 3139. Law governing security interest**

15 **Security interest is defined by the Uniform Commercial Code, which**
16 **specifies the kinds of property susceptible of encumbrance by a security interest**
17 **and governs the manner of creation of security interests and the rights of the**
18 **holders of security interests against obligors and third persons.**

19 Revision Comments - 2014

20 (a) This Article is new. It signals that security interests, though obviously a
21 form of security when granted for the purpose of securing an obligation, are
22 governed by special legislation.

23 (b) Security interest, as defined in the Uniform Commercial Code, also
24 includes certain transactions that do not secure the performance of an obligation. See
25 R.S. 10:1-201(35). This Title is not intended to limit the definition of the term
26 "security interest" found in the Uniform Commercial Code or the application of the
27 Uniform Commercial Code to those transactions.

28 **Art. 3140. Nullity of agreement of forfeiture**

29 **A clause in a contract providing in advance that ownership of a thing**
30 **given as security will transfer upon default in performance of the secured**
31 **obligation is absolutely null.**

32 **A clause in a contract obligating the owner of a thing to give it to an**
33 **obligee in payment of a debt upon a future default in performance of an**
34 **obligation is absolutely null.**

35 Revision Comments - 2014

36 (a) The first paragraph of this Article furthers a longstanding civilian concept
37 that an agreement of forfeiture of a thing given as security, known in Roman law as
38 *the lex commissoria*, is null. An express prohibition of agreements of that nature in
39 contracts of pledge was contained in Article 3132 of the Louisiana Civil Code of
40 1825 and also in the second paragraph of Article 3165 of the Louisiana Civil Code
41 of 1870, until the repeal of that paragraph by Acts 1872, No. 9. Despite the repeal,
42 agreements of forfeiture have continued to be viewed as unenforceable in Louisiana.

1 See *Alcolea v. Smith*, 150 La. 482, 90 So. 769 (La. 1922), holding that agreements
2 of forfeiture have been prohibited by the civil law "since the edict of Constantine"
3 and that "it would require something more than a doubtful implication (i.e., the 1872
4 amendment of Article 3165) to justify any court in any civilized country in now
5 reading it into a statute."

6 (b) The prohibition of this Article is not limited to contracts of pledge but
7 rather applies to all forms of security. Thus, a mortgage may not provide that
8 ownership of the mortgaged property will transfer to the mortgagee upon default.

9 (c) Many civil law jurisdictions continue to prohibit *the lex commissoria*.
10 See, e.g., Québec Civil Code Art. 1801; Luxembourg Civil Code Art. 2078;
11 Argentine Civil Code Art. 3222; B.G.B. § 1229; Spanish Civil Code Art. 1859. In
12 France, the agreement of forfeiture, known as the *pacte comissoire*, is now
13 sometimes permitted. See French Civil Code Arts. 2348, 2459, and 2460 (Rev.
14 2006).

15 (d) The second paragraph of the Article addresses a related concept: the
16 inability of a debtor to promise before default to make a giving in payment. This
17 paragraph follows, and makes more general, the holding of *Guste v. Hibernia*
18 *National Bank in New Orleans*, 655 So.2d 724 (La. App. 4th Cir. 1995), writ denied
19 660 So.2d 852 (La. 1995), which found to be absolutely null a *dation en paiement*
20 executed at the time of an act of credit sale and held in escrow under an agreement
21 providing for its release upon a future default. The reasoning of the court was that
22 the law provides for the exclusive means of foreclosure of a mortgage and any
23 attempt to "completely bypass and waive the laws concerning foreclosure" violates
24 public policy. This Article does not by its terms prohibit an obligor from promising
25 *after* default to make a future giving in payment in favor of the obligee, but other
26 public policy considerations may nonetheless make such a promise unenforceable
27 according to the circumstances. On the invalidity of a promise to make a giving in
28 payment, see *Slovenko, Of Pledge*, 33 Tul. L. Rev. 59, 116 (1958).

29 (e) Chapter 9 of the Uniform Commercial Code permits a creditor, after
30 default, to propose a "strict foreclosure" whereby he will acquire the collateral in full
31 or partial satisfaction of the secured obligation without the necessity of a judicial sale
32 or other disposition. See R.S. 10:9-620 through 9-622. This Article does not limit
33 the availability of strict foreclosure under the Uniform Commercial Code.

34 TITLE XX-A. PLEDGE

35 CHAPTER 1. GENERAL PROVISIONS

36 Art. 3141. Pledge defined

37 **Pledge is a real right established by contract over property of the kind**
38 **described in Article 3142 to secure performance of an obligation.**

39 Revision Comments - 2014

40 (a) This Article is new. Article 3133 of the Louisiana Civil Code of 1870
41 defined pledge as a contract by which a debtor gives something to his creditor as
42 security for his debt. Though that Article defined the term as a type of contract,
43 ensuing Articles referred to "the obligation of pledge", and certain Articles referred
44 to "the pledge" as the thing pledged. See, e.g., C.C. Art. 3175 (1870). This Article
45 defines pledge as the real right that arises from a contract of pledge, rather than the
46 contract itself.

47 (b) Pledge is defined by the domain of things that are susceptible of pledge,
48 as specified in Article 3142 (Rev. 2014). A pledge under this Title cannot exist over
49 other kinds of property.

50 (c) Since Louisiana's adoption of Chapter 9 of the Uniform Commercial
51 Code effective January 1, 1990, the Articles on pledge contained in the Louisiana

1 Civil Code of 1870 have been greatly reduced in their operation and to a large extent
2 supplanted by the Uniform Commercial Code. The revision of this Title harmonizes
3 the law of pledge with the Uniform Commercial Code by eliminating any overlap
4 between the two wholly different regimes. Because of the very broad scope of
5 Chapter 9 of the Louisiana Uniform Commercial Code, this Title has quite limited
6 applicability to movables. It nonetheless fills a gap in the law that would otherwise
7 exist with respect to encumbrance of movable property that is presently, or in the
8 future becomes, excluded from coverage under the Uniform Commercial Code. See
9 generally R.S. 10:9-109.

10 (d) Under the Louisiana Civil Code of 1870, two kinds of pledge existed:
11 the pledge of a movable, known as the pawn, and the pledge of an immovable,
12 known as the antichresis. See C.C. Arts. 3134 and 3135 (1870). With an antichresis,
13 the creditor was given possession of an immovable for the purpose of reaping its
14 fruits and other revenues and undertook the correlative obligations of paying taxes
15 and providing for the upkeep and repair of the immovable. See C.C. Art. 3176-3181
16 (1870). Because of the obligations imposed on the creditor, antichresis fell into
17 disuse. See Slovenko, *Of Pledge*, 33 Tul. L. Rev. 59, 130 (1958). Over a century
18 ago, the Louisiana Supreme Court termed it "an antiquated contract." See *Harang*
19 *v. Ragan*, 134 La. 201, 63 So. 875, 877 (La. 1913). Antichresis is suppressed in this
20 revision and is no longer a form of pledge. Despite the suppression of the nominate
21 contract of antichresis, parties might nonetheless, through the exercise of the
22 freedom of contract recognized by Article 1971 (Rev. 1984), enter into an
23 innominate contract providing for an arrangement similar to what was previously
24 known as an antichresis, but the contract would create neither a pledge under this
25 Title nor a real right in the immovable enforceable against third persons who acquire
26 rights in it. See Comment (d) to C.C. Art. 476 (Rev. 1978).

27 (e) In modern times, the antichresis has given way to other forms of security
28 that allow the creditor to be secured by the revenues of an immovable without the
29 disadvantages of an antichresis. For instance, in France, antichresis was effectively
30 replaced by the cession of anticipated rent. *Planiol et Ripert, Traité élémentaire de*
31 *droit civil*, Volume 2, Part 2, No. 2507-07 (1939)(English translation by the
32 Louisiana State Law Institute, 1959). A similar evolution has taken place in
33 Louisiana; the assignment of leases and rents, which has become almost universal
34 in commercial real estate financings and which requires no dispossession of the
35 debtor, has supplanted antichresis. Since 1980, the assignment of leases and rents
36 has been governed by former R.S. 9:4401. This Title gives express recognition and
37 treatment within the Civil Code to this modern form of pledge.

38 **Art. 3142. Property susceptible of pledge**

39 **The only things that may be pledged are the following:**

40 **(1) A movable that is not susceptible of encumbrance by security**
41 **interest.**

42 **(2) The lessor's rights in the lease of an immovable and its rents.**

43 **(3) Things made susceptible of pledge by law.**

44 Revision Comments - 2014

45 (a) This Article is new. It contains an exhaustive list of things susceptible of
46 pledge.

47 (b) Civil law jurisdictions typically permit all movable property, corporeal
48 or incorporeal, to be encumbered by pledge. See, e.g., French Civil Code Arts. 2333
49 and 2355 and B.G.B. § 1204. Similarly, Articles 3154 and 3155 of the Louisiana
50 Civil Code of 1870 provided that every corporeal or incorporeal movable could be
51 pawned. With the adoption of Chapter 9 of the Uniform Commercial Code in

1 Louisiana effective January 1, 1990, however, security interest became the exclusive
2 means of encumbrance of most kinds of movable property, thereby greatly narrowing
3 the kinds of movable property that can be pledged under the Civil Code.
4 Nonetheless, the exclusions that do remain, or that might exist in the future, require
5 the continued existence of the legal framework under which property outside the
6 scope of Chapter 9 of the Uniform Commercial Code can be encumbered. This
7 Article makes the set of things susceptible of pledge and the set of things susceptible
8 of encumbrance by a security interest mutually exclusive.

9 (c) There are presently few, if any, corporeal movables that are excluded
10 from coverage under Chapter 9 of the Uniform Commercial Code. The few
11 incorporeal movables that are excluded include rights under policies of insurance
12 other than life insurance. Even then, Chapter 9 still has limited applicability to the
13 extent that amounts payable under an insurance policy constitute proceeds of other
14 collateral. See R.S. 10:9-109(d)(8).

15 (d) Under this Article, the lessor's rights in the lease of an immovable and
16 its rents are also susceptible of pledge. Chapter 2 of this Title contains rules that are
17 specifically applicable to a pledge of that nature. Under prior law, the lessor's rights
18 in the leases and rents of an immovable could be encumbered by an assignment or
19 pledge effected under former R.S. 9:4401, a statute whose provisions suggested
20 heavy influence from both the common law and the Uniform Commercial Code.
21 This revision places the encumbrance of the lessor's rights in the lease of an
22 immovable and its rents within the civil law framework of pledge and gives nearly
23 complete treatment to pledges of that nature within the Civil Code itself.

24 **Art. 3143. Pledge of property susceptible of encumbrance by security interest**

25 **A contract by which a person purports to pledge a thing that is**
26 **susceptible of encumbrance by security interest does not create a pledge under**
27 **this Title but may be effective to create a security interest in the thing.**

28 Revision Comment - 2014

29 This Article is new. In the case of property susceptible of encumbrance by
30 a security interest, the Uniform Commercial Code contains the exclusive regime
31 under which it can be encumbered as security, and parties are not permitted to negate
32 the applicability of the Uniform Commercial Code by styling their contract as one
33 of pledge. Nevertheless, it remains a common practice for property to be "pledged"
34 under a contract styled as a "pledge," even though the property in question is
35 susceptible of encumbrance under the Uniform Commercial Code and the security
36 right created by the contract is actually a security interest. An example of this is the
37 "pledge" of a collateral mortgage note. This Article provides that a contract
38 purporting to pledge property that is susceptible of encumbrance under the Uniform
39 Commercial Code does not create a pledge under this Title. Whether the contract is
40 sufficient to create a security interest is a matter governed exclusively by the
41 Uniform Commercial Code.

42 **Art. 3144. Accessory nature of pledge**

43 **Pledge is accessory to the obligation that it secures and may be enforced**
44 **by the pledgee only to the extent that he may enforce the secured obligation.**

45 Revision Comment - 2014

46 This Article is new. As a form of security, pledge is always accessory to the
47 obligation that it secures. Consequently, a pledge may be enforced only to the extent

1 of the obligation that it secures. Another consequence of the accessory nature of
2 pledge is that it is transferred with the obligation that it secures without a special
3 provision to that effect. See C.C. Art. 3136 (Rev. 2014).

4 **Art. 3145. Preference afforded by pledge**

5 **Pledge gives the pledgee the right to be satisfied from the thing pledged**
6 **and its fruits in preference to unsecured creditors of the pledgor and to other**
7 **persons whose rights become effective against the pledgee after the pledge has**
8 **become effective as to them.**

9 Revision Comments - 2014

10 (a) This provision, which is based on Article 3157 of the Louisiana Civil
11 Code of 1870, adds a ranking rule similar to that applicable to mortgages in Article
12 3307(3)(Rev. 1992).

13 (b) Because the kinds of property subject to security interest and pledge are
14 mutually exclusive, there is no need for a rule ranking security interests against
15 pledges except perhaps in the special case of insurance proceeds payable with respect
16 to collateral that is subject to a security interest under the Uniform Commercial
17 Code. Under R.S. 10:9-315, a security interest continues in the insurance proceeds,
18 even though claims under insurance policies, other than life insurance, are otherwise
19 outside the scope of Chapter 9 of the Uniform Commercial Code. See R.S.
20 10:9-109(d)(8). If, however, the owner of the collateral desires to encumber a claim
21 to insurance proceeds in favor of another creditor, he must do so by granting a pledge
22 under this Title. In that limited instance, there is the possibility of a ranking dispute
23 between the secured party claiming rights to the insurance as proceeds of his
24 collateral and the pledgee of the claim under the insurance policy. This Article
25 supplies the ranking rule: if the security interest was perfected under the Uniform
26 Commercial Code before the pledge was made effective against third persons, the
27 security interest primes the pledge of rights under the insurance policy.

28 **Art. 3146. Obligations for which pledge may be given**

29 **A pledge may be given to secure the performance of any lawful**
30 **obligation, including obligations that arise in the future. As to all obligations,**
31 **present and future, secured by the pledge, notwithstanding the nature of the**
32 **obligations or the date they arise, the pledge has effect between the parties from**
33 **the time that the requirements for formation of the contract of pledge are**
34 **satisfied and has effect as to third persons from the time that the applicable**
35 **requirements of Articles 3153 through 3155 are satisfied.**

36 Revision Comments - 2014

37 (a) This Article restates the substance of Article 3136 of the Louisiana Civil
38 Code of 1870 and expressly permits a pledge to secure future obligations, an
39 arrangement that was also permitted under the complicated provisions of Article
40 3158 of the 1870 Code, as amended.

41 (b) Article 3158 of the Louisiana Civil Code of 1870 required, as a condition

1 for effectiveness against third persons, that a pledge state the amount of the debt that
 2 it secured or a limit on the amount of the secured obligations. In contrast, Chapter
 3 9 of the Uniform Commercial Code does not require that a security agreement state
 4 the amount or limit of secured obligations. This Article follows the approach of the
 5 Uniform Commercial Code by omitting any requirement for a statement of the
 6 amount of the secured obligation. Chapter 2 of this Title requires, however, that a
 7 contract pledging the lessor's interest in the leases and rents of an immovable state
 8 the amount of the secured obligation or the maximum amount of secured obligations
 9 that may be outstanding from time to time. See C.C. Art. 3168 (Rev. 2014).

10 (c) In the case of a pledge securing future obligations, the rights created by
 11 the pledge as security for the future obligations relate back to the time the pledge
 12 became effective between the parties or, insofar as third persons are concerned, from
 13 the time the pledge was made effective against third persons. On that issue, this
 14 Article follows the pattern of Article 3298(B) (Rev. 1991; As Amended), which
 15 provides a similar rule for mortgages.

16 (d) Article 3140 of the Louisiana Civil Code of 1870 permitted a pledge to
 17 be given not only for an obligation consisting of money but also for one having
 18 another object. By permitting a pledge to secure any lawful obligation, this Article
 19 also allows a pledge to secure an obligation that is not for the payment of money.
 20 Article 3147 (Rev. 2014) specifies the effect of such a pledge.

21 **Art. 3147. Pledge securing obligation that is not for the payment of money**

22 **A pledge that secures an obligation other than one for the payment of**
 23 **money, such as an obligation for the performance of an act, secures the claim**
 24 **of the pledgee for the damages he may suffer from the breach of the obligation.**

25 Revision Comment - 2014

26 This Article is new. Although it has no counterpart in the Civil Code of
 27 1870, it is patterned after Article 3294 (Rev. 1991), which provides a similar rule for
 28 contracts of mortgage.

29 **Art. 3148. Pledge securing an obligation of another person**

30 **A person may pledge his property to secure an obligation of another**
 31 **person. In such a case, the pledgor may assert against the pledgee any defense**
 32 **that the obligor could assert except lack of capacity or discharge in bankruptcy**
 33 **of the obligor. The pledgor may also assert any other defenses available to a**
 34 **surety.**

35 Revision Comments - 2014

36 (a) The first sentence of this Article is derived from Article 3141 of the
 37 Louisiana Civil Code of 1870. The second sentence expresses the same principle
 38 found in Article 3295 (Rev. 1991), which applies when a person mortgages his
 39 property as security for another person's obligation.

40 (b) When a person encumbers his property as security for the obligation of
 41 another, his status is similar to that of a surety against whom recourse has been
 42 limited by contract to the thing given as security. French commentators refer to a
 43 third person who has mortgaged an immovable as security for the debt of another
 44 without obligating himself personally as a caution réelle, or real surety. Planiol,

1 intended to apply only if, under present law or under some future change in the law,
2 a particular corporeal movable is insusceptible of encumbrance under the Uniform
3 Commercial Code and therefore is properly susceptible of encumbrance by pledge.
4 See Article 3142 (Rev. 2014). The first sentence of this Article is not intended to
5 apply to a corporeal movable that is susceptible of encumbrance by a security
6 interest under the Uniform Commercial Code. In that case, Chapter 9 of the Uniform
7 Commercial Code applies exclusively.

8 (d) Article 3162 of the Civil Code of 1870 allowed the thing pledged to be
9 placed into the possession of "a third person agreed on by the parties." Though not
10 expressly required by the text of the Article, the jurisprudence held that the third
11 person must have knowledge of the arrangement and accept delivery with the
12 obligation to hold the property in trust for the pledgee. See *Wells v. Dean*, 211 La.
13 132, 29 So.2d 590 (La. 1947). This rule did not, however, necessarily require a
14 written acknowledgment, and one case even presumed, in the absence of any other
15 explanation why the pledgor of a life insurance policy had come into possession of
16 the original policy before his death, that the pledgor's possession was as an agent pro
17 hac vice for the pledgee. See *Scott v. Corkern*, 231 La. 368, 91 So.2d 569 (La.
18 1956). By comparison, when a third party's possession is used as the means of
19 perfection of a security interest, the Uniform Commercial Code requires that the
20 third party authenticate a record acknowledging that he holds possession of the
21 collateral for the secured party's benefit. See R.S. 10:9-313(c)(1). This Article
22 requires that the third person agree to hold the thing for the benefit of the pledgee but
23 does not require that agreement to be in writing.

24 (e) As a condition to the effectiveness of a pledge between the parties, this
25 Article requires a written contract of pledge except in one instance: when the thing
26 pledged is a corporeal movable that has been placed into the possession of the
27 pledgee or a third person who has agreed to hold the thing for the benefit of the
28 pledgee. In all other cases, a pledge cannot exist, even between the parties, unless
29 it is established by a written contract. The Louisiana Civil Code of 1870 generally
30 did not require a writing for a pledge to exist between the parties; delivery of
31 possession sufficed to evidence the pledge.

32 (f) Rules concerning the effectiveness of a pledge against third persons are
33 contained in Articles 3153 through 3155 (Rev. 2014).

34 **Art. 3150. Acceptance**

35 **A written contract of pledge need not be signed by the pledgee, whose**
36 **consent is presumed and whose acceptance may be tacit.**

37 Revision Comments - 2014

38 This Article is new. Although it has no counterpart in the Civil Code of 1870,
39 it is patterned after Article 3289 (Rev. 1991), which provides a similar rule for
40 contracts of mortgage.

41 **Art. 3151. Power to pledge**

42 **A contract of pledge may be established only by a person having the**
43 **power to alienate the thing pledged.**

44 Revision Comments - 2014

45 This Article is new, although the Louisiana Civil Code of 1870 contained a
46 number of Articles addressing a person's power to pledge the property of another.
47 See C.C. Arts. 3148-3150 (1870). This Article follows the simpler approach of
48 Article 3290 (Rev. 1992), which provides the identical rule for contracts of

1 mortgage. Similar provisions limiting the power to encumber a thing to those
2 persons having the power to alienate it exist in the civil codes of other jurisdictions.
3 See, e.g., Argentine Civil Code Art. 3213; Québec Civil Code Art. 2681; Zakona o
4 Založnom Pravu na Pokretnim Stvarima Upisanim u Registar (The Law on Pledge
5 of Movable Assets in the Pledge Registry) art. 17 (Serbia); Spanish Civil Code Art.
6 1857.

7 **Art. 3152. Pledge of a thing not owned**

8 **A pledge given over a thing that the pledgor does not own is established**
9 **when the thing is acquired by the pledgor and the other requirements for the**
10 **establishment of the pledge have been satisfied.**

11 Revision Comments - 2014

12 This Article is derived from Article 3144 of the Louisiana Civil Code of
13 1870.

14 **Art. 3153. General requirements for effectiveness of pledge against third**
15 **persons**

16 **A pledge is without effect as to third persons unless it has become**
17 **effective between the parties and is established by written contract.**

18 Revision Comments - 2014

19 (a) This Article is derived from Paragraph A of Article 3158 of the Louisiana
20 Civil Code of 1870, which stated the general rule that a pledge could have effect
21 against third persons only if evidenced by a writing. Paragraph B of the same Article
22 contained a number of exceptions to the writing requirement, in the case of
23 promissory notes, bills of exchange, bills of lading, stocks, bonds, or other "written
24 obligations of any kind." Other than the catch-all category of "written obligations
25 of any kind," those kinds of collateral are all now encumbered under the Uniform
26 Commercial Code, and an exception to the writing requirement for them in this Title
27 is unnecessary. Thus, this Article follows the simpler approach of Paragraph A of
28 Article 3158 of the 1870 Code, requiring in all cases a written contract for a pledge
29 to be effective against third persons. In the case of the pledge of an incorporeal, a
30 written pledge is required under Article 3153 even for the pledge to be effective
31 between the parties. In that case, therefore, this Article adds no additional
32 requirement in order for the pledge to have effect against third persons.

33 (b) This Article sets forth only the general requirements imposed upon all
34 pledges in order for them to have effect against third persons. Additional
35 requirements must be satisfied in the case of the pledge of the lessor's rights in the
36 lease of an immovable and its rents and in the case of the pledge of other third-party
37 obligations. See C.C. Arts. 3154 and 3155 (Rev. 2014).

38 **Art. 3154. Effectiveness against third persons of the pledge of the lease of an**
39 **immovable**

40 **The pledge of the lessor's rights in the lease of an immovable and its**
41 **rents has effect against third persons in accordance with the provisions of**

Chapter 2 of this Title.

Revision Comments - 2014

This Article is new. Chapter 2 of this Title specifies the requirements that must be satisfied for a pledge of the lessor's rights in the lease of an immovable and its rents to have effect against third persons. See C.C. Art. 3169 (Rev. 2014).

Art. 3155. Effectiveness against third persons of the pledge of other obligations

If the thing pledged is another person's obligation not arising under the lease of an immovable, the pledge is effective against third persons only from the time that the obligor has actual knowledge of the pledge or has been given notice of it.

Revision Comments - 2014

(a) This Article is new. The Louisiana Civil Code of 1870 did not require notification to the person obligated on a pledged obligation in order for the pledge to have effect against third persons. In contrast, Article 2643 (Rev. 1993) requires notice to or knowledge by the person obligated on an assigned right in order for an assignment of that right to be effective against him or other third persons. This Article applies the same rule to pledges, other than a pledge of the lessor's rights in the lease of an immovable and its rents. See C.C. Art. 3169 (Rev. 2014).

(b) This Article does not require the obligor's consent to the pledge, nor an acknowledgment by the obligor that notice has been given.

(c) This Article does not address the issue of when the obligor is obligated to render performance to the pledge. That issue is governed by Article 3161 (Rev. 2014), which requires not only the obligor's knowledge of the existence of the pledge but also a written direction to the obligor to render performance to the pledgee.

(d) In the case of a mortgage that includes a pledge of the mortgagor's rights under policies of insurance covering the mortgaged immovable, R.S. 9:5386 provides an exception to the notice requirement of this Article: the pledge has effect as to third persons when the act of mortgage is recorded, without the necessity of notice to the insurer.

Art. 3156. Pledgee's right of retention

If the thing pledged has been delivered to the pledgee or a third person for the benefit of the pledgee, the pledgee is not obligated to return it until all secured obligations have been extinguished.

Revision Comments - 2014

(a) This Article restates the principle of Civil Code Article 3164 (1870) without intending to change the law. The pledgee's right of retention is commonly recognized under the law of pledge in civilian jurisdictions. See, e.g., French Civil Code Art. 2339; Argentine Civil Code Art. 3229; Luxembourg Civil Code Art. 2083; Spanish Civil Code Art. 1866;

(b) This Article does not alter the longstanding rule that a pledgee may not resist seizure under judicial process, even if instituted by a creditor holding an inferior security right. See *Pickens v. Webster*, 31 La. Ann. 870 (1879) and *Case v. Kloppenburg*, 27 La. Ann. 482 (1875).

1 in the case of a mere secured transaction, rather than an outright assignment of
 2 ownership, the parties may very well intend that the assignor retain the right to
 3 collect payments on the pledged obligation until some later event, such as the
 4 occurrence of a default by the assignor. This Article adopts the same concept: the
 5 obligor is not obligated to render performance to the pledgee until he has been
 6 notified of the pledge and directed in writing to render performance to the pledgee.
 7 Since mere notification to the third-party obligor of the existence of a pledge is not
 8 sufficient to require him to render performance to the pledgee, a fortiori the third
 9 party's actual knowledge of the pledge would not so obligate him in the absence of
 10 an express, written direction to render performance to the pledgee.

11 (c) In addition to the pledge of other kinds of obligations, this Article applies
 12 to the pledge of the lessor's interest in the lease of an immovable and its rents. It
 13 replaces former R.S. 9:4401(G), which provided that a lessee was not discharged
 14 from his debt if he paid anyone other than an assignee after receiving written notice
 15 that the assignment had become "absolute."

16 **Art. 3162. Defenses available to obligor of a pledged obligation**

17 **Unless the obligor of a pledged obligation makes a contrary agreement**
 18 **with the pledgor or pledgee, he may assert against the pledgee any defense**
 19 **arising out of the transaction that gave rise to the pledged obligation. He may**
 20 **also assert against the pledgee any other defense that arises against the pledgor**
 21 **before the obligor has been given written notice of the pledge.**

22 Revision Comments - 2014

23 (a) This Article is new. It combines concepts found in the Uniform
 24 Commercial Code and elsewhere in the Civil Code.

25 (b) Article 1900 (Rev. 1984) provides that an obligor who has been given
 26 notice of an assignment to which he did not consent may not claim compensation
 27 against the assignee for an obligation of the assignor arising after that notice. The
 28 Civil Code does not expressly address the circumstances under which other defenses
 29 might be asserted by the obligor against the assignee. By contrast, the Uniform
 30 Commercial Code provides that an account debtor, in the absence of an agreement
 31 to the contrary, retains the right to assert against a secured party any defense or claim
 32 arising from the transaction that gave rise to the account debtor's obligation
 33 irrespective of when the claim or defense arises. He may also assert against the
 34 secured party any other defense or claim he has against the assignor, even if not
 35 related to the contract in question, to the extent that the defense or claim accrues
 36 before he receives a notification of the assignment. See R.S. 10:9-404(a). This
 37 Article largely adopts the approach of the Uniform Commercial Code.

38 **Art. 3163. Clause prohibiting pledge**

39 **A clause in a contract restricting the pledge of the rights of a party to**
 40 **payments that are or will become due under the contract, making the pledge or**
 41 **its enforcement a default under the contract, or providing that the other party**
 42 **is excused from performance or may terminate the contract on account of the**
 43 **pledge, is without effect.**

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Revision Comments - 2014

(a) This Article is new. It adopts concepts expressed in Chapter 9 of the Uniform Commercial Code and in former R.S. 9:4401. Under certain circumstances, it may effect a change in the law.

(b) Under Article 2653 (Rev. 1993), a right cannot be assigned when the contract from which it arises prohibits the assignment of that right. Interpreting that Article, the Supreme Court has held that there is no public policy precluding a clause prohibiting assignment of rights under an insurance contract. See *In Re Katrina Canal Breaches Litigation*, 63 So.3d 955 (La. 2011). By its terms, however, Article 2653 (Rev. 1993) applies to sales and does not necessarily apply to a mere pledge or the granting of a security interest. Chapter 9 of the Uniform Commercial Code generally voids anti-assignment clauses that prohibit a security interest and specifically provides this rule prevails over Article 2653 (Rev. 1993). See R.S.10:9-406. Similarly, former R.S. 9:4401(G)(4) provided that any term in a lease was ineffective if it prohibited assignment of rent, prohibited creation of a security right in rent or required the lessee's consent to the assignment or security right.

(c) This Article applies to all pledges of an obligation of a third person to make payment, including both pledges of movables that are outside the scope of Chapter 9 of the Uniform Commercial Code and pledges of the lessor's interest in the lease of an immovable and its rents. The effect of this Article is, however, limited to the pledge of payments that are or will become due under a contract. This Article does not apply to the encumbrance of other rights that the pledgor may have under the contract.

(d) This Article does not invalidate the arrangement commonly known as a "negative pledge" by which an obligor agrees with one of his creditors that he will not encumber one or more of his assets in favor of another creditor. Thus, a lessor may validly agree with one of his creditors that he will not pledge to another creditor his rights to rents arising under a lease of an immovable. The reason that this Article does not apply to such an agreement is that the contract restricting the pledge is not the contract under which the pledged payments will become due under the same contract. In the example given, the payments arise under the lease between the lessor and lessee, while the prohibition against pledging those payments arises under the contract between the lessor and his creditor. On the other hand, this Article invalidates a stipulation in a lease whereby the lessor agrees with the lessee that the rents under the lease may not be pledged to the lessor's creditors. Such a stipulation, if it were permitted under this Article, would in effect make the rents under the lease unsusceptible of pledge. There is no similar consequence with a negative pledge, which is a mere contractual covenant that does not have the effect of nullifying a pledge made in violation of its terms.

Art. 3164. Modification of contract from which a pledged obligation arises

The parties to a contract from which a pledged obligation arises may agree to modify or terminate the contract or to substitute a new contract. If made in good faith, the agreement is effective against the pledgee without his consent. Nevertheless, after written notice of the pledge is given to the obligor of a pledged obligation that has been fully earned by the pledgor's performance, an agreement modifying or extinguishing the pledged obligation is without effect against the pledgee unless made with his consent.

Revision Comments - 2014

1 (a) This Article is new. It addresses an issue for which no treatment was
2 given in the Louisiana Civil Code of 1870: the circumstances under which the
3 contract from which a pledged obligation arises can be modified or terminated by the
4 parties to that contract without the consent of the pledgee.

5 (b) For contracts that are susceptible of encumbrance by a security interest,
6 Chapter 9 of the Uniform Commercial Code states the general rule that a
7 modification of or substitution for an assigned contract is effective against the
8 assignee (i.e., the secured party) if made in good faith. R.S. 10:9-405(a). R.S.
9 10:9-405(b) hinges the applicability of this rule, however, on two factors: whether
10 the right to payment has been fully earned by performance and whether the account
11 debtor has received notification of the assignment. Only where the right to payment
12 has been fully earned by performance and the account debtor has been notified of the
13 assignment is the general rule of R.S. 10:9-405(a) inapplicable. In other words, only
14 in that event is the consent of the assignee necessary for a modification made in good
15 faith. Of course, under any circumstances in which a modification is made by the
16 parties in bad faith, the modification is, by inference from R.S. 10:9-405(a),
17 unenforceable against the assignee.

18 (c) This Article restates the substance of R.S. 10:9-405. An agreement made
19 in good faith by the parties to a contract from which a pledged obligation arises is
20 generally effective against the pledgee without the necessity of his consent. An
21 exception arises after written notice of a pledge has been given to the obligor of a
22 pledged obligation that has been fully earned by performance. In that specific case,
23 an agreement for the modification of that obligation is without effect as to the
24 pledgee unless made with his consent.

25 (d) The rules expressed in this Article apply to all pledges of a third person's
26 obligation, including the obligations of a lessee under a lease that is the subject of
27 a pledge made under Chapter 2 of this Title. In the case of an assignment of leases
28 and rents, former R.S. 9:4401(G) addressed the topic using terminology and concepts
29 similar to those found in R.S. 10:9-405 but with somewhat different results.

30 **Art. 3165. Attachment of pledge to obligations arising under modified or**
31 **substituted contract**

32 **Upon the modification of a contract from which a pledged obligation**
33 **arises, or the substitution of a new contract, the pledge encumbers the**
34 **corresponding rights of the pledgor under the modified or substituted contract.**

35 Revision Comments - 2014

36 This Article is new. It makes more general a principle that applied to
37 assignments of leases and rents under former R.S. 9:4401(G)(3). Chapter 9 of the
38 Uniform Commercial Code contains a similar principle. See R.S. 10:9-405.

39 **Art. 3166. Modification as default by pledgor**

40 **The pledgor and pledgee may agree that a modification or termination**
41 **of the contract from which a pledged obligation of a third person arises, or the**
42 **substitution of a new contract, is a default by the pledgor.**

43 Revision Comments - 2014

44 (a) This Article is new. It makes more general a principle that applied to
45 assignments of leases and rents under former R.S. 9:4401(G)(3). Chapter 9 of the

1 Uniform Commercial Code contains a similar principle. See R.S. 10:9-405.

2 (b) Under Article 3164 (Rev. 2014), a modification or termination of a
3 contract from which a pledged obligation arises is generally effective against the
4 pledgee without his consent if it is made in good faith. Nevertheless, a pledge may
5 provide that a modification or termination of the contract, or the substitution of a
6 new contract, is a default by the pledgor.

7 **Art. 3167. Pledgee not bound for pledgor's obligations**

8 **In the absence of an assumption by the pledgee, the existence of a pledge**
9 **does not impose upon the pledgee liability for the pledgor's acts or omissions,**
10 **nor does it bind the pledgee to perform the pledgor's obligations.**

11 Revision Comments - 2014

12 This Article is new. It expands to all pledges a principle that applied to
13 assignments of leases and rents under former R.S. 9:4401(G)(5). Chapter 9 of the
14 Uniform Commercial Code contains a similar principle. See R.S. 10:9-402.

15 **CHAPTER 2. THE PLEDGE OF THE LESSOR'S RIGHTS IN THE**

16 **LEASE OF AN IMMOVABLE AND ITS RENTS**

17 **Art. 3168. Requirements of contract**

18 **A contract establishing a pledge of the lessor's rights in the lease of an**
19 **immovable and its rents must state precisely the nature and situation of the**
20 **immovable and must state the amount of the secured obligation or the**
21 **maximum amount of secured obligations that may be outstanding from time to**
22 **time.**

23 Revision Comments - 2014

24 (a) This Chapter, which supplements the general provisions of Chapter 1,
25 contains provisions that are specifically applicable to the pledge of the lessor's rights
26 in the lease of an immovable and its rents.

27 (b) There is no requirement that a pledge encumber both leases and rents, for
28 the parties may choose to encumber in a pledge only leases or only rents. There is
29 also no requirement that all leases or all rents of an immovable be pledged; the
30 parties may choose to encumber only one or more specific leases or the rents from
31 those specific leases. See C.C. Art. 3170 (Rev. 2014). The scope of what is pledged
32 is a matter of contract between the parties.

33 (c) This Article restates a number of formal requirements contained in
34 former R.S. 9:4401(A) but in a manner that more closely follows the formal
35 requirements applicable to a contract of mortgage. Cf C.C. Art. 3288 (Rev. 1991).
36 The degree of specificity required in the description of the immovable subject to the
37 pledge and the requirements for description of the secured obligation are identical
38 to the corresponding requirements that apply to a contract of mortgage. See
39 Comments (b) and (c) to C.C. Art. 3288 (Rev. 1991).

40 (d) A pledge under this Chapter may be created by a sublessor. In that event,
41 the pledge encumbers his rights under the sublease, but not his rights under the
42 underlying lease of the property from his own lessor. The rights of a lessee under

1 a lease, as well as the rights of a sublessee under a sublease, are not susceptible of
2 pledge under this Chapter but instead are encumbered by mortgage. See C.C. Art.
3 3286 (Rev. 1991; Amended 1993); R.S. 9:4401 (Rev. 2014).

4 **Art. 3169. Effectiveness against third persons**

5 **The pledge of the lessor's rights in the lease of an immovable and its**
6 **rents is without effect as to third persons unless the contract establishing the**
7 **pledge is recorded in the manner prescribed by law.**

8 **Nevertheless, the pledge is effective as to the lessee from the time that he**
9 **is given written notice of the pledge, regardless of whether the contract**
10 **establishing the pledge has been recorded.**

11 Revision Comments - 2014

12 (a) This Article is new. Recordation of a contract establishing a pledge of
13 the lessor's rights in the lease of an immovable and its rents is required for the pledge
14 to have effect against third persons other than the lessee. To that extent, the Article
15 restates a requirement that was contained in former R.S. 9:4401. Unlike that statute,
16 however, this Article does not specify the place where recordation must occur. The
17 place of recordation is specified in Article 3346 (Rev. 2014), which changes the law
18 by requiring recordation in the mortgage records, rather than in the conveyance
19 records, as former R.S. 9:4401 previously provided.

20 (b) This Article does not address the issue of when the lessee is obligated to
21 render performance to the pledgee. That issue is governed by Article 3161 (Rev.
22 2014). Article 3164 (Rev. 2014) prescribes the circumstances under which an
23 agreement by the lessor and lessee to modify a lease has effect against a pledgee.

24 **Art. 3170. Pledge contained in act of mortgage**

25 **A pledge of the lessor's rights in the lease of an immovable and its rents**
26 **may be established in an act of mortgage of the immovable. In that event, the**
27 **pledge is given the effect of recordation for so long as the mortgage is given that**
28 **effect and is extinguished when the mortgage is extinguished.**

29 Revision Comments - 2014

30 This Article is new. It recognizes the longstanding practice of the inclusion
31 within a contract of mortgage of the pledge of the mortgagor's rights in the leases and
32 rents of the mortgaged immovable. Similar recognition was contained in former R.S.
33 9:4401(A). This Article omits, however, the provision of former R.S. 9:4401(A) to
34 the effect that recordation of the contract of mortgage in the mortgage records
35 obviated the need for separate recordation in the conveyance records in order for the
36 pledge to have effect against third persons. Under this revision, all pledges of the
37 lessor's interest in the lease of an immovable and its rents must be recorded in the
38 mortgage records, rather than the conveyance records, in order to have effect against
39 third persons, regardless of whether the pledge is contained in a contract of mortgage
40 or in a separate contract of pledge. See C.C. Art. 3346 (Rev. 2014).

41 **Art. 3171. Pledge of all or part of the leases of an immovable**

1 seemed to presuppose that mineral lease bonus payable to a landowner or holder of
2 a mineral servitude was not rent and would therefore be an "account" susceptible of
3 encumbrance only by a security interest under Chapter 9 of the Uniform Commercial
4 Code. Nevertheless, after the adoption of those statutes, the Supreme Court held, in
5 a case involving claims of collation among heirs, that mineral lease bonus is a form
6 of rent. Succession of Doll v. Doll, 593 So.2d 1239 (La. 1992).

7 This Article provides that mineral lease bonus payable to a landowner or
8 holder of a mineral servitude is encumbered by a pledge under this Chapter, rather
9 than by a security interest under Chapter 9 of the Uniform Commercial Code,
10 without regard to whether the bonus is classified as rent under the Mineral Code.
11 Similarly, delay rentals, royalties, and shut-in payments arising from mineral leases
12 are encumbered by a pledge under this Chapter, as is any other payment that is owed
13 to a landowner or holder of a mineral servitude and that is classified as rent under the
14 Mineral Code. This treatment is in accord with cases holding a mineral lease bonus
15 to be a civil fruit (See, e.g., Milling v. Collector of Revenue, 220 La. 773, 57 So.2d
16 679 (La. 1952)), as well as the law of community property, which classifies as
17 community property bonuses, delay rentals, royalties, and shut-in payments arising
18 from mineral leases covering separate property. See C.C. Art. 2339 (Rev. 1979;
19 Amended 2008).

20 (e) Mineral payments owing to a person other than a landowner or holder of
21 a mineral servitude are not susceptible of pledge under this Title.

22 **Art. 3173. Accounting to other pledgees for rent collected**

23 **Except as provided in this Article, a pledgee is not bound to account to**
24 **another pledgee for rent collected.**

25 **A pledgee shall account to the holder of a superior pledge for rent the**
26 **pledgee collects more than one month before it is due and for rent he collects**
27 **with actual knowledge that the payment of rent to him violated written**
28 **directions given to the lessee to pay rent to the holder of the superior pledge.**

29 **After all secured obligations owed to a pledgee have been extinguished,**
30 **he shall deliver any remaining rent collected to another pledgee who has made**
31 **written demand upon him for the rent before he delivers it to the pledgor.**

32 Revision Comments - 2014

33 (a) This Article is new. It changes the law by generally permitting an
34 inferior pledgee to collect rent from the lessee without a duty to account to a superior
35 pledgee for the rent collected. Nevertheless, the inferior pledgee must account to the
36 superior pledgee for any rent he collects more than one month before it is due. The
37 inferior pledgee must also account for any rent he collects with actual knowledge
38 that payment of the rent to him violated written instructions to the lessee to pay rent
39 to the superior pledgee.

40 (b) Former R.S. 9:4401(G)(2) provided that, if a pledgee had not notified the
41 lessee to make direct payment to him, the lessee was exonerated of liability for rent
42 paid to the lessor or a subsequent assignee; however, the person to whom payment
43 was remitted was nevertheless liable to the pledgee for the sums received. Thus, an
44 inferior pledgee who collected rent was exposed to liability to a superior pledgee for
45 any rent he might collect. This Article now permits the inferior pledgee to retain rent
46 he collects as it falls due, unless a superior pledgee has notified the lessee to make

1 payment to him and the inferior pledgee has knowledge of these instructions. At any
2 time, of course, the superior pledgee can give a direct payment notification to the
3 lessee, in which event the lessee will no longer be able safely to pay the inferior
4 pledgee. See C.C. Art. 3161 (Rev. 2014). The inferior pledgee would still be able
5 to retain any payments that the lessee might make to him in violation of these
6 instructions if the inferior pledgee were unaware of those instructions.

7 (c) The principles expressed in this Article are analogous to rules under
8 Chapter 9 of the Uniform Commercial Code, which generally permit an inferior
9 secured party to collect proceeds of collateral without liability to a superior secured
10 party, provided that the inferior secured party does not know that his receipt of the
11 proceeds violates the rights of the superior secured party. See Uniform Commercial
12 Code Official Comment 5 to R.S. 10:9-331; Uniform Commercial Code Official
13 Comment 7 to R.S. 10:9-330 and Uniform Commercial Code Official Comment 5
14 to R.S. 10:9-607.

15 (d) This Article does not grant inferior pledgees the right to collect rent more
16 than one month in advance of the date due. Without a rule limiting the ability of an
17 inferior pledgee to collect future rents, a superior pledgee might have discovered that
18 all future rents for the balance of the term of the lease had been paid in advance to
19 an inferior pledgee.

20 (e) Under Article 3160 (Rev. 2014), after the secured obligation has been
21 satisfied, a pledgee must account to the pledgor for any excess payment received on
22 a pledged obligation of a third person. This obligation applies to any excess
23 proceeds of rent collected from a lessee. Under this Article, if before delivering the
24 excess proceeds to the pledgor the pledgee receives a demand for them from another
25 pledgee, the pledgee who collected the rent is bound to turn the excess proceeds over
26 to the other pledgee, rather than delivering them to the lessor. Chapter 9 of the
27 Uniform Commercial Code contains a similar rule. See R.S. 10:9-608.

28 (f) R.S. 9:4402 (Rev. 2014) addresses the rights of competing pledgees to
29 rental collections that have been deposited into a deposit account maintained with
30 a financial institution.

31 (g) The provisions of this Article may be altered by agreement between
32 pledgees.

33 **Art. 3174. Judicial sale prohibited**

34 **A pledge of the lessor's rights in the lease of an immovable and its rents**
35 **does not entitle the pledgee to cause the rights of the lessor to be sold by judicial**
36 **process. Any clause to the contrary is absolutely null.**

37 Revision Comments - 2014

38 (a) This Article, which is new and has no counterpart in either the Louisiana
39 Civil Code of 1870 or former R.S. 9:4401, highlights a fundamental distinction
40 between the enforcement of the pledge of a movable and the enforcement of the
41 pledge of the lessor's rights under the lease of an immovable. In the case of the
42 pledge of a movable, Article 3158 (Rev. 2014) permits an extra-judicial disposition
43 by the pledgee, if authorized in the contract of pledge, as well as seizure and sale by
44 judicial process of the thing pledged. This Article precludes the pledgee of the
45 lessor's rights in the lease of an immovable and its rents from proceeding with either
46 kind of disposition. Allowing the pledgee to sell the lessor's rights under the lease,
47 whether by private or judicial sale, would, in a sense, effect an undesirable
48 dismemberment of ownership of the immovable.

49 (b) The pledge of lessor's rights in the lease of an immovable and its rents
50 is enforced only by collection of rents and enforcement of other obligations of the
51 lessee under the lease. The pledgee is given the right to collect rents by Article 3160
52 (Rev. 2014) and, to effectuate this right, is permitted by Article 3161 (Rev. 2014) to

1 direct the lessee to pay rent to him. If necessary, the pledgee may enforce his rights
2 by bringing suit directly against the lessee. He may also employ remedies available
3 under the Code of Civil Procedure to seize the rents in the hands of the lessee, but
4 he cannot cause the lessor's rights under the lease to be sold by judicial process. See
5 C.C.P. Arts. 2411 and 3503.

6 **Art. 3175. Applicability of general rules of pledge**

7 **In all matters for which no special provision is made in this Chapter, the**
8 **pledge of the lessor's rights in the lease of an immovable and its rents is**
9 **governed by the provisions of the first Chapter of this Title.**

10 Revision Comments - 2014

11 This Article is new. It states explicitly that the entirety of Chapter 1 of this
12 Title applies fully to the pledge of the lessor's rights in the lease of an immovable
13 and its rents except to the extent inconsistent with the provisions of this Chapter.

14 * * *

15 TITLE XXII-A OF REGISTRY

16 CHAPTER 1. GENERAL PROVISIONS

17 * * *

18 Art. 3346. Place of recordation; duty of the recorder

19 A. An instrument creating, establishing, or relating to a mortgage or
20 privilege over an immovable, **or the pledge of the lessor's rights in the lease of an**
21 **immovable and its rents**, is recorded in the mortgage records of the parish in which
22 the immovable is located. All other instruments are recorded in the conveyance
23 records of that parish.

24 B. The recorder shall maintain in the manner prescribed by law all
25 instruments that are recorded with him.

26 Revision Comments - 2014

27 Effective as of January 1, 2015, this Article provides that a pledge of the
28 lessor's rights in the lease of an immovable and its rents is recorded in the mortgage
29 records of the parish in which the immovable is located. This represents a change
30 in the law, which formerly required recordation in the conveyance records. For
31 transitional rules applicable to the continued effectiveness of assignments of leases
32 and rents filed in the conveyance records in accordance with former R.S. 9:4401
33 prior to January 1, 2015, as well as rules that apply to the reinscription, release,
34 transfer, amendment, or other modification of those assignments, see R.S. 9:4403.
35 After January 1, 2015, despite the filing of the original assignment of leases and rents
36 in the conveyance records, an instrument effecting the reinscription, release, transfer,
37 amendment, or other modification of the assignment must be filed in the mortgage
38 records, and a filing in the conveyance records is neither necessary nor effective to

1 cause the instrument to have effect against third persons.

2 * * *

3 CHAPTER 2. MORTGAGE RECORDS

4 SECTION 1. GENERAL PROVISIONS

5 Art. 3354. Applicability

6 The provisions of this Chapter apply only to the mortgages records and
7 privileges encumbering immovables and to pledges of the lessor's rights in the
8 lease of an immovable and its rents.

9 Revision Comments - 2014

10 (a) The primary purpose of the 2014 revision of this Chapter is to include the
11 pledge of the lessor's rights in the lease of an immovable and its rents within its
12 scope. Effective as of January 1, 2015, Article 3346 provides that the pledge of the
13 lessor's rights in the lease of an immovable and its rents is recorded in the mortgage
14 records of the parish in which the immovable is located. This represents a change
15 in the law, which formerly required recordation in the conveyance records. For
16 transitional rules applicable to the continued effectiveness of assignments of leases
17 and rents filed in the conveyance records in accordance with former R.S. 9:4401
18 prior to January 1, 2015, as well as rules that apply to the reinscription, release,
19 transfer, amendment, or other modification of those assignments, see R.S. 9:4403.
20 After January 1, 2015, despite the filing of the original assignment of leases and
21 rents in the conveyance records, an instrument effecting the reinscription, release,
22 transfer, amendment, or other modification of the assignment must be filed in the
23 mortgage records, and a filing in the conveyance records is neither necessary nor
24 effective to cause the instrument to have effect against third persons.

25 (b) This Chapter applies only to encumbrances upon immovables. Privileges
26 and pledges that encumber movable property are not subject to the registry or
27 reinscription requirements of this Chapter or other provisions of this Title. See C.C.
28 Arts. 3153 and 3155 (Rev. 2014); Art. XIX, Sec. 19 of the La. Const. of 1921, made
29 statutory by Art. XIV, Sec. 16 of the La. Const. of 1974. References to pledges in
30 later Articles of this Chapter are limited to pledges of the lessor's rights in the lease
31 of an immovable and its rents.

32 Art. 3355. Mortgage, pledge, or privilege affecting property in several parishes

33 An act of mortgage, contract of pledge, instrument evidencing a privilege,
34 or other instrument that affects property located in more than one parish may be
35 executed in multiple originals for recordation in each of the several parishes. An
36 original that is filed with a recorder need only describe property that is within the
37 parish in which it is filed.

38 A certified copy of an instrument that is recorded in the records of a parish
39 need only describe property that is within the parish in which it is filed.

40 Revision Comments - 2014

1 This provision is consistent with Article 3345 (Rev. 2005) and reflects
2 practices that have long been followed by practitioners. It expressly recognizes that
3 recordation of a multiple original that omits the description of encumbered property
4 located in other parishes does not affect the validity of the recordation.

5 Art. 3356. Transfers, amendments, and releases

6 A. A transferee of an obligation secured by a mortgage, **pledge, or privilege**
7 is not bound by any unrecorded act releasing, amending, or otherwise modifying the
8 mortgage, **pledge, or privilege** if he is a third person with respect to that unrecorded
9 act.

10 B. A recorded transfer, modification, amendment, or release of a mortgage,
11 **pledge, or privilege** made by the obligee of record is effective as to a third person
12 notwithstanding that the obligation secured by the mortgage, **pledge, or privilege** has
13 been transferred to another.

14 C. For the purpose of this Chapter, the obligee of record of a mortgage,
15 **pledge, or privilege** is the person identified by the mortgage records as the obligee
16 of the secured obligation.

17 Revision Comments - 2014

18 Prior to the revision of the Title on Mortgages effective January 1, 1993,
19 some courts, relying upon the general principle that one cannot transfer a greater
20 right than he has under a contract, held that a transferee of the secured obligation was
21 bound by unrecorded acts between the mortgagor and previous mortgagee. Other
22 courts, seemingly recognizing that a mortgage is a real right and hence subject to the
23 principle that contracts modifying or amending such rights must be recorded to affect
24 third persons, held that a transferee of an obligation secured by a mortgage was not
25 bound by a separate unrecorded contract between the mortgagor and mortgagee
26 modifying, releasing or amending the mortgage. See Harrell, "Developments in the
27 Law, Security Devices," 47 La.L.Rev. 452, 464 (1986). This Article adopts the latter
28 view and requires that any act releasing a mortgage, pledge, or privilege, or
29 amending or otherwise modifying the contract creating or evidencing it, be recorded
30 in order to affect subsequent assignees of the secured obligation.

31 SECTION 2. METHOD AND DURATION OF RECORDATION

32 Art. 3357. Duration; general rule

33 Except as otherwise expressly provided by law, the effect of recordation of
34 an instrument creating a mortgage **or pledge** or evidencing a privilege ceases ten
35 years after the date of the instrument.

36 Revision Comments - 2014

37 (a) This and the succeeding four Articles state the rules relative to the lapse

1 of inscriptions of mortgages, pledges, and privileges in the mortgage records.

2 (b) This Article establishes a general rule that the effect of an inscription
3 ceases ten years after the date of the document evidencing the mortgage, pledge, or
4 privilege. This departs from the rule of Article 3369 of the Louisiana Civil Code of
5 1870 that the period of inscription was counted from the date of the secured
6 obligation.

7 Art. 3358. Duration of recordation of certain mortgages, pledges, and ~~vendor's~~
8 privileges

9 If an instrument creating a mortgage or pledge or evidencing a ~~vendor's~~
10 privilege describes the maturity of any obligation secured by the mortgage, pledge,
11 or privilege and if any part of the described obligation matures nine years or more
12 after the date of the instrument, the effect of recordation ceases six years after the
13 latest maturity date described in the instrument.

14 Revision Comments - 2014

15 Under this Article, the effect of recording a mortgage, pledge, or privilege
16 that secures an obligation having a stated maturity of nine years or more ceases six
17 years after the maturity of the obligation. This Article recognizes, however, that the
18 particular terms of the secured obligations may or may not be apparent from the
19 recorded instruments creating the mortgage or pledge or evidencing the privilege
20 securing them. Consequently, this Article extends the period of inscription beyond
21 the ten-year limit prescribed by Article 3357 (Rev. 2014) only in those cases in
22 which the recorded instrument describes the maturity of a particular obligation that
23 it secures. If the maturity occurs nine years or more from the date of the instrument,
24 the effect of registry continues for six years from the date of the described maturity.

25 * * *

26 Art. 3361. Effect of amendment

27 If before the effect of recordation ceases an instrument is recorded that
28 amends a recorded mortgage, pledge, or privilege to describe or modify the maturity
29 of a particular obligation that it secures, then the time of cessation of the effect of the
30 recordation is determined by reference to the maturity of the obligation last
31 becoming due described in the mortgage, pledge, or privilege as amended.

32 Revision Comments - 2014

33 If, before the effect of recordation ceases, an amendment to a mortgage,
34 pledge, or privilege is filed that would bring about a longer period of effectiveness,
35 as in the case of an amendment describing a note with a maturity of nine years or
36 more from the date of the original instrument, then the period of inscription is
37 calculated with reference to the maturity of the obligations described by the
38 instrument as amended.

39 Art. 3362. Method of reinscription

1 Art. 3365. Effect of ~~request~~ **notice** recorded after cessation of effect of recordation

2 ~~A.~~ A notice of reinscription that is recorded after the effect of recordation of
3 the instrument sought to be reinscribed has ceased, again produces the effects of
4 recordation, but only from the time that the notice of reinscription is recorded. The
5 effect of recordation pursuant to this ~~Paragraph~~ **Article** shall continue for ten years
6 from the date on which the notice of reinscription is recorded, and the instrument
7 may be reinscribed thereafter from time to time as provided by Article 3362.

8 ~~B.~~ Reinscription pursuant to ~~Paragraph A~~ of this Article does not require that
9 the mortgage **or pledge** or evidence of privilege be again recorded, even if the
10 original recordation has been cancelled.

11 Revision Comments - 2014

12 This Article restates a rule that the courts held was implied by provisions of
13 the Louisiana Civil Code of 1870. If the notice of reinscription is timely recorded,
14 it extends the period of inscription for ten years from its date of recordation in all
15 cases. If it is recorded after the effect of recordation ceases, the reinscription gives
16 the mortgage, pledge, or privilege the effect it would have if that were the first time
17 the instrument was recorded.

18 SECTION 3. CANCELLATION

19 Art. 3366. Cancellation upon written request; form and content

20 A. The recorder of mortgages shall cancel, in whole or in part and in the
21 manner prescribed by law, the recordation of a mortgage, **pledge**, or privilege upon
22 receipt of a written request for cancellation in a form prescribed by law and that:

23 (1) Identifies the mortgage, **pledge**, or privilege by reference to the place in
24 the records where it is recorded; and

25 (2) Is signed by the person requesting the cancellation.

26 B. The effect of recordation of the instrument ceases upon cancellation by
27 the recorder pursuant to the provisions of this Article.

28 Art. 3367. Cancellation of recordation after effect of recordation has ceased

29 If the effect of recordation of a mortgage, **pledge**, or privilege has ceased for
30 lack of reinscription, the recorder upon receipt of a written signed application shall
31 cancel its recordation.

32 Art. 3368. Cancellation of ~~prescribed~~ judicial mortgage **arising from judgment**

1 **that has prescribed**

2 **Notwithstanding the reinscription of a judicial mortgage created by the**

3 **filing of a judgment of a court of this state, The ~~the~~** recorder shall cancel **the**

4 **judicial mortgage** from his records ~~a judicial mortgage created by the filing of a~~

5 ~~judgment of a court of this state that has been reinscribed, upon the written request~~

6 ~~of any person's **written request** to which is attached a certificate from the clerk of~~

7 ~~the court rendering the judgment that no suit or motion ~~has been~~ **was** filed for its~~

8 ~~revival within the time required by Article 3501 or of a certified copy of a final **and**~~

9 **definitive** judgment of the court rejecting the demands of the plaintiff in a suit or

10 ~~motion to revive the judgment.~~

Revision Comments - 2014

12 As Comment (b) to Article 3359 (Rev. 2014) explains, reinscription of a

13 judicial mortgage and revival of the underlying judgment are entirely different

14 concepts. Both timely reinscription and a timely suit for revival are necessary for a

15 judicial mortgage to continue to have effect. Under this Article, even if a judicial

16 mortgage is reinscribed, the recorder must cancel the inscription of the judicial

17 mortgage from his records upon any person's request accompanied by a certificate

18 from the clerk of the court rendering the underlying judgment that no suit was filed

19 for its revival within the time required by Article 3501 (Rev. 1983) or by a final and

20 definitive judgment of that court rejecting the demands of the plaintiff in a suit to

21 revive it.

* * *

23 Section 2. The heading of Part IV of Chapter 1 of Code Title XX-A of Code

24 Book III of Title 9 of the Louisiana Revised Statutes of 1950, and R.S. 9:4401 and

25 9:5386 are hereby amended and reenacted and R.S. 9:4402 and 4403 are hereby

26 enacted to read as follows:

CODE TITLE XX - ~~OF PLEDGE~~ SECURITY

* * *

CODE TITLE XX-A - PLEDGE

CHAPTER 1. PLEDGES

PART IV. PLEDGE ~~OR ASSIGNMENT~~ OF LEASES

AND RENTS OF AN IMMOVABLE

~~§4401. Conditional or collateral assignment of leases or rents~~

~~A. Any obligation may be secured by an assignment by a lessor or sublessor~~

1 of leases or rents, or both leases and rents, pertaining to immovable property. Such
2 assignment may be expressed as a conditional or collateral assignment, and may be
3 effected in an act of mortgage, by a separate written instrument of assignment, or by
4 a separate written instrument of pledge, and may be referred to, denominated, or
5 described as a pledge or an assignment, or both. The instrument shall state the
6 amount of the obligation secured thereby or the maximum amount of the obligation
7 that may be outstanding at any time from time to time that such assignment secures.
8 If such conditional or collateral assignment is made, it shall become absolute upon
9 the assignor's default in respect to the obligation thereby secured or in accordance
10 with the terms of the instrument creating such assignment, and shall become
11 operative as to the debtor upon written notice to the debtor from or on behalf of the
12 assignee or the assignor that such assignment has so become absolute.

13 (1) ~~An assignment relating to a lease or rent of an immovable is given the~~
14 ~~effect of recordation when an original or a certified copy of the instrument creating~~
15 ~~the assignment is filed in the conveyance records of the parish in which the~~
16 ~~immovable is situated; however, an assignment contained in an act of mortgage filed~~
17 ~~in the mortgage records of such parish on or after September 1, 1995, shall be given~~
18 ~~the effect of recordation when, to the extent, and for so long as the act of mortgage~~
19 ~~is given such effect, without the need for separate recordation in the conveyance~~
20 ~~records. An assignment given the effect of recordation has such effect with regard~~
21 ~~to all obligations, present and future, secured thereby notwithstanding the date of the~~
22 ~~incurrence of such obligations or the nature of such obligations.~~

23 (2) ~~Such assignment may include all or any portion of the assignor's~~
24 ~~presently existing and anticipated future leases and rents pertaining to the described~~
25 ~~immovable property. As future leases or rents of an immovable come into existence~~
26 ~~the assignee's rights as to such leases and rents shall have effect as to third persons~~
27 ~~from the date of the filing of the instrument. It shall not be necessary to specifically~~
28 ~~describe the presently existing or future arising leases or rents; to affect the assignor,~~
29 ~~the assignee, the debtor, or other third parties the instrument shall suffice if it~~

1 contains a general description of the leases and rents together with a description of
2 the immovable affected by the lease. The immovable property description shall be
3 the kind of description which, if contained in a mortgage of the immovable, would
4 cause such mortgage to be effective as to third persons if the mortgage were properly
5 filed for record under the laws of this state.

6 (3) ~~Once an assignment relating to leases or rents of an immovable is so~~
7 ~~filed, the assignee shall have a superior claim to the leases and rents assigned and~~
8 ~~their proceeds as against all other creditors whose claims or security interests arise~~
9 ~~or are perfected after the filing of the assignment, notwithstanding the fact that the~~
10 ~~debtor is not notified of or does not consent to the assignment or that the assignee is~~
11 ~~not in possession of the immovable property.~~

12 (4) ~~Except for purposes of Subsection G, the term "lease" as used in this~~
13 ~~Section includes a sublease.~~

14 B. ~~This Section is intended to recognize one method of securing obligations,~~
15 ~~and shall not have the effect of repealing any other provision of law in respect to~~
16 ~~pledge, pawn, and assignment of incorporeal rights.~~

17 C. ~~This Section is remedial and shall be retroactive. All assignments of~~
18 ~~leases or rents heretofore made in compliance with the provisions of this Section are~~
19 ~~hereby validated.~~

20 D. ~~A landowner or mineral servitude owner may make a conditional or~~
21 ~~collateral assignment pursuant to this Section of rents, royalties, delay rentals,~~
22 ~~shut-in payments, and other payments which are rent or rentals under Title 31 of the~~
23 ~~Louisiana Revised Statutes attributable to the landowner's sale, lease, or other~~
24 ~~disposition of his right to explore and develop his land for production of minerals or~~
25 ~~to the mineral servitude owner's sale, lease, or other disposition of his mineral right.~~
26 ~~This Section shall not otherwise apply to rents, royalties, overriding royalties,~~
27 ~~bonuses, and other payments and other rights under mineral leases and other~~
28 ~~contracts relating to minerals.~~

29 E. ~~This Section shall apply to assignments of leases of movable property~~

1 subject to the Louisiana Lease of Movable Act entered into prior to the time Chapter
2 9 of the Louisiana Commercial Laws (R.S. 10:9-101, et seq.) becomes effective,
3 including without limitation those assignments of leases that affect rights arising
4 after the effective date of Chapter 9 and those continuing assignments that may
5 secure future obligations, lines of credit, and other ongoing credit facilities. This
6 Section shall further apply to assignments of leases of immovable property located
7 in this state without regard to the time Chapter 9 becomes effective.

8 F.(1) ~~Except as otherwise agreed to by the parties, the assignee's interest in~~
9 ~~the leases or rents assigned continues in any identifiable proceeds including~~
10 ~~collections received by the assignor.~~

11 (2) ~~In the event of insolvency proceedings instituted by or against an~~
12 ~~assignor, the assignee has a perfected security interest in proceeds of the leases or~~
13 ~~rents or both leases and rents assigned, as follows:~~

14 (a) ~~In identifiable noncash proceeds and in separate deposit accounts~~
15 ~~containing only proceeds.~~

16 (b) ~~In identifiable cash proceeds in the form of money which is neither~~
17 ~~commingled with other money nor deposited in a deposit account prior to the~~
18 ~~insolvency proceedings.~~

19 (c) ~~In identifiable cash proceeds in the form of checks and the like which are~~
20 ~~not deposited in a deposit account prior to the insolvency proceedings.~~

21 (d) ~~In all cash and deposit accounts of the assignor in which proceeds have~~
22 ~~been commingled with other funds, but the perfected security interest under this~~
23 ~~Section is subject to any right of set-off. It is further limited to an amount not greater~~
24 ~~than the amount of any cash proceeds received by the assignor within ten days before~~
25 ~~the institution of the insolvency proceedings, less the sum of:~~

26 (i) ~~the payments to the assignee on account of cash proceeds received by the~~
27 ~~assignor during such period; and~~

28 (ii) ~~the cash proceeds received by the assignor during such period to which~~
29 ~~the assignee is entitled under Paragraphs (a) through (c) of Subsection F(2).~~

1 ~~G.(1) The rights of an assignee against the debtor shall be subject to any~~
2 ~~dealing by the debtor with the assignor, any other assignee, or other successor in~~
3 ~~interest of the assignor until the debtor receives written notice from or on behalf of~~
4 ~~the assignee or the assignor that the assignment of the particular lease or rent of~~
5 ~~which he is debtor has become absolute. A notification which does not reasonably~~
6 ~~identify the rights assigned is ineffective. If requested by the debtor, the assignee~~
7 ~~must seasonably furnish reasonable proof that the assignment has been made and~~
8 ~~unless he does so the debtor may pay the assignor.~~

9 ~~(2) Except as provided in this Subsection (G), a debtor who has received~~
10 ~~written notice that the assignment has become absolute will not be discharged from~~
11 ~~his debt if he pays anyone other than the assignee. In any case in which a debtor is~~
12 ~~not notified of the assignment made in compliance with the provisions of this Section~~
13 ~~and, in good faith, makes payment of rent in whole or in part to the assignor or the~~
14 ~~assignor's successor, or to a subsequent assignee of the rent who shall have notified~~
15 ~~the debtor of that assignment, then to the extent of payment, the debtor shall be~~
16 ~~exonerated of liability to make payment to the first assignee; however, the person to~~
17 ~~whom payment was made shall be accountable and liable to the assignee for the~~
18 ~~sums received. The debtor may, at its option, commence concursus proceedings~~
19 ~~instead of making payment to the assignor or the assignee.~~

20 ~~(3) Notwithstanding the debtor's receipt of written notice of the assignment,~~
21 ~~a modification of or substitution for the lease made in good faith and in accordance~~
22 ~~with reasonable commercial standards is effective against an assignee, unless the~~
23 ~~debtor has otherwise agreed with the assignee. In either event the assignee acquires~~
24 ~~rights under the modified or substituted lease corresponding to the assignee's rights~~
25 ~~under the original lease. No termination or modification of or substitution for a lease~~
26 ~~shall be effective against an assignee as to the right to the payment of rent or a part~~
27 ~~thereof under an assigned lease which has been fully earned by performance. The~~
28 ~~assignment may provide that modification of or substitution for the lease is a default~~
29 ~~by the assignor.~~

1 ~~(4) A term in any lease between a debtor and an assignor is ineffective if it~~
2 ~~prohibits assignment of rent or prohibits creation of a security right in rent due or to~~
3 ~~become due or requires the debtor's consent to such assignment of rent or security~~
4 ~~interest in rent.~~

5 ~~(5) The mere existence of a conditional or collateral assignment does not~~
6 ~~impose contract or tort liability upon the assignee for the assignor's acts or omissions~~
7 ~~relating to such leases.~~

8 ~~H.(1) The effect of recordation of all assignments recorded on or after~~
9 ~~September 1, 1990, ceases ten years after the date of the instrument creating the~~
10 ~~assignment, except, that if an instrument creating an assignment describes the~~
11 ~~maturity of an obligation secured thereby and if any part of the described obligation~~
12 ~~matures nine years or more after the date of the instrument, the effect of recordation~~
13 ~~ceases six years after the described maturity date. A recorded instrument creating~~
14 ~~an assignment may be reinscribed by filing a signed, written notice of reinscription.~~
15 ~~The notice shall state the name of the assignor as it appears in the recorded~~
16 ~~instrument and recordation number or other appropriate recordation information of~~
17 ~~the instrument or of a prior notice of reinscription and shall declare that the~~
18 ~~instrument is reinscribed. A notice of reinscription that is filed before the effect of~~
19 ~~recordation ceases continues that effect for ten years from the date the notice is filed.~~
20 ~~A notice of reinscription that is filed after the effect of recordation ceases produces~~
21 ~~the effects of recordation, but only from the date the notice is filed. The method of~~
22 ~~reinscription provided in this Section is exclusive, and neither an amendment of an~~
23 ~~instrument creating an assignment nor an acknowledgment of the existence of an~~
24 ~~assignment by the assignor constitutes a reinscription of the instrument.~~
25 ~~Notwithstanding the foregoing, the effect of recordation of an assignment contained~~
26 ~~in an act of mortgage filed on or after September 1, 1995, continues for so long as~~
27 ~~the act of mortgage is given the effect of recordation. In such cases, reinscription of~~
28 ~~the act of mortgage constitutes reinscription of the assignment contained therein.~~

29 ~~(2) Notwithstanding the foregoing provisions, the effect of registry of all~~

1 assignments recorded on or before August 31, 1990, shall be determined by the other
2 laws of registry applicable thereto.

3 (3) ~~The recordation of an assignment may be cancelled by the consent of the~~
4 ~~assignee evidenced by any written release, under private signature or otherwise.~~
5 ~~Cancellation or erasure of an act of mortgage containing an assignment constitutes~~
6 ~~cancellation of the assignment contained therein, whether the act of mortgage was~~
7 ~~recorded in the mortgage records or conveyance records, or both.~~

8 ~~I. The provisions of R.S. 9:4401(A), as amended and reenacted, and the~~
9 ~~provisions of R.S. 9:4401(G) and (H) as enacted by Acts of the 1990 Regular Session~~
10 ~~are remedial and shall, wherever possible, be given retroactive effect. All~~
11 ~~assignments of present and future leases or rents heretofore made in compliance~~
12 ~~herewith are hereby validated.~~

13 **§4401. Pledge of the lessor's rights in the lease of an immovable and its rents**

14 **Any obligation may be secured by a pledge of the rights of a lessor or**
15 **sublessor in the lease or sublease of an immovable and its rents made in**
16 **accordance with Chapter 2 of Title XX-A of Book III of the Civil Code. The**
17 **rights of the lessee under a lease, or of a sublessee under a sublease, are not**
18 **susceptible of pledge.**

19 Revision Comments - 2014

20 (a) From its enactment in 1980, former R.S. 9:4401 contained detailed
21 provisions governing the assignment, or pledge, of the lessor's rights in leases and
22 rents of an immovable. The 2014 enactment of Title XX-A of Book III of the Civil
23 Code places the encumbrance of the lessor's rights in the lease of an immovable and
24 its rents within the civil law framework of pledge and gives nearly complete
25 treatment to pledges of that nature within the Civil Code itself. The provisions of the
26 Civil Code are supplemented by this Section and those that follow.

27 (b) This Section expressly provides that a pledge may be created by either
28 a lessor or a sublessor. In the case of a pledge created by a sublessor, the pledge
29 encumbers his rights under the sublease, but not his rights under the underlying lease
30 from his own lessor. The rights of a lessee under a lease, as well as the rights of a
31 sublessee under a sublease, are not susceptible of pledge but instead are encumbered
32 by a mortgage. See C.C. Art. 3286 (Rev. 1991; Amended 1993).

33 (c) Former R.S. 9:4401 provided for the filing of the assignment or pledge
34 in the conveyance records of the parish in which the immovable was located. The
35 2014 revision of the law of pledge amended Civil Code Article 3346 (Rev. 2014) to
36 require recordation of the pledge of the lessor's rights in the lease of an immovable
37 and its rents in the mortgage records, rather than the conveyance records.
38 Transitional rules applicable to the continued effectiveness of assignments of leases
39 and rents filed in the conveyance records in accordance with former R.S. 9:4401

1 prior to January 1, 2015, as well as rules that apply to the reinscription, release,
2 transfer, amendment, or other modification of these assignments, are contained in
3 R.S. 9:4403.

4 **§4402. Right of pledgee to cash proceeds of rent**

5 **A. Unless otherwise agreed, a pledge of the lessor's interest in the rents**
6 **of an immovable encumbers any identifiable cash proceeds of rent, such as**
7 **money, checks, deposit accounts, or the like.**

8 **B. The right of a pledgee to proceeds of rent deposited into a deposit**
9 **account maintained with a financial institution are subject to the rights of the**
10 **following persons:**

11 **(1) The financial institution with which the deposit account is**
12 **maintained.**

13 **(2) A transferee of funds from the deposit account, unless the transferee**
14 **acts in collusion with the pledgor in violating the rights of the pledgee.**

15 **(3) A secured party holding a security interest perfected by control of**
16 **the deposit account in accordance with R.S. 10:9-104.**

17 **(4) Another pledgee holding a superior pledge of the rent.**

18 **C. Notwithstanding Subsection B, the right of a pledgee to collections of**
19 **rent deposited into a deposit account maintained by him or for his benefit is**
20 **superior to the right of another pledgee to those collections, unless the pledgee**
21 **who collected the rent has an obligation to account for the collections to the**
22 **other pledgee under Civil Code Article 3172.**

23 Revision Comments - 2014

24 (a) Former R.S. 9:4401(F) provided that the assignee's interest in leases and
25 rents continued in any identifiable proceeds, including collections. Subsection A of
26 this Section limits the reach of the pledge of a lessor's interest in the rents of an
27 immovable to identifiable cash proceeds, such as money, checks, deposit accounts,
28 or the like.

29 (b) When proceeds of rent are deposited into a deposit account maintained
30 with a financial institution, Subsection B provides that the rights of the pledgee are
31 subject to the rights of the depository bank, the rights of a secured party who holds
32 a security interest perfected by control of the deposit account, and the rights of a
33 transferee of funds from the deposit account who does not act in collusion with the
34 pledgor in violating the rights of the pledgee. Except as otherwise provided in
35 Subsection C, the rights of a pledgee to proceeds held in the deposit account are also
36 subject to the rights of another pledgee holding a superior pledge of the rent. Thus,
37 if a lessor who has granted pledges in favor of two or more pledgees deposits rent he

1 has collected into a deposit account, the ranking of the rights of the competing
2 pledges to the deposited rent is preserved.

3 (c) Subsection C applies when a pledgee collects rent which he then deposits
4 into a deposit account that he maintains or that someone else maintains on his behalf.
5 If the pledgee collected those rents without any obligation under Civil Code Article
6 3172 (Rev. 2014) to account to a superior pledgee for them, the superior pledgee has
7 no right to claim the collections held in the deposit account to the prejudice of the
8 pledgee who collected them.

9 **§4403. Transitional filing rules for assignments of leases and rents recorded**
10 **prior to January 1, 2015**

11 **A. An assignment of leases and rents that was recorded prior to January**
12 **1, 2015, shall be subject to the reinscription requirements of Chapter 2 of Title**
13 **XXII-A of Book III of the Civil Code, with the modifications provided in this**
14 **Section.**

15 **B. Except as otherwise provided in Subsection C, the effect of**
16 **recordation of an assignment of leases and rents that was recorded in the**
17 **conveyance records prior to January 1, 2015, and that remained effective**
18 **against third persons on that date shall continue, without the necessity of**
19 **recordation in the mortgage records, until the date that filing of a notice of**
20 **reinscription is required under Chapter 2 of Title XXII-A of Book III of the**
21 **Civil Code or December 31, 2024, whichever first occurs. On that date, the**
22 **effect of recordation of the assignment shall cease unless a notice of**
23 **reinscription of the assignment has been filed in the mortgage records, as**
24 **provided in Article 3362 of the Civil Code. This Subsection shall not apply to**
25 **assignments contained in an act of mortgage filed in the mortgage records.**

26 **C. The effect of recordation of an assignment of leases and rents that**
27 **was recorded on or before August 31, 1990, or was made effective against third**
28 **persons on or before that date in another manner permitted by the law then in**
29 **effect, and that remained effective against third persons on January 1, 2015,**
30 **shall continue, without the necessity of recordation in the mortgage records,**
31 **until the date that the effect of recordation would cease under the law in effect**
32 **at the time the assignment was first made effective against third persons or until**
33 **December 31, 2024, whichever first occurs. On that date, the effect of**

1 recordation of the assignment shall cease unless a notice of reinscription of the
2 assignment has been filed in the mortgage records, as provided in Article 3362
3 of the Civil Code.

4 D. The effect of recordation of an assignment of leases and rents as to
5 which a notice of reinscription is filed in the mortgage records shall continue for
6 ten years from the date on which the notice of reinscription is filed, and the
7 assignment may be reinscribed thereafter from time to time as provided in
8 Article 3362 of the Civil Code.

9 E. The filing of a notice of reinscription in the conveyance records on or
10 after January 1, 2015, is neither necessary nor effective to continue the effect of
11 recordation of an assignment of leases and rents, regardless of whether the
12 assignment or a previous notice of reinscription was filed in the conveyance
13 records.

14 F. Unless filed in the conveyance records before January 1, 2015, an
15 instrument releasing, transferring, amending or otherwise modifying an
16 assignment of leases and rents shall be without effect as to third persons until
17 filed in the mortgage records. Filing the instrument in the conveyance records
18 on and after January 1, 2015, is neither necessary nor effective to cause the
19 instrument to have effect against third persons, regardless of whether the
20 original assignment or any previous transfer, amendment, or other modification
21 was filed in the conveyance records.

22 G. An assignment of leases and rents that was recorded in the mortgage
23 records within the period of ten years prior to January 1, 2015, shall be given
24 the effect of recordation, without further action, on January 1, 2015, as if it
25 were first filed on that date. This Subsection shall not apply to assignments that
26 were also filed in the conveyance records prior to January 1, 2015, nor to
27 assignments contained in an act of mortgage.

28 Revision Comments - 2014

29 (a) Former R.S. 9:4401 required recordation of an assignment or pledge of
30 leases and rents in the conveyance records of the parish in which the immovable is

1 located. Effective as of January 1, 2015, Civil Code Article 3346 (Rev. 2014)
2 requires recordation of the pledge of the lessor's rights in the lease of an immovable
3 and its rents in the mortgage records. This Section provides transitional rules
4 applicable to the effect of recordation of assignments of leases and rents filed in the
5 conveyance records in accordance with former R.S. 9:4401 prior to January 1, 2015,
6 as well as transitional rules that apply to the reinscription, release, transfer,
7 amendment, or other modification of those assignments. Subsection A applies the
8 reinscription rules of Chapter 2 of Title XXII-A of Book III of the Civil Code, as
9 amended in 2014, to assignments of leases and rents that were filed prior to January
10 1, 2015, but with the modifications provided under this Section.

11 (b) Subsection B states the general rule that an assignment or pledge of
12 leases and rents filed in the conveyance records prior to January 1, 2015 continues
13 to have the effect of recordation, without the necessity of recordation in the mortgage
14 records, until reinscription is required. Before the date that reinscription is required,
15 a notice of reinscription must be filed in the mortgage records in order for the
16 assignment to continue to have the effect of recordation. The filing of a notice of
17 reinscription in the conveyance records on or after January 1, 2015 is not only
18 unnecessary, it is wholly without effect, regardless of whether the assignment or a
19 previous notice of reinscription was filed in the conveyance records. This is
20 expressly stated in Subsection E.

21 (c) The period within which reinscription of assignments or pledges of leases
22 and rents filed prior to January 1, 2015 is required is not changed by this Section,
23 except in two instances. First, Subsection B imposes an outside deadline of
24 December 31, 2024 for the reinscription in the mortgage records of assignments or
25 pledges of leases and rents that were filed in the conveyance records prior to January
26 1, 2015. Thus, even if an assignment filed in the conveyance records prior to that
27 date secures an obligation that is described to have a maturity such that reinscription
28 would not have been required under prior law until after December 31, 2024, a notice
29 of reinscription must nonetheless be recorded in the mortgage records on or before
30 December 31, 2024 in order for the assignment to continue to have the effect of
31 recordation after that date. The second change in the reinscription period is
32 discussed in Comment (d), *infra*.

33 (d) Under former R.S. 9:4401(H)(2), assignments of leases and rents
34 recorded in the conveyance records on or before August 31, 1990 were subject to no
35 reinscription requirement at all. Subsection C of this Section imposes a reinscription
36 requirement upon those assignments and a reinscription deadline of December 31,
37 2024. If a notice of reinscription of an assignment of leases and rents that was
38 recorded on or before August 31, 1990 is not filed in the mortgage records on or
39 before December 31, 2024, the assignment will cease to be effective against third
40 persons after that date. Subsection C applies by its terms only to assignments that
41 were recorded on or before August 31, 1990 and that remain effective against third
42 persons on January 1, 2015. If, for any reason, the effect of recordation of the
43 assignment ceased prior to January 1, 2015, Subsection C would not operate to
44 revive the assignment.

45 (e) Between January 1, 1990 and August 31, 1990, it was possible to effect
46 an assignment of the rents of an immovable through an assignment of accounts
47 receivable in accordance with the Louisiana Assignment of Accounts Receivable
48 Act, former R.S. 9:3101 et seq. (repealed by Acts 2001, No. 128). The assignment
49 was made effective against third persons by the filing of a financing statement in the
50 U.C.C. records. This practice was ended by Acts 1990, No. 1079; however, Section
51 9 of that act specifically provided that the change in the Assignment of Accounts
52 Receivable Act "shall not impair or make invalid any assignments of accounts
53 arising out of the leasing of immovable property entered into prior to the effective
54 date of this Act." Subsection C of this Section provides that any such assignments
55 that might continue to be effective against third persons on January 1, 2015 are
56 subject to the requirement of the filing of a notice of reinscription in the mortgage
57 records by no later than December 31, 2024. This is an outside deadline, however,
58 and effectiveness of the assignment against third persons will be lost even sooner if

1 a notice of reinscription is not filed in the mortgage records before lapse of the
2 financing statement that is the basis of the perfection of the assignment. The filing
3 of further continuation statements in the U.C.C. records on or after January 1, 2015
4 will not continue the effectiveness of the financing statement.

5 (f) Subsection F is patterned after Civil Code Article 3356 (Rev. 2005),
6 which provides a similar rule for instruments affecting acts of mortgage. After
7 January 1, 2015, instruments that release, transfer, amend, or otherwise modify an
8 assignment of leases and rents are filed in the mortgage records, rather than the
9 conveyance records, even if the original assignment was filed in the conveyance
10 records.

11 (g) Subsection G deals with the effectiveness against third persons of an
12 assignment of leases and rents that, within the period of ten years prior to January
13 1, 2015, was recorded, inappropriately, only in the mortgage records, rather than in
14 the conveyance records as former R.S. 9:4401 required. Subsection G grants these
15 assignments the effect of recordation as of January 1, 2015, as if the assignment
16 were first filed on that date. The effect of recordation is not retroactive to the actual
17 date of filing. Moreover, the reinscription deadline for such an assignment is not
18 reckoned from January 1, 2015, but rather according to the normal rules of Chapter
19 2 of Title XXII-A of Book III of the Civil Code. Subsection G does not grant the
20 effect of recordation to an assignment of leases and rents that was recorded in the
21 mortgage records more than ten years prior to January 1, 2015. Such assignments
22 (unless contained in an act of mortgage) were not given the effect of recordation
23 when they were filed and are not given the effect of recordation by Subsection G.
24 See Prudential Ins. Co. of America v. CC & F Baton Rouge Development Co., 647
25 So.2d 1131 (La. App. 1st Cir.1994).

26 (h) Former R.S. 9:4401 accorded the effect of recordation to an assignment
27 of leases and rents contained in an act of mortgage filed in the mortgage records, to
28 the extent and for so long as the act of mortgage was given such effect, without the
29 need for separate recordation in the conveyance records. For this reason, Subsection
30 G by its terms does not apply to assignments of leases and rents contained in an act
31 of mortgage. Similarly, the outside reinscription deadline of December 31, 2024
32 contained in Subsection B does not apply to assignments contained in an act of
33 mortgage recorded in the mortgage records. The purpose of that outside deadline is
34 to cause evidence of all assignments or pledges of leases and rents to appear in the
35 mortgage records in all events no later than December 31, 2024. In the case of an
36 assignment contained in a properly recorded act of mortgage, the assignment already
37 appears in the mortgage records through a filing that was effective at the time made.
38 The general rule of Subsection A applies to such assignments: they are subject to the
39 normal reinscription requirements of Chapter 2 of Title XXII-A of Book III of the
40 Civil Code.

41 * * *

42 §5386. Mortgage including ~~collateral assignment and~~ pledge of certain
43 mortgagor's incorporeal rights to insurance

44 A. A mortgage of an immovable property may ~~provide for the~~ contain a
45 ~~collateral assignment or pledge of the~~ mortgagor's rights ~~right to receive proceeds~~
46 ~~attributable to the insurance loss of the mortgaged property~~ under policies of
47 insurance covering the immovable. ~~Such collateral assignment or~~ In that event,
48 the ~~pledge shall have~~ has ~~effect, other than between the immediate parties, or those~~
49 ~~on whose behalf or for whose benefit they act, and shall be deemed perfected by the~~

1 proper recordation of the mortgage in the mortgage records of the parish in which the
2 immovable is situated as to third persons when the act of mortgage is recorded
3 in the manner prescribed by law, without the necessity of notice to the insurer,
4 and continues to have that effect for so long as the mortgage is given the effect
5 of recordation.

6 B. The rights of the mortgagee against the insurer shall be subject to any
7 dealing by the insurer with the mortgagor, any other assignee or pledgee, or other
8 successor in interest of the mortgagor until the insurer receives written notice from
9 or on behalf of the mortgagee or the mortgagor of the collateral assignment or pledge
10 of the right to receive the insurance proceeds. In any case in which an insurer is not
11 notified in writing of the assignment or pledge of the right to receive insurance
12 proceeds made in compliance with the provisions of this Section and, in good faith,
13 makes payment of the insurance proceeds attributable to the loss of the mortgaged
14 property in whole or in part to the mortgagor, any other assignee or pledgee, or other
15 successor in interest of the mortgagor, then, to the extent of payment, the insurer
16 shall be exonerated of liability to make payment to the mortgagee; however, the
17 person to whom payment was made shall be accountable and liable to the mortgagee
18 for the sums received. ~~Nothing contained in this Section shall be construed to~~ **The**
19 **pledge of the mortgagor's rights to insurance does not** modify the obligations of
20 ~~any~~ **the** insurer under any simple or standard or other loss payee clause of its
21 insurance policy.

22 C. A mortgage ~~pledge of the mortgagor's rights under policies of~~
23 **insurance covering an immovable** shall not be invalid, ineffective, or fraudulent
24 against other creditors by reason of the mortgagor's freedom to use, commingle, or
25 dispose of proceeds ~~from~~ **of** the insurance ~~loss of the mortgaged property,~~ or by
26 reason of the mortgagee's failure to require the mortgagor to account ~~therefor~~ **for the**
27 **proceeds.**

28 Section 3. R.S. 10:9-102(a)(2) is hereby amended and reenacted to read as follows:

29 §9-102. Definitions and index of definitions

1 (a) Chapter 9 definitions. In this Chapter:

2 * * *

3 (2) "Account," except as used in "account for," means a right to payment of
 4 a monetary obligation, whether or not earned by performance, (i) for property that
 5 has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for
 6 services rendered or to be rendered, (iii) for a policy of insurance issued or to be
 7 issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy
 8 provided or to be provided, (vi) for the use or hire of a vessel under a charter or other
 9 contract, (vii) arising out of the use of a credit or charge card or information
 10 contained on or for use with the card, or (viii) as winnings in a lottery or other game
 11 of chance operated or sponsored by a state, governmental unit of a state, or person
 12 licensed or authorized to operate the game by a state or governmental unit of a state.
 13 The term includes health-care-insurance receivables. The term further includes any
 14 right to payment ~~owed to a landowner or the owner of a mineral right, such as a~~
 15 ~~bonus, rent, or royalty, which is payable out of or measured by production of oil, gas,~~
 16 ~~or other minerals, or is otherwise attributable to the mineral right, whether or not~~
 17 ~~such payment is rent under Title 31 of the Louisiana Revised Statutes of 1950,~~
 18 ~~except for rent payable to a landowner or mineral servitude owner~~ **that is payable**
 19 **out of or measured by production of oil, gas, or other minerals, or is otherwise**
 20 **attributable to a mineral right, whether or not the payment is classified as rent**
 21 **under the Mineral Code, except that the term does not include bonuses, delay**
 22 **rentals, royalties, or shut-in payments payable to a landowner or mineral**
 23 **servitude owner under a mineral lease, nor does the term include other**
 24 **payments to them that are classified as rent under the Mineral Code.** The term
 25 does not include (i) rights to payment evidenced by chattel paper or an instrument,
 26 (ii) tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit
 27 rights or letters of credit, (vi) rights to payment for money or funds advanced or sold,
 28 other than rights arising out of the use of a credit or charge card or information
 29 contained on or for use with the card, (vii) life insurance policies or rights to

1 payment or claims thereunder, or (viii) judgments or rights to payment represented
2 thereby.

3 Revision Comments - 2014

4 The 2014 revision of the definition of "account" in this Section, made in
5 tandem with the enactment of Civil Code Article 3172 (Rev. 2014), is intended to
6 ensure that "accounts" as defined in this section and the kinds of mineral payments
7 susceptible of encumbrance by pledge under Civil Code Article 3172 (Rev. 2014)
8 are mutually exclusive. Bonus, delay rentals, royalties, and shut-in payments
9 payable to a landowner or mineral servitude owner under a mineral lease, as well as
10 any other payments to them that are classified as rent under the Mineral Code, do not
11 constitute "accounts" susceptible of encumbrance by a security interest under this
12 Chapter but instead are encumbered by a pledge under Civil Code Art. 3172. See
13 Comment (d) to Civil Code Art. 3172 (Rev. 2014).

14 Section 4. Civil Code Articles 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, and
15 3184 are hereby repealed.

16 Section 5. The Louisiana State Law Institute is hereby authorized to add Comments
17 for Civil Code Articles 3359 and 3364 to read as follows:

18 Art. 3359. Duration of recordation of judicial mortgage

19 * * *

20 Revision Comments - 2014

21 (a) This Article expressly declares that the effect of recording a judgment
22 ceases ten years after the date of the judgment. This continues the interpretation of
23 Article 3369 of the Louisiana Civil Code of 1870 and is implicit in present Article
24 3357 (Rev. 2014).

25 (b) The failure to reinscribe a judicial mortgage within ten years of its date
26 causes the effect of recordation to cease. As the courts have observed, there is a
27 common misunderstanding as to the relationship between reinscribing a judicial
28 mortgage and obtaining a judgment of revival under C.C.P. Art. 3334. Bank One
29 Louisiana v. Lacobee, 811 So.2d 164 (La. App. 2d Cir. 2002). See also Brunston v.
30 Hoover, 945 So.2d 852 (La. App. 3d Cir. 2006) and Mouton v. Watson, 500 So.2d
31 792 (La. App. 1st Cir.1986). Under Article 3300 (Rev. 2014), a judicial mortgage
32 is created by the filing of a money judgment in the mortgage records. This Article
33 provides that the effect of recordation of a judgment creating a judicial mortgage
34 ceases ten years after the date of the judgment. A notice of reinscription filed in
35 accordance with Article 3362 (Rev. 2014) continues the effect of recordation of a
36 judicial mortgage, without the necessity of filing a judgment reviving the original
37 judgment. The judgment itself prescribes, however, if a suit to revive it is not filed
38 within ten years of its date and a judgment reviving it obtained in due course. If the
39 judicial mortgage is not reinscribed, the effect of recordation ceases whether or not
40 prescription on the underlying judgment is interrupted by a suit for revival. If the
41 judicial mortgage is reinscribed, it nevertheless becomes unenforceable when the
42 underlying judgment prescribes. Accordingly, Article 3368 (Rev. 2014) permits the
43 recorder to cancel the inscription from his records upon the request of any person if
44 the request is accompanied by a certificate from the clerk of the court rendering the
45 judgment that no suit has been filed for its revival within the time required by Article
46 3501 (Rev. 1983) or is accompanied by a final and definitive judgment of that court
47 rejecting the demands of the plaintiff in a suit to revive it.

1 * * *

2 Art. 3364. Effect of timely recordation of notice or reinscription

3 * * *

4 Revision Comments - 2014

5 Under this Article, reinscription is effective when a notice of reinscription is
6 filed. The effect of the original recordation is extended for ten years from that time.

7 Section 6. The Louisiana State Law Institute is hereby authorized to amend or to
8 provide headings in the Civil Code and the Louisiana Revised Statutes of 1950.

9 Section 7. This Act shall become effective on January 1, 2015.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Peacock (SB 89)

Present law Title XX provides for "Of Pledge."

Proposed law provides for "Security" and provides for "Pledge" in new Title XX-A.

Present law (C.C. Art. 3133) provides the definition of pledge.

Proposed law provides that an obligor is obligated to fulfill his obligation out of all of his property, present and future.

Present law (C.C. Art. 3133.1) provides how pledges relate to Chapter 9 of the Louisiana Commercial Laws.

Proposed law suppresses this provision.

Present law (C.C. Art. 3134) provides that there are the two kinds of pledge; pawn and antichresis.

Proposed law provides that in the absence of a preference an obligor's property is available to all of his creditors and the proceeds of its sale are distributed ratably.

Present law (C.C. Art. 3135) provides the distinction between pawn and antichresis.

Proposed law provides that a written contract can restrict the obligee's recourse against the obligor to a particular property or a specified class or kind of property.

Present law (C.C. Art. 3136) provides that every lawful obligation can be enforceable by pledge.

Proposed law provides a definition of "security" but it does not change the law.

Present law (C.C. Art. 3137) provides that if the principal obligation is conditional then the pledge is confirmed or extinguished with it.

Proposed law clarifies the law by providing that security can be either personal or real and

provides definitions of "personal" and "real" property.

Present law (C.C. Art. 3138) provides that if the obligation is null then so too is the pledge.

Proposed law provides that suretyship, privilege, mortgage, pledge, and a security interest established to secure a performance of an obligation are kinds of security.

Present law (C.C. Art. 3139) provides that a natural obligation can be the basis of a pledge.

Proposed law does not change the law. It provides that the laws of security interest are defined by the Uniform Commercial Code.

Present law (C.C. Art. 3140) provides that pledge can be given in money and for any other object.

Proposed law provides that a clause in a contract that provides in advance that the ownership of a thing given as security will transfer upon default in performance of the obligation is absolutely null.

Proposed law provides for a new Title XX-A, "Pledge."

Present law (C.C. Art. 3141) provides that a pledge can be given for another's debt.

Proposed law provides a definition of "pledge".

Present law (C.C. Art. 3142) provides that a debtor can give in pledge whatever belongs to him, but cannot confer to a creditor any further right than what he himself has.

Proposed law clarifies the law by providing an exhaustive list of things susceptible of pledge.

Present law (C.C. Art. 3143) provides that to determine whether a thing given in pledge belonged to the debtor, reference must be made to the time when the pawn was made.

Proposed law clarifies that a contract by which a person purports to pledge a thing that is susceptible of encumbrance by security interest does not create a pledge under this Title, but may create a security interest in the thing.

Present law (C.C. Art. 3144) provides that when the debtor pledges a thing not owned and then subsequently acquires ownership of thing pledged, his ownership relates back to the time of the contract and the pledge is good.

Proposed law provides that a pledge is an accessory to the obligation that it secures.

Present law (C.C. Art. 3145) provides that one may pledge another's property so long as it is with the express or tacit consent of the owner.

Proposed law provides that a pledge gives the pledgee the right to be satisfied from the thing pledged and its fruits in preference to unsecured creditors of the pledgor.

Present law (C.C. Art. 3146) provides that the tacit consent of the owner must be inferred from circumstances so strong as to leave no doubt of the owner's intention.

Proposed law provides that a pledge may be given to secure the performance of any lawful obligation.

Present law (C.C. Art. 3147) provides that as long as the owner of the thing pledged refrains from claiming it, the debtor cannot seek to have it restored until his debt has been

discharged.

Proposed law provides a new rule that is similar to the rule for contracts of mortgage wherein a pledge that secures an obligation other than the payment of money secures the claim of the pledgee for the damages he may suffer from the breach of the obligation.

Present law (C.C. Art. 3148) provides that the pledge of a thing by fiduciaries requires authorization in the manner prescribed by law.

Proposed law provides that a person may pledge his property to secure an obligation of another person.

Present law (C.C. Art. 3149) provides that a mandatary cannot give a thing in pledge unless he has express power to do so or the principal gives his consent.

Proposed law provides the formal requirements of a contract of pledge.

Present law (C.C. Art. 3150) provides that pledges by cities or other corporations can only be given in pledge according to their acts of incorporation.

Proposed law provides a new rule, which is similar to a similar rule for contracts of mortgage, that a written contract of pledge need not be signed by the pledgee because his acceptance is presumed.

Present law (C.C. Art. 3151) was repealed by Acts 1980, No. 150.

Proposed law provides that a contract of pledge may be established only by a person having the power to alienate the thing pledged.

Present law (C.C. Art. 3152) provides that it is essential that the creditor be put in possession of the thing pledged and that he receive actual delivery.

Proposed law provides that a pledge given over a thing that the pledgor does not own is established when the thing is acquired by the pledgor and the other requirements for the establishment of the pledge have been satisfied.

Present law (C.C. Art. 3153) provides that delivery is only necessary for corporal things pledged.

Proposed law provides that a pledge is without effect as to third persons unless it has become effective between the parties and is established by written contract.

Present law (C.C. Art. 3154) provides that every corporeal thing susceptible of alienation can be pawned, even money.

Proposed law provides for the requirements that must be satisfied for a pledge of the lessor's rights in the lease of an immovable and its rents to have effect against third persons.

Present law (C.C. Art. 3155) provides that incorporeal movables, such as credits, can be pawned.

Proposed law provides that if the thing pledged is another person's obligation not arising under the lease of an immovable, the pledge is effective against third persons only from the time that the obligor has actual knowledge of the pledge or has been given notice of it.

Present law (C.C. Art. 3156) provides that when a debtor wishes to pawn a claim on another person, he must make a transfer of it in the act of pledge and deliver to the creditor to whom it is transferred the note or instrument that provides its existence.

Proposed law provides that the pledgee is not obligated to return the pledged thing until all secured obligations have been extinguished.

Present law (C.C. Art. 3157) provides that pawn invests the creditor with the right of having his debt satisfied by privilege in preference to other creditors out of the thing pledged.

Proposed law provides that the contract of pledge is indivisible.

Present law (C.C. Art. 3158) provides for the formalities and contents of a pledge and the requirements for pledge of promissory notes and other written obligation to be effective against third persons.

Proposed law provides a new rule wherein if agreed in a written contract of pledge of a movable upon failure of performance of the secured obligation, the pledgee may dispose of the thing pledged.

Present law (C.C. Art. 3159) provides for the necessary formalities for an act of pledge in favor of banks to be effective.

Proposed law provides that the pledgee is entitled to receive the fruits of the thing pledged, to retain it as security, and to apply it to the secured obligation.

Present law (C.C. Art. 3160) was repealed by Acts 1988, No. 243.

Proposed law provides that the pledgee may apply collections from the third person's obligation to the secured obligation even if the secured obligation has not yet matured.

Present law (C.C. Art. 3161) was repealed by Acts 1900, No. 157.

Proposed law provides the notice that is required when performance is to be made by an obligor of a pledged obligation and what performance of that obligation accomplishes.

Present law (C.C. Art. 3162) provides that if thing pledged was a corporeal movable or evidence of a credit or other instrument under private signature the privilege does not subsist on the pledge unless the thing is actually put and remains in the possession of the creditor or agree-upon third person.

Proposed law provides a new rule wherein the obligor may assert against the pledgee any defense arising out of the transaction that gave rise to the pledged obligation, or assert any other defense that arises against the pledgor before the obligor has been given written notice of the pledge.

Present law (C.C. Art. 3163) provides that when several things have been pawned, the owner cannot retake one of the things unless the whole debt is satisfied.

Proposed law provides a new rule wherein a clause prohibiting pledge is without effect.

Present law (C.C. Art. 3164) provides that creditors in possession of the pledge enjoy a right of retention until the whole debt is paid.

Proposed law provides that parties to a contract from which a pledged obligation arises can agree to modify or terminate the contract or substitute a new contract, and if made in good faith is effective against the pledgee without his consent.

Present law (C.C. Art. 3165) provides the rights of a pledgee upon debtor's default and the procedure to enforce those rights.

Proposed law provides that upon the modification of a contract from which a pledged

obligation arises, the substitution of a new contract encumbers the corresponding rights of the pledgor.

Present law (C.C. Art. 3166) provides that until the debtor is divested of his property, he remains the proprietor of the pledge.

Proposed law provides that the pledgor and pledgee may agree that a modification or termination of the contract from which the pledged obligation of a third person arises or a new contract is substituted is a default by the pledgor.

Present law (C.C. Art. 3167) provides that the creditor is responsible for loss or decay of the pledge that is the result of his fault; the debtor is responsible to the creditor for necessary expenses incurred for the preservation of the thing pledged.

Proposed law provides that the pledgee is not bound for the pledgor's obligations.

Present law (C.C. Art. 3168) provides that the fruits of the thing pledged are part of it so they remain in the hands of the creditor; but the creditor must give an account of them to the debtor or deduct them from the amount due him.

Proposed law provides the requirements for a contract establishing a pledge of the lessor's rights in the lease of an immovable and its rents.

Present law (C.C. Art. 3169) provides for the imputation of interest earned by credit that is pledged.

Proposed law provides that the pledge of the lessor's rights in the lease of an immovable and its rents is without effect as to third persons unless the contract establishing the pledge is recorded in the manner prescribed by law, nevertheless, the pledge is effective against the lessee from the time that he is given written notice of the pledge.

Present law (C.C. Art. 3170) provides that the creditor can enforce the pledgee's right to enforce payment of credit pledged but when received, he must apply it to the payment of the debt due and any excess given to the pledgor.

Proposed law provides that a pledge of the lessor's rights in the lease of an immovable and its rents may be established in an act of mortgage of the immovable.

Present law (C.C. Art. 3171) provides that the pawn cannot be divided between the heirs of the debtor or creditor.

Proposed law provides that a pledge can be established over all or part of the leases of an immovable, even those not yet in existence, and that it can be made effective against third persons.

Present law (C.C. Art. 3172) provides that if the proceeds of the sale exceed the debt, the surplus shall be given to the owner; if there is a deficit, the creditor can claim the balance from the debtor's other property.

Proposed law provides that the owner of land or holder of a mineral servitude can pledge bonuses, delay rentals, royalties, and shut-in payments by express provision in a contract establishing a pledge.

Present law (C.C. Art. 3173) provides that debtor taking pledge without the creditor's consent commits a sort of theft.

Proposed law provides under what circumstances a pledgee shall account to other pledgees for rent collected.

Present law (C.C. Art. 3174) provides that a creditor who has been deceived on the substance or quality of the thing pledged can demand another thing or immediate payment.

Proposed law provides that a pledge of the lessor's rights in the lease of an immovable and its rents does not entitle the pledgee to cause the rights of the lessor to be sold by judicial process, any clause to the contrary is absolutely null.

Present law (C.C. Art. 3175) provides that the creditor cannot acquire the thing through acquisitive prescription.

Proposed law provides that in all matters not provided for in Chapter 2 of this Title, the pledge of the lessor's rights in the lease of an immovable and its rents is governed by the provisions of the first Chapter of this Title.

Present law (C.C. Art. 3176) provides that the antichresis shall be written; the creditor acquires the right of reaping the fruits the immovable produces so long as he annually deducts their proceeds from the interest and then from the principal of the debt.

Proposed law repeals this provision.

Present law (C.C. Art. 3177) provides that the creditor must pay the taxes, annual charges, and repairs for the property, unless agreed otherwise.

Proposed law repeals this provision.

Present law (C.C. Art. 3178) provides that before full payment the debtor cannot claim the enjoyment of the immovable given in pledge; however, the creditor can compel the debtor to retake the enjoyment of the immovable.

Proposed law repeals this provision.

Present law (C.C. Art. 3179) provides that the creditor does not become owner of the pledged immovable upon failure of payment at a stated time; any clause to the contrary is null.

Proposed law repeals this provision.

Present law (C.C. Art. 3180) provides that an agreement that fruits or revenues be compensated with interest can be performed in any way not prohibited by law.

Proposed law repeals this provision.

Present law (C.C. Art. 3181) provides that every provision on antichresis cannot prejudice the rights that a third person may have on the immovable; the creditor in possession of the immovable cannot have any right of preference to other creditors.

Proposed law repeals this provision.

Present law (C.C. Art. 3182) relative to privileges, provides that the debtor has general liability.

Proposed law repeals this provision.

Present law (C.C. Art. 3183) relative to privileges, provides that the property of the debtor is the common pledge of his creditors and the proceeds of its sale must be distributed among them ratable unless otherwise there exist some lawful causes of preference.

Proposed law repeals this provision.

Present law (C.C. Art. 3184) relative to privilege, provides that privilege and mortgages are lawful causes of preference.

Proposed law repeals this provision.

Present law (C.C. Art. 3346) relative to recordation, provides for the place of recordation and the duty of the recorder relative to an instrument creating, establishing, or relating to a mortgage or privilege over an immovable.

Proposed law provides the place where the instrument creating, establishing, or relating to a mortgage or privilege over an immovable, or the pledge of the lessor's rights in the lease of an immovable and its rents must be recorded and the duty of the recorder.

Present law (C.C. Art. 3354) relative to recordation, provides the applicability of Chapter 2 of Title XXII-A of Book III of the Civil Code.

Proposed law provides that the provisions of Chapter 2 of Title XXII-A of Book III of the Civil Code apply to mortgages and privileges encumbering immovables and to pledges of the lessor's rights in the lease of an immovable and its rents.

Present law (C.C. Art. 3355) provides that mortgages or privileges affecting property in several parishes may be executed in multiple originals for recordation in each of the several parishes; a certified copy of an instrument that recorded in the records of a parish need only describe property that is within the parish where it is filed.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3356) provides for the transfers, amendments, and releases of an obligation secured by a mortgage.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3357) provides that the effect of recordation of an instrument creating a mortgage or evidencing a privilege ceases ten years after the date of the instrument.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3358) provides that the duration of recordation of an instrument creating a mortgage or evidencing a vendor's privilege matures nine years or more after the date of the instrument, the effect of recordation ceases six years after the latest maturity date described in the instrument.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3359) provides that the effect of recordation of a judgment creating a judicial mortgage ceases ten years after the date of the judgment.

Proposed law retains present law but clarifies it with new Comments.

Present law (C.C. Art. 3360) provides for the duration of recordation of a mortgage given by a tutor, curator, or succession representative.

Proposed law retains present law.

Present law (C.C. Art. 3361) provides that if prior to the cessation of the effect of recordation, an instrument is recorded that amends a recorded mortgage or privilege then the effect of recordation is determined by reference to the maturity of the obligation last becoming due as amended.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3362) provides for the method of reinscribing a recorded instrument that has created a mortgage or evidenced a vendor's privilege by recording a signed written notice of reinscription.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3363) provides that the method of reinscribing provided in the Chapter is exclusive.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3364) provides that the effect of a timely recorded notice of reinscription continues for ten years from the date the notice is recorded.

Proposed law retains present law but clarifies it with a Comment.

Present law (C.C. Art. 3365) provides that if the notice of reinscription was recorded after the effect of recordation has ceased, the effects of recordation continue but only for ten years from the time the notice of reinscription was recorded.

Proposed law retains present law with some technical clarification to the text, adds pledges to this provision, and removes some of the text of the accompanying Comments.

Present law (C.C. Art. 3366) provides for the form and consent for the cancellation upon request of a mortgage or privilege by the recorder of mortgages.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3367) provides that if the effect of recordation ceases for lack of reinscription, the recorder upon receipt of a written signed application shall cancel the recordation of the mortgage or privilege.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3368) provides for the cancellation of a prescribed judicial mortgage.

Proposed law clarifies the law by providing that both a timely reinscription and a timely suit for revival are necessary for a judicial mortgage to continue to have effect.

Present law (R.S. 9:4401) provides for conditional or collateral assignment of leases or rents.

Proposed law provides that any obligation may be secured by a pledge of the rights of a lessor or sublessor in the lease or sublease of an immovable and its rents.

Present law (R.S. 9:4402) there is no present law.

Proposed law provides the right of the pledgee to cash proceeds of rent.

Present law (R.S. 9:4403) there is no present law.

Proposed law provides the transitional filing rules for assignments of leases and rents recorded prior to January 1, 2015.

Present law (R.S. 9:5386) provides for mortgages including collateral assignments and the pledge of certain incorporeal rights.

Proposed law clarifies the law by providing that a mortgage of an immovable may contain a pledge of the mortgagor's rights under policies of insurance covering the immovable and the procedure detailing how to pledge a mortgagor's right to insurance.

Present law (R.S. 10:9-102) provides for the definition of "Account" for Chapter 9 of Title 10 of the Louisiana Revised Statutes of 1950.

Proposed law provides a new definition of "Account" for Chapter 9 of Title 10 of the Louisiana Revised Statutes of 1950.

Proposed law repeals Civil Code Articles 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, and 3184.

Proposed law authorizes the Louisiana State Law Institute to add Comments for Civil Code Articles 3359 and 3364.

Proposed law authorizes the Louisiana State Law Institute to amend or to provide headings in the Civil Code and the Louisiana Revised Statutes of 1950.

Effective January 1, 2015.

(Amends Title XX of Book III of the Civil Code, consisting of C.C. Arts. 3133 through 3140, C.C. Arts. 3346, 3354, 3355, 3356, 3357, 3358, 3361, 3362, 3363, 3365, 3366, 3367, and 3368, the heading of Part IV of Chapter 1 of Code Title XX-A of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, R.S. 9:4401 and 5386, and R.S. 10:9-102(a)(2); adds Title XX-A of Book III of the Civil Code to consist of C.C. Arts. 3141 through 3175, R.S. 9:4402 and 4403; repeals C.C. Arts. 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, and 3184).