

SENATE BILL NO. 89

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

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AN ACT

To amend and reenact Title XX of Book III of the Civil Code, to be comprised of Articles 3133 through 3140, Civil Code Articles 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), to enact Title XX-A of Book III of the Civil Code to consist of Articles 3141 through 3175, R.S. 9:4402 and 4403, to repeal Civil Code Articles 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, and 3184, relative to security, pledge, and registry; to provide for the liability of an obligor for his obligation; to provide for ratable treatment of creditors; to provide for limitations upon recourse; to provide for a definition of security; to provide for personal or real security; to provide for kinds of security; to provide for the law governing a security interest; to provide for the nullity of an agreement of forfeiture; to provide for the general provisions of pledge; to provide a definition of pledge; to provide for property susceptible of pledge; to provide for the pledge of property susceptible of encumbrance by a security interest; to provide for the accessory nature of pledge; to provide for the preference afforded by pledge; to provide for obligations for which pledge may be given; to provide for pledge securing an obligation that is not for the payment of money; to provide for pledge securing an obligation of another person; to provide the formal requirements of a contract of pledge; to provide for the acceptance of a pledge; to provide for who has the power to pledge; to provide for the pledge of a thing not owned; to provide the general requirements for effectiveness of pledge against third persons; to provide for effectiveness against third persons of the pledge of the lease of an immovable; to

1 provide for effectiveness against third persons of the pledge of other obligations; to
2 provide for the pledgee's right of retention; to provide for the indivisibility of pledge;
3 to provide for the enforcement of a pledge of a movable; to provide for fruits of thing
4 pledged; to provide for the pledge of the obligation of a third person; to provide for
5 performance by an obligor of a pledged obligation; to provide for defenses available
6 to the obligor of a pledged obligation; to provide for a clause prohibiting pledge; to
7 provide for the modification of a contract from which a pledge obligation arises; to
8 provide for the attachment of pledge obligations arising under modified or
9 substituted contract; to provide for modification as default by pledgor; to provide
10 that pledgee is not bound for pledgor's obligations; to provide for the requirements
11 of a contract of the pledge of the lessor's rights in the lease of an immovable and its
12 rents; to provide for the effectiveness of a pledge of the lessor's rights in the lease of
13 an immovable and its rents against third persons; to provide for a pledge contained
14 in act of mortgage; to provide for pledge of all or part of the leases of an immovable;
15 to provide for pledge of mineral payments by owner of land or holder of mineral
16 servitude; to provide for accounting to other pledgees for rent collected; to provide
17 for the prohibition of a judicial sale of the lessor's rights in the lease of an
18 immovable and its rents; to provide for the applicability of the general rules of
19 Chapter 1 of Title XX-A of Book III of the Civil Code to the pledge of the lessor's
20 rights in the lease of an immovable and its rents when no special provision is made
21 in Chapter 2 of Title XX-A of Book III of the Civil Code; to provide for the place of
22 recordation of instrument creating, establishing, or relating to a mortgage or privilege
23 over an immovable, or the pledge of the lessor's rights in the lease of an immovable
24 and its rents and the duty of recorder; to provide for the general provisions of
25 mortgage records; to provide for the applicability of Chapter 2 of Title XXII-A of
26 Book III of the Civil Code to mortgages, privileges, and pledges; to provide for a
27 mortgage, pledge, or privilege affecting property in several parishes; to provide for
28 transfers, amendments, and releases; to provide for a general rule of duration of the
29 recordation of an instrument creating a mortgage, pledge, or evidencing a privilege;
30 to provide for the duration of recordation of certain mortgages, pledges, and

1 privileges; to provide for the duration of recordation of judicial mortgages; to
 2 provide for the effect of amendment; to provide for the method of reinscription; to
 3 provide for the exclusiveness of the method of reinscription; to provide for the effect
 4 of timely recordation of notice of reinscription; to provide for the effect of notice
 5 recorded after cessation of effect of recordation; to provide for the form and content
 6 of cancellation upon written request; to provide for the cancellation of recordation
 7 after effect of recordation has ceased; to provide for cancellation of judicial
 8 mortgage arising from judgment that has prescribed; to provide for the pledge of
 9 leases and rents of an immovable; to provide for the pledge of the lessor's rights in
 10 the lease of an immovable and its rents; to provide for the right of pledgee to cash
 11 proceeds of rent; to provide for transitional filing rules for assignments of leases and
 12 rents recorded prior to January 1, 2015; to provide for mortgage to include pledge
 13 of mortgagor's rights to insurance; to provide a definition of an account for Chapter
 14 9 of Title 10 of the Louisiana Revised Statutes of 1950; to provide authorization for
 15 the Louisiana State Law Institute to add Comments for Civil Code Articles 3359 and
 16 3364; to provide authorization for the Louisiana State Law Institute to amend or to
 17 provide headings in the Civil Code and the Louisiana Revised Statutes of 1950; to
 18 provide for an effective date; and to provide for related matters.

19 Be it enacted by the Legislature of Louisiana:

20 Section 1. Title XX of Book III of the Civil Code, comprised of Articles 3133
 21 through 3140, and Civil Code Articles 3346, 3354, 3355, 3356, 3357, 3358, 3361, 3362,
 22 3363, 3365, 3366, 3367, and 3368 are hereby amended and reenacted and Title XX-A of
 23 Book III of the Civil Code, comprised of Articles 3141 through 3175, is hereby enacted to
 24 read as follows:

25 ~~TITLE XX. OF PLEDGE~~

26 ~~Art. 3133. Pledge, definition~~

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

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

30 ~~This Title shall apply to pledges of movables that are delivered prior to the~~

1 ~~time Chapter 9 of the Louisiana Commercial Laws becomes effective, including~~
2 ~~without limitation those pledges that may secure future obligations and lines of~~
3 ~~credit, as well as to pledges entered into on or after the time Chapter 9 of the~~
4 ~~Louisiana Commercial Laws becomes effective that are exempt or otherwise~~
5 ~~excluded from coverage thereunder.~~

6 ~~Art. 3134. Kinds of Pledge~~

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

8 ~~The pawn.~~

9 ~~The antichresis.~~

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

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

13 ~~CHAPTER 1. GENERAL PROVISIONS~~

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

15 ~~Every lawful obligation may be enforced by the auxiliary obligation of~~
16 ~~pledge.~~

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

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

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

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

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

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

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

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

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

30 ~~A person may give a pledge, not only for his own debt, but for that of another~~

1 also:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 ~~But this delivery is only necessary with respect to corporeal things; as to~~
16 ~~incorporeal rights, such as credits, which are given in pledge, the delivery is merely~~
17 ~~fictitious and symbolical.~~

18 ~~CHAPTER 2. OF PAWN~~

19 ~~Art. 3154. Things subject to pawn~~

20 ~~One may pawn every corporeal thing, which is susceptible of alienation.~~

21 ~~One may even pawn money as a security for performing or refraining to~~
22 ~~perform some act.~~

23 ~~Art. 3155. Incorporeal movables~~

24 ~~One may, in fine, pawn incorporeal movables, such as credits and other~~
25 ~~claims of that nature.~~

26 ~~Art. 3156. Claims against other persons~~

27 ~~When a debtor wishes to pawn a claim on another person, he must make a~~
28 ~~transfer of it in the act of pledge, and deliver to the creditor to whom it is transferred~~
29 ~~the note or instrument which proves its existence.~~

30 ~~Art. 3157. Privilege and preference of pledge creditor~~

1 any other obligations or liabilities of the pledgor or any other person, to the pledgee,
2 or its successor, then existing or thereafter arising, up to the limit of the pledge, such
3 as may be included in a cross-collateralization clause, and the pledged instrument or
4 item remains and has remained in the hands of the pledgee or its successor, the
5 instrument or item may remain in pledge to the pledgee or its successor, or without
6 withdrawal from the hands of the pledgee or its successor, be repledged to the
7 pledgee or its successor to secure at any time any renewal or renewals of the original
8 loan or any part thereof or any new or additional loans, even though the original loan
9 has been reduced or paid, up to the total limit which it was agreed should be secured
10 by the pledge, and, if so desired or provided, to secure any other obligations or
11 liabilities of the pledgor or any other person to the pledgee or its successor, then
12 existing or thereafter arising, up to the limit of the pledge, without any added
13 notification or other formality, and the pledge shall be valid as well against third
14 persons as against the pledgor thereof, if made in good faith, and such renewals,
15 additional loans and advances or other obligations or liabilities shall be secured by
16 the collateral to the same extent as if they came into existence when the instrument
17 or item was originally pledged and the pledge was made to secure them.

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

24 ~~D. (1) The assignment or transfer of the principal obligation does not:~~
25 ~~extinguish the pledge; constitute a new pledge or issuance; or affect the retroactive~~
26 ~~effect given by this Article for obligations to the original pledgee or its successor. In~~
27 ~~all cases, if the pledge at the time of its delivery, issuance, or reissuance was~~
28 ~~intended to secure obligations that may arise in the future, the pledge relates back to~~
29 ~~the time of delivery, issuance, or reissuance if and when such future obligations are~~
30 ~~incurred, as long as the pledgee, the pledgee's agents, or the pledgee's successors~~

1 have maintained possession of the pledged item.

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

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

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

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

10 E. ~~The delivery of property on deposit in a warehouse, cotton press, or on~~
 11 ~~storage with a third person, or represented by a bill of lading, shall pass to the~~
 12 ~~pledgee by the mere delivery of the warehouse receipt, cotton press receipt, bill of~~
 13 ~~lading, or storage receipt, showing the number, quantity or weight of the thing~~
 14 ~~pledged; and such pledge so made, without further formalities, shall be valid as well~~
 15 ~~against third persons as against the pledgor thereof, if made in good faith. Such~~
 16 ~~receipts shall be valid and binding in the order of time in which they are issued for~~
 17 ~~the number, quantity, or weight of the things pledged, if there should not be enough~~
 18 ~~to meet all receipts so issued.~~

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

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

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

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

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

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

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

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

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

9 ~~Art. 3165. Rights of pledgee on default of debtor, procedure~~

10 ~~The creditor cannot, in case of failure of payment, dispose of the pledge; but~~
11 ~~when there have been pledges of stock, bonds or other property, for the payment of~~
12 ~~any debt or obligation, it shall be necessary before such stocks, bonds or other~~
13 ~~property so pledged shall be sold for the payment of the debt, for which such pledge~~
14 ~~was made, that the holder of such pledge be compelled to obtain a judgment in the~~
15 ~~ordinary course of law, and the same formalities in all respects shall be observed in~~
16 ~~the sale of property so pledged as in ordinary cases; but in all pledges of movable~~
17 ~~property, or rights, or credits, stocks, bonds or other movable property, it shall be~~
18 ~~lawful for the pledger to authorize the sale or other disposition of the property~~
19 ~~pledged, in such manner as may be agreed upon by the parties without the~~
20 ~~intervention of courts of justice; provided, that all existing pledges shall remain in~~
21 ~~force and be subject to the provisions of this act.~~

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

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

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

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

1 owner; if, on the contrary, they are not sufficient to satisfy it, the creditor is entitled
2 to claim the balance out of the debtor's other property.

3 ~~Art. 3173. Debtor taking pledge without creditor's consent~~

4 ~~The debtor who takes away the pledge without the creditor's consent,~~
5 ~~commits a sort of theft.~~

6 ~~Art. 3174. Rights of creditor deceived as to pledge~~

7 ~~When the creditor has been deceived on the substance or quality of the thing~~
8 ~~given in pledge, he may claim another thin in its stead, or demand immediately his~~
9 ~~payment, though the debtor be solvable.~~

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

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

13 ~~CHAPTER 3. OF ANTICHRESIS~~

14 ~~Art. 3176. Necessity for written instrument, rights acquired by creditor~~

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

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

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

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

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

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

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

29 ~~But the creditor who wishes to free himself from the obligations mentioned~~
30 ~~in the preceding articles, may always, unless he has renounced this right, compel the~~

Art. 3134. Ratable treatment of creditors

In the absence of a preference authorized or established by legislation, an obligor's property is available to all his creditors for the satisfaction of his obligations, and the proceeds of its sale are distributed ratably among them.

Revision Comments - 2014

(a) This Article, derived from Article 3183 of the Louisiana Civil Code of 1870, carries forward the familiar principle that the property of the debtor is the "common pledge of his creditors." The reference in the source Article to the concept of "pledge" has been deleted, because the term was used in that Article in a non-technical sense that was different from the security device known as pledge. See Slovenko, Of Pledge, 33 Tul. L. Rev. 59, 62-63 (1958).

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

Art. 3135. Limitations upon recourse

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

Revision Comments - 2014

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

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

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

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

Art. 3136. Security defined

Security is an accessory right established by legislation or contract over property, or an obligation undertaken by a person other than the principal

1 **obligor, to secure performance of an obligation. It is accessory to the obligation**
 2 **it secures and is transferred with the obligation without a special provision to**
 3 **that effect.**

4 Revision Comments - 2014

5 (a) This Article is new, but it furthers the concepts stated in Article 1913
 6 (Rev. 1984), which identifies certain types of security agreements as examples of
 7 accessory contracts. This Article is broader in its scope, however, because it is not
 8 limited to rights established by contract. For instance, privileges, which are
 9 established only by law and never by contract, are a form of security.

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

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

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

20 **Security is personal or real.**

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

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

26 Revision Comments - 2014

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

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

32 (c) Forms of real security are not necessarily real rights. Many privileges do
 33 not constitute real rights, even though they are a form of real security. See Liquid
 34 Carbonic Corporation v. Leger, 169 So. 170 (La. App. 1st Cir. 1936). See also
 35 Planiol et Ripert, Traité élémentaire de droit Civil, Volume 2, Part 2, No. 2548, 2618
 36 (1939)(English translation by the Louisiana State Law Institute, 1959);
 37 Yiannopoulos, Real Rights in Louisiana and Comparative Law: Part 1, 23 La. Law
 38 Rev. 161, 223 (1963).

39 **Art. 3138. Kinds of security**

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

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

Revision Comments - 2014

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

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

(c) The list contained in this Article is merely illustrative. Other forms of security exist, such as a pignorative contract in the form of a sale with a right of redemption in favor of a seller who remains in possession. See C.C. Art. 2569 (Rev. 1993); *Latiolais v. Breaux*, 154 La. 1006, 98 So. 620 (La. 1924); *Jackson v. Golson*, 91 So.2d 394 (La. App. 2d Cir. 1956).

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

Art. 3139. Law governing security interest

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

Revision Comments - 2014

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

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

Art. 3140. Nullity of agreement of forfeiture

Unless expressly permitted by law, a clause in a contract providing in advance that ownership of a thing given as security will transfer upon default in performance of the secured obligation is absolutely null.

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

Revision Comments - 2014

(a) The first paragraph of this Article furthers a longstanding civilian concept that an agreement of forfeiture of a thing given as security, known in Roman law as *the lex commissoria*, is null. An express prohibition of agreements of that nature in contracts of pledge was contained in Article 3132 of the Louisiana Civil Code of 1825 and also in the second paragraph of Article 3165 of the Louisiana Civil Code of 1870, until the repeal of that paragraph by Acts 1872, No. 9. Despite the repeal, agreements of forfeiture have continued to be viewed as unenforceable in Louisiana. See *Alcolea v. Smith*, 150 La. 482, 90 So. 769 (La. 1922), holding that agreements of forfeiture have been prohibited by the civil law "since the edict of Constantine" and that "it would require something more than a doubtful implication (i.e., the 1872 amendment of Article 3165) to justify any court in any civilized country in now reading it into a statute."

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

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

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

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

TITLE XX-A. PLEDGECHAPTER 1. GENERAL PROVISIONSArt. 3141. Pledge defined

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

Revision Comments - 2014

(a) This Article is new. Article 3133 of the Louisiana Civil Code of 1870 defined pledge as a contract by which a debtor gives something to his creditor as security for his debt. Though that Article defined the term as a type of contract, ensuing Articles referred to "the obligation of pledge", and certain Articles referred

1 to "the pledge" as the thing pledged. See, e.g., C.C. Art. 3175 (1870). This Article
 2 defines pledge as the real right that arises from a contract of pledge, rather than the
 3 contract itself.

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

7 (c) Since Louisiana's adoption of Chapter 9 of the Uniform Commercial
 8 Code effective January 1, 1990, the Articles on pledge contained in the Louisiana
 9 Civil Code of 1870 have been greatly reduced in their operation and to a large extent
 10 supplanted by the Uniform Commercial Code. The revision of this Title harmonizes
 11 the law of pledge with the Uniform Commercial Code by eliminating any overlap
 12 between the two wholly different regimes. Because of the very broad scope of
 13 Chapter 9 of the Louisiana Uniform Commercial Code, this Title has quite limited
 14 applicability to movables. It nonetheless fills a gap in the law that would otherwise
 15 exist with respect to encumbrance of movable property that is presently, or in the
 16 future becomes, excluded from coverage under the Uniform Commercial Code. See
 17 generally R.S. 10:9-109.

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

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

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

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

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

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

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

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

3 (b) Civil law jurisdictions typically permit all movable property, corporeal
 4 or incorporeal, to be encumbered by pledge. See, e.g., French Civil Code Arts. 2333
 5 and 2355 and B.G.B. § 1204. Similarly, Articles 3154 and 3155 of the Louisiana
 6 Civil Code of 1870 provided that every corporeal or incorporeal movable could be
 7 pawned. With the adoption of Chapter 9 of the Uniform Commercial Code in
 8 Louisiana effective January 1, 1990, however, security interest became the exclusive
 9 means of encumbrance of most kinds of movable property, thereby greatly narrowing
 10 the kinds of movable property that can be pledged under the Civil Code.
 11 Nonetheless, the exclusions that do remain, or that might exist in the future, require
 12 the continued existence of the legal framework under which property outside the
 13 scope of Chapter 9 of the Uniform Commercial Code can be encumbered. This
 14 Article makes the set of things susceptible of pledge and the set of things susceptible
 15 of encumbrance by a security interest mutually exclusive.

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

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

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

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

35 Revision Comment - 2014

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

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

50 **Pledge is accessory to the obligation that it secures and may be enforced**

1 **by the pledgee only to the extent that he may enforce the secured obligation.**

2 Revision Comment - 2014

3 This Article is new. As a form of security, pledge is always accessory to the
4 obligation that it secures. Consequently, a pledge may be enforced only to the extent
5 of the obligation that it secures. Another consequence of the accessory nature of
6 pledge is that it is transferred with the obligation that it secures without a special
7 provision to that effect. See C.C. Art. 3136 (Rev. 2014).

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

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

13 Revision Comments - 2014

14 (a) This provision, which is based on Article 3157 of the Louisiana Civil
15 Code of 1870, adds a ranking rule similar to that applicable to mortgages in Article
16 3307(3)(Rev. 1992).

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

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

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

40 Revision Comments - 2014

1 (a) This Article restates the substance of Article 3136 of the Louisiana Civil
2 Code of 1870 and expressly permits a pledge to secure future obligations, an
3 arrangement that was also permitted under the complicated provisions of Article
4 3158 of the 1870 Code, as amended.

5 (b) Article 3158 of the Louisiana Civil Code of 1870 required, as a condition
6 for effectiveness against third persons, that a pledge state the amount of the debt that
7 it secured or a limit on the amount of the secured obligations. In contrast, Chapter
8 9 of the Uniform Commercial Code does not require that a security agreement state
9 the amount or limit of secured obligations. This Article follows the approach of the
10 Uniform Commercial Code by omitting any requirement for a statement of the
11 amount of the secured obligation. Chapter 2 of this Title requires, however, that a
12 contract pledging the lessor's interest in the leases and rents of an immovable state
13 the amount of the secured obligation or the maximum amount of secured obligations
14 that may be outstanding from time to time. See C.C. Art. 3168 (Rev. 2014).

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

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

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

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

30 Revision Comment - 2014

31 This Article is new. Although it has no counterpart in the Civil Code of
32 1870, it is patterned after Article 3294 (Rev. 1991), which provides a similar rule for
33 contracts of mortgage.

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

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

40 Revision Comments - 2014

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

45 (b) When a person encumbers his property as security for the obligation of

1 another, his status is similar to that of a surety against whom recourse has been
 2 limited by contract to the thing given as security. French commentators refer to a
 3 third person who has mortgaged an immovable as security for the debt of another
 4 without obligating himself personally as a caution réelle, or real surety. Planiol,
 5 *Traité élémentaire de droit civil*, Vol. 2, Part 2, No. 2368 (English translation by the
 6 Louisiana State Law Institute, 1959); Baudry-Lacantinerie, *Traité de droit civil*
 7 français § 1292 (3d ed. 1906); T. 2. 18 Laurent, *Principes de droit civil français* §
 8 126 at 160 (3d ed. 1878). See also *Boyter v. Shreveport Bank & Trust*, 65 B.R. 944
 9 (W.D. La.1986). Because the status of a person who has pledged his property as
 10 security for the debt of another is akin to that of a surety, this Article grants to him
 11 the same defenses that are available to a surety under Article 3046 (Rev. 1987). In
 12 the event of a modification of the principal obligation without his consent, the
 13 pledgor is also entitled to assert the defenses available to a surety under Article 3062
 14 (Rev. 1987).

15 **Art. 3149. Formal requirements of contract of pledge**

16 **The pledge of a corporeal movable is effective between the parties only**
 17 **if the thing pledged has been delivered to the pledgee or a third person who has**
 18 **agreed to hold the thing for the benefit of the pledgee. The pledge of other**
 19 **things is effective between the parties only if established by written contract, but**
 20 **delivery is not required.**

21 Revision Comments - 2014

22 (a) This Article greatly simplifies the complicated rules that were provided
 23 in Article 3158 and other Articles of the Louisiana Civil Code of 1870 governing the
 24 formal requirements of the contract of pledge, at the same time adopting a number
 25 of concepts from Chapter 9 of the Uniform Commercial Code. Between the parties,
 26 this Article retains the requirement that a pledged corporeal movable must be placed
 27 into the pledgee's possession; indeed, that remains the essence of a pledge, as it is in
 28 many civil law systems. See, e.g., Argentine Civil Code Art. 3212; B.G.B. § 1205;
 29 Luxembourg Civil Code Art. 2076; Spanish Civil Code Art. 1863. In the case of the
 30 pledge of an incorporeal, however, delivery is unnecessary, and the requirement of
 31 a written pledge agreement is substituted as the essential element that must exist for
 32 the pledge to have effect between the parties.

33 (b) Under Article 3152 of the Louisiana Civil Code of 1870, delivery of the
 34 thing pledged was essential to the very existence of the contract of pledge, even
 35 between the parties. This provision was tempered, however, by Article 3153 (1870),
 36 which provided that delivery was necessary only with respect to corporeal things and
 37 that, in the case of incorporeal rights, delivery was merely fictitious and symbolical.
 38 Nevertheless, if the incorporeal right was evidenced by a writing, Articles 3156 and
 39 3162 (1870) required delivery to the pledgee of the note or other instrument
 40 evidencing the right. This Article continues the requirement of delivery of a pledged
 41 corporeal movable but removes that requirement entirely in the case of the pledge
 42 of an incorporeal. In modern practice, contracts are often executed in multiple
 43 originals, and parties frequently treat mere scanned facsimiles exchanged by
 44 electronic means as the equivalent of signed original documents. Thus, a
 45 requirement of delivery of a contract or other instrument to the pledgee would further
 46 no purpose, except perhaps in the case of special types of writings such as
 47 promissory notes and certificates evidencing securities. The rights evidenced by
 48 those writings, however, are susceptible of encumbrance under the Uniform
 49 Commercial Code and therefore cannot be encumbered under this Title in any event.
 50 See C.C. Art. 3142 (Rev. 2014).

51 (c) Though this Article requires delivery in the case of the pledge of a

1 corporeal movable, there may actually be no corporeal movables to which that rule
 2 would presently apply, for Chapter 9 of the Uniform Commercial Code may cover
 3 all corporeal movables without exception. The first sentence of this Article is
 4 intended to apply only if, under present law or under some future change in the law,
 5 a particular corporeal movable is unsusceptible of encumbrance under the Uniform
 6 Commercial Code and therefore is properly susceptible of encumbrance by pledge.
 7 See Article 3142 (Rev. 2014). The first sentence of this Article is not intended to
 8 apply to a corporeal movable that is susceptible of encumbrance by a security
 9 interest under the Uniform Commercial Code. In that case, Chapter 9 of the Uniform
 10 Commercial Code applies exclusively.

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

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

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

37 **Art. 3150. Acceptance**

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

40 Revision Comments - 2014

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

44 **Art. 3151. Power to pledge**

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

47 Revision Comments - 2014

48 This Article is new, although the Louisiana Civil Code of 1870 contained a
 49 number of Articles addressing a person's power to pledge the property of another.

1 See C.C. Arts. 3148-3150 (1870). This Article follows the simpler approach of
 2 Article 3290 (Rev. 1992), which provides the identical rule for contracts of
 3 mortgage. Similar provisions limiting the power to encumber a thing to those
 4 persons having the power to alienate it exist in the civil codes of other jurisdictions.
 5 See, e.g., Argentine Civil Code Art. 3213; Québec Civil Code Art. 2681; Zakona o
 6 Založnom Pravu na Pokretnim Stvarima Upisanim u Registar (The Law on Pledge
 7 of Movable Assets in the Pledge Registry) art. 17 (Serbia); Spanish Civil Code Art.
 8 1857.

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

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

13 Revision Comments - 2014

14 This Article is derived from Article 3144 of the Louisiana Civil Code of
 15 1870.

16 **Art. 3153. General requirements for effectiveness of pledge against third**
 17 **persons**

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

20 Revision Comments - 2014

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

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

40 **Art. 3154. Effectiveness against third persons of the pledge of the lease of an**
 41 **immovable**

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

Art. 3157. Indivisibility of pledge

The contract of pledge is indivisible, notwithstanding the divisibility of the secured obligations, and the pledgor may not demand return of all or part of the thing pledged until all secured obligations have been extinguished.

Revision Comments - 2014

This Article restates the principle of indivisibility found in Civil Code Article 3163 (1870), without intending to change the law. This principle is a common feature of the law of pledge in civilian jurisdictions. See, e.g., French Civil Code Art. 2349; Argentine Civil Code Art. 3233; Luxembourg Civil Code Art. 2083; Spanish Civil Code Art. 1860.

Art. 3158. Enforcement of pledge of a movable

If agreed in a written contract of pledge of a movable, the pledgee may, upon failure of performance of the secured obligation, dispose of the thing pledged at public auction or by private sale, but he shall act reasonably in disposing of the thing and shall account to the pledgor for any proceeds of the disposition in excess of the amount needed to satisfy the secured obligation. Otherwise, the pledgee may cause the sale of the thing pledged only by having it seized and sold under judicial process.

Revision Comments - 2014

This Article is derived from Articles 3165 and 3172 of the Louisiana Civil Code of 1870. The requirement to act reasonably in the disposition of the thing pledged is similar to the requirement of the Uniform Commercial Code that every aspect of a secured party's actions in disposing of collateral after default must be "commercially reasonable." See R.S. 10: 9-610.

Art. 3159. Fruits of things pledged

The pledgee is entitled to receive the fruits of the thing pledged and to retain them as security. He may also apply them to the secured obligation, even if not yet due.

Revision Comments - 2014

This Article is a restatement and simplification of Article 3168 of the Louisiana Civil Code of 1870. The entitlement of a pledgee to fruits of the thing pledged is a common feature of the law of pledge in civilian jurisdictions. See, e.g., French Civil Code Art. 2345 (2006); Argentine Civil Code Art. 3231; Zakona o Založnom Pravu na Pokretnim Stvarima Upisanim u Registar (The Law on Pledge of Movable Assets in the Pledge Registry) art. 21 (Serbia).

Art. 3160. Pledge of obligation of a third person

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

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

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

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

21 Revision Comments - 2014

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

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

37 **Art. 3163. Clause prohibiting pledge**

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

43 Revision Comments - 2014

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

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

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

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

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

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

47 Revision Comments - 2014

48 (a) This Article is new. It addresses an issue for which no treatment was
49 given in the Louisiana Civil Code of 1870: the circumstances under which the

1 contract from which a pledged obligation arises can be modified or terminated by the
2 parties to that contract without the consent of the pledgee.

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

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

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

28 **Art. 3165. Attachment of pledge to obligations arising under modified or**
29 **substituted contract**

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

33 Revision Comments - 2014

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

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

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

41 Revision Comments - 2014

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

45 (b) Under Article 3164 (Rev. 2014), a modification or termination of a
46 contract from which a pledged obligation arises is generally effective against the

pledgee without his consent if it is made in good faith. Nevertheless, a pledge may provide that a modification or termination of the contract, or the substitution of a new contract, is a default by the pledgor.

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

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

Revision Comments - 2014

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

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

LEASE OF AN IMMOVABLE AND ITS RENTS

Art. 3168. Requirements of contract

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

Revision Comments - 2014

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

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

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

(d) A pledge under this Chapter may be created by a sublessor. In that event, the pledge encumbers his rights under the sublease, but not his rights under the underlying lease of the property from his own lessor. The rights of a lessee under a lease, as well as the rights of a sublessee under a sublease, are not susceptible of pledge under this Chapter but instead are encumbered by mortgage. See C.C. Art. 3286 (Rev. 1991; Amended 1993); R.S. 9:4401 (Rev. 2014).

Art. 3169. Effectiveness against third persons

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 as to the lessee from the time that he is given written notice of the pledge, regardless of whether the contract establishing the pledge has been recorded.

Revision Comments - 2014

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

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

Art. 3170. Pledge contained in act of mortgage

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. In that event, the pledge is given the effect of recordation for so long as the mortgage is given that effect and is extinguished when the mortgage is extinguished.

Revision Comments - 2014

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

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

A pledge may be established over all or part of the leases of an immovable, including those not yet in existence, without the necessity of specific

1 description of the leases in the contract establishing the pledge. If the pledge is
 2 established over leases not yet in existence, the pledge encumbers future leases
 3 as they come into existence. The pledge has effect as to third persons, even with
 4 respect to leases not in existence at the time of formation of the contract
 5 establishing the pledge, from the time that the contract establishing the pledge
 6 is recorded in the manner prescribed by law.

7 Revision Comments - 2014

8 This Article is new. It restates the provisions of former R.S. 9:4401(A)(2),
 9 without any intent to change the law.

10 Art. 3172. Pledge of mineral payments by owner of land or holder of mineral
 11 servitude

12 By express provision in a contract establishing a pledge, the owner of
 13 land or holder of a mineral servitude may pledge bonuses, delay rentals,
 14 royalties, and shut-in payments arising from mineral leases, as well as other
 15 payments that are classified as rent under the Mineral Code. Other kinds of
 16 payments owing under a contract relating to minerals are not susceptible of
 17 pledge under this Title.

18 Revision Comments - 2014

19 (a) This Article, which is derived from former R.S. 9:4401(D), clarifies the
 20 law.

21 (b) Like the source provision, this Article permits a landowner or holder of
 22 a mineral servitude to pledge mineral payments. This Article makes clear, however,
 23 that a contract of pledge encumbers mineral payments only if the contract includes
 24 an express statement to that effect. A mere statement that all leases and rents of the
 25 immovable are pledged will not suffice for the pledge to encumber mineral
 26 payments.

27 (c) "Accounts" as defined in Chapter 9 of the Uniform Commercial Code and
 28 the kinds of mineral payments susceptible of encumbrance by pledge under this
 29 Chapter are mutually exclusive. See R.S. 10: 9-102(a)(2) (Rev. 2014).

30 (d) This Article clarifies an issue that was uncertain under former R.S.
 31 9:4401: whether mineral lease bonus payable to a landowner or holder of a mineral
 32 servitude is susceptible of encumbrance by a pledge, rather than by a security interest
 33 under Chapter 9 of the Uniform Commercial Code. Under prior law, mineral
 34 payments that were classified as rent under the Mineral Code were susceptible of
 35 encumbrance under former R.S. 9:4401 and were excluded from the definition of
 36 "account" in Section 9-102 of the Uniform Commercial Code. Both that definition
 37 and the provisions of former R.S. 9:4401 were written, however, in a manner that
 38 seemed to presuppose that mineral lease bonus payable to a landowner or holder of
 39 a mineral servitude was not rent and would therefore be an "account" susceptible of
 40 encumbrance only by a security interest under Chapter 9 of the Uniform Commercial
 41 Code. Nevertheless, after the adoption of those statutes, the Supreme Court held, in
 42 a case involving claims of collation among heirs, that mineral lease bonus is a form

1 of rent. Succession of Doll v. Doll, 593 So.2d 1239 (La. 1992).

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

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

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

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

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

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

27 Revision Comments - 2014

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

35 (b) Former R.S. 9:4401(G)(2) provided that, if a pledgee had not notified the
 36 lessee to make direct payment to him, the lessee was exonerated of liability for rent
 37 paid to the lessor or a subsequent assignee; however, the person to whom payment
 38 was remitted was nevertheless liable to the pledgee for the sums received. Thus, an
 39 inferior pledgee who collected rent was exposed to liability to a superior pledgee for
 40 any rent he might collect. This Article now permits the inferior pledgee to retain rent
 41 he collects as it falls due, unless a superior pledgee has notified the lessee to make
 42 payment to him and the inferior pledgee has knowledge of these instructions. At any
 43 time, of course, the superior pledgee can give a direct payment notification to the
 44 lessee, in which event the lessee will no longer be able safely to pay the inferior
 45 pledgee. See C.C. Art. 3161 (Rev. 2014). The inferior pledgee would still be able
 46 to retain any payments that the lessee might make to him in violation of these
 47 instructions if the inferior pledgee were unaware of those instructions.

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

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

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

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

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

27 **Art. 3174. Judicial sale prohibited**

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

31 Revision Comments - 2014

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

43 (b) The pledge of lessor's rights in the lease of an immovable and its rents
 44 is enforced only by collection of rents and enforcement of other obligations of the
 45 lessee under the lease. The pledgee is given the right to collect rents by Article 3160
 46 (Rev. 2014) and, to effectuate this right, is permitted by Article 3161 (Rev. 2014) to
 47 direct the lessee to pay rent to him. If necessary, the pledgee may enforce his rights
 48 by bringing suit directly against the lessee. He may also employ remedies available
 49 under the Code of Civil Procedure to seize the rents in the hands of the lessee, but
 50 he cannot cause the lessor's rights under the lease to be sold by judicial process. See
 51 C.C.P. Arts. 2411 and 3503.

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

1 **In all matters for which no special provision is made in this Chapter, the**
 2 **pledge of the lessor's rights in the lease of an immovable and its rents is**
 3 **governed by the provisions of Chapter 1 of this Title.**

4 Revision Comments - 2014

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

8 * * *

9 TITLE XXII-A OF REGISTRY

10 CHAPTER 1. GENERAL PROVISIONS

11 * * *

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

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

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

20 Revision Comments - 2014

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

34 * * *

35 CHAPTER 2. MORTGAGE RECORDS

36 SECTION 1. GENERAL PROVISIONS

37 Art. 3354. Applicability

1 mortgage, **pledge, or privilege** if he is a third person with respect to that unrecorded
2 act.

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

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

10 Revision Comments - 2014

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

24 SECTION 2. METHOD AND DURATION OF RECORDATION

25 Art. 3357. Duration; general rule

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

29 Revision Comments - 2014

30 (a) This and the succeeding four Articles state the rules relative to the lapse
31 of inscriptions of mortgages, pledges, and privileges in the mortgage records.

32 (b) This Article establishes a general rule that the effect of an inscription
33 ceases ten years after the date of the document evidencing the mortgage, pledge, or
34 privilege. This departs from the rule of Article 3369 of the Louisiana Civil Code of
35 1870 that the period of inscription was counted from the date of the secured
36 obligation.

37 Art. 3358. Duration of recordation of certain mortgages, **pledges,** and ~~vendor's~~
38 privileges

39 If an instrument creating a mortgage **or pledge** or evidencing a ~~vendor's~~

1 privilege describes the maturity of any obligation secured by the mortgage, **pledge**,
 2 or privilege and if any part of the described obligation matures nine years or more
 3 after the date of the instrument, the effect of recordation ceases six years after the
 4 latest maturity date described in the instrument.

5 Revision Comments - 2014

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

16 * * *

17 Art. 3361. Effect of amendment

18 If before the effect of recordation ceases an instrument is recorded that
 19 amends a recorded mortgage, **pledge**, or privilege to describe or modify the maturity
 20 of a particular obligation that it secures, then the time of cessation of the effect of the
 21 recordation is determined by reference to the maturity of the obligation last
 22 becoming due described in the mortgage, **pledge**, or privilege as amended.

23 Revision Comments - 2014

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

30 Art. 3362. Method of reinscription

31 A person may reinscribe a recorded instrument creating a mortgage **or pledge**
 32 or evidencing a ~~vendor's~~ privilege by recording a signed written notice of
 33 reinscription. The notice shall state the name of the mortgagor **or pledgor**, or **the**
 34 **name of the** obligor of the debt secured by the privilege, as it appears in the recorded
 35 instrument **and, as well as the** registry number or other appropriate recordation
 36 information of the instrument or of a prior notice of reinscription, and shall declare
 37 that the instrument is reinscribed.

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Revision Comments - 2014

The method of reinscription provided for in this Article, which has been the exclusive means of reinscription since January 1, 1993, is much simpler than the method that was previously required. Formerly, one had to file a copy of the original mortgage with the recorder accompanied by a request for reinscription. Reinscription occurred when the recorder again copied the reinscribed act into his records. No useful purpose was served by refileing an instrument that was already filed, or by copying an existing document into the records again. This Article instead simply requires the person desiring to reinscribe an instrument to do so by expressing that intent in a signed document that identifies the instrument and the records where its inscription is found.

Art. 3363. Method of reinscription exclusive

The method of reinscription provided in this Chapter is exclusive. Neither an amendment of an instrument creating a mortgage or pledge, or evidencing a privilege, nor an acknowledgment of the existence of a mortgage, pledge, or privilege by the mortgagor, pledgor, or obligor, constitutes a reinscription of the instrument.

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(a) This Article makes clear that the filing of a signed, written notice of reinscription is the exclusive means of reinscription. The Article rejects jurisprudence under former Civil Code Article 3369 (1870) to the effect that any document filed by the mortgagor which recognized an existing mortgage effected a reinscription of that mortgage. One case even appears to hold that a reinscription could occur if the acknowledgement was in an act filed in the conveyance records. Exxon Process & Mechanical v. Moncrieffe, 498 So.2d 158 (La. App. 1 Cir.1986).

(b) Under Article 3367 (Rev. 2014), the recorder is required upon simple request to cancel from his records any mortgage, pledge, or privilege that has not been reinscribed within the required period. The rule under the 1870 Code placed a considerable burden upon both the recorder and the persons examining the records. Nor was the rule necessarily advantageous to the obligee. The present rule, which has been in effect since January 1, 1993, requires that there be an express notice that reinscription is sought, which is then accomplished when that notice is filed.

* * *

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

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

~~B:~~ Reinscription pursuant to ~~Paragraph A~~ of this Article does not require that

1 the mortgage or pledge or evidence of privilege be again recorded, even if the
2 original recordation has been cancelled.

3 Revision Comments - 2014

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

10 SECTION 3. CANCELLATION

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

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

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

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

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

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

21 If the effect of recordation of a mortgage, pledge, or privilege has ceased for
22 lack of reinscription, the recorder upon receipt of a written signed application shall
23 cancel its recordation.

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

25 that has prescribed

26 Notwithstanding the reinscription of a judicial mortgage created by the

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

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

29 ~~judgment of a court of this state that has been reinscribed; upon the written request~~

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

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

32 revival within the time required by Article 3501 or of a certified copy of a final and

1 definitive judgment of the court rejecting the demands of the plaintiff in a suit or
2 motion to revive the judgment.

3 Revision Comments - 2014

4 As Comment (b) to Article 3359 (Rev. 2014) explains, reinscription of a
5 judicial mortgage and revival of the underlying judgment are entirely different
6 concepts. Both timely reinscription and a timely suit for revival are necessary for a
7 judicial mortgage to continue to have effect. Under this Article, even if a judicial
8 mortgage is reinscribed, the recorder must cancel the inscription of the judicial
9 mortgage from his records upon any person's request accompanied by a certificate
10 from the clerk of the court rendering the underlying judgment that no suit was filed
11 for its revival within the time required by Article 3501 (Rev. 1983) or by a final and
12 definitive judgment of that court rejecting the demands of the plaintiff in a suit to
13 revive it.

14 * * *

15 Section 2. The heading of Part IV of Chapter 1 of Code Title XX-A of Code
16 Book III of Title 9 of the Louisiana Revised Statutes of 1950, and R.S. 9:4401 and
17 9:5386 are hereby amended and reenacted and R.S. 9:4402 and 4403 are hereby
18 enacted to read as follows:

19 CODE TITLE XX - ~~OF PLEDGE~~ **SECURITY**

20 * * *

21 **CODE TITLE XX-A - PLEDGE**

22 **CHAPTER 1. PLEDGES**

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

24 **AND RENTS OF AN IMMOVABLE**

25 ~~§4401. Conditional or collateral assignment of leases or rents~~

26 ~~A. Any obligation may be secured by an assignment by a lessor or sublessor~~
27 ~~of leases or rents, or both leases and rents, pertaining to immovable property. Such~~
28 ~~assignment may be expressed as a conditional or collateral assignment, and may be~~
29 ~~effected in an act of mortgage, by a separate written instrument of assignment, or by~~
30 ~~a separate written instrument of pledge, and may be referred to, denominated, or~~
31 ~~described as a pledge or an assignment, or both. The instrument shall state the~~
32 ~~amount of the obligation secured thereby or the maximum amount of the obligation~~
33 ~~that may be outstanding at any time from time to time that such assignment secures.~~
34 ~~If such conditional or collateral assignment is made, it shall become absolute upon~~

1 the assignor's default in respect to the obligation thereby secured or in accordance
2 with the terms of the instrument creating such assignment, and shall become
3 operative as to the debtor upon written notice to the debtor from or on behalf of the
4 assignee or the assignor that such assignment has so become absolute.

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

15 (2) ~~Such assignment may include all or any portion of the assignor's~~
16 ~~presently existing and anticipated future leases and rents pertaining to the described~~
17 ~~immovable property. As future leases or rents of an immovable come into existence~~
18 ~~the assignee's rights as to such leases and rents shall have effect as to third persons~~
19 ~~from the date of the filing of the instrument. It shall not be necessary to specifically~~
20 ~~describe the presently existing or future arising leases or rents; to affect the assignor,~~
21 ~~the assignee, the debtor, or other third parties the instrument shall suffice if it~~
22 ~~contains a general description of the leases and rents together with a description of~~
23 ~~the immovable affected by the lease. The immovable property description shall be~~
24 ~~the kind of description which, if contained in a mortgage of the immovable, would~~
25 ~~cause such mortgage to be effective as to third persons if the mortgage were properly~~
26 ~~filed for record under the laws of this state.~~

27 (3) ~~Once an assignment relating to leases or rents of an immovable is so~~
28 ~~filed, the assignee shall have a superior claim to the leases and rents assigned and~~
29 ~~their proceeds as against all other creditors whose claims or security interests arise~~
30 ~~or are perfected after the filing of the assignment, notwithstanding the fact that the~~

1 debtor is not notified of or does not consent to the assignment or that the assignee is
2 not in possession of the immovable property.

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

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

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

11 ~~D. A landowner or mineral servitude owner may make a conditional or~~
12 ~~collateral assignment pursuant to this Section of rents, royalties, delay rentals,~~
13 ~~shut-in payments, and other payments which are rent or rentals under Title 31 of the~~
14 ~~Louisiana Revised Statutes attributable to the landowner's sale, lease, or other~~
15 ~~disposition of his right to explore and develop his land for production of minerals or~~
16 ~~to the mineral servitude owner's sale, lease, or other disposition of his mineral right.~~
17 ~~This Section shall not otherwise apply to rents, royalties, overriding royalties,~~
18 ~~bonuses, and other payments and other rights under mineral leases and other~~
19 ~~contracts relating to minerals.~~

20 ~~E. This Section shall apply to assignments of leases of movable property~~
21 ~~subject to the Louisiana Lease of Movables Act entered into prior to the time Chapter~~
22 ~~9 of the Louisiana Commercial Laws (R.S. 10:9-101, et seq.) becomes effective,~~
23 ~~including without limitation those assignments of leases that affect rights arising~~
24 ~~after the effective date of Chapter 9 and those continuing assignments that may~~
25 ~~secure future obligations, lines of credit, and other ongoing credit facilities. This~~
26 ~~Section shall further apply to assignments of leases of immovable property located~~
27 ~~in this state without regard to the time Chapter 9 becomes effective.~~

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

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

4 ~~(a) In identifiable noncash proceeds and in separate deposit accounts~~
5 ~~containing only proceeds:~~

6 ~~(b) In identifiable cash proceeds in the form of money which is neither~~
7 ~~commingled with other money nor deposited in a deposit account prior to the~~
8 ~~insolvency proceedings:~~

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

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

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

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

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

28 ~~(2) Except as provided in this Subsection (G), a debtor who has received~~
29 ~~written notice that the assignment has become absolute will not be discharged from~~
30 ~~his debt if he pays anyone other than the assignee. In any case in which a debtor is~~

1 not notified of the assignment made in compliance with the provisions of this Section
2 and, in good faith, makes payment of rent in whole or in part to the assignor or the
3 assignor's successor, or to a subsequent assignee of the rent who shall have notified
4 the debtor of that assignment, then to the extent of payment, the debtor shall be
5 exonerated of liability to make payment to the first assignee; however, the person to
6 whom payment was made shall be accountable and liable to the assignee for the
7 sums received. The debtor may, at its option, commence concursus proceedings
8 instead of making payment to the assignor or the assignee.

9 (3) ~~Notwithstanding the debtor's receipt of written notice of the assignment,~~
10 ~~a modification of or substitution for the lease made in good faith and in accordance~~
11 ~~with reasonable commercial standards is effective against an assignee, unless the~~
12 ~~debtor has otherwise agreed with the assignee. In either event the assignee acquires~~
13 ~~rights under the modified or substituted lease corresponding to the assignee's rights~~
14 ~~under the original lease. No termination or modification of or substitution for a lease~~
15 ~~shall be effective against an assignee as to the right to the payment of rent or a part~~
16 ~~thereof under an assigned lease which has been fully earned by performance. The~~
17 ~~assignment may provide that modification of or substitution for the lease is a default~~
18 ~~by the assignor.~~

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

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

26 H.(1) ~~The effect of recordation of all assignments recorded on or after~~
27 ~~September 1, 1990, ceases ten years after the date of the instrument creating the~~
28 ~~assignment, except, that if an instrument creating an assignment describes the~~
29 ~~maturity of an obligation secured thereby and if any part of the described obligation~~
30 ~~matures nine years or more after the date of the instrument, the effect of recordation~~

1 ~~ceases six years after the described maturity date. A recorded instrument creating~~
 2 ~~an assignment may be reinscribed by filing a signed, written notice of reinscription.~~
 3 ~~The notice shall state the name of the assignor as it appears in the recorded~~
 4 ~~instrument and recordation number or other appropriate recordation information of~~
 5 ~~the instrument or of a prior notice of reinscription and shall declare that the~~
 6 ~~instrument is reinscribed. A notice of reinscription that is filed before the effect of~~
 7 ~~recordation ceases continues that effect for ten years from the date the notice is filed.~~
 8 ~~A notice of reinscription that is filed after the effect of recordation ceases produces~~
 9 ~~the effects of recordation, but only from the date the notice is filed. The method of~~
 10 ~~reinscription provided in this Section is exclusive, and neither an amendment of an~~
 11 ~~instrument creating an assignment nor an acknowledgment of the existence of an~~
 12 ~~assignment by the assignor constitutes a reinscription of the instrument.~~
 13 ~~Notwithstanding the foregoing, the effect of recordation of an assignment contained~~
 14 ~~in an act of mortgage filed on or after September 1, 1995, continues for so long as~~
 15 ~~the act of mortgage is given the effect of recordation. In such cases, reinscription of~~
 16 ~~the act of mortgage constitutes reinscription of the assignment contained therein.~~

17 ~~(2) Notwithstanding the foregoing provisions, the effect of registry of all~~
 18 ~~assignments recorded on or before August 31, 1990, shall be determined by the other~~
 19 ~~laws of registry applicable thereto.~~

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

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

30 **§4401. Pledge of the lessor's rights in the lease of an immovable and its rents**

1 the deposit account in accordance with R.S. 10:9-104.

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

3 C. Notwithstanding Subsection B of this Section, the right of a pledgee
 4 to collections of rent deposited into a deposit account maintained by him or for
 5 his benefit is superior to the right of another pledgee to those collections, unless
 6 the pledgee who collected the rent has an obligation to account for the
 7 collections to the other pledgee under Civil Code Article 3173.

8 Revision Comments - 2014

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

14 (b) When proceeds of rent are deposited into a deposit account maintained
 15 with a financial institution, Subsection B provides that the rights of the pledgee are
 16 subject to the rights of the depository bank, the rights of a secured party who holds
 17 a security interest perfected by control of the deposit account, and the rights of a
 18 transferee of funds from the deposit account who does not act in collusion with the
 19 pledgor in violating the rights of the pledgee. Except as otherwise provided in
 20 Subsection C, the rights of a pledgee to proceeds held in the deposit account are also
 21 subject to the rights of another pledgee holding a superior pledge of the rent. Thus,
 22 if a lessor who has granted pledges in favor of two or more pledgees deposits rent he
 23 has collected into a deposit account, the ranking of the rights of the competing
 24 pledgees to the deposited rent is preserved.

25 (c) Subsection C applies when a pledgee collects rent which he then deposits
 26 into a deposit account that he maintains or that someone else maintains on his behalf.
 27 If the pledgee collected those rents without any obligation under Civil Code Article
 28 3173 (Rev. 2014) to account to a superior pledgee for them, the superior pledgee has
 29 no right to claim the collections held in the deposit account to the prejudice of the
 30 pledgee who collected them.

31 §4403. Transitional filing rules for assignments of leases and rents recorded
 32 prior to January 1, 2015

33 A. An assignment of leases and rents that was recorded prior to January
 34 1, 2015, shall be subject to the reinscription requirements of Chapter 2 of Title
 35 XXII-A of Book III of the Civil Code, with the modifications provided in this
 36 Section.

37 B. Except as otherwise provided in Subsection C of this Section, the
 38 effect of recordation of an assignment of leases and rents that was recorded in
 39 the conveyance records prior to January 1, 2015, and that remained effective
 40 against third persons on that date shall continue, without the necessity of

1 recording in the mortgage records, until the date that filing of a notice of
2 reinscription is required under Chapter 2 of Title XXII-A of Book III of the
3 Civil Code or December 31, 2024, whichever first occurs. On that date, the
4 effect of recording of the assignment shall cease unless a notice of
5 reinscription of the assignment has been filed in the mortgage records, as
6 provided in Article 3362 of the Civil Code. This Subsection shall not apply to
7 assignments contained in an act of mortgage filed in the mortgage records.

8 C. The effect of recording of an assignment of leases and rents that
9 was recorded on or before August 31, 1990, or was made effective against third
10 persons on or before that date in another manner permitted by the law then in
11 effect, and that remained effective against third persons on January 1, 2015,
12 shall continue, without the necessity of recording in the mortgage records,
13 until the date that the effect of recording would cease under the law in effect
14 at the time the assignment was first made effective against third persons or until
15 December 31, 2024, whichever first occurs. On that date, the effect of
16 recording of the assignment shall cease unless a notice of reinscription of the
17 assignment has been filed in the mortgage records, as provided in Article 3362
18 of the Civil Code.

19 D. The effect of recording of an assignment of leases and rents as to
20 which a notice of reinscription is filed in the mortgage records shall continue for
21 ten years from the date on which the notice of reinscription is filed, and the
22 assignment may be reinscribed thereafter from time to time as provided in
23 Article 3362 of the Civil Code.

24 E. The filing of a notice of reinscription in the conveyance records on or
25 after January 1, 2015, is neither necessary nor effective to continue the effect of
26 recording of an assignment of leases and rents, regardless of whether the
27 assignment or a previous notice of reinscription was filed in the conveyance
28 records.

29 F. Unless filed in the conveyance records before January 1, 2015, an
30 instrument releasing, transferring, amending or otherwise modifying an

1 assignment of leases and rents shall be without effect as to third persons until
 2 filed in the mortgage records. Filing the instrument in the conveyance records
 3 on and after January 1, 2015, is neither necessary nor effective to cause the
 4 instrument to have effect against third persons, regardless of whether the
 5 original assignment or any previous transfer, amendment, or other modification
 6 was filed in the conveyance records.

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

13 Revision Comments - 2014

14 (a) Former R.S. 9:4401 required recordation of an assignment or pledge of
 15 leases and rents in the conveyance records of the parish in which the immovable is
 16 located. Effective as of January 1, 2015, Civil Code Article 3346 (Rev. 2014)
 17 requires recordation of the pledge of the lessor's rights in the lease of an immovable
 18 and its rents in the mortgage records. This Section provides transitional rules
 19 applicable to the effect of recordation of assignments of leases and rents filed in the
 20 conveyance records in accordance with former R.S. 9:4401 prior to January 1, 2015,
 21 as well as transitional rules that apply to the reinscription, release, transfer,
 22 amendment, or other modification of those assignments. Subsection A applies the
 23 reinscription rules of Chapter 2 of Title XXII-A of Book III of the Civil Code, as
 24 amended in 2014, to assignments of leases and rents that were filed prior to January
 25 1, 2015, but with the modifications provided under this Section.

26 (b) Subsection B states the general rule that an assignment or pledge of
 27 leases and rents filed in the conveyance records prior to January 1, 2015 continues
 28 to have the effect of recordation, without the necessity of recordation in the mortgage
 29 records, until reinscription is required. Before the date that reinscription is required,
 30 a notice of reinscription must be filed in the mortgage records in order for the
 31 assignment to continue to have the effect of recordation. The filing of a notice of
 32 reinscription in the conveyance records on or after January 1, 2015 is not only
 33 unnecessary, it is wholly without effect, regardless of whether the assignment or a
 34 previous notice of reinscription was filed in the conveyance records. This is
 35 expressly stated in Subsection E.

36 (c) The period within which reinscription of assignments or pledges of leases
 37 and rents filed prior to January 1, 2015 is required is not changed by this Section,
 38 except in two instances. First, Subsection B imposes an outside deadline of
 39 December 31, 2024 for the reinscription in the mortgage records of assignments or
 40 pledges of leases and rents that were filed in the conveyance records prior to January
 41 1, 2015. Thus, even if an assignment filed in the conveyance records prior to that
 42 date secures an obligation that is described to have a maturity such that reinscription
 43 would not have been required under prior law until after December 31, 2024, a notice
 44 of reinscription must nonetheless be recorded in the mortgage records on or before
 45 December 31, 2024 in order for the assignment to continue to have the effect of
 46 recordation after that date. The second change in the reinscription period is

1 discussed in Comment (d), *infra*.

2 (d) Under former R.S. 9:4401(H)(2), assignments of leases and rents
3 recorded in the conveyance records on or before August 31, 1990 were subject to no
4 reinscription requirement at all. Subsection C of this Section imposes a reinscription
5 requirement upon those assignments and a reinscription deadline of December 31,
6 2024. If a notice of reinscription of an assignment of leases and rents that was
7 recorded on or before August 31, 1990 is not filed in the mortgage records on or
8 before December 31, 2024, the assignment will cease to be effective against third
9 persons after that date. Subsection C applies by its terms only to assignments that
10 were recorded on or before August 31, 1990 and that remain effective against third
11 persons on January 1, 2015. If, for any reason, the effect of recordation of the
12 assignment ceased prior to January 1, 2015, Subsection C would not operate to
13 revive the assignment.

14 (e) Between January 1, 1990 and August 31, 1990, it was possible to effect
15 an assignment of the rents of an immovable through an assignment of accounts
16 receivable in accordance with the Louisiana Assignment of Accounts Receivable
17 Act, former R.S. 9:3101 et seq. (repealed by Acts 2001, No. 128). The assignment
18 was made effective against third persons by the filing of a financing statement in the
19 U.C.C. records. This practice was ended by Acts 1990, No. 1079; however, Section
20 9 of that act specifically provided that the change in the Assignment of Accounts
21 Receivable Act "shall not impair or make invalid any assignments of accounts
22 arising out of the leasing of immovable property entered into prior to the effective
23 date of this Act." Subsection C of this Section provides that any such assignments
24 that might continue to be effective against third persons on January 1, 2015 are
25 subject to the requirement of the filing of a notice of reinscription in the mortgage
26 records by no later than December 31, 2024. This is an outside deadline, however,
27 and effectiveness of the assignment against third persons will be lost even sooner if
28 a notice of reinscription is not filed in the mortgage records before lapse of the
29 financing statement that is the basis of the perfection of the assignment. The filing
30 of further continuation statements in the U.C.C. records on or after January 1, 2015
31 will not continue the effectiveness of the financing statement.

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

38 (g) Subsection G deals with the effectiveness against third persons of an
39 assignment of leases and rents that, within the period of ten years prior to January
40 1, 2015, was recorded, inappropriately, only in the mortgage records, rather than in
41 the conveyance records as former R.S. 9:4401 required. Subsection G grants these
42 assignments the effect of recordation as of January 1, 2015, as if the assignment
43 were first filed on that date. The effect of recordation is not retroactive to the actual
44 date of filing. Moreover, the reinscription deadline for such an assignment is not
45 reckoned from January 1, 2015, but rather according to the normal rules of Chapter
46 2 of Title XXII-A of Book III of the Civil Code. Subsection G does not grant the
47 effect of recordation to an assignment of leases and rents that was recorded in the
48 mortgage records more than ten years prior to January 1, 2015. Such assignments
49 (unless contained in an act of mortgage) were not given the effect of recordation
50 when they were filed and are not given the effect of recordation by Subsection G.
51 See *Prudential Ins. Co. of America v. CC & F Baton Rouge Development Co.*, 647
52 So.2d 1131 (La. App. 1st Cir.1994).

53 (h) Former R.S. 9:4401 accorded the effect of recordation to an assignment
54 of leases and rents contained in an act of mortgage filed in the mortgage records, to
55 the extent and for so long as the act of mortgage was given such effect, without the
56 need for separate recordation in the conveyance records. For this reason, Subsection
57 G by its terms does not apply to assignments of leases and rents contained in an act
58 of mortgage. Similarly, the outside reinscription deadline of December 31, 2024
59 contained in Subsection B does not apply to assignments contained in an act of

1 mortgage recorded in the mortgage records. The purpose of that outside deadline is
 2 to cause evidence of all assignments or pledges of leases and rents to appear in the
 3 mortgage records in all events no later than December 31, 2024. In the case of an
 4 assignment contained in a properly recorded act of mortgage, the assignment already
 5 appears in the mortgage records through a filing that was effective at the time made.
 6 The general rule of Subsection A applies to such assignments: they are subject to the
 7 normal reinscription requirements of Chapter 2 of Title XXII-A of Book III of the
 8 Civil Code.

9 * * *

10 §5386. Mortgage including ~~collateral assignment and~~ pledge of certain
 11 mortgagor's incorporeal rights to insurance

12 A. A mortgage of an immovable property may ~~provide for the~~ contain a
 13 ~~collateral assignment or pledge of the~~ mortgagor's rights right to receive proceeds
 14 ~~attributable to the insurance loss of the mortgaged property~~ under policies of
 15 insurance covering the immovable. ~~Such collateral assignment or~~ In that event,
 16 the pledge shall have has effect, ~~other than between the immediate parties, or those~~
 17 ~~on whose behalf or for whose benefit they act, and shall be deemed perfected by the~~
 18 ~~proper recordation of the mortgage in the mortgage records of the parish in which the~~
 19 ~~immovable is situated~~ as to third persons when the act of mortgage is recorded
 20 in the manner prescribed by law, without the necessity of notice to the insurer,
 21 and continues to have that effect for so long as the mortgage is given the effect
 22 of recordation.

23 B. The rights of the mortgagee against the insurer shall be subject to any
 24 dealing by the insurer with the mortgagor, any other assignee or pledgee, or other
 25 successor in interest of the mortgagor until the insurer receives written notice from
 26 or on behalf of the mortgagee or the mortgagor of the collateral assignment or pledge
 27 of the right to receive the insurance proceeds. In any case in which an insurer is not
 28 notified in writing of the assignment or pledge of the right to receive insurance
 29 proceeds made in compliance with the provisions of this Section and, in good faith,
 30 makes payment of the insurance proceeds attributable to the loss of the mortgaged
 31 property in whole or in part to the mortgagor, any other assignee or pledgee, or other
 32 successor in interest of the mortgagor, then, to the extent of payment, the insurer
 33 shall be exonerated of liability to make payment to the mortgagee; however, the
 34 person to whom payment was made shall be accountable and liable to the mortgagee

1 for the sums received. ~~Nothing contained in this Section shall be construed to~~ **The**
 2 **pledge of the mortgagor's rights to insurance does not** modify the obligations of
 3 ~~any~~ **the** insurer under any simple or standard or other loss payee clause of its
 4 insurance policy.

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

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

12 §9-102. Definitions and index of definitions

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

14 * * *

15 (2) "Account," except as used in "account for," means a right to payment of
 16 a monetary obligation, whether or not earned by performance, (i) for property that
 17 has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for
 18 services rendered or to be rendered, (iii) for a policy of insurance issued or to be
 19 issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy
 20 provided or to be provided, (vi) for the use or hire of a vessel under a charter or other
 21 contract, (vii) arising out of the use of a credit or charge card or information
 22 contained on or for use with the card, or (viii) as winnings in a lottery or other game
 23 of chance operated or sponsored by a state, governmental unit of a state, or person
 24 licensed or authorized to operate the game by a state or governmental unit of a state.
 25 The term includes health-care-insurance receivables. The term further includes any
 26 right to payment ~~owed to a landowner or the owner of a mineral right, such as a~~
 27 ~~bonus, rent, or royalty, which is payable out of or measured by production of oil, gas,~~
 28 ~~or other minerals, or is otherwise attributable to the mineral right, whether or not~~
 29 ~~such payment is rent under Title 31 of the Louisiana Revised Statutes of 1950;~~
 30 ~~except for rent payable to a landowner or mineral servitude owner~~ **that is payable**

1 out of or measured by production of oil, gas, or other minerals, or is otherwise
 2 attributable to a mineral right, whether or not the payment is classified as rent
 3 under the Mineral Code, except that the term does not include bonuses, delay
 4 rentals, royalties, or shut-in payments payable to a landowner or mineral
 5 servitude owner under a mineral lease, nor does the term include other
 6 payments to them that are classified as rent under the Mineral Code. The term
 7 does not include (i) rights to payment evidenced by chattel paper or an instrument,
 8 (ii) tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit
 9 rights or letters of credit, (vi) rights to payment for money or funds advanced or sold,
 10 other than rights arising out of the use of a credit or charge card or information
 11 contained on or for use with the card, (vii) life insurance policies or rights to
 12 payment or claims thereunder, or (viii) judgments or rights to payment represented
 13 thereby.

14 Revision Comments - 2014

15 The 2014 revision of the definition of "account" in this Section, made in
 16 tandem with the enactment of Civil Code Article 3172 (Rev. 2014), is intended to
 17 ensure that "accounts" as defined in this section and the kinds of mineral payments
 18 susceptible of encumbrance by pledge under Civil Code Article 3172 (Rev. 2014)
 19 are mutually exclusive. Bonus, delay rentals, royalties, and shut-in payments
 20 payable to a landowner or mineral servitude owner under a mineral lease, as well as
 21 any other payments to them that are classified as rent under the Mineral Code, do not
 22 constitute "accounts" susceptible of encumbrance by a security interest under this
 23 Chapter but instead are encumbered by a pledge under Civil Code Art. 3172. See
 24 Comment (d) to Civil Code Art. 3172 (Rev. 2014).

25 Section 4. Civil Code Articles 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, and
 26 3184 are hereby repealed.

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

29 Art. 3359. Duration of recordation of judicial mortgage

30 * * *

31 Revision Comments - 2014

32 (a) This Article expressly declares that the effect of recording a judgment
 33 ceases ten years after the date of the judgment. This continues the interpretation of
 34 Article 3369 of the Louisiana Civil Code of 1870 and is implicit in present Article
 35 3357 (Rev. 2014).

36 (b) The failure to reinscribe a judicial mortgage within ten years of its date
 37 causes the effect of recordation to cease. As the courts have observed, there is a

1 common misunderstanding as to the relationship between reinscribing a judicial
 2 mortgage and obtaining a judgment of revival under C.C.P. Art. 3334. Bank One
 3 Louisiana v. Lacobee, 811 So.2d 164 (La. App. 2d Cir. 2002). See also Brunston v.
 4 Hoover, 945 So.2d 852 (La. App. 3d Cir. 2006) and Mouton v. Watson, 500 So.2d
 5 792 (La. App. 1st Cir.1986). Under Article 3300 (Rev. 2014), a judicial mortgage
 6 is created by the filing of a money judgment in the mortgage records. This Article
 7 provides that the effect of recordation of a judgment creating a judicial mortgage
 8 ceases ten years after the date of the judgment. A notice of reinscription filed in
 9 accordance with Article 3362 (Rev. 2014) continues the effect of recordation of a
 10 judicial mortgage, without the necessity of filing a judgment reviving the original
 11 judgment. The judgment itself prescribes, however, if a suit to revive it is not filed
 12 within ten years of its date and a judgment reviving it obtained in due course. If the
 13 judicial mortgage is not reinscribed, the effect of recordation ceases whether or not
 14 prescription on the underlying judgment is interrupted by a suit for revival. If the
 15 judicial mortgage is reinscribed, it nevertheless becomes unenforceable when the
 16 underlying judgment prescribes. Accordingly, Article 3368 (Rev. 2014) permits the
 17 recorder to cancel the inscription from his records upon the request of any person if
 18 the request is accompanied by a certificate from the clerk of the court rendering the
 19 judgment that no suit has been filed for its revival within the time required by Article
 20 3501 (Rev. 1983) or is accompanied by a final and definitive judgment of that court
 21 rejecting the demands of the plaintiff in a suit to revive it.

22 * * *

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

24 * * *

25 Revision Comments - 2014

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

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

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

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____