

SENATE BILL NO. 405

BY SENATOR PRICE

1 AN ACT

2 To enact R.S. 9:5633.1, relative to three-year acquisitive prescription; to provide for  
3 acquisition of blighted property in certain municipalities; to provide for the filing of  
4 certain affidavits and judgments; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:5633.1 is hereby enacted to read as follows:

7 **§5633.1. Blighted property in certain municipalities; acquisitive prescription**

8 **A. In an incorporated municipality that is under a home rule charter,**  
9 **having a population between six thousand six hundred fifty and seven thousand**  
10 **six hundred fifty, according to the latest federal decennial census, ownership of**  
11 **an immovable may be acquired by the prescription of three years without the**  
12 **need of just title or possession in good faith. The requirements for the**  
13 **acquisitive prescription of three years are as follows:**

14 **(1) The land and all improvements thereon shall be located in the**  
15 **municipality and shall have been declared or certified blighted after an**  
16 **administrative hearing, pursuant to R.S. 13:2575 or 2576.**

17 **(2) The following documents in Subparagraphs (a) and (c) of this**  
18 **Paragraph shall be filed in the mortgage and conveyance records for the parish**  
19 **where the immovable property is situated:**

20 **(a) An affidavit by the possessor of the immovable property stating the**  
21 **name and address of the possessor, stating the intention of the possessor to take**  
22 **corporeal possession of the immovable property for the possessor's own account**  
23 **in accordance with this Section, stating that such corporeal possession shall**  
24 **commence no sooner than fourteen calendar days after the date of filing of the**  
25 **affidavit and giving a short legal description of the immovable property**  
26 **intended to be possessed.**

1           **(b) An owner of immovable property having common boundaries with**  
2           **the immovable shall have a first right of possession to such immovable. In the**  
3           **event more than one owner of immovable property having common boundaries**  
4           **with the immovable files the resolution and affidavit as described in**  
5           **Subparagraph (a) of this Paragraph, the owner of property having common**  
6           **boundaries who files first, shall secure the first right to assert possession of the**  
7           **immovable. An owner of immovable property having common boundaries with**  
8           **the immovable has the right to file within fourteen days of the municipality**  
9           **passing the resolution. After fourteen days have elapsed, any interested party**  
10           **may avail himself of the provisions of this Section.**

11           **(c) There shall be annexed to and filed with the affidavit described in**  
12           **Subparagraph (a) of this Paragraph a certified copy of the judgment, order,**  
13           **declaration, determination, resolution, or ordinance of the municipality,**  
14           **certified by the municipality as a true copy, hereinafter referred to as**  
15           **"resolution" declaring the property as an unoccupied premises, and as either**  
16           **blighted, neglected, littered, abandoned, constituting a public nuisance, in a**  
17           **dangerous and dilapidated condition, in a state of disrepair, overgrown by**  
18           **weeds or grass, or on which junked motor vehicles are parked.**

19           **(3) Within thirty days after the affidavit and resolution are filed as**  
20           **described in Paragraph (2) of this Subsection, the resolution and affidavit shall**  
21           **be sent by certified mail, return receipt requested, to the owner at the address**  
22           **shown on the tax rolls of the assessor and to all parties having an interest in the**  
23           **immovable property, including but not limited to all mortgage holders, as**  
24           **shown by the conveyance and mortgage records, at the address of each party as**  
25           **shown in those records. Failure to adequately comply with this Paragraph shall**  
26           **cause the forfeiture of any and all rights of the possessor granted in this Section.**

27           **(4) Within one month after the resolution and affidavit are filed as**  
28           **described in Paragraph (2) of this Subsection, a notice shall be affixed to at least**  
29           **one prominent location on the immovable, including but not limited to a front**  
30           **door, front gate or entry, or next to a mailbox. The notice shall state the name**

1 and address of the possessor; that the possessor intends to take corporeal  
2 possession of the immovable for the possessor's own account; and the date that  
3 the notice is affixed.

4 (5) The possessor shall take corporeal possession peaceably, and  
5 commence within a reasonable time, not to exceed forty-five days, to maintain  
6 and repair the property, and shall continue with reasonable diligence to do so  
7 and improve its condition, until the property is no longer blighted or in  
8 disrepair. The municipality shall have the right to determine if this obligation  
9 of the possessor is being completed.

10 (6) All ad valorem taxes, interest, and penalties due and payable shall be  
11 paid in full by the possessor.

12 B. If, after notice to the possessor and a contradictory hearing, the  
13 municipality determines that the possessor is not complying with the possessor's  
14 obligation set forth in Paragraphs (A)(5) and (A)(6) of this Section or should any  
15 possessor seeking to acquire pursuant to this Section fail to satisfy any of the  
16 requisites for acquisitive prescription listed in Subsection A of this Section, then  
17 the right to possession, the running of prescription, and the effect of the  
18 affidavits described in this Section shall cease, and all rights which may have  
19 accrued thereunder shall be terminated, except as specifically set forth in this  
20 Section.

21 C. The possessor shall not demolish any structure on the immovable  
22 unless the municipality finds the structure to be a public nuisance and  
23 authorizes the demolition.

24 D. If the possessor has met the requisites listed in Subsection A of this  
25 Section, the possessor shall not be liable to the owner of the immovable for any  
26 tortious act or any civil claim or cause of action related to the possession of the  
27 possessor which may have occurred on or after the date that corporeal  
28 possession was taken, including but not limited to trespass and demolition of the  
29 improvements, and such possessor shall not be subject to criminal prosecution  
30 for trespass upon the immovable or for demolition of the improvements.

1 Nothing provided in this Section shall prevent the owner from instituting and  
2 prosecuting a real action against the possessor pursuant to Code of Civil  
3 Procedure Article 3651 et seq.

4 E.(1) In the event the owner is successful in bringing a real action against  
5 the possessor pursuant to Code of Civil Procedure Article 3651 et seq., the  
6 owner shall reimburse the possessor for all monies advanced by the possessor  
7 for attorney fees and costs, tax statements or researches, mortgage, or  
8 conveyance certificates, title abstracts, filing fees, postage, copies, printing, the  
9 payment of satisfaction of mortgages, judgments, liens, and other  
10 encumbrances, plus costs and expenses for cancellation thereof, and for all ad  
11 valorem taxes, interest, and penalties paid by the possessor on the immovable,  
12 the value of the improvements made or done on the immovable by the possessor  
13 after the date that corporeal possession was taken, and the cost or value of any  
14 cleaning, clearing, cutting, repairs, rehabilitation, maintenance, removal, work,  
15 or demolition to the extent not otherwise included in the value of the  
16 improvements and for any other reasonable costs incurred or value of work  
17 done by the possessor.

18 (2) In addition to the foregoing reimbursements, all monies advanced by  
19 the possessor shall earn, and the possessor shall be entitled to receive interest,  
20 at the judicial interest rate provided by R.S. 13:4202.

21 (3) To prove the cost or value of cleaning, clearing, cutting, repairs,  
22 rehabilitation, maintenance, removal, work, or demolition made or done on the  
23 immovable and of any times set forth in Paragraph (1) of this Subsection, the  
24 possessor shall provide proof of payment from the persons who performed the  
25 work or from whom the materials were purchased or affidavits establishing the  
26 hourly rate generally charged for such work in the municipality in which the  
27 immovable subject to this Section is located and the number of hours spent on  
28 work with reasonable itemization. In the event the owner contests the validity  
29 of such documentation, the municipality shall appoint a person to determine the  
30 value or cost of said items.

1           **F. If the possessor has met the requirements set forth in Paragraphs**  
2           **(A)(2), (3), and (4) of this Section, all expenses and monies for the matters set**  
3           **forth in Subsection E of this Section, that are paid or advanced by or owed to**  
4           **the possessor, shall be secured by a first lien and privilege on the immovable**  
5           **property described in the affidavit filed under Subparagraph (A)(2)(a) of this**  
6           **Section, which lien and privilege shall rank based on the date of recording in the**  
7           **mortgage records, the affidavit, and resolution as required in Subparagraphs**  
8           **(A)(2)(a) and (c) of this Section, and the lien and privilege shall be inferior to all**  
9           **previously recorded mortgages, privileges, liens, and judgments. Such lien and**  
10           **privilege shall be in favor of the possessor and, as such, it may be encumbered**  
11           **or assigned to secure any loan made to the possessor for the purpose of**  
12           **financing the acquisition of the immovable property subject to the acquisitive**  
13           **prescription provided for in this Section or for the cleaning, clearing, cutting,**  
14           **repairs, maintenance, rehabilitation work, demolition, or for the construction**  
15           **of improvements on or to the immovable property.**

16           **G. Notwithstanding the provisions of this Section, no recorded mortgage**  
17           **privilege, lien, or judgment encumbering the subject property shall be**  
18           **extinguished or impaired by the accrual of acquisitive prescription under this**  
19           **Section, and any holder of a mortgage, privilege, lien or judgment, encumbering**  
20           **the subject property may enforce its rights through foreclosure, including the**  
21           **seizure and sale of the subject property, as though acquisitive prescription had**  
22           **not accrued.**

23           **H. The provisions governing acquisitive prescription of ten years and of**  
24           **thirty years apply to the prescription of three years provided in this Section to**  
25           **the extent that their application is consistent with the prescription of three**  
26           **years.**

27           **I. Notwithstanding the provisions of Subsection A of this Section, in the**  
28           **event that the possessor rehabilitates or constructs a residential or commercial**  
29           **structure, ownership of the immovable may be acquired by prescription without**  
30           **the need of just title or possession in good faith on the date that a certificate of**

1 use and occupancy shall be obtained by the possessor. For the purpose of this  
2 Subsection, "residential or commercial structure" shall not include garages,  
3 sheds, barns, or other outbuildings. Notwithstanding the provisions of this  
4 Subsection, no mortgage, privilege, lien or judgment encumbering the subject  
5 property shall be extinguished or impaired by the accrual of acquisitive  
6 prescription under this Section, and any holder of a mortgage, privilege, lien or  
7 judgment, encumbering the subject property may enforce its rights through  
8 foreclosure, including the seizure and sale of the subject property, as though  
9 acquisitive prescription had not accrued.

10 J. In the event the possessor does not comply with the provisions of  
11 Subsection A of this Section, or if a termination described in Subsection B of  
12 this Section occurs, any interested party required to be approved by the  
13 municipality may file in the mortgage records of the parish, a certified copy of  
14 the notice of termination described in Subsection B of this Section, which shall  
15 be conclusive evidence of the failure of the possessor to comply with the  
16 requirements necessary to acquire the immovable property by the prescription  
17 provided for in this Section and shall act to nullify the filed affidavit of intent  
18 to possess described in Paragraph (A)(2) of this Section, as if the affidavit was  
19 never filed, without any need to have the affidavit canceled or released of  
20 record, but the possessor retains all rights to preserve and recover the amounts  
21 set forth in Paragraphs (E)(1) through (4) of this Section, and the lien and  
22 privilege set forth in Subsection F of this Section.

23 K. The filing or depositing in the conveyance or mortgage records of any  
24 forged or wrongfully altered affidavit, notice of resolution, termination,  
25 certificate or proof, or mortgage certificate described in this Section, or  
26 containing a false statement or false representation of a material fact, shall be  
27 a felony pursuant to R.S. 14:133 and shall be actionable under Civil Code  
28 Article 2315.

29 L. This Section shall be liberally construed to encourage and to protect  
30 reasonable good faith work and expenditures by the possessor for cleaning,

1            **clearing, cutting, maintenance, grass cutting, trash and debris removal, repairs,**  
 2            **rehabilitation, maintenance, demolition, and work on or to the subject property**  
 3            **or any structures therein.**

4            Section 2. This Act shall become effective upon signature by the governor or, if not  
 5            signed by the governor, upon expiration of the time for bills to become law without signature  
 6            by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 7            vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 8            effective on the day following such approval.

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 PRESIDENT OF THE SENATE

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 SPEAKER OF THE HOUSE OF REPRESENTATIVES

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

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