
DIGEST

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HB 220 Original

2023 Regular Session

Pressly

Abstract: Provides with respect to actions to determine ownership or possession.

Present law (C.C. Art. 531) requires a person claiming ownership of an immovable against another in possession to prove that he acquired ownership from a previous owner or by acquisitive prescription.

Proposed law imposes the burden of proof provided by present law only when the other person has been in possession for one year in good faith and with just title or has been in possession for 10 years, otherwise, the burden of proof is better title.

Present law (C.C. Art. 3440) provides that the possessory action is available to a precarious possessor, such as a lessee or a depositary.

Proposed law deletes the incorrect reference to depositaries found in present law.

Present law (C.C.P. Art. 1061) requires the defendant in the principal action to reconvene in all causes of action that arise out of the same transaction or occurrence but provides for certain exceptions, such as in actions for divorce or for disavowal.

Proposed law adds to the exceptions provided by present law the filing of a reconventional demand asserting a petitory action or declaratory judgment action to determine ownership under Article 3657.

Present law (C.C.P. Art. 3651) provides that a petitory action is brought by a person who is not in possession of immovable property or a real right therein.

Proposed law changes present law to clarify that a petitory action is brought by a person who does not have the right to possess immovable property or a real right therein.

Present law (C.C.P. Art. 3653) sets forth the burden of proof that must be satisfied by the plaintiff in a petitory action and requires the plaintiff to prove that he acquired ownership from a previous owner or by acquisitive prescription if the defendant is in possession of the immovable.

Proposed law imposes the burden of proof provided by present law only when the defendant has been in possession for one year in good faith and with just title or has been in possession for 10 years, otherwise, the plaintiff's burden of proof is better title.

Present law (C.C.P. Art. 3654) provides that the same burden of proof that must be satisfied by the plaintiff in a petitory action also applies to an action for a declaratory judgment or a concursus, expropriation, or similar proceeding.

Proposed law changes present law to impose the burden of proving acquisition of ownership from a previous owner or by acquisitive prescription when the adverse party has been in possession for one year in good faith and with just title or has been in possession for 10 years, otherwise, the burden of proof is better title.

Present law (C.C.P. Art. 3655) provides that a possessory action is brought by the possessor of immovable property or a real right therein.

Proposed law adds to present law that a possessory action may also be brought by a precarious possessor.

Present law (C.C.P. Art. 3656(A)) provides that a possessory action shall be brought by one who possesses for himself and specifies that a predial lessee does not possess for himself.

Proposed law changes present law to allow a possessory action to be brought by a precarious possessor, such as a lessee, against anyone except the person for whom the precarious possessor possesses, in accordance with the Civil Code.

Present law (C.C.P. Art. 3657) prohibits the cumulation of possessory and petitory actions and provides that a plaintiff who improperly cumulates these actions or institutes a petitory action waives the possessory action. Present law further provides that a defendant who improperly asserts title in the possessory action or institutes a petitory action judicially confesses the possession of the plaintiff in the possessory action.

Proposed law expands present law to prohibit cumulation of a possessory action with either a petitory action or a declaratory judgment action to determine ownership.

Proposed law changes the consequence provided by present law for improper cumulation by the plaintiff, instead providing that the defendant may object by asserting a dilatory exception. Proposed law also changes the consequence when the defendant improperly asserts title in the possessory action, instead limiting the defendant's assertions of title to those matters that may be considered in the possessory action under Article 3661.

Proposed law retains the consequence provided by present law when the defendant institutes a separate petitory action or declaratory judgment action to determine ownership, requiring the defendant to judicially confess the possession of the plaintiff. Proposed law also prohibits the defendant from filing a reconventional demand asserting claims of title unless the plaintiff seeks an adjudication of ownership.

Present law (C.C.P. Art. 3658) sets forth the items that must be proven by the plaintiff in a possessory action.

Proposed law retains present law but recognizes that a possessory action may also be brought by a precarious possessor.

Present law (C.C.P. Art. 3659) provides with respect to disturbances in law and in fact.

Proposed law retains present law but clarifies when a disturbance in law must arise in order for the disturbance to form the basis of a possessory action.

Present law (C.C.P. Art. 3660) provides for a definition of "possession" for purposes of present law.

Proposed law retains present law but adds that precarious possession also constitutes possession for purposes of proposed law.

Present law (C.C.P. Art. 3661) provides that no evidence of ownership or title to immovable property or a real right therein shall be admitted in a possessory action except under certain circumstances, such as to prove the extent of possession by a party.

Proposed law retains present law but adds that evidence of ownership or title may also be admitted to prove the extent of possession by a party's ancestors in title.

Present law (C.C.P. Art. 3662) sets forth the relief that may be granted to a successful plaintiff in a possessory action, including ordering the defendant to assert his claim of ownership within a delay not to exceed 60 days or be precluded thereafter from doing so.

Proposed law fixes the delay provided by present law at 60 days and also provides that this relief is not available against the state or against a defendant who appeared in the action only through an attorney appointed to represent him under Article 5091.

Present law (C.C.P. Art. 3669) provides that the burden of proof in an action between the owner of a mineral servitude and the owner of a mineral royalty is that which must be borne by the plaintiff in a petitory action when neither party is in possession.

Proposed law clarifies that the applicable burden of proof is to prove better title.

(Amends C.C. Arts. 531 and 3440 and C.C.P. Arts. 1061, 3651, 3653, 3654, 3655, 3656(A), 3657-3662, and 3669)