

2023 Regular Session

HOUSE BILL NO. 220

BY REPRESENTATIVE PRESSLY

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROPERTY/IMMOVABLE: Provides relative to actions to determine ownership or possession

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

AN ACT

To amend and reenact Civil Code Articles 531 and 3440 and Code of Civil Procedure Articles 1061, 3651, 3653, 3654, 3655, 3656(A), 3657 through 3662, and 3669, relative to actions to determine ownership or possession; to provide with respect to petitory actions, possessory actions, actions for declaratory judgments to determine ownership, and similar proceedings; to provide for proof of ownership of immovables; to provide with respect to precarious possession; to provide for reconventional demands; to provide with respect to cumulation of actions; to provide with respect to disturbances in fact and in law; to provide with respect to possession and admissibility of title; to provide for relief and appeals; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 531 and 3440 are hereby amended and reenacted to read as follows:

Art. 531. Proof of ownership of immovable.

One ~~who claims~~ claiming the ownership of an immovable against another who has been in possession of the immovable for one year after having commenced possession in good faith and with just title or who has been in possession of the immovable for ten years ~~must~~ shall prove that he has acquired ownership from a

1 previous owner or by acquisitive prescription. ~~If neither party is in possession~~ In all  
2 other cases, he need only prove a better title.

3 Revision Comments - 2023

4 (a) The 2023 revision of this Article changes substantially the burden of  
5 proof imposed upon a person claiming the ownership of an immovable against  
6 another who is in possession. Prior to the revision, this Article provided that in such  
7 cases, the claimant's burden of proof was to prove that he had acquired ownership  
8 from a prior owner or by acquisitive prescription. This burden of proof, which has  
9 often been characterized as the requirement of proving "title good against the world,"  
10 applied even when the defendant was a usurper who had no title at all. See Pure Oil  
11 Co. v. Skinner, 294 So. 2d 797 (La. 1974). Application of that rule could lead to  
12 obvious inequities by allowing a usurper who was in possession for only one year to  
13 prevail against a party who might have been in possession for many years previously  
14 under a title that suffered from only minor defects. See Pure Oil Co. v. Skinner, 294  
15 So. 2d 797, 799 (La. 1974) (Summers, J., dissenting).

16 (b) The 2023 revision narrows the circumstances in which the person  
17 claiming ownership must prove that he acquired ownership from a prior owner or by  
18 acquisitive prescription. As revised, the Article provides that this onerous burden  
19 of proof applies only when the defendant has been in possession for one year after  
20 having commenced possession in good faith and with just title or when the defendant  
21 has been in possession for ten years, regardless of whether in good faith or with just  
22 title. Where neither of these circumstances applies, the burden imposed upon the  
23 claimant is merely to prove a better title than that of the defendant.

24 (c) The good faith and just title mentioned in this Article are identical to the  
25 good faith and just title necessary to start the running of the acquisitive prescription  
26 of ten years under Article 3475. "Good faith" is used in this Article with the  
27 meaning given in Articles 3480 and 3481. By the express wording of this Article,  
28 the defendant's good faith is measured only at the commencement of his possession.  
29 This is analogous to the rule that applies under Article 3482 for purposes of the  
30 accrual of the acquisitive prescription of ten years.

31 (d) The 2023 revision does not change the rule that a common author in title  
32 is presumed to be the previous owner. See Article 532; Weaver v. Hailey, 416 So.  
33 2d 311 (La. App. 3 Cir. 1982). The presumption is rebuttable. See Article 532,  
34 comment (b).

35 \* \* \*

36 Art. 3440. Protection of precarious possession

37 Where there is a disturbance of possession, the possessory action is available  
38 to a precarious possessor, such as a lessee ~~or a depositary~~, against anyone except the  
39 person for whom he possesses.

40 Section 2. Code of Civil Procedure Articles 1061, 3651, 3653, 3654, 3655, 3656(A),  
41 3657 through 3662, and 3669 are hereby amended and reenacted to read as follows:

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Art. 1061. Actions pleaded in reconventional demand; compulsory

2 A. The defendant in the principal action may assert in a reconventional  
3 demand any causes of action ~~which he~~ that the defendant may have against the  
4 plaintiff in the principal action, even if these two parties are domiciled in the same  
5 parish and regardless of connexity between the principal and reconventional  
6 demands.

7 B. ~~The defendant in the principal action;~~ Except as otherwise provided in  
8 Article 3657, and except in an action for divorce under Civil Code Article 102 or 103  
9 or in an action under Civil Code Article 186, the defendant in the principal action  
10 shall assert in a reconventional demand all causes of action that ~~he~~ the defendant may  
11 have against the plaintiff that arise out of the transaction or occurrence that is the  
12 subject matter of the principal action.

13 \* \* \*

14 Art. 3651. Petitory action

15 The petitory action is one brought by a person who claims the ownership of,  
16 but who ~~is not in possession~~ does not have the right to possess, ~~of~~ immovable  
17 property or ~~of~~ a real right therein, against another who is in possession or who claims  
18 the ownership thereof adversely, to obtain judgment recognizing the plaintiff's  
19 ownership.

20 Comments - 2023

21 According to the Civil Code, possession is a matter of fact, but the right to  
22 possess arises from possession for over a year and, once acquired, is lost if the  
23 possessor is evicted and does not recover possession within one year of the eviction.  
24 Civil Code Articles 3422 and 3434. For purposes of this Chapter, Code of Civil  
25 Procedure Article 3660 defines "possession" as possession in fact, rather than the  
26 right to possess, but this Article, among others, used the term "in possession" where  
27 the right to possess, rather than factual possession, was intended. The 2023 revision  
28 of this Article clarifies that a petitory action is brought by one who does not have the  
29 right to possess. A person who still has the right to possess even though he might  
30 have lost actual possession within the past year should bring a possessory action  
31 against the person who evicted him, rather than a petitory action under this Article.

32 \* \* \*

1 Art. 3653. Same; proof of title; immovable

2 A. To obtain a judgment recognizing his ownership of immovable property  
3 or real right therein, the plaintiff in a petitory action shall:

4 (1) Prove that he has acquired ownership from a previous owner or by  
5 acquisitive prescription, if the court finds that the defendant is has been in possession  
6 ~~thereof; or~~ for one year after having commenced possession in good faith and with  
7 just title or that the defendant has been in possession for ten years.

8 (2) Prove a better title thereto than the defendant, ~~if the court finds that the~~  
9 ~~latter is not in possession thereof~~ in all other cases.

10 B. When the titles of the parties are traced to a common author, ~~he~~ the  
11 common author is presumed to be the previous owner.

12 Comments - 2023

13 (a) The 2023 revision of this Article changes substantially the burden of  
14 proof imposed upon the plaintiff in a petitory action when the defendant has the right  
15 to possess. Prior to the revision, this Article provided that, if the defendant in a  
16 petitory action was in possession, the plaintiff's burden of proof was to prove that he  
17 had acquired ownership from a prior owner or by acquisitive prescription. This  
18 burden of proof, which has often been characterized as the requirement of proving  
19 "title good against the world," applied even when the defendant was a usurper who  
20 had no title at all. See Pure Oil Co. v. Skinner, 294 So. 2d 797 (La. 1974).  
21 Application of that rule could lead to obvious inequities by allowing a usurper who  
22 was in possession for only one year to prevail in a petitory action against a party who  
23 might have been in possession for many years previously under a title that suffered  
24 from only minor defects. See Pure Oil Co. v. Skinner, 294 So. 2d 797, 799 (La.  
25 1974) (Summers, J., dissenting).

26 (b) The 2023 revision narrows the circumstances in which the plaintiff in a  
27 petitory action must prove that he acquired ownership from a prior owner or by  
28 acquisitive prescription. As revised, the Article provides that this onerous burden  
29 of proof applies only when the defendant has been in possession for one year after  
30 having commenced possession in good faith and with just title or when the defendant  
31 has been in possession for ten years, regardless of whether in good faith or with just  
32 title. Where neither of these circumstances applies, the plaintiff's burden in the  
33 petitory action is merely to prove a better title than that of the defendant.

34 (c) The good faith and just title mentioned in this Article are identical to the  
35 good faith and just title necessary to start the running of the acquisitive prescription  
36 of ten years under Civil Code Article 3475. "Good faith" is used in this Article with  
37 the meaning given in Civil Code Articles 3480 and 3481. By the express wording  
38 of this Article, the defendant's good faith is measured only at the commencement of  
39 his possession. This is analogous to the rule that applies under Civil Code Article  
40 3482 for purposes of the accrual of the acquisitive prescription of ten years.

41 (d) The 2023 revision does not change the rule that a common author in title  
42 is presumed to be the previous owner. See Civil Code Article 532; Weaver v.

1 Hailey, 416 So. 2d 311 (La. App. 3 Cir. 1982). The presumption is rebuttable. See  
2 Civil Code Article 532, comment (b).

3 (e) Prior to its 2023 revision, this Article contained another example of the  
4 use of the term "possession" with a meaning different from that given to the term in  
5 Article 3660. See, e.g., Griffin v. Daigle, 769 So. 2d 720 (La. App. 1 Cir. 2000)  
6 (explaining that the words "in possession" as formerly used in this Article required  
7 that the defendant have had corporeal possession for at least one year or civil  
8 possession for the same period of time preceded by corporeal possession). This  
9 inconsistency in terminology was eliminated in the 2023 revision.

10 \* \* \*

11 Art. 3654. Proof of title in action for declaratory judgment, concursus,  
12 expropriation, or similar proceeding

13 When the issue of ownership of immovable property or of a real right therein  
14 is presented in an action for a declaratory judgment, or in a concursus, expropriation,  
15 or similar proceeding, or when the issue of the ownership of funds that are deposited  
16 in the registry of the court and ~~which~~ that belong to the owner of the immovable  
17 property or of the real right therein is so presented, the court shall render judgment  
18 ~~in favor of the party~~ as follows:

19 (1) ~~Who~~ If the party who would be entitled to the possession of the  
20 immovable property or real right therein in a possessory action has been in  
21 possession for one year after having commenced possession in good faith and with  
22 just title or has been in possession for ten years, the court shall render judgment in  
23 favor of that party, unless the adverse party proves that he ~~has acquired ownership~~  
24 ~~from a previous owner or by acquisitive prescription,~~ or would be entitled to a  
25 judgment recognizing his ownership in a petitory action under Article 3653(1).

26 (2) ~~Who~~ In all other cases, the court shall render judgment in favor of the  
27 party who proves better title to the immovable property or real right therein, ~~when~~  
28 ~~neither party would be entitled to the possession of the immovable property or real~~  
29 ~~right therein in a possessory action.~~

30 Comments - 2023

31 The 2023 revisions to this Article are intended to conform the burden of  
32 proof in a declaratory judgment action or other proceeding in which ownership is at  
33 issue to the burden of proof that applies under revised Article 3653 in a petitory  
34 action. As with a petitory action, if one party has been in possession for one year  
35 after having commenced possession in good faith and with just title or has been in  
36 possession for ten years, even in the absence of good faith or just title, that party will

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 prevail, unless the adverse party proves that he acquired ownership from a prior  
2 owner or by acquisitive prescription.

3 Art. 3655. Possessory action

4 The possessory action is one brought by the possessor or precarious possessor  
5 of immovable property or of a real right therein to be maintained in his possession  
6 of the property or enjoyment of the right when he has been disturbed, or to be  
7 restored to the possession or enjoyment thereof when he has been evicted.

8 Comments - 2023

9 The 2023 revision of this Article recognizes and complements a previous  
10 amendment to the Civil Code granting a precarious possessor, such as a lessee, the  
11 right to bring a possessory action against anyone other than the person for whom the  
12 precarious possessor possesses. See Civil Code Article 3440.

13 Art. 3656. Same; parties; venue

14 A. A ~~plaintiff in a~~ possessory action ~~shall~~ may be brought by one who  
15 possesses for himself. A person entitled to the use or usufruct of immovable  
16 property, and one who owns a real right therein, possesses for himself. A ~~predial~~  
17 ~~lessee~~ precarious possessor against  
18 anyone except the person for whom he possesses for and in the name of his lessor,  
19 ~~and not for himself.~~

20 \* \* \*

21 Comments - 2023

22 (a) The 2023 revision of this Article recognizes and complements a previous  
23 amendment to the Civil Code granting a precarious possessor, such as a lessee, the  
24 right to bring a possessory action against anyone other than the person for whom the  
25 precarious possessor possesses. See Civil Code Article 3440.

26 (b) The statement in this Article that a usufructuary possesses for himself  
27 means that the usufructuary has standing to bring a possessory action and does not  
28 imply that a usufructuary can prescribe against the naked owner without taking the  
29 steps required to terminate precarious possession under Civil Code Articles 3439 and  
30 3478.

31 Art. 3657. Same; cumulation with petitory action ~~prohibited~~ or declaratory  
32 judgment action; conversion into or separate petitory action by defendant  
33 reconventional demand or separate suit asserting ownership or title

34 A. The plaintiff ~~may~~ shall not cumulate the possessory action with either the  
35 petitory and the possessory actions in the same suit or plead them in the alternative,

1 ~~and when he does so he waives the possessory action or a declaratory judgment~~  
2 ~~action to determine ownership. If the plaintiff brings does so, the possessory action;~~  
3 ~~and without dismissing it and prior to judgment therein institutes the petitory action;~~  
4 ~~the possessory action is abated does not abate, but the defendant may object to the~~  
5 ~~cumulation by asserting a dilatory exception. If, before executory judgment in the~~  
6 ~~possessory action, the plaintiff institutes the petitory action or a declaratory judgment~~  
7 ~~action in a separate suit, the possessory action abates.~~

8 B. When, ~~except as provided in Article 3661(1)-(3)~~, the defendant in a  
9 possessory action asserts title in himself, in the alternative or otherwise, ~~he~~ the  
10 defendant does not thereby ~~converts the suit~~ convert the possessory action into a  
11 petitory action, ~~and judicially confesses~~ or judicially confess the possession of the  
12 plaintiff in the possessory action, but the defendant's assertions of title shall be  
13 considered in defense of the possessory action only for the purposes stated in Article  
14 3661(B)(1) through (3).

15 C. Unless the plaintiff in the possessory action seeks an adjudication of his  
16 ownership, the defendant shall not file a reconventional demand asserting a petitory  
17 action or declaratory judgment action to determine ownership. If, before executory  
18 judgment in a possessory action, the defendant therein institutes a petitory action or  
19 a declaratory judgment action to determine ownership in a separate suit he files  
20 against the plaintiff in the possessory action, the ~~plaintiff~~ defendant in the petitory  
21 possessory action judicially confesses the possession of the ~~defendant therein~~  
22 plaintiff in the possessory action.

23 Comments - 2023

24 (a) The 2023 amendment of this Article preserves the rule of noncumulation  
25 of the possessory and petitory actions and expands the rule to prohibit cumulation  
26 of the possessory action with a declaratory judgment action to determine ownership.  
27 At the same time, the amendment lessens the consequences for the plaintiff of an  
28 improper cumulation and eliminates the judicial confession of the plaintiff's  
29 possession that previously arose from the defendant's assertions of title in a  
30 possessory action.

31 (b) Prior to the 2023 amendment of this Article, if the plaintiff cumulated the  
32 possessory action with the petitory action, the possessory action simply abated.  
33 Under the revised Article, when the plaintiff cumulates the possessory action with  
34 a petitory action or with a declaratory judgment action to determine ownership, the

1           possessory action does not abate, but the defendant has the right to object to the  
2           improper cumulation by filing a dilatory exception. See Article 926(A)(7). Upon  
3           sustaining the exception, the court may order separate trials or may order the plaintiff  
4           to elect which action he desires to pursue, as provided in Articles 464 and 465. If not  
5           raised through a timely dilatory exception, the objection of improper cumulation is  
6           waived. See Article 926(B).

7           (c) If, rather than cumulating the possessory action with a petitory or  
8           declaratory judgment action, the plaintiff in the possessory action files a separate  
9           action to determine ownership while the possessory action is pending, the possessory  
10          action abates, but the plaintiff by doing so makes no confession of the defendant's  
11          possession.

12  
13          (d) Prior to the 2023 revision, the consequences for a defendant who asserted  
14          title in himself in response to a possessory action were grave. Not only did his  
15          assertions of title convert the possessory action into a petitory action in which he  
16          became the plaintiff, but they also constituted a judicial confession of the other  
17          party's possession, thus triggering the onerous burden under Article 3653 of proving  
18          title good against the world. This harsh penalty has been removed. The defendant's  
19          assertions of title in a possessory action no longer convert the action into a petitory  
20          action or constitute a judicial confession of the plaintiff's possession; however, the  
21          defendant's assertions of title are considered in defense of the possessory action only  
22          for the limited purposes specified in Article 3661(B)(1) through (3). Thus, the  
23          defendant cannot divert the focus of a possessory action from the issue of possession  
24          to the often more complicated issue of ownership through the simple expedient of  
25          injecting issues of ownership in his pleadings.

26          (e) Unless the plaintiff in a possessory action has sought an adjudication of  
27          his ownership, the defendant is not permitted to assert a claim of ownership by  
28          reconvention. If the defendant asserts ownership by instituting a separate suit before  
29          judgment in the possessory action becomes executory, he judicially confesses the  
30          possession of the plaintiff in the possessory action. This judicial confession does not  
31          arise, however, if it is the plaintiff in the possessory action who institutes the  
32          separate suit to determine ownership while the possessory action is pending and the  
33          defendant reconvenes in that separate suit to assert his own claim of ownership.

34          Art. 3658. Same; requisites

35                 To maintain the possessory action the ~~possessor must~~ plaintiff shall allege  
36          and prove ~~that~~ all of the following:

37                 (1) ~~He~~ The plaintiff had possession or precarious possession of the  
38          immovable property or real right therein at the time the disturbance occurred;.

39                 (2) ~~He~~ The plaintiff and his ancestors in title, or the person for whom the  
40          plaintiff possesses precariously and that person's ancestors in title, had such  
41          possession quietly and without interruption for more than a year immediately prior  
42          to the disturbance, unless evicted by force or fraud;.



1 (3) The disturbance was one in fact or in law, as defined in Article 3659;  
2 ~~and.~~

3 (4) The possessory action was instituted within a year of the disturbance.

4 Comments - 2023

5 The 2023 amendments to this Article recognize that a precarious possessor  
6 may bring a possessory action. The precarious possessor himself need not have  
7 exercised his precarious possession for a full year prior to the disturbance; it suffices  
8 if the person for whom he possesses precariously, or that person's ancestors in title,  
9 have had possession for a year.

10 Art. 3659. Same; disturbance in fact and in law defined

11 A. Disturbances of possession ~~which that~~ give rise to the possessory action  
12 are of two kinds: disturbance in fact and disturbance in law.

13 B. A disturbance in fact is an eviction, or any other physical act ~~which that~~  
14 prevents the possessor of immovable property or of a real right therein from enjoying  
15 his possession quietly, or ~~which that~~ throws any obstacle in the way of that  
16 enjoyment.

17 C. A disturbance in law is the occurrence or existence of any of the  
18 following adversely to the possessor of immovable property or a real right therein:

19 (1) The execution, recordation, or registry, or continuing existence of record  
20 after the possessor or his ancestors in title acquired the right to possess, of any  
21 instrument ~~which that~~ asserts or implies a right of ownership or right to the  
22 possession of the immovable property or ~~of~~ a real right therein, ~~or any.~~

23 (2) The continuing existence of record of any instrument that asserts or  
24 implies a right of ownership or right to the possession of the immovable property or  
25 a real right therein, unless the instrument was recorded before the possessor and his  
26 ancestors in title commenced possession.

27 (3) Any other claim or pretension of ownership or right to the possession  
28 thereof of the immovable property or a real right therein, whether written or oral,  
29 except when asserted in an action or proceeding, ~~adversely to the possessor of such~~  
30 ~~property or right.~~

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

Comments - 2023

(a) The 2023 amendments to this Article clarify when a disturbance in law must arise, in relation to the time that the plaintiff enters into possession or acquires the right to possess, in order for the disturbance to form the basis of a possessory action.

(b) Under Subparagraph (C)(1) of this Article, the plaintiff in a possessory action or his ancestors in title must have acquired the right to possess before the execution, recordation, or registry of an instrument that is claimed to constitute a disturbance in law. Thus, the plaintiff cannot complain that a previously recorded instrument, such as a prior conveyance in favor of the defendant, constitutes a disturbance in law of his possession. Similarly, under Subparagraph (C)(2), the continuing existence of record of an adverse instrument does not constitute a disturbance in law if the instrument was recorded before the possessor and his ancestors in title commenced possession.

(c) The temporal difference between Subparagraph (C)(1) (which refers to the time the plaintiff acquired the right to possess) and Subparagraph (C)(2) (which refers to the earlier point in time at which the plaintiff commenced possession) is intentional. Until the plaintiff has been in possession for one year, he is not entitled to complain of any kind of disturbance in law. After the one-year period has accrued, the plaintiff is entitled to complain of the execution and recordation of new adverse instruments, as Subparagraph (C)(1) provides, and may also complain of the continuing existence of record of instruments that were recorded during that one-year period and that, on account of their continuing existence of record after the accrual of the one-year period, constitute a continuing disturbance of his possession. In no event is the plaintiff permitted to claim that an instrument recorded before he commenced possession is a disturbance of his possession.

(d) The reason that the continuing existence of record of an adverse instrument constitutes a distinct disturbance in law is to prevent a possessor from losing the right to complain of an instrument that was recorded after he commenced possession but more than one year before he brings the possessory action. Without such a rule, his right to bring the possessory action would be lost under Article 3658(4) for failure to institute the action within one year of the recordation of the instrument, even though he may have had no reason to suspect that an adverse instrument had been recorded. Because the continuing existence of record is a continuing disturbance, the one-year prescriptive period under Article 3658(4) for bringing a possessory action complaining of this disturbance in law effectively does not commence to run under these circumstances. See *Roy O. Martin Lumber Co., Inc. v. Lemoine*, 381 So. 2d 915 (La. App. 3 Cir. 1980). See also *Ree Corp. v. Shaffer*, 260 So. 2d 307, 313 (La. 1972) (Tate, J., concurring).

Art. 3660. Same; possession

A. A person is in possession of immovable property or of a real right therein, within the intendment of the articles of this Chapter, when ~~he~~ the person has the corporeal possession thereof, or civil possession thereof preceded by corporeal possession by him or his ancestors in title, and possesses for himself or precariously for another, whether in good or bad faith, or even as a usurper.

1 B. Subject to the provisions of Articles 3656 and 3664, a person who claims  
2 the ownership of immovable property or of a real right therein possesses through his  
3 lessee, through another who occupies the property or enjoys the right under an  
4 agreement with him or his lessee, or through a person who has the use or usufruct  
5 thereof to which his right of ownership is subject.

6 Comments - 2023

7 The 2023 amendment of this Article retains the rule that, for purposes of this  
8 Chapter, "possession" means possession in fact, rather than the right to possess,  
9 except where the right to possess is expressly stated. Consistent with the changes  
10 made to Articles 3655, 3656, and 3658, the amended Article recognizes that  
11 precarious possession for another person constitutes possession for purposes of this  
12 Chapter.

13 Art. 3661. Same; title not at issue; limited admissibility of evidence of title

14 A. In the possessory action, the ownership or title of the parties to the  
15 immovable property or real right therein is not at issue.

16 B. No evidence of ownership or title to the immovable property or real right  
17 therein shall be admitted except to prove any of the following:

- 18 (1) The possession thereof by a party as owner;~~;~~
- 19 (2) The extent of the possession thereof by a party~~;~~ or and his ancestors in  
20 title.
- 21 (3) The length of time in which a party and his ancestors in title have had  
22 possession thereof.

23 Comments - 2023

24 The 2023 amendment to this Article clarifies that a person is entitled to use  
25 evidence of ownership for purposes of proving not only the extent of his own  
26 possession, but also the extent of possession of his ancestors in title. See Civil Code  
27 Article 3442.

28 Art. 3662. Same; relief ~~which~~ that may be granted successful plaintiff in judgment;  
29 appeal

- 30 A. A judgment rendered for the plaintiff in a possessory action shall:
- 31 (1) Recognize ~~his~~ the plaintiff's right to the possession of the immovable  
32 property or real right therein, and restore him to possession thereof if he has been

CODING: Words in struck through type are deletions from existing law; words underscored are additions.

1 evicted, or maintain him in possession thereof if the disturbance has not been an  
2 eviction;

3 (2) Order the defendant to assert his adverse claim of ownership of the  
4 immovable property or real right therein in a petitory action to be filed within a delay  
5 to be fixed by the court not to exceed sixty days after the date the judgment becomes  
6 executory, or be precluded thereafter from asserting the ownership thereof, if the  
7 plaintiff has prayed for ~~such~~ this relief and this relief is not precluded by Paragraph  
8 B of this Article; and

9 (3) Award ~~him~~ the plaintiff the damages to which he is entitled and for  
10 which he has prayed for.

11 B. A judgment in a possessory action shall not grant the relief described in  
12 Subparagraph (A)(2) of this Article against the state or against a defendant who  
13 appeared in the action only through an attorney appointed to represent him under  
14 Article 5091.

15 C. A suspensive appeal from the judgment rendered in a possessory action  
16 may be taken within the delay provided in Article 2123, and a devolutive appeal may  
17 be taken from ~~such~~ the judgment only within thirty days of the applicable date  
18 provided in Article 2087(A).

19 Comments - 2023

20 (a) Among the substantive changes made to this Article by the 2023 revision,  
21 Subparagraph (A)(2) provides that the delay within which the losing defendant can  
22 be ordered to file a petitory action, where that relief was prayed for by the prevailing  
23 plaintiff, is fixed in all cases at sixty days. This relief is not available against a  
24 defendant who appeared in the action only through an attorney appointed to represent  
25 him under Article 5091. Nevertheless, the prevailing plaintiff is not without a  
26 remedy to obtain a determination of ownership when the defendant has appeared in  
27 the possessory action in that manner; the plaintiff can institute his own declaratory  
28 judgment action against the defendant and, depending on the circumstances, may be  
29 entitled to have an attorney again appointed to defend the absentee defendant in the  
30 declaratory judgment action.

31 (b) The 2023 revision removes the constitutional infirmity in this Article  
32 noted by the Supreme Court in *Todd v. State*, through Dept. of Natural Resources,  
33 456 So. 2d 1340 (La. 1983), amended 474 So. 2d 430 (La. 1985), in which the court  
34 held that, although a possessory action can be brought against the state, the relief  
35 allowed under Subparagraph (A)(2) of this Article is a form of liberative prescription  
36 that cannot run against the state under Article XII, Section 13 of the Constitution of  
37 Louisiana.

1 (c) A judgment rendered in violation of Paragraph B of this Article is subject  
2 to annulment under Article 2004.

3 \* \* \*

4 Art. 3669. Possessory action unavailable between owner of mineral servitude and  
5 owner of dependent mineral royalty

6 In the event of a dispute between the owner of a mineral servitude and the  
7 owner of a mineral royalty burdening or alleged to burden the servitude in question,  
8 the possessory action is unavailable to either party, and the only available real action  
9 is the petitory action. The burden of proof on the plaintiff in ~~such an~~ the petitory  
10 action is ~~that which must be borne by the plaintiff in a petitory action when neither~~  
11 party is in possession to prove a better title than that of the defendant.

12 Comments - 2023

13 Prior to its revision in 2023, this Article provided that the plaintiff's burden  
14 of proof in a petitory action contemplated by this Article was that which applies  
15 when neither party is in possession. Rather than following this indirect approach, the  
16 2023 revision states more plainly and directly what the burden of proof is in such an  
17 action: it is to prove a better title.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 220 Engrossed                      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 Art. 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 Art. 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 Art. 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)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Make technical changes.