2023 Regular Session

ACT No. 421

HOUSE BILL NO. 220

BY REPRESENTATIVE PRESSLY

(On Recommendation of the Louisiana State Law Institute)

1	AN ACT			
2	To amend and reenact Civil Code Articles 531 and 3440 and Code of Civil Procedure			
3	Articles 1061, 3651, 3653 through 3655, 3656(A), 3657 through 3662, and 3669,			
4	relative to actions to determine ownership or possession; to provide with respect			
5	petitory actions, possessory actions, actions for declaratory judgments to determine			
6	ownership, and similar proceedings; to provide for proof of ownership of			
7	immovables; to provide with respect to precarious possession; to provide for			
8	reconventional demands; to provide with respect to cumulation of actions; to provide			
9	with respect to disturbances in fact and in law; to provide with respect to possession			
10	and admissibility of title; to provide for relief and appeals; and to provide for related			
11	matters.			
12	Be it enacted by the Legislature of Louisiana:			
13	Section 1. Civil Code Articles 531 and 3440 are hereby amended and reenacted to			
14	read as follows:			
15	Art. 531. Proof of ownership of immovable.			
16	One who claims claiming the ownership of an immovable against another			
17	who has been in possession of the immovable for one year after having commenced			
18	possession in good faith and with just title or who has been in possession of the			
19	immovable for ten years must shall prove that he has acquired ownership from a			
20	previous owner or by acquisitive prescription. If neither party is in possession In all			
21	other cases, he need only prove a better title.			

CODING: Words in $\frac{\text{struck through}}{\text{type}}$ type are deletions from existing law; words $\frac{\text{underscored}}{\text{underscored}}$ are additions.

Revision Comments - 2023

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2 (a) The 2023 revision of this Article changes substantially the burden of 3 proof imposed upon a person claiming the ownership of an immovable against 4 another who is in possession. Prior to the revision, this Article provided that in such 5 cases, the claimant's burden of proof was to prove that he had acquired ownership 6 from a prior owner or by acquisitive prescription. This burden of proof, which has 7 often been characterized as the requirement of proving "title good against the world," 8 applied even when the defendant was a usurper who had no title at all. See Pure Oil 9 Co. v. Skinner, 294 So. 2d 797 (La. 1974). Application of that rule could lead to 10 obvious inequities by allowing a usurper who was in possession for only one year to 11 prevail against a party who might have been in possession for many years previously 12 under a title that suffered from only minor defects. See Pure Oil Co. v. Skinner, 294 13 So. 2d 797, 799 (La. 1974) (Summers, J., dissenting). 14 (b) The 2023 revision narrows the circumstances in which the person 15 claiming ownership must prove that he acquired ownership from a prior owner or by 16 acquisitive prescription. As revised, the Article provides that this onerous burden 17 of proof applies only when the defendant has been in possession for one year after 18 having commenced possession in good faith and with just title or when the defendant 19 has been in possession for ten years, regardless of whether in good faith or with just 20 title. Where neither of these circumstances applies, the burden imposed upon the 21 claimant is merely to prove a better title than that of the defendant. 22 (c) The good faith and just title mentioned in this Article are identical to the 23 good faith and just title necessary to start the running of the acquisitive prescription 24 of ten years under Article 3475. "Good faith" is used in this Article with the 25 meaning given in Articles 3480 and 3481. By the express wording of this Article, 26 the defendant's good faith is measured only at the commencement of his possession. 27 This is analogous to the rule that applies under Article 3482 for purposes of the 28 accrual of the acquisitive prescription of ten years. 29 (d) The 2023 revision does not change the rule that a common author in title 30 is presumed to be the previous owner. See Article 532; Weaver v. Hailey, 416 So. 31 2d 311 (La. App. 3 Cir. 1982). The presumption is rebuttable. See Article 532, 32 comment (b). 33 34 Art. 3440. Protection of precarious possession 35 Where there is a disturbance of possession, the possessory action is available 36 to a precarious possessor, such as a lessee or a depositary, against anyone except the 37 person for whom he possesses. 38 Section 2. Code of Civil Procedure Articles 1061, 3651, 3653 through 3655, 39 3656(A), 3657 through 3662, and 3669 are hereby amended and reenacted to read as 40 follows: 41 Art. 1061. Actions pleaded in reconventional demand; compulsory

A. The defendant in the principal action may assert in a reconventional

demand any causes of action which he that the defendant may have against the

plaintiff in the principal action, even if these two parties are domiciled in the same parish and regardless of connexity between the principal and reconventional demands.

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

* * *

Art. 3651. Petitory action

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

Comments - 2023

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

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Art. 3653. Same; proof of title; immovable

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

(1) Prove that he has acquired ownership from a previous owner or by acquisitive prescription, if the court finds that the defendant is has been in possession

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1 thereof; or for one year after having commenced possession in good faith and with 2 just title or that the defendant has been in possession for ten years. 3 (2) Prove a better title thereto than the defendant, if the court finds that the 4 latter is not in possession thereof in all other cases. 5 B. When the titles of the parties are traced to a common author, he the 6 common author is presumed to be the previous owner. 7 Comments - 2023 8 (a) The 2023 revision of this Article changes substantially the burden of 9 proof imposed upon the plaintiff in a petitory action when the defendant has the right 10 to possess. Prior to the revision, this Article provided that, if the defendant in a 11 petitory action was in possession, the plaintiff's burden of proof was to prove that he 12 had acquired ownership from a prior owner or by acquisitive prescription. This 13 burden of proof, which has often been characterized as the requirement of proving 14 "title good against the world," applied even when the defendant was a usurper who 15 had no title at all. See Pure Oil Co. v. Skinner, 294 So. 2d 797 (La. 1974). 16 Application of that rule could lead to obvious inequities by allowing a usurper who 17 was in possession for only one year to prevail in a petitory action against a party who 18 might have been in possession for many years previously under a title that suffered 19 from only minor defects. See Pure Oil Co. v. Skinner, 294 So. 2d 797, 799 (La. 20 1974) (Summers, J., dissenting). 21 (b) The 2023 revision narrows the circumstances in which the plaintiff in a 22 petitory action must prove that he acquired ownership from a prior owner or by 23 acquisitive prescription. As revised, the Article provides that this onerous burden 24 of proof applies only when the defendant has been in possession for one year after 25 having commenced possession in good faith and with just title or when the defendant 26 has been in possession for ten years, regardless of whether in good faith or with just 27 title. Where neither of these circumstances applies, the plaintiff's burden in the 28 petitory action is merely to prove a better title than that of the defendant. 29 (c) The good faith and just title mentioned in this Article are identical to the 30 good faith and just title necessary to start the running of the acquisitive prescription 31 of ten years under Civil Code Article 3475. "Good faith" is used in this Article with 32 the meaning given in Civil Code Articles 3480 and 3481. By the express wording 33 of this Article, the defendant's good faith is measured only at the commencement of 34 his possession. This is analogous to the rule that applies under Civil Code Article 35 3482 for purposes of the accrual of the acquisitive prescription of ten years. 36 (d) The 2023 revision does not change the rule that a common author in title 37 is presumed to be the previous owner. See Civil Code Article 532; Weaver v. 38 Hailey, 416 So. 2d 311 (La. App. 3 Cir. 1982). The presumption is rebuttable. See 39 Civil Code Article 532, comment (b). 40 (e) Prior to its 2023 revision, this Article contained another example of the

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inconsistency in terminology was eliminated in the 2023 revision.

use of the term "possession" with a meaning different from that given to the term in

Article 3660. See, e.g., Griffin v. Daigle, 769 So. 2d 720 (La. App. 1 Cir. 2000) (explaining that the words "in possession" as formerly used in this Article required

that the defendant have had corporeal possession for at least one year or civil

possession for the same period of time preceded by corporeal possession). This

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

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

- (1) Who If the party who would be entitled to the possession of the immovable property or real right therein in a possessory action has been in possession for one year after having commenced possession in good faith and with just title or has been in possession for ten years, the court shall render judgment in favor of that party, unless the adverse party proves that he has acquired ownership from a previous owner or by acquisitive prescription; or would be entitled to a judgment recognizing his ownership in a petitory action under Article 3653(A)(1).
- (2) Who In all other cases, the court shall render judgment in favor of the party who proves better title to the immovable property or real right therein, when neither party would be entitled to the possession of the immovable property or real right therein in a possessory action.

Comments - 2023

The 2023 revisions to this Article are intended to conform the burden of proof in a declaratory judgment action or other proceeding in which ownership is at issue to the burden of proof that applies under revised Article 3653 in a petitory action. As with a petitory action, if one party has been in possession for one year after having commenced possession in good faith and with just title or has been in possession for ten years, even in the absence of good faith or just title, that party will prevail, unless the adverse party proves that he acquired ownership from a prior owner or by acquisitive prescription.

Art. 3655. Possessory action

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

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

Art. 3656. Same; parties; venue

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

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Comments - 2023

- (a) The 2023 revision of this Article recognizes and complements a previous amendment to the Civil Code granting a precarious possessor, such as a lessee, the right to bring a possessory action against anyone other than the person for whom the precarious possessor possesses. See Civil Code Article 3440.
- (b) The statement in this Article that a usufructuary possesses for himself means that the usufructuary has standing to bring a possessory action and does not imply that a usufructuary can prescribe against the naked owner without taking the steps required to terminate precarious possession under Civil Code Articles 3439 and 3478.
- Art. 3657. Same; cumulation with petitory action prohibited or declaratory judgment action; conversion into or separate petitory action by defendant reconventional demand or separate suit asserting ownership or title

A. The plaintiff may shall not cumulate the possessory action with either the petitory and the possessory actions in the same suit or plead them in the alternative, and when he does so he waives the possessory action or a declaratory judgment action to determine ownership. If the plaintiff brings does so, the possessory action, and without dismissing it and prior to judgment therein institutes the petitory action, the possessory action is abated does not abate, but the defendant may object to the cumulation by asserting a dilatory exception. If, before executory judgment in the possessory action, the plaintiff institutes the petitory action or a declaratory judgment action in a separate suit, the possessory action abates.

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

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

Comments - 2023

- (a) The 2023 amendment of this Article preserves the rule of noncumulation of the possessory and petitory actions and expands the rule to prohibit cumulation of the possessory action with a declaratory judgment action to determine ownership. At the same time, the amendment lessens the consequences for the plaintiff of an improper cumulation and eliminates the judicial confession of the plaintiff's possession that previously arose from the defendant's assertions of title in a possessory action.
- (b) Prior to the 2023 amendment of this Article, if the plaintiff cumulated the possessory action with the petitory action, the possessory action simply abated. Under the revised Article, when the plaintiff cumulates the possessory action with a petitory action or with a declaratory judgment action to determine ownership, the possessory action does not abate, but the defendant has the right to object to the improper cumulation by filing a dilatory exception. See Article 926(A)(7). Upon sustaining the exception, the court may order separate trials or may order the plaintiff to elect which action he desires to pursue, as provided in Articles 464 and 465. If not raised through a timely dilatory exception, the objection of improper cumulation is waived. See Article 926(B).
- (c) If, rather than cumulating the possessory action with a petitory or declaratory judgment action, the plaintiff in the possessory action files a separate action to determine ownership while the possessory action is pending, the possessory action abates, but the plaintiff by doing so makes no confession of the defendant's possession.

1 (d) Prior to the 2023 revision, the consequences for a defendant who asserted 2 title in himself in response to a possessory action were grave. Not only did his 3 assertions of title convert the possessory action into a petitory action in which he 4 became the plaintiff, but they also constituted a judicial confession of the other 5 party's possession, thus triggering the onerous burden under Article 3653 of proving 6 title good against the world. This harsh penalty has been removed. The defendant's 7 assertions of title in a possessory action no longer convert the action into a petitory 8 action or constitute a judicial confession of the plaintiff's possession; however, the 9 defendant's assertions of title are considered in defense of the possessory action only 10 for the limited purposes specified in Article 3661(B)(1) through (3). Thus, the defendant cannot divert the focus of a possessory action from the issue of possession 11 to the often more complicated issue of ownership through the simple expedient of 12 13 injecting issues of ownership in his pleadings. 14 (e) Unless the plaintiff in a possessory action has sought an adjudication of 15 his ownership, the defendant is not permitted to assert a claim of ownership by 16

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

Art. 3658. Same; requisites

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

- (1) He The plaintiff had possession or precarious possession of the immovable property or real right therein at the time the disturbance occurred;
- (2) He The plaintiff and his ancestors in title, or the person for whom the plaintiff possesses precariously and that person's ancestors in title, had such possession quietly and without interruption for more than a year immediately prior to the disturbance, unless evicted by force or fraud;.
- (3) The disturbance was one in fact or in law, as defined in Article 3659; and.
 - (4) The possessory action was instituted within a year of the disturbance.

Comments - 2023

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

1	Art. 3659. Same; disturbance in fact and in law defined		
2	A. Disturbances of possession which that give rise to the possessory action		
3	are of two kinds: disturbance in fact and disturbance in law.		
4	B. A disturbance in fact is an eviction, or any other physical act which that		
5	prevents the possessor of immovable property or of a real right therein from enjoying		
6	his possession quietly, or which that throws any obstacle in the way of that		
7	enjoyment.		
8	C. A disturbance in law is the occurrence or existence of any of the		
9	following adversely to the possessor of immovable property or a real right therein:		
10	(1) The execution, recordation, or registry, or continuing existence of record		
11	after the possessor or his ancestors in title acquired the right to possess, of any		
12	instrument which that asserts or implies a right of ownership or right to the		
13	possession of the immovable property or of a real right therein, or any.		
14	(2) The continuing existence of record of any instrument that asserts or		
15	implies a right of ownership or right to the possession of the immovable property or		
16	a real right therein, unless the instrument was recorded before the possessor and his		
17	ancestors in title commenced possession.		
18	(3) Any other claim or pretension of ownership or right to the possession		
19	thereof of the immovable property or a real right therein, whether written or oral,		
20	except when asserted in an action or proceeding, adversely to the possessor of such		
21	property or right.		
22	Comments - 2023		
23 24 25 26	(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.		
27 28 29 30 31 32 33 34	(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.

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(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 than 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

<u>A.</u> 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.

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

Comments - 2023

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

1	Art. 3661. Same; title not at issue; limited admissibility of evidence of title		
2	A. In the possessory action, the ownership or title of the parties to the		
3	immovable property or real right therein is not at issue.		
4	B. No evidence of ownership or title to the immovable property or real right		
5	therein shall be admitted except to prove any of the following:		
6	(1) The possession thereof by a party as owner;.		
7	(2) The extent of the possession thereof by a party; or and his ancestors in		
8	title.		
9	(3) The length of time in which a party and his ancestors in title have had		
10	possession thereof.		
11	Comments - 2023		
12 13 14 15	The 2023 amendment to this Article clarifies that a person is entitled to use evidence of ownership for purposes of proving not only the extent of his own possession, but also the extent of possession of his ancestors in title. See Civil Code Article 3442.		
16	Art. 3662. Same; relief which that may be granted successful plaintiff in judgment;		
17	appeal		
18	A. A judgment rendered for the plaintiff in a possessory action shall:		
19	(1) Recognize his the plaintiff's right to the possession of the immovable		
20	property or real right therein, and restore him to possession thereof if he has been		
21	evicted, or maintain him in possession thereof if the disturbance has not been an		
22	eviction;.		
23	(2) Order the defendant to assert his adverse claim of ownership of the		
24	immovable property or real right therein in a petitory action to be filed within a delay		
25	to be fixed by the court not to exceed sixty days after the date the judgment becomes		
26	executory, or be precluded thereafter from asserting the ownership thereof, if the		
27	plaintiff has prayed for such this relief and this relief is not precluded by Paragraph		
28	B of this Article.; and		
29	(3) Award him the plaintiff the damages to which he is entitled and for		
30	which he has prayed for.		

1 B. A judgment in a possessory action shall not grant the relief described in 2 Subparagraph (A)(2) of this Article against the state or against a defendant who 3 appeared in the action only through an attorney appointed to represent him under 4 Article 5091. 5 C. A suspensive appeal from the judgment rendered in a possessory action 6 may be taken within the delay provided in Article 2123, and a devolutive appeal may 7 be taken from such the judgment only within thirty days of the applicable date 8 provided in Article 2087(A). 9 Comments - 2023 10 (a) Among the substantive changes made to this Article by the 2023 revision, 11 Subparagraph (A)(2) provides that the delay within which the losing defendant can 12 be ordered to file a petitory action, where that relief was prayed for by the prevailing 13 plaintiff, is fixed in all cases at sixty days. This relief is not available against a 14 defendant who appeared in the action only through an attorney appointed to represent 15 him under Article 5091. Nevertheless, the prevailing plaintiff is not without a remedy to obtain a determination of ownership when the defendant has appeared in 16 17 the possessory action in that manner; the plaintiff can institute his own declaratory judgment action against the defendant and, depending on the circumstances, may be 18 19 entitled to have an attorney again appointed to defend the absentee defendant in the 20 declaratory judgment action. 21 (b) The 2023 revision removes the constitutional infirmity in this Article 22 noted by the Supreme Court in Todd v. State, through Dept. of Natural Resources, 23 456 So. 2d 1340 (La. 1983), amended 474 So. 2d 430 (La. 1985), in which the court 24 held that, although a possessory action can be brought against the state, the relief 25 allowed under Subparagraph (A)(2) of this Article is a form of liberative prescription 26 that cannot run against the state under Article XII, Section 13 of the Constitution of

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

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

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

L	Comments - 2023		
2 3 4 5	Prior to its revision in 2023, this Article provided that the plaintiff's burder of proof in a petitory action contemplated by this Article was that which applies when neither party is in possession. Rather than following this indirect approach, the 2023 revision states more plainly and directly what the burden of proof is in such a action: it is to prove a better title.		
		SPEAKER OF THE HOUSE OF REPRESENTATIVES	
		PRESIDENT OF THE SENATE	
		GOVERNOR OF THE STATE OF LOUISIANA	
-	APPROVED:		

ENROLLED

HB NO. 220