

Regular Session, 2010

SENATE BILL NO. 361

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

USUFRUCT. Provides for the continuous revision of the Civil Code Articles on usufruct.
(gov sig)

1 AN ACT
2 To amend and reenact Civil Code Articles 538, 549, 553, 558, 567 through 569, 573 through
3 575, 577, 580, 581, 583, 584, 586 through 594, 601, 603, 604, 608, 613, 615, 616,
4 618 through 620, and 623 through 625, and to enact Civil Code Articles 568.1,
5 568.2, and 568.3, relative to usufruct; to provide for the continuous revision; to
6 provide for the general principles; to provide for the capacity to receive; to provide
7 for voting shares of stock; to provide for improvements and alterations; to provide
8 for contracts affecting liability; to provide for disposition of nonconsumables; to
9 provide for obligations and rights; to provide for an effective date; and to provide for
10 related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Civil Code Articles 538, 549, 553, 558, 567 through 569, 573 through
13 575, 577, 580, 581, 583, 584, 586 through 594, 601, 603, 604, 608, 613, 615, 616, 618
14 through 620, and 623 through 625 are hereby amended and reenacted, and Civil Code
15 Articles 568.1, 568.2, and 568.3 are hereby enacted to read as follows:

16 Article 538. Usufruct of consumable things

17 If the things subject to the usufruct are consumables, the usufructuary

1 becomes owner of them. He may consume, alienate, or encumber them as he sees
2 fit. At the termination of the usufruct he is bound either to pay to the naked owner
3 ~~either~~ the value that the things had at the commencement of the usufruct or to deliver
4 to him things of the same quantity and quality.

5 * * *

6 Article 549. Capacity to receive usufruct

7 Usufruct may be established in favor of a natural person or ~~legal entity a~~
8 **juridical person.**

9 * * *

10 Article 553. Voting of shares of stock **and other rights**

11 The usufructuary has the right to vote shares of stock **in corporations and**
12 **to vote or exercise similar rights with respect to interests in other juridical**
13 **persons,** unless otherwise provided.

14 * * *

15 Article 558. Improvements and alterations

16 The usufructuary may make improvements and alterations on the property
17 subject to the usufruct at his cost and with the written consent of the naked owner.
18 If the naked owner fails or refuses to give his consent, the usufructuary may, after
19 notice to the naked owner and with the approval of the ~~proper~~ court, make at his cost
20 those improvements and alterations that a prudent administrator would make.

21 * * *

22 Article 567. Contracts affecting the usufructuary's liability

23 The usufructuary may alienate, lease, or encumber his right. All such
24 contracts cease of right at the end of the usufruct.

25 If the usufructuary leases, alienates, or encumbers his right, he is responsible
26 **to the naked owner** for the abuse that the person with whom he has contracted
27 makes of the property.

28 Article 568. Disposition of nonconsumable things; ~~payment of tax~~

29 ~~The usufructuary does not have the right to dispose of nonconsumable things~~

1 ~~unless the right has been expressly granted to him. Nevertheless, he may dispose of~~
2 ~~corporeal movables that are gradually and substantially impaired by use, wear, or~~
3 ~~decay, such as equipment, appliances, and vehicles, provided that he acts as a~~
4 ~~prudent administrator. Upon disposition, the usufruct is converted into a usufruct of~~
5 ~~money, and the usufructuary is bound to pay to the naked owner at the end of the~~
6 ~~usufruct the value that the things had at the time of disposition.~~

7 ~~When the usufructuary who has been expressly granted the right to dispose~~
8 ~~of nonconsumable things sells property subject to usufruct, and there is any tax owed~~
9 ~~as a result of the sale, the tax shall be paid from the proceeds of the sale.~~

10 **The usufructuary may not dispose of nonconsumable things unless the**
11 **right to do so has been expressly granted to him. Nevertheless, he may dispose**
12 **of corporeal movables that are gradually and substantially impaired by use,**
13 **wear, or decay, such as equipment, appliances, and vehicles, provided that he**
14 **acts as a prudent administrator.**

15 **The right to dispose of a nonconsumable thing includes the rights to**
16 **alienate, lease, and encumber the thing. It does not include, however, the right**
17 **to alienate by donation inter vivos, unless that right is expressly granted.**

18 **Article 568.1.**

19 **If a thing subject to the usufruct is donated inter vivos by the**
20 **usufructuary, he is obligated to pay to the naked owner at the termination of the**
21 **usufruct the value of the thing as of the time of the donation. If a thing subject**
22 **to the usufruct is otherwise alienated by the usufructuary, the usufruct attaches**
23 **to any money or other property received by the usufructuary. The property**
24 **received shall be classified as consumable or nonconsumable in accordance with**
25 **the rules of this Title, and the usufruct shall be governed by those rules subject**
26 **to the terms of the act establishing the original usufruct. If, at the time of the**
27 **alienation, the value of the property received by the usufructuary is less than**
28 **the value of the thing alienated, the usufructuary is bound to pay the difference**
29 **to the naked owner at the termination of the usufruct.**

1 Comments - 2010

2 (a) If the property received by the usufructuary is consumable, then under
3 the rules of this Title, the usufructuary will be bound to pay to the naked owner at the
4 termination of the usufruct the value of the consumables that he received, and under
5 the regular rules governing usufruct the usufructuary will become the "owner" of the
6 consumable property. See Civil Code Article 538. This will leave open the question
7 of whether he may have sold the property for too low a price, and he is always
8 subject to the obligation of acting as a prudent administrator. See Civil Code Article
9 576 and revision comment (b). If the usufructuary receives property that is
10 nonconsumable, the usufruct will always attach to it and the usufructuary will be
11 bound to deliver the thing received to the naked owner at the termination of the
12 usufruct. See Civil Code Article 539.

13
14 (b) The rules expressed in comment (a) are the rules to which Article 568-B
15 refers when it states that the usufruct "shall be governed by those rules." This Article
16 expressly refers to the act of establishing the original usufruct, because if that act
17 granted authority to dispose of nonconsumables, that grant would be a continuing
18 grant of authority and would apply to the new nonconsumables that have been
19 received.

20
21 **Article 568.2.**

22 **The right to dispose of a nonconsumable thing includes the right to lease**
23 **the thing for a term that extends beyond the termination of the usufruct. If, at**
24 **the termination of the usufruct, the thing remains subject to the lease, the**
25 **usufructuary is accountable to the naked owner for any diminution in the value**
26 **of the thing at that time attributable to the lease.**

27 **Article 568.3.**

28 **If, at the termination of the usufruct, the thing subject to the usufruct is**
29 **burdened by an encumbrance established by the usufructuary to secure an**
30 **obligation, the usufructuary is bound to remove the encumbrance.**

31 Comment - 2010

32
33 In accounting for any "diminution" in value of a thing attributable to an
34 encumbrance placed on it by the usufructuary, it is not intended that any diminution
35 in value be considered attributable to such an encumbrance if the debt secured by
36 that encumbrance was incurred in connection with the refinancing of a pre-existing
37 debt of an equal or greater amount that was previously secured by an encumbrance
38 on the thing. In other words, the article is intended to cover new debts and not the
39 refinancing of existing ones.

40
41 Article 569. Duties with regard to things gradually or totally impaired

42 If the usufructuary has not disposed of corporeal movables that are by their
43 nature impaired by use, wear, or decay, he is bound to ~~restore~~ **deliver** them to the
44 owner in the state in which they may be at the end of the usufruct.

* * *

Article 577. Liability for repairs

The usufructuary is responsible for ordinary maintenance and repairs for keeping the property subject to the usufruct in good order, whether the need for these repairs arises from accident or force majeure, ~~from~~ the normal use of ~~the~~ things, or ~~from~~ his fault or neglect.

The naked owner is responsible for extraordinary repairs, unless they have become necessary as a result of the usufructuary's fault or neglect in which case the usufructuary is bound to make them at his cost.

* * *

Article 580. Reimbursement for necessary repairs

If, after the usufruct commences and before the usufructuary is put in possession, the naked owner incurs necessary expenses or makes repairs for which the usufructuary is responsible, ~~he~~ **the naked owner** has the right to claim the cost thereof from the usufructuary and may retain the possession of the things subject to the usufruct until he is paid.

Article 581. Liability for necessary expenses

The usufructuary is answerable for all expenses that ~~became~~ **become** necessary for the preservation and use of the property after the commencement of the usufruct.

* * *

Article 583. Ruin from accident, ~~or decay~~ **force majeure or age**

Neither the usufructuary nor the naked owner is bound to restore property that has been totally destroyed through accident, **force majeure**, or ~~because of~~ age.

If the naked owner elects to restore the property or to make extraordinary repairs, he ~~must~~ **shall** do so within a reasonable time and in the manner least inconvenient and onerous for the usufructuary.

Article 584. ~~Annual~~ **Periodic** charges

The usufructuary is bound to pay the ~~annual~~ **periodic** charges, **such as**

1 **property taxes, that may be** imposed, during his enjoyment **of the usufruct** on the
 2 property subject to the usufruct, such as property taxes.

3 * * *

4 Article 586. Liability for debts; usufruct inter vivos

5 When the usufruct is established inter vivos, the usufructuary is not liable for
 6 debts of the grantor, **but if the debt is secured by an encumbrance of the thing**
 7 **subject to the usufruct, the thing may be sold for the payment of the debt.** When
 8 the property subject to the usufruct is burdened with a mortgage, pledge, or privilege,
 9 the usufructuary may discharge the indebtedness and may claim reimbursement only
 10 for the capital he has expended.

11 In the case of a gratuitous usufruct, the action for reimbursement shall lie
 12 against the naked owner at the end of the usufruct, subject to the provisions
 13 contained in the title: *Of donations inter vivos and mortis causa.* In the case of an
 14 onerous usufruct, the action shall lie against the grantor, subject to the provisions
 15 contained in the title: *Sale.*

16 Article 587. Liability for debts; usufruct **established** mortis causa

17 When the usufruct is established mortis causa, the position of the
 18 usufructuary relative to the payment of the debts of the succession depends upon
 19 whether the usufruct is universal, under universal title, or under particular title. The
 20 usufruct of an entire succession is universal, of a fraction thereof is under universal
 21 title, and of individually determined things is under particular title. **When the**
 22 **usufruct is established mortis causa, the usufructuary is not liable for estate**
 23 **debts, but the property subject to the usufruct may be sold for the payment of**
 24 **estate debts, in accordance with the rules provided for the payment of the debt**
 25 **or debts of an estate in Book III of this Code.**

26 Article 588. Usufruct under particular title **Discharge of debt on encumbered**
 27 **property; usufruct established inter vivos**

28 The legatee of a usufruct under particular title is not liable for the debts of the
 29 succession. When the property subject to the usufruct is burdened with a mortgage,

1 in accordance with the following provisions: **If the usufructuary fails or refuses**
 2 **to advance the funds needed to discharge a debt secured by property subject to**
 3 **the usufruct, or an estate debt that is charged to the property subject to the**
 4 **usufruct, the naked owner may advance the funds needed. If he does so, the**
 5 **naked owner may demand that the usufructuary pay him interest during the**
 6 **period of the usufruct. If the naked owner does not advance the funds, he may**
 7 **demand that all or part of the property be sold as needed to discharge the debt.**

8 Article 591. Advance of sums; measure of liability **Continuation of usufruct after**
 9 **sale of property**

10 The universal usufructuary must advance the funds needed for the discharge
 11 of all the debts of the succession.

12 The usufructuary under universal title must contribute to the payment of the
 13 debts of the succession in proportion to the value of the property subject to the
 14 usufruct. **If property subject to the usufruct is sold to pay an estate debt, or a**
 15 **debt of the grantor, the usufruct attaches to any proceeds of the sale of the**
 16 **property that remain after payment of the debt.**

17 Article 592. Return of capital principal; payment of interest **Multiple**
 18 **usufructuaries, contribution to payment of estate debts**

19 When the usufructuary advances funds needed for the discharge of the debts
 20 of the succession he shall be reimbursed without interest at the end of the usufruct.
 21 When the usufructuary does not make such an advance, the universal successor may
 22 make the necessary advance, for which the usufructuary shall pay interest during the
 23 period of the usufruct, or sell a part of the property subject to the usufruct. **If there**
 24 **is more than one usufructuary of the same property, each contributes to the**
 25 **payment of estate debts that are charged to the property in proportion to his**
 26 **enjoyment of the property. If one or more of the usufructuaries fails to advance**
 27 **his share, those of them who advance the funds shall have the right to recover**
 28 **the funds they advance from those who do not advance their shares.**

29 Article 593. Discharge of legacy of annuity

1 **a usufructuary who has the power to dispose of nonconsumable property, the**
 2 **usufruct terminates as to the nonconsumable property sold or exchanged, but**
 3 **as provided in Article 568,** the usufruct attaches to the ~~proceeds of the sale~~ **money**
 4 **or other property received by the usufructuary,** unless the parties provide ~~agree~~
 5 otherwise. **Any tax or expense incurred as the result of the sale or exchange of**
 6 **property subject to usufruct shall be paid from the proceeds of the sale or**
 7 **exchange, and shall be deducted from the amount due by the usufructuary to**
 8 **the naked owner at the termination of the usufruct.**

9 * * *

10 Article 618. ~~Investment of money~~ **Security for proceeds**

11 In cases governed by Articles 614, 615, 616, and the first sentence of Article
 12 617, the naked owner may demand, within one year from receipt of the proceeds by
 13 the usufructuary that the ~~money be safely invested subject to the right of the~~
 14 ~~usufructuary~~ **usufructuary give security for the proceeds.** If such a demand is
 15 made, and the parties cannot agree, the nature of the ~~investment~~ **security** shall be
 16 determined by the court. This ~~article~~ **Article** does not apply to corporeal movables
 17 referred to in **the second sentence of Article 568, or to property disposed of by the**
 18 **usufructuary pursuant to the power to dispose of nonconsumables if the grantor**
 19 **of the usufruct has dispensed with the security.**

20 Article 619. Changes made by the testator

21 A usufruct by donation mortis causa is not considered ~~as~~ revoked merely
 22 because the testator has made changes in the property after the date of his ~~will~~
 23 **testament.** The effect of the legacy is determined by application of the rules
 24 contained in the title: *Of donations inter vivos and mortis causa.*

25 Article 620. Sale of the property or of the usufruct

26 Usufruct terminates by the enforcement of a ~~mortgage~~ placed **an**
 27 **encumbrance established** upon the property prior to the creation of the usufruct **to**
 28 **secure a debt.** The usufructuary may have an action against the grantor of the
 29 usufruct or against the naked owner under the provisions established in the third

1 section of this ~~chapter~~ **Chapter**.

2 ~~The sale of the property by the naked owner after the usufruct has been~~
3 ~~created or the enforcement of a mortgage placed upon the property by the naked~~
4 ~~owner after the creation of the usufruct does not affect the right of the usufructuary.~~

5 The judicial sale of the usufruct by creditors of the usufructuary deprives the
6 usufructuary of his enjoyment of the property but does not terminate the usufruct.

7 Comment - 2010

8 The elimination of Paragraph two of Article 620 is not intended to effect a
9 change in the law. The subject is already covered in Article 603.

10 * * *

11 Article 623. Abuse of the enjoyment; **consequences**

12 ~~A~~ **The** usufruct may be terminated by the naked owner if the usufructuary
13 commits waste, alienates things without authority, neglects to make ordinary repairs,
14 or abuses his enjoyment in any other manner.

15 Article 624. ~~Consequences of abuse~~ **Security to prevent termination**

16 In the cases covered by the preceding ~~article~~ **Article**, the court may decree
17 termination of the usufruct or decree that the property be delivered to the naked
18 owner on the condition that he shall pay to the usufructuary a reasonable annuity
19 until the end of the usufruct. The amount of the annuity shall be based on the value
20 of the usufruct.

21 The usufructuary may prevent termination of the usufruct or delivery of the
22 property to the naked owner by giving security to insure that he will take appropriate
23 corrective measures within a period fixed by the court.

24 Article 625. Intervention by creditors of the usufructuary

25 A creditor of the usufructuary may intervene and may prevent termination of
26 the usufruct ~~or~~ **and** delivery of the property to the naked owner by offering to repair
27 the damages caused by the usufructuary and by giving security for the future.

28 Section 2. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature
30 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
31

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

The original instrument was prepared by Angela Lockett De Jean. The following digest, which does not constitute a part of the legislative instrument, was prepared by Camille Sebastien Perry.

DIGEST

Smith (SB 361)

Present law (C.C. Art. 549) provides that a usufruct may be established in favor of a natural person or a legal entity.

Proposed law changes "legal entity" to "juridical person" to be consistent with the definition of "person" in Civil Code Article 24.

Present law (C.C. Art. 553) provides that the usufructuary has the right to vote shares of stock.

Proposed law provides that the usufructuary has the right to exercise rights in other juridical entities that are similar to voting rights in corporations.

Present law (C.C. Art. 567) provides that the usufructuary may enter contracts affecting the usufruct.

Proposed law retains present law and provides that the usufructuary is responsible to the naked owner for abuse of the property.

Present law (C.C. Art. 568) provides rules for the disposition of nonconsumables by the usufructuary.

Proposed law (C.C. Art. 568 - 568.3) provides more specific rules relative to the usufructuary's right to dispose of nonconsumables.

Present law (C.C. Art. 573) provides that certain legal usufructuaries, as well as sellers or donors of property with reservation of usufruct, are dispensed from providing security by operation of law.

Proposed law retains present law, but reorganizes and rearranges the Article.

Present law (C.C. Art. 577) provides that the usufructuary is responsible for ordinary repairs whether the need for repairs arises from accident, the normal use of the thing, or the usufructuary's fault or neglect.

Proposed law retains present law and adds *force majeure* as a cause for need of ordinary repairs for which the usufructuary is responsible.

Present law (C.C. Art. 583) provides that neither the usufructuary nor the naked owner is bound to restore property totally destroyed by accident or age.

Proposed law retains present law and adds *force majeure* to the list of causes of destruction of property for which restoration is not mandatory.

Present law (C.C. Art. 584) provides that the usufructuary is bound to pay annual charges imposed on the property.

Proposed law provides that the usufructuary is liable for periodic charges that may be imposed on the property.

Present law (C.C. Art. 586) provides that an inter vivos usufructuary is not liable for the debts of the grantor.

Proposed law retains present law and provides an exception that if the debt is secured by an encumbrance of the thing subject to the usufruct, it may be sold for the payment of the debt.

Present law (C.C. Art. 587) provides that in a mortis causa usufruct the usufructuary's obligation relative to payment of the debts of the succession depends on whether the usufructuary is universal, under universal title or under particular title.

Proposed law revises the language of the article in order to coordinate with the revision of the law of successions. It does not change the law, inasmuch as the classifications expressed in the article have already been eliminated.

Present law (C.C. Art. 588) provides rules for the discharge of a mortgage, pledge, or privilege by the usufructuary under particular title and the usufructuary's right to claim reimbursement from the naked owner.

Proposed law provides rules for discharge of encumbrances on the property by an inter vivos usufructuary. Allows the usufructuary to obtain reimbursement for any interest paid that accrued prior to the commencement of the usufruct.

Present law (C.C. Art. 589) provides that neither the universal usufructuary nor the usufructuary under universal title is liable for the payment of succession debts.

Proposed law provides rules for discharge of a debt on encumbered property by a mortis causa usufructuary. It does not change present law because the classifications expressed in the article have already been eliminated.

Present law (C.C. Art. 590) provides rules for selling property subject to a universal usufruct or usufruct under universal title to pay succession debts.

Proposed law provides that in the case of encumbered property, the naked owner may advance the funds if the usufructuary refuses to do so and demand that the usufructuary pay interest during the period of the usufruct.

Present law (C.C. Art. 591) provides that the universal usufructuary must advance the necessary funds to pay the debts of the succession.

Proposed law provides that if property subject to the usufruct is sold to pay debts, the usufruct attaches to the proceeds of the sale remaining after the debts are paid. It does not change present law because the classification of universal usufructuary expressed in the article have already been eliminated.

Present law (C.C. Art. 592) provides that when the usufructuary advance funds to pay succession debts he shall be reimbursed at the end of the usufruct.

Proposed law provides rules for the payment of succession debts when there are multiple usufructuaries.

Proposed law provides rules for discharge of a debt on encumbered property by a mortis causa usufructuary. It does not change present law, because the classifications expressed in the article have already been eliminated.

Present law (C.C. Art. 593) provides that the legacy of an annuity is to be discharged by the

universal usufructuary.

Proposed law provides that a legacy of an annuity chargeable to property subject to the usufruct is to be paid according to a payment order set forth in proposed law.

Present law (C.C. Art. 601) provides that the usufructuary may remove improvements made by him, subject to the obligation of restoring the property to its former condition and he may not claim compensation for improvements that he does not or cannot remove.

Proposed law provides that the usufructuary may not claim reimbursement for improvements that he does not or cannot remove.

Present law (C.C. Art. 603) provides that the naked owner may dispose of the naked ownership and he may also alienate or encumber the property subject to the usufruct, but he cannot thereby affect the usufruct.

Proposed law deletes the naked owner's authority to also alienate or encumber the property subject to the usufruct.

Present law (C.C. Art. 604) provides that the naked owner may establish real rights on the property without impairing the rights of the usufructuary.

Proposed law restricts the impairment of the rights of a usufructuary.

Present law (C.C. Art. 608) provides that a usufruct in favor of a legal entity cannot exceed 30 years.

Proposed law changes the terminology from legal entity to juridical person.

Present law (C.C. Art. 613) provides that a usufruct of nonconsumables terminates by loss of the property due to accident or decay.

Proposed law adds *force majeure* to the causes of loss of property for which usufruct terminates.

Present law (C.C. Art. 615) provides rules regarding changes in the form of the property subject to the usufruct.

Proposed law retains present law, but provides that when the property changes form, the usufruct attaches to the new form received by the usufructuary.

Present law (C.C. Art. 616) provides that when property is sold in an action for partition or by agreement between the usufructuary and the naked owner, the usufruct attaches to the proceeds.

Proposed law provides for situations not addressed under present law.

Present law (C.C. Art. 618) gives the naked owner the right to demand that cash proceeds received by the usufructuary be invested in certain cases.

Proposed law provides that the naked owner has the right to demand that the usufructuary give security for the proceeds.

Present law (C.C. Art. 619) provides that a usufruct mortis causa is not considered revoked by changes in the property made by the testator.

Proposed law retains present law.

Present law (C.C. Art. 620) provides that usufruct terminates by the enforcement of a mortgage on the property subject to the usufruct.

Proposed law provides that usufruct terminates by the enforcement of any encumbrance established upon the property prior to the creation of the usufruct.

Present law (C.C. Art. 625) provides rules governing the right of the usufructuary's creditors to intervene in certain cases.

Proposed law retains present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.C. Arts. 538, 549, 553, 558, 567-569, 573-575, 577, 580, 581, 583, 584, 586-594, 601, 603, 604, 608, 613, 615, 616, 618-620, and 623-625; adds C.C. Arts. 568.1, 568.2, and 568.3)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Provides for technical changes.
2. Deletes a naked owner's authority to also alienate or encumber the property subject to the usufruct when he has authority to dispose of the naked ownership, but he cannot thereby affect the usufruct.