

SENATE BILL NO. 361

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

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

Article 538. Usufruct of consumable things

If the things subject to the usufruct are consumables, the usufructuary becomes owner of them. He may consume, alienate, or encumber them as he sees fit. At the termination of the usufruct he is bound **either** to pay to the naked owner ~~either~~ the value that the things had at the commencement of the usufruct or **to** deliver to him things of the same quantity and quality.

* * *

Article 549. Capacity to receive usufruct

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

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

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

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Article 558. Improvements and alterations

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

* * *

Article 567. Contracts affecting the usufructuary's liability

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

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

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

~~The usufructuary does not have the right to dispose of nonconsumable things unless the right has been expressly granted to him. Nevertheless, he may dispose of corporeal movables that are gradually and substantially impaired by use, wear, or decay, such as equipment, appliances, and vehicles, provided that he acts as a prudent administrator. Upon disposition, the usufruct is converted into a usufruct of money, and the usufructuary is bound to pay to the naked owner at the end of the usufruct the value that the things had at the time of disposition.~~

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

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

6 The right to dispose of a nonconsumable thing includes the rights to
 7 lease, alienate, and encumber the thing. It does not include the right to alienate
 8 by donation inter vivos, unless that right is expressly granted.

9 Article 568.1. Donation and alienation

10 If a thing subject to the usufruct is donated inter vivos by the
 11 usufructuary, he is obligated to pay to the naked owner at the termination of the
 12 usufruct the value of the thing as of the time of the donation. If a thing subject
 13 to the usufruct is otherwise alienated by the usufructuary, the usufruct attaches
 14 to any money or other property received by the usufructuary. The property
 15 received shall be classified as consumable or nonconsumable in accordance with
 16 the provisions of this Title, and the usufruct shall be governed by those
 17 provisions subject to the terms of the act establishing the original usufruct. If,
 18 at the time of the alienation, the value of the property received by the
 19 usufructuary is less than the value of the thing alienated, the usufructuary is
 20 bound to pay the difference to the naked owner at the termination of the
 21 usufruct.

22 Comments - 2010

23 (a) If the property received by the usufructuary is consumable, then under
 24 the rules of this Title, the usufructuary will be bound to pay to the naked owner at the
 25 termination of the usufruct the value of the consumables that he received, and under
 26 the regular rules governing usufruct the usufructuary will become the "owner" of the
 27 consumable property. See Civil Code Article 538. This will leave open the question
 28 of whether he may have sold the property for too low a price, and he is always
 29 subject to the obligation of acting as a prudent administrator. See Civil Code Article
 30 576 and revision comment (b). If the usufructuary receives property that is
 31 nonconsumable, the usufruct will always attach to it and the usufructuary will be
 32 bound to deliver the thing received to the naked owner at the termination of the
 33 usufruct. See Civil Code Article 539.

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 35 (b) The rules expressed in comment (a) are the rules to which Article 568-B
 36 refers when it states that the usufruct "shall be governed by those rules." This Article
 37 expressly refers to the act of establishing the original usufruct, because if that act
 38 granted authority to dispose of nonconsumables, that grant would be a continuing

1 grant of authority and would apply to the new nonconsumables that have been
2 received.

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4 Article 568.2. Right to lease

5 The right to dispose of a nonconsumable thing includes the right to lease
6 the thing for a term that extends beyond the termination of the usufruct. If, at
7 the termination of the usufruct, the thing remains subject to the lease, the
8 usufructuary is accountable to the naked owner for any diminution in the value
9 of the thing at that time attributable to the lease.

10 Article 568.3. Requirement to remove encumbrance

11 If, at the termination of the usufruct, the thing subject to the usufruct is
12 burdened by an encumbrance established by the usufructuary to secure an
13 obligation, the usufructuary is bound to remove the encumbrance.

14 Comment - 2010

15 In accounting for any "diminution" in value of a thing attributable to an
16 encumbrance placed on it by the usufructuary, it is not intended that any diminution
17 in value be considered attributable to such an encumbrance if the debt secured by
18 that encumbrance was incurred in connection with the refinancing of a pre-existing
19 debt of an equal or greater amount that was previously secured by an encumbrance
20 on the thing. In other words, the article is intended to cover new debts and not the
21 refinancing of existing ones.

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

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

26 The usufructuary is relieved of this obligation if the things are entirely worn
27 out by normal use, wear, or decay.

28 * * *

29 Article 573. Dispensation of security ~~by operation of law~~

30 A. Security ~~may be dispensed with by ex operation of law when~~ **is dispensed**
31 **with when any of the following occur:**

32 **(1)** a **A** person has a legal usufruct under Civil Code Article 223 or 3252.

33 ~~B. Security is dispensed with by operation of law when a~~ **(2)** **A** surviving
34 spouse has a legal usufruct under Civil Code Article 890 unless the naked owner is
35 not a child of the usufructuary or ~~unless the naked owner, although a child of the~~

1 usufructuary, is a forced heir of the decedent. In the latter case, if the naked owner
2 is a child of the usufructuary and is also a forced heir of the decedent, the naked
3 owner may obtain security but only to the extent of his legitime.

4 ~~C. Security is dispensed with by operation of law when a (3) A~~ parent has a
5 legal usufruct under Civil Code Article 891 unless the naked owner is not a child of
6 the usufructuary.

7 ~~D. Security is dispensed with by operation of law when a (4) A~~ surviving
8 spouse has a legal usufruct under Civil Code Article 2434 unless the naked owner
9 is a child of the decedent but not a child of the usufructuary.

10 ~~B. Sellers or donors~~ A seller or donor of property under reservation of
11 usufruct is not required to give security.

12 Article 574. Delay in giving security

13 A delay ~~of~~ in giving security does not deprive the usufructuary of the fruits
14 derived from the property since the commencement of the usufruct.

15 Article 575. Failure to give security

16 If the usufructuary does not give security, ~~a proper~~ the court may order that
17 the property be delivered to an administrator appointed in accordance with Articles
18 3111 through 3113 of the Code of Civil Procedure for administration on behalf of the
19 usufructuary. The administration terminates if the usufructuary gives security.

20 * * *

21 Article 577. Liability for repairs

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

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

29 * * *

30 Article 580. Reimbursement for necessary repairs

1 contained in the title: ~~*Of donations inter vivos and mortis causa.*~~ In the case of an
 2 onerous usufruct, the action shall lie against the grantor, subject to the provisions
 3 contained in the title: ~~*Sale.*~~

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

5 ~~When the usufruct is established mortis causa, the position of the~~
 6 ~~usufructuary relative to the payment of the debts of the succession depends upon~~
 7 ~~whether the usufruct is universal, under universal title, or under particular title. The~~
 8 ~~usufruct of an entire succession is universal, of a fraction thereof is under universal~~
 9 ~~title, and of individually determined things is under particular title. When the~~
 10 ~~usufruct is established mortis causa, the usufructuary is not liable for estate~~
 11 ~~debts, but the property subject to the usufruct may be sold for the payment of~~
 12 ~~estate debts, in accordance with the rules provided for the payment of the debt~~
 13 ~~of an estate in Book III of this Code.~~

14 Article 588. ~~Usufruct under particular title~~ **Discharge of debt on encumbered**
 15 **property; usufruct established inter vivos**

16 ~~The legatee of a usufruct under particular title is not liable for the debts of the~~
 17 ~~succession. When the property subject to the usufruct is burdened with a mortgage,~~
 18 ~~pledge, or privilege, the usufructuary may discharge the indebtedness and may claim~~
 19 ~~reimbursement only for the capital he has expended. The action for reimbursement~~
 20 ~~shall lie against the naked owner at the end of the usufruct, subject to the provisions~~
 21 ~~contained in the title: *Of donations inter vivos and mortis causa.* When property~~
 22 ~~subject to a usufruct established inter vivos is encumbered to secure a debt~~
 23 ~~before the commencement of the usufruct, the usufructuary may advance the~~
 24 ~~funds needed to discharge the indebtedness. If he does so, the naked owner~~
 25 ~~shall reimburse the usufructuary, without interest, at the termination of the~~
 26 ~~usufruct, for the principal of the debt the usufructuary has discharged, and for~~
 27 ~~any interest the usufructuary has paid that had accrued on the debt before the~~
 28 ~~commencement of the usufruct.~~

29 Art. 589. ~~Universal usufruct and usufruct under universal title~~ **Discharge of debt**
 30 **on encumbered property by mortis causa usufructuary**

1 Neither the universal usufructuary nor the usufructuary under universal title
 2 is liable for the debts of the succession. Nevertheless, the property subject to their
 3 usufruct may be seized and sold for the payment of succession debts. **If the**
 4 **usufructuary of a usufruct established mortis causa advances funds to discharge**
 5 **an estate debt charged to the property subject to the usufruct, the naked owner**
 6 **shall reimburse the usufructuary, without interest, at the termination of the**
 7 **usufruct, but only to the extent of the principal of the debt he has discharged**
 8 **and for any interest he has paid that had accrued on the debt before the**
 9 **commencement of the usufruct.**

10 Article 590. Sale of property to pay succession debts **Encumbered property;**
 11 **discharge of debt on encumbered property by naked owner**

12 When it is necessary to satisfy a creditor of the succession, the succession
 13 representative, with the authorization of the proper court or the universal successor,
 14 may sell so much of the property subject to a universal usufruct or usufruct under
 15 universal title as may be required to yield a sum for the discharge of the
 16 indebtedness. The usufructuary may prevent the sale by advancing the funds needed
 17 in accordance with the following provisions. **If the usufructuary fails or refuses**
 18 **to advance the funds needed to discharge a debt secured by property subject to**
 19 **the usufruct, or an estate debt that is charged to the property subject to the**
 20 **usufruct, the naked owner may advance the funds needed. If he does so, the**
 21 **naked owner may demand that the usufructuary pay him interest during the**
 22 **period of the usufruct. If the naked owner does not advance the funds, he may**
 23 **demand that all or part of the property be sold as needed to discharge the debt.**

24 Article 591. Advance of sums, measure of liability **Continuation of usufruct after**
 25 **sale of property**

26 The universal usufructuary must advance the funds needed for the discharge
 27 of all the debts of the succession.

28 The usufructuary under universal title must contribute to the payment of the
 29 debts of the succession in proportion to the value of the property subject to the
 30 usufruct. **If property subject to the usufruct is sold to pay an estate debt, or a**

1 debt of the grantor, the usufruct attaches to any proceeds of the sale of the
 2 property that remain after payment of the debt.

3 Article 592. ~~Return of capital principal; payment of interest~~ **Multiple**
 4 **usufructuaries; contribution to payment of estate debts**

5 ~~When the usufructuary advances funds needed for the discharge of the debts~~
 6 ~~of the succession he shall be reimbursed without interest at the end of the usufruct.~~
 7 ~~When the usufructuary does not make such an advance, the universal successor may~~
 8 ~~make the necessary advance, for which the usufructuary shall pay interest during the~~
 9 ~~period of the usufruct, or sell a part of the property subject to the usufruct.~~ **If there**
 10 **is more than one usufructuary of the same property, each contributes to the**
 11 **payment of estate debts that are charged to the property in proportion to his**
 12 **enjoyment of the property. If one or more of the usufructuaries fails to advance**
 13 **his share, those of them who advance the funds shall have the right to recover**
 14 **the funds they advance from those who do not advance their shares.**

15 Article 593. Discharge of legacy of annuity

16 ~~The legacy of an annuity must be acquitted wholly by the universal~~
 17 ~~usufructuary. If the legacy of the usufruct is under universal title, it must be~~
 18 ~~acquitted by the usufructuary in proportion to his enjoyment.~~ **Unless there is a**
 19 **governing testamentary disposition, the legacy of an annuity that is chargeable**
 20 **to property subject to a usufruct is payable first from the fruits and products**
 21 **of the property subject to the usufruct and then from the property itself.**

22 Article 594. Court costs; expenses of litigation

23 Court costs in actions concerning the property subject to the usufruct are
 24 taxed in accordance with the rules of the Code of Civil Procedure. Expenses of
 25 litigation other than court costs are apportioned between usufructuaries and naked
 26 owners in accordance with the ~~ensuing articles~~ **following Articles.**

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28 Article 601. Removal of improvements

29 The usufructuary may remove all improvements he has made, subject to the
 30 obligation of restoring the property to its former condition. He may not claim

1 compensation reimbursement from the owner for improvements that he does not
2 remove or that cannot be removed.

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4 Art. 603. Disposition of the naked ownership; alienation or encumbrance of the
5 property.

6 The naked owner may dispose of the naked ownership: **, but he can not**
7 **thereby affect the usufruct** ~~He may also alienate or encumber the property subject~~
8 ~~to the usufruct, but he cannot thereby affect the usufruct.~~

9 Article 604. Servitudes

10 The naked owner may establish real rights on the property subject to the
11 usufruct, provided that they may be exercised without ~~injury to the usufructuary~~
12 **impairing the usufructuary's rights.**

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14 Article 608. Dissolution of juridical person; thirty year limitation

15 A usufruct established in favor of a ~~legal entity other than a natural person~~
16 ~~terminates when the entity ceases to exist, or upon the lapse of thirty years from the~~
17 ~~date of the commencement of the usufruct.~~ **juridical person terminates if the**
18 **juridical person is dissolved or liquidated, but not if the juridical person is**
19 **converted, merged or consolidated into a successor juridical person. In any**
20 **event, a usufruct in favor of a juridical person shall terminate upon the lapse**
21 **of thirty years from the date of the commencement of the usufruct. This Article**
22 **shall not apply to a juridical person in its capacity as the trustee of a trust.**

23 Comment - 2010

24 The last sentence explains that a trust is not itself a juridical person and
25 therefore the Article does not apply to it. A trust is a "relationship." La. R.S.
26 9:1731. Nevertheless, the trustee may be a corporate or institutional trustee which
27 a juridical person and it is intended this article not affect the trust in that event.

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29 Article 613. Loss, extinction, or destruction of property

30 The usufruct of nonconsumables terminates by the permanent and total loss,
31 extinction, or destruction through accident, **force majeure** or decay of the property
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1 subject to the usufruct.

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4 Article 615. Change of the form of property

5 When property subject to usufruct changes form without ~~any~~ **an** act of the
6 usufructuary, the usufruct does not terminate even though the property ~~can~~ **may** no
7 longer serve the use for which it was originally destined.

8 When property subject to usufruct is converted into money or other property
9 without an act of the usufructuary, as in a case of expropriation of an immovable or
10 liquidation of a corporation, the usufruct ~~does not terminate but~~ **terminates as to the**
11 **property converted and** attaches to the money or other property **received by the**
12 **usufructuary.**

13 Article 616. Sale **or exchange** of the property; **taxes**

14 When property subject to usufruct is sold **or exchanged**, whether in an action
15 for partition or by agreement between the usufructuary and the naked owner **or by**
16 **a usufructuary who has the power to dispose of nonconsumable property, the**
17 **usufruct terminates as to the nonconsumable property sold or exchanged, but**
18 **as provided in Article 568.1,** the usufruct attaches to the ~~proceeds of the sale~~ **money**
19 **or other property received by the usufructuary,** unless the parties ~~provide~~ **agree**
20 otherwise. **Any tax or expense incurred as the result of the sale or exchange of**
21 **property subject to usufruct shall be paid from the proceeds of the sale or**
22 **exchange, and shall be deducted from the amount due by the usufructuary to**
23 **the naked owner at the termination of the usufruct.**

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25 Article 618. Investment of money **Security for proceeds**

26 In cases governed by Articles 614, 615, 616, and the first sentence of Article
27 617, the naked owner may demand, within one year from receipt of the proceeds by
28 the usufructuary that the ~~money be safely invested subject to the right of the~~
29 ~~usufructuary~~ **usufructuary give security for the proceeds.** If such a demand is
30 made, and the parties cannot agree, the nature of the investment **security** shall be
31 determined by the court. This ~~article~~ **Article** does not apply to corporeal movables

1 referred to in the second sentence of Article 568, or to property disposed of by the
 2 usufructuary pursuant to the power to dispose of nonconsumables if the grantor
 3 of the usufruct has dispensed with the security.

4 Article 619. Changes made by the testator

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

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

10 Usufruct terminates by the enforcement of a ~~mortgage placed an~~
 11 encumbrance established upon the property prior to the creation of the usufruct to
 12 secure a debt. The usufructuary may have an action against the grantor of the
 13 usufruct or against the naked owner under the provisions established in ~~the third~~
 14 ~~section~~ Section 3 of this ~~chapter~~ Chapter.

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

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

20 Comment - 2010

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

23 * * *

24 Article 623. Abuse of the enjoyment; consequences

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

28 Article 624. ~~Consequences of abuse~~ Security to prevent termination

29 In the cases covered by the preceding ~~article~~ Article, the court may decree
 30 termination of the usufruct or decree that the property be delivered to the naked
 31 owner on the condition that he shall pay to the usufructuary a reasonable annuity
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1 until the end of the usufruct. The amount of the annuity shall be based on the value
2 of the usufruct.

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

6 Article 625. Intervention by creditors of the usufructuary

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

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____