

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 361 By Senator Smith

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

USUFRUCT. Provides for the continuous revision of the Civil Code Articles on usufruct.
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SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Made numerous technical amendments.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

DIGEST

Smith

SB No. 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 this provision.

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 amends present law 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 lease, 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)

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