

2023 Regular Session

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 to
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.

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Revision Comments - 2023

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

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

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

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

* * *

Art. 3440. Protection of precarious possession

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

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

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

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

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

10 * * *

11 Art. 3651. Petitory action

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

17 Comments - 2023

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

29 * * *

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

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

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

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
 41 use of the term "possession" with a meaning different from that given to the term in
 42 Article 3660. See, e.g., *Griffin v. Daigle*, 769 So. 2d 720 (La. App. 1 Cir. 2000)
 43 (explaining that the words "in possession" as formerly used in this Article required
 44 that the defendant have had corporeal possession for at least one year or civil
 45 possession for the same period of time preceded by corporeal possession). This
 46 inconsistency in terminology was eliminated in the 2023 revision.

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

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

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

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

20 Comments - 2023

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

29 Art. 3655. Possessory action

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

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Comments - 2023

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.

1 ~~B. When, except as provided in Article 3661(1)-(3), the defendant in a~~
2 ~~possessory action asserts title in himself, in the alternative or otherwise, he~~ the
3 ~~defendant does not~~ thereby converts the suit convert the possessory action into a
4 ~~petitory action, and judicially confesses~~ or judicially confess the possession of the
5 ~~plaintiff in the possessory action, but the defendant's assertions of title shall be~~
6 ~~considered in defense of the possessory action only for the purposes stated in Article~~
7 3661(B).

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

Comments - 2023

17 (a) The 2023 amendment of this Article preserves the rule of noncumulation
18 of the possessory and petitory actions and expands the rule to prohibit cumulation
19 of the possessory action with a declaratory judgment action to determine ownership.
20 At the same time, the amendment lessens the consequences for the plaintiff of an
21 improper cumulation and eliminates the judicial confession of the plaintiff's
22 possession that previously arose from the defendant's assertions of title in a
23 possessory action.

24 (b) Prior to the 2023 amendment of this Article, if the plaintiff cumulated the
25 possessory action with the petitory action, the possessory action simply abated.
26 Under the revised Article, when the plaintiff cumulates the possessory action with
27 a petitory action or with a declaratory judgment action to determine ownership, the
28 possessory action does not abate, but the defendant has the right to object to the
29 improper cumulation by filing a dilatory exception. See Article 926(A)(7). Upon
30 sustaining the exception, the court may order separate trials or may order the plaintiff
31 to elect which action he desires to pursue, as provided in Articles 464 and 465. If not
32 raised through a timely dilatory exception, the objection of improper cumulation is
33 waived. See Article 926(B).

34 (c) If, rather than cumulating the possessory action with a petitory or
35 declaratory judgment action, the plaintiff in the possessory action files a separate
36 action to determine ownership while the possessory action is pending, the possessory
37 action abates, but the plaintiff by doing so makes no confession of the defendant's
38 possession.
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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
 11 defendant cannot divert the focus of a possessory action from the issue of possession
 12 to the often more complicated issue of ownership through the simple expedient of
 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 reconvention. If the defendant asserts ownership by instituting a separate suit before
 17 judgment in the possessory action becomes executory, he judicially confesses the
 18 possession of the plaintiff in the possessory action. This judicial confession does not
 19 arise, however, if it is the plaintiff in the possessory action who institutes the
 20 separate suit to determine ownership while the possessory action is pending and the
 21 defendant reconvenes in that separate suit to assert his own claim of ownership.

22 Art. 3658. Same; requisites

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

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

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

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

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

34 Comments - 2023

35 The 2023 amendments to this Article recognize that a precarious possessor
 36 may bring a possessory action. The precarious possessor himself need not have
 37 exercised his precarious possession for a full year prior to the disturbance; it suffices
 38 if the person for whom he possesses precariously, or that person's ancestors in title,
 39 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 (a) The 2023 amendments to this Article clarify when a disturbance in law
 24 must arise, in relation to the time that the plaintiff enters into possession or acquires
 25 the right to possess, in order for the disturbance to form the basis of a possessory
 26 action.

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

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

13 (d) The reason that the continuing existence of record of an adverse
 14 instrument constitutes a distinct disturbance in law is to prevent a possessor from
 15 losing the right to complain of an instrument that was recorded after he commenced
 16 possession but more than one year before he brings the possessory action. Without
 17 such a rule, his right to bring the possessory action would be lost under Article
 18 3658(4) for failure to institute the action within one year of the recordation of the
 19 instrument, even though he may have had no reason to suspect that an adverse
 20 instrument had been recorded. Because the continuing existence of record is a
 21 continuing disturbance, the one-year prescriptive period under Article 3658(4) for
 22 bringing a possessory action complaining of this disturbance in law effectively does
 23 not commence to run under these circumstances. See Roy O. Martin Lumber Co.,
 24 Inc. v. Lemoine, 381 So. 2d 915 (La. App. 3 Cir. 1980). See also Ree Corp. v.
 25 Shaffer, 260 So. 2d 307, 313 (La. 1972) (Tate, J., concurring).

26 Art. 3660. Same; possession

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

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

37 Comments - 2023

38 The 2023 amendment of this Article retains the rule that, for purposes of this
 39 Chapter, "possession" means possession in fact, rather than the right to possess,
 40 except where the right to possess is expressly stated. Consistent with the changes
 41 made to Articles 3655, 3656, and 3658, the amended Article recognizes that
 42 precarious possession for another person constitutes possession for purposes of this
 43 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 The 2023 amendment to this Article clarifies that a person is entitled to use
13 evidence of ownership for purposes of proving not only the extent of his own
14 possession, but also the extent of possession of his ancestors in title. See Civil Code
15 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
 16 remedy to obtain a determination of ownership when the defendant has appeared in
 17 the possessory action in that manner; the plaintiff can institute his own declaratory
 18 judgment action against the defendant and, depending on the circumstances, may be
 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
 27 Louisiana.

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

30 * * *

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

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

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Comments - 2023

Prior to its revision in 2023, this Article provided that the plaintiff's burden 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 an 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: _____