

# ACT No. 421

2023 Regular Session

HOUSE BILL NO. 220

BY REPRESENTATIVE PRESSLY

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Civil Code Articles 531 and 3440 and Code of Civil Procedure Articles 1061, 3651, 3653 through 3655, 3656(A), 3657 through 3662, and 3669, relative to actions to determine ownership or possession; to provide with respect to petitory actions, possessory actions, actions for declaratory judgments to determine ownership, and similar proceedings; to provide for proof of ownership of immovables; to provide with respect to precarious possession; to provide for reconventional demands; to provide with respect to cumulation of actions; to provide with respect to disturbances in fact and in law; to provide with respect to possession and admissibility of title; to provide for relief and appeals; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 531 and 3440 are hereby amended and reenacted to read as follows:

Art. 531. Proof of ownership of immovable.

One ~~who claims~~ claiming the ownership of an immovable against another who has been in possession of the immovable for one year after having commenced possession in good faith and with just title or who has been in possession of the immovable for ten years ~~must~~ shall prove that he has acquired ownership from a previous owner or by acquisitive prescription. ~~If neither party is in possession~~ In all 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 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.

\* \* \*

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 (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.



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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: \_\_\_\_\_