

## RÉSUMÉ DIGEST

ACT 421 (HB 220)

2023 Regular Session

Pressly

Existing law (C.C. Art. 531) requires a person claiming ownership of an immovable against another in possession to prove that he acquired ownership from a previous owner or by acquisitive prescription.

Existing law imposes the burden of proof provided by existing law only when the other person has been in possession for one year in good faith and with just title or has been in possession for 10 years, otherwise, the burden of proof is better title.

Existing law (C.C. Art. 3440) provides that the possessory action is available to a precarious possessor, such as a lessee or a depositary.

New law deletes the incorrect reference to depositaries found in prior law.

Existing law (C.C.P. Art. 1061) requires the defendant in the principal action to reconvene in all causes of action that arise out of the same transaction or occurrence but provides for certain exceptions, such as in actions for divorce or for disavowal.

New law adds to the exceptions provided by existing law the filing of a reconventional demand asserting a petitory action or declaratory judgment action to determine ownership under C.C.P. Art. 3657.

Existing law (C.C.P. Art. 3651) provides that a petitory action is brought by a person who is not in possession of immovable property or a real right therein.

New law clarifies that a petitory action is brought by a person who does not have the right to possess immovable property or a real right therein.

Existing law (C.C.P. Art. 3653) sets forth the burden of proof required to be satisfied by the plaintiff in a petitory action and requires the plaintiff to prove that he acquired ownership from a previous owner or by acquisitive prescription if the defendant is in possession of the immovable.

New law imposes the burden of proof provided by existing law only when the defendant has been in possession for one year in good faith and with just title or has been in possession for 10 years, otherwise, the plaintiff's burden of proof is better title.

Existing law (C.C.P. Art. 3654) provides that the same burden of proof required to be satisfied by the plaintiff in a petitory action also applies to an action for a declaratory judgment or a concursus, expropriation, or similar proceeding.

New law imposes the burden of proving acquisition of ownership from a previous owner or by acquisitive prescription when the adverse party has been in possession for one year in good faith and with just title or has been in possession for 10 years, otherwise, the burden of proof is better title.

Existing law (C.C.P. Art. 3655) provides that a possessory action is brought by the possessor of immovable property or a real right therein.

New law adds that a possessory action may also be brought by a precarious possessor.

Existing law (C.C.P. Art. 3656(A)) provides that a possessory action shall be brought by one who possesses for himself and specifies that a predial lessee does not possess for himself.

New law changes existing law to allow a possessory action to be brought by a precarious possessor, such as a lessee, against anyone except the person for whom the precarious possessor possesses, in accordance with the Civil Code.

Existing law (C.C.P. Art. 3657) prohibits the cumulation of possessory and petitory actions and provides that a plaintiff who improperly cumulates these actions or institutes a petitory action waives the possessory action. Existing law further provides that a defendant who

improperly asserts title in the possessory action or institutes a petitory action judicially confesses the possession of the plaintiff in the possessory action.

New law expands existing law to prohibit cumulation of a possessory action with either a petitory action or a declaratory judgment action to determine ownership.

New law changes the consequence provided by existing law for improper cumulation by the plaintiff, instead providing that the defendant may object by asserting a dilatory exception. New law also changes the consequence when the defendant improperly asserts title in the possessory action, instead limiting the defendant's assertions of title to those matters that may be considered in the possessory action under C.C.P. Art. 3661.

New law retains the consequence provided by existing law when the defendant institutes a separate petitory action or declaratory judgment action to determine ownership, requiring the defendant to judicially confess the possession of the plaintiff. New law also prohibits the defendant from filing a reconventional demand asserting claims of title unless the plaintiff seeks an adjudication of ownership.

Existing law (C.C.P. Art. 3658) sets forth the items that must be proven by the plaintiff in a possessory action.

New law recognizes that a possessory action may also be brought by a precarious possessor.

Existing law (C.C.P. Art. 3659) provides with respect to disturbances in law and in fact.

New law clarifies when a disturbance in law must arise in order for the disturbance to form the basis of a possessory action.

Existing law (C.C.P. Art. 3660) provides for a definition of "possession" for purposes of existing law.

New law adds that precarious possession also constitutes possession for purposes of new law.

Existing law (C.C.P. Art. 3661) provides that no evidence of ownership or title to immovable property or a real right therein shall be admitted in a possessory action except under certain circumstances, such as to prove the extent of possession by a party.

New law adds that evidence of ownership or title may also be admitted to prove the extent of possession by a party's ancestors in title.

Existing law (C.C.P. Art. 3662) sets forth the relief that may be granted to a successful plaintiff in a possessory action, including ordering the defendant to assert his claim of ownership within a delay not to exceed 60 days or be precluded thereafter from doing so.

New law fixes the delay provided by existing law at 60 days and also provides that this relief is not available against the state or against a defendant who appeared in the action only through an attorney appointed to represent him under C.C.P. Art. 5091.

Existing law (C.C.P. Art. 3669) provides that the burden of proof in an action between the owner of a mineral servitude and the owner of a mineral royalty is that which must be borne by the plaintiff in a petitory action when neither party is in possession.

New law clarifies that the applicable burden of proof is to prove better title.

Effective August 1, 2023.

(Amends C.C. Arts. 531 and 3440 and C.C.P. Arts. 1061, 3651, 3653-3655, 3656(A), 3657-3662, and 3669)