Regular Session, 2004

HOUSE BILL NO. 38

BY REPRESENTATIVE ANSARDI

(On Recommendation of the Louisiana State Law Institute)

LEASES: Revises and reorganizes the Civil Code Articles on lease

AN ACT

To amend and reenact Civil Code Articles 650 and 2668, Chapters 1 and 2 of Title IX of Book III of the Civil Code, to be comprised of Chapters 1 through 4 of Title IX of Book III of the Civil Code, consisting of Articles 2668 through 2729, Civil Code Article 3219, and R.S. 9:3221, to enact R.S. 9:3259.2, to repeal Civil Code Article 3218, relative to lease and to redesignate Chapter 3 of Title IX of Book III of the Civil Code, comprised of Articles 2745 through 2777, as Chapter 5 of Title IX of Book III of the Civil Code; to provide for definitions; to provide for a contract to lease; to provide for the types of leases; to provide for things that may be leased; to provide relative to ownership; to provide for rent; to provide for the term or duration; to provide for the form; to provide relative to registry; to provide for the obligations of the lessor and lessee; to provide for delivery; to provide for errors relative to the size of an immovable leased thing; to provide for the misuse of the leased thing; to provide for liability for damages; to provide for notification of damages; to provide for expenses; to provide for the rights of the lessor and lessee relative to the attachments, additions, or improvements; to provide for the warranty against vices or defects; to provide for peaceful possession; to provide relative to subleasing; to provide for the seizure of a third person's movables; to provide relative to privileges; to provide for transfer; to provide for loss, destruction, or expropriation; to provide

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for termination; to provide for the death of the lessor or lessee; to provide for reconduction; to provide for a lease relative to a predial servitude; to provide for amendments; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Article 2668 and Chapters 1 and 2 of Title IX of Book III of the Civil Code are hereby amended and reenacted comprised of Chapters 1 through 4 of Title IX of Book III of the Civil Code, consisting of Articles 2668 through 2729, to read as follows:

TITLE IX. LEASE

CHAPTER 1. GENERAL PROVISIONS

Art. 2668. Contract of lease defined

Lease is a synallagmatic contract by which one party, the lessor, binds himself to give to the other party, the lessee, the use and enjoyment of a thing for a term in exchange for a rent that the lessee binds himself to pay.

The consent of the parties as to the thing and the rent is essential but not necessarily sufficient for a contract of lease.

Revision Comments -- 2004

(a) This Article reproduces in condensed form the substance of Articles 2669, 2670, 2674, and 2677 of the Civil Code of 1870. It differs from the source articles in that it excludes the hiring of services from the scope of the term "lease." Under this Revision, the hiring of services is no longer a form of lease, but is instead an innominate contract. This change also makes it possible to replace the term "price" with the more appropriate term "rent" in describing the lessee's performance.

(b) According to this Article, a lease is a synallagmatic, or bilateral, contract - that is, "[a] contract ... [by which] the parties obligate themselves reciprocally, so that the obligation of each party is correlative to the obligation of the other." C.C. Art. 1908 (Rev. 1984). In return for the lessee's obligation to pay the rent, the lessor binds himself to allow the lessee, and to ensure for him, the use and enjoyment of the thing for the agreed or contemplated term. The lessee's right is a personal rather than a real right, see Civil Code Article 476 (Rev. 1978) and comments thereunder, and the lessor's obligation is a personal rather than a real one, see Civil Code Articles 1766 and 1763 (Rev. 1984). Externally, a lease may resemble certain real rights, such as the personal servitudes of usufruct or habitation or the limited personal servitude of rights of use, all of which also confer on a person the right to use a thing belonging to another. However, unlike those servitudes --which are true dismemberments of ownership conferring on the holder of them a direct and immediate authority over the thing that is assertible against future owners of the thing-- a lease simply confers on the lessee the right to demand performance from the lessor and his universal successors. Only exceptionally, and where the law so provides, is this right assertible

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against subsequent acquirers of the thing. See C.C. Arts. 2711 and 2712 (Rev. 2004), (providing that the transfer of a leased movable or an immovable subject to a recorded lease does not terminate the lease).

(c) The second paragraph of this Article is based on Civil Code Article 2670 (1870), but clarifies that: (1) the necessary consent must be consent *as to* the thing to be leased and the rent to be paid; and (2) such consent, though essential, is not necessarily sufficient for a contract of lease.

(d) Without an agreement as to the thing and the rent, there cannot be a contract of lease. On the other hand, the existence of such an agreement does not necessarily mean that a contract of lease has come into existence if the parties did not so intend. For example, if, despite agreement on the thing and the rent, it is understood that the parties will not be bound until they agree on other terms of the contract, then there is no lease until these terms are agreed upon. Similarly, even if the parties intended to be bound upon their agreement as to the thing and the "rent," the resulting contract may or may not be one of lease, depending again on the intent of the parties. For example, if the right intended to be conveyed has the attributes of a real right such as a personal servitude or a limited personal servitude of use, then the contract is not a lease, even though the parties used terms like "rent" or "lease." *Cf.* C.C. Art. 730 (Rev. 1977).

(e) If the contract is one of lease, then the rules of this Title become applicable for filling any gaps in the parties' agreement and for determining its overall validity and effectiveness. Agreement as to the rent does not necessarily mean agreement on the exact amount (see Civil Code Article 2676 (Rev. 2004) providing for the fixing of the rent), but does presuppose an understanding that what is to be paid will be "rent" rather than a "price." Likewise, as stated in the first paragraph of this Article, the parties must have agreed that the giving of the "use and enjoyment" of the thing is not a permanent one but is rather "for a term," albeit an indeterminate one. See Civil Code Articles 2678-2680 (Rev. 2004).

Art. 2669. Relation with other titles

In all matters not provided for in this Title, the contract of lease is governed by the rules of the Titles of "Obligations in General" and "Conventional Obligations or Contracts".

Revision Comments -- 2004

(a) This Article reproduces the substance of Article 2668 of the Civil Code of 1870. The slight change in language is not intended to change the law, but rather to parallel the corresponding article of the Title "Sale" (see C.C. Art. 2438 (Rev. 1993). The cross-reference contained in the source provision has been broadened to take account of the rearrangement of articles effected by the 1984 obligations revision which expanded the content of Title III of Book III of the Civil Code of 1870, "Of Obligations," and has placed in it many of the general articles formerly contained in Title IV, "Of Conventional Obligations."

(b) This Article restates the obvious proposition that, like any other contract, a lease is subject to the general rules provided by the Civil Code for all contracts. Since particular rules prevail over general rules, then, with regard to leases, the rules of the Title on "Lease" should prevail over the general rules on contracts and obligations in general. See C.C. Art. 1916 (Rev. 1984) (providing that "nominate contracts are subject to the special rules of the respective titles when those rules

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modify, complement, or depart from the [general] rules[.]") By the same token, the rules of this Title, being the general rules for all leases, may be displaced by more specific rules provided in other statutes for certain types of leases, such as the Mineral Code (see C.C. Art. 2672 (Rev. 2004), the Louisiana Lease of Movables Act (R.S. 9:3301 et seq.), the Louisiana Rental-Purchase Agreement Act (R.S. 9:3351 et seq.), and R.S. 9:3201 et seq.

Art. 2670. Contract to lease

A contract to enter into a lease at a future time is enforceable by either party if there was agreement as to the thing to be leased and the rent, unless the parties understood that the contract would not be binding until reduced to writing or until its other terms were agreed upon.

Revision Comments -- 2004

(a) This Article is new. It is derived from pertinent Louisiana jurisprudence and from the general principle of Civil Code Article 1971 (Rev. 1984), which provides that "[p]arties are free to contract for any object that is lawful, possible, and determined or determinable." Cf. also C.C. Arts. 1976 (Rev. 1984) and 2450 (Rev. 1993). A contract to enter into a lease at a future time is not only lawful and possible, but also meets the requirement of determinability provided by Civil Code Article 1971 (Rev. 1984), if the parties agree as to the thing to be leased and the rent to be paid. Agreement as to the term is not necessary since the term may be supplied by law. See C.C. Art. 2680 (Rev. 2004).

(b) A contract to lease that meets the requirements of this Article generates binding obligations and may be enforced by either party pursuant to the provisions of the Title of "Conventional Obligations or Contracts." See C.C. Arts. 1983 et seq (Rev. 1984). For cases recognizing this principle, see Coffee v. Smith, 109 La. 440, 33 So. 554 (1903); Gladney v. Steinau, 149 La. 79, 88 So. 694 (1921); Knights of Pythias v. Fishel, 168 La. 1095, 123 So. 724 (1929); Johnson v. Williams, 178 La. 891, 152 So. 556 (1934); City of New Orleans v. Cheramie, 509 So.2d 58 (La.App. 1 Cir. 1987), writ denied 512 So.2d 463 (La. 1987). See also Vernon Palmer, Leases: The Law in Louisiana, § 2-4 (1982).

(c) Enforcement is not available, however, if the parties understood that the contract would not be binding until reduced to writing or until its other terms were agreed upon. In such cases, "the contract is [merely] inchoate, incomplete, and either party, before signing, may . . . recede . . ." Laroussini v. Werlein, 52 La.Ann. 424, 27 So. 89, at p. 90 (1899). See also In re Woodville, 115 La. 810, 40 So. 174 (1905); Waldhauser v. Adams Hats, 207 La. 56, 20 So.2d 423 (1944).

Art. 2671. Types of leases

Depending on the agreed use of the leased thing, a lease is characterized as: residential, when the thing is to be occupied as a dwelling; agricultural, when the thing is a predial estate that is to be used for agricultural purposes; mineral, when the thing is to be used for the production of minerals; commercial, when the thing is to be used for business or commercial purposes; or consumer, when the thing is a movable

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intended for the lessee's personal or familial use outside his trade or profession. This enumeration is not exclusive.

When the thing is leased for more than one of the above or for other purposes, the dominant or more substantial purpose determines the type of lease for purposes of regulation.

Revision Comment -- 2004

This Article is new. It defines the various categories of leases, many of which are used in this Title.

Art. 2672. Mineral lease

A mineral lease is governed by the Mineral Code.

Revision Comments -- 2004

(a) This Article reiterates the obvious by providing that mineral leases are governed by the applicable provisions of the Mineral Code (R.S. 31:114, *et seq*.). Being more specific with regard to mineral leases, those provisions prevail over the provisions of this Title.

(b) R.S. 31:2, Article 2 of the Mineral Code, provides that "[i]f [the Mineral] Code does not expressly or impliedly provide for a particular situation, the Civil Code ... [is] applicable." As part of the Civil Code, this Title may apply in a supplementary fashion to mineral lease issues that are not provided for by the Mineral Code. However, before resorting to this Title, as opposed to other titles of the Civil Code, one should bear in mind the fact that a mineral lease is a real right and that it differs in many respects from an ordinary lease.

CHAPTER 2. ESSENTIAL ELEMENTS

Section 1. The Thing

Art. 2673. The thing

All things, corporeal or incorporeal, that are susceptible of ownership may be the object of a lease, except those that cannot be used without being destroyed by that very use, or those the lease of which is prohibited by law.

Revision Comments -- 2004

(a) This Article reproduces the substance of Articles 2678 and 2679 of the Civil Code of 1870. It differs from the source articles in three respects, as explained in the next three comments, respectively.

(b) This Article clarifies the law by declaring that things that are insusceptible of ownership are also insusceptible of being leased. Examples of such things, called "common things" by Civil Code Article 449 (Rev. 1978), are "such as the air and the high seas." *Id.* See also La. Const. Art 9 § 1. For a parallel provision in the law of sales, see C.C. Art. 2448 (Rev. 1995). On the other hand, things that are susceptible

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of ownership but not private ownership, i.e. "public things" (see C.C. Art. 450 (Rev. 1978)), may be leased provided that such a lease is permitted by "applicable laws and regulations." C.C. Art. 452 (Rev. 1978).

(c) This Article also differs from the source provisions in that it does not prohibit *a priori* the lease of a credit, nor does it contain any presumption against the lease of incorporeals. Under this Article, all things, corporeal or incorporeal, movable or immovable, may be the object of lease, "except those that cannot be used without being destroyed by that very use. . . ." This prohibition may encompass certain incorporeals, such as a credit, but can also encompass certain corporeal movables, such as "those that cannot be used without being expended or consumed" (C.C. Art. 536 (Rev. 1976)) by that use. The question of whether the particular use will so consume or destroy the thing is left for judicial determination.

(d) The second prohibition refers to things "the lease of which is prohibited by law." Examples of such prohibitions can be found in the Civil Code, as well as the Revised Statutes. See, e.g., C.C. Art. 637 (Rev. 1976) (prohibiting the lease of the right of habitation); C.C. Art. 650 (Rev. 1977) (which is amended by this Revision to clarify that not only alienation but also the leasing of a predial servitude separately from the dominant estate is prohibited. See Comment (e); C.C. Art. 1766 (Rev. 1984) (defining obligations strictly personal to the obligee); and C.C. Art. 2337 (Rev. 1979) (prohibiting the lease of a spouse's undivided interest in the community).

(e) Article 2680 of the Civil Code of 1870 provides that "[a] right of servitude can not be leased separately from the property to which it is annexed." The substance of that article has been retained and transferred to Civil Code Article 650 (Rev. 1977), where it more properly belongs, which now provides in part that "[t]he right of using the servitude cannot be alienated, leased, or encumbered separately from the dominant estate." The word "leased" has been added to Civil Code Article 650 by this Act.

Art. 2674. Ownership of the thing

A lease of a thing that does not belong to the lessor may nevertheless be binding on the parties.

Revision Comments -- 2004

(a) This Article is derived from Articles 2681 and 2682 of the Louisiana Civil Code of 1870. See also C.C. Arts. 2703 and 2704 (1870). Article 2681 of the Civil Code of 1870 provided that "[h]e who possesses a thing belonging to another, may let it to a third person, but he can not let it for any other use than that to which it is usually applied." The quoted article seems to contemplate subleases by lessees or leases by other precarious possessors. Civil Code Article 2674 (Rev. 2004) is broader in scope and includes even leases by adverse possessors, in good or in bad faith. Consequently, the provision of the source article that prohibited the lease of the thing "for any other use than that to which it is usually applied" is not reproduced in Civil Code Article 2674 (Rev. 2004). For the right of a lessee, *vis-à-vis* the lessor, to sublease the thing, see Civil Code Article 2713 (Rev. 2004).

(b) Article 2682 of the Louisiana Civil Code of 1870 provided that "[h]e who lets out the property of another, warrants the enjoyment of it against the claim of the owner." This principle is implicit in Civil Code Article 2674 (Rev. 2004), particularly the phrase "binding on the parties." According to Civil Code Article 2700 (Rev. 2004), a binding lease imposes on the lessor the obligation to warrant the lessee's peaceful possession. The combined reading of Civil Code Articles 2700 and 2674

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(Rev. 2004) leads inescapably to the conclusion that, even if he does not own the thing, the lessor is bound to warrant the lessee's peaceful possession of the thing against any person with pretensions of ownership or other legal right. See C.C. Arts. 2700-2702 (Rev. 2004). See also Civil Code Article 2711 (Rev. 2004) which provides that the transfer of the leased thing does not terminate the lease, and Comment (b) which reiterates that the lessor remains bound to warrant the lessee's peaceful possession.

(c) By the same token, as long as the lessor is willing and able to protect the lessee's peaceful possession for the remainder of the term, the lessee may not refuse to pay rent or carry out his other obligations under the lease solely because of the lessor's claimed or real lack of ownership. Thus, the gist of Civil Code Article 2674 (Rev. 2004) is that ownership of the thing by the lessor is not an essential element of the contract of lease. In the absence of contrary understanding, the lease is binding even if such ownership is lacking. The use of the word "may" in Civil Code Article 2674 (Rev. 2004) is intended to cover cases in which there is a contrary understanding and generally cases in which ownership of the thing by the lessor was part of the cause of the contract of lease. In such cases, the lessee is entitled to the remedies provided by the Title of "Conventional Obligations or Contracts."

(d) The rule of this Article is subject to exceptions provided by more specific provisions of Louisiana legislation which prohibit the lease of a thing belonging to another. For example, Civil Code Article 2337 (Rev. 1979) provides that "[a] spouse may not . . . lease to a third person his undivided interest in the community or in particular things of the community prior to the termination of the regime." Similarly, Civil Code Article 2369.4 (Rev. 1995) provides that "[a] spouse may not . . . lease former community property . . . without the concurrence of the other spouse[.]" Leases entered into in violation of these articles are null. Comment (b) under Civil Code Article 2337 (Rev. 1979) declares that leases in violation of that article are absolutely null, and Civil Code Article 2369.4 (Rev. 1995) provides that leases in violation of that article are relatively null. A similar conclusion might be reached with regard to Civil Code Article 805 (Rev. 1990), which provides that "[t]he consent of all the co-owners is required for the lease . . . of the entire thing held in indivision." However, Civil Code Article 802 (Rev. 1990), which provides that "[a]s against third persons, a co-owner has the right to use and enjoy the thing as if he were the sole owner," may lead to the conclusion that leases in violation of Civil Code Article 805 (Rev. 1990) are binding on the lessor and the lessee, although they are not binding on the non-leasing co-owners.

Section 2. The Rent

Art. 2675. The rent

The rent may consist of money, commodities, fruits, services, or other performances sufficient to support an onerous contract.

Revision Comments -- 2004

(a) This Article is based in part on Article 2671 of the Louisiana Civil Code of 1870 but adds "services, or other performances" to the list contained in the source provision. This addition is consistent with the jurisprudence, which characterized as illustrative the list contained in that article. See Louisiana Ass'n for Mental Health v. Edwards, 322 So.2d 761 (La. 1975). *Cf*. C.C. Art. 1756 (Rev. 1984). The term "rent" is substituted for "price" because, unlike the source provision, the scope of Civil Code Article 2675 (Rev. 2004) and of this Title is confined to the lease of things

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and does not encompass the hiring of services. See C.C. Art. 2668 (Rev. 2004), Comment (a).

(b) Because a lease is an onerous contract (see C.C. Art. 2668 (Rev. 2004)), all the performances contemplated by Civil Code Article 2675 (Rev. 2004) must be "sufficient to support an onerous contract." This is consistent with the jurisprudence, which held that in the absence of rent there is no lease and that the rent "must be serious and not out of proportion to the thing's value." Arnold v. Board of Levee Com'rs of Orleans Levee Dist., 366 So.2d 1321, 1327 (La. 1978). See also Myers v. Burke, 189 So. 482 (La.App. 1 Cir. 1939); Benoit v. Burke, 189 So. 484 (La.App. 1 Cir. 1939); University Pub. Co. v. Piffet, 34 La.Ann. 602 (1882); Fisk v. Moores, 11 Rob. 279 (1845); Paige & Wells v. Scott's Heirs, 12 La. 490 (1838). See also C.C. Art. 2464 (Rev. 1993), which provides that "[t]here is no sale unless the parties intended that a price be paid" and that "[t]he price must not be out of all proportion with the value of the thing sold."

Art. 2676. Agreement as to the rent

The rent shall be fixed by the parties in a sum either certain or determinable through a method agreed by them. It may also be fixed by a third person designated by them.

If the agreed method proves unworkable or the designated third person is unwilling or unable to fix the rent, then there is no lease.

If the rent has been established and thereafter is subject to redetermination either by a designated third person or through a method agreed to by the parties, but the third person is unwilling or unable to fix the rent or the agreed method proves unworkable, the court may either fix the rent or provide a similar method in accordance with the intent of the parties.

Revision Comments -- 2004

(a) This Article is derived from Articles 2671 and 2672 of the Civil Code of 1870. The first sentence of this Article restates the principle of Article 2671 of the Louisiana Civil Code of 1870 by requiring that the rent be either certain or determinable. If this requirement is not met, there is no lease. For pertinent jurisprudence, see, *inter alia*, Haughery v. Lee, 17 La.Ann. 22 (1865); Weaks Supply Co. v. Werdin, 147 So. 838 (La.App. 2 Cir. 1933); Faroldi v. Nungesser, 144 So.2d 568 (La.App. 4 Cir. 1962); Southern States Equipment Co., Inc. v. Unique Services, Inc., 525 So.2d 1198 (La.App. 5 Cir. 1988); Paige & Wells v. Scott's Heirs, 12 La. 490 (1838); Fisk v. Moores, 11 Rob. 279 (1845); Groghan v. Billingsley, 313 So.2d 255 (La.App. 4 Cir. 1975), writ denied 318 So.2d 46 (La. 1975). This jurisprudence continues to be relevant.

(b) The first sentence also clarifies the law by providing that the requirement of determinability is satisfied if the parties specified a method for fixing the rent. For example, an agreement for a rental price of one cent per gallon on all gasoline sold during the month was held to be sufficiently certain to support a lease contract. See Lee v. Pearson, 143 So. 516 (La.App. 1 Cir. 1932); Selber Bros. v. Newstadt's Shoe

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Stores, 203 La. 316, 14 So.2d 10 (1943). This clarification is consistent not only with the jurisprudence but also with the 1993 revision of the law of Sales. See C.C. Art. 2464 (Rev. 1993); Bonfanti v. Davis, 487 So.2d 165 (La.App. 3 Cir. 1986); Mouton v. P.A.B., Inc., 450 So.2d 410 (La.App. 3 Cir. 1984), writ denied 458 So.2d 118 (La. 1984); Arata v. Louisiana Stadium and Exposition Dist., 254 La. 579, 225 So.2d 362 (1969), certiorari denied 90 S.Ct. 569, 396 U.S. 279, 24 L.Ed.2d 467 (1970); Succession of Pietri, Orleans No. 7991 (La.App. Orleans 1921).

(c) The second sentence of this Article reproduces the substance of the first sentence of Article 2672 of the Civil Code of 1870. Although the source provision required that the third person be "named *and* determined," this sentence requires only that the third person be "designated." Designation may be by name or by title or position. For example, a stipulation in a commercial lease that the rent shall be fixed "by the president of the local chamber of commerce or her designee" is sufficient under this sentence, even if at the time of the stipulation the parties did not know who would be the president or her designee. For related provisions, see C.C. Arts. 1974 (Rev. 1984) and 2465 (Rev. 1993).

(d) The second paragraph of this Article restates in broader terms the principle of the last phrase of the first paragraph of Article 2672 of the Civil Code of 1870 so as to include situations in which the method agreed by the parties proves unworkable.

(e) The third paragraph of this Article changes the law by allowing court intervention in the limited circumstances specified therein. This change is consistent with the 1984 revision of the law of Obligations and the 1993 revision of the law of Sales. See Cf. C.C. Arts. 1974 (Rev. 1984) and 2465 (Rev. 1993). However, unlike these articles, this paragraph authorizes court intervention only for redetermination, as opposed to initial determination, of the rent.

Art. 2677. Crop rent

When the parties to an agricultural lease agree that the rent will consist of a portion of the crops, that portion is considered at all times the property of the lessor.

Revision Comment -- 2004

This Article reproduces the substance of the first sentence of R.S. 9:3204. It does not change the law.

Section 3. The Term

Art. 2678. Term

The lease shall be for a term. Its duration may be agreed to by the parties or supplied by law.

The term may be fixed or indeterminate. It is fixed when the parties agree that the lease will terminate at a designated date or upon the occurrence of a designated event.

It is indeterminate in all other cases.

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Revision Comments -- 2004

(a) The first sentence of this Article reiterates the principle established in the first article of this Title that, in order for a contract to qualify as a lease, the contract must, *inter alia*, be "for a term," that is, it may not be perpetual. This principle is derived from Article 2674 of the Civil Code of 1870 (for "a certain time") and from Louisiana judicial decisions that have held that a perpetual "lease" is a *nudum pactum*. Becker & Associates, Inc. v. Lou-Ark Equipment Rentals Co., Inc., 331 So.2d 474 (La. 1976); Bristo v. Christine Oil & Gas Co., 139 La. 312, 71 So. 521 (1916); Calhoun v. Christine Oil & Gas Co., 139 La. 316, 71 So. 522 (1916); Dunham v. McCormick, 139 La. 317, 71 So. 523 (1916); Parrott v. McCormick, 139 La. 318, 71 So. 523 (1916); Nervis v. McCormick 139 La. 318, 71 So. 523 (1916); Leslie v. Blackwell, 370 So.2d 178 (La.App. 3 Cir. 1979).

(b) The second sentence of this Article provides that *the duration* of the term need not be specified in the contract. If it is not so specified, then the duration is supplied by law (legal term). See C.C. Art. 2680 (Rev. 2004). This principle is derived from Articles 2685 and 2687 of the Civil Code of 1870. In combination with Civil Code Articles 2679 and 2680 (Rev. 2004), this sentence enunciates the distinction between (a) conventional terms, that is, terms the duration of which is validly established by the parties; and (b) legal terms, that is, terms the duration of which is established by operation of law when the parties either did not specified the duration or provided for one not allowed by law, such as one exceeding ninety-nine years or one depending solely on the will of the lessee or the lessor who have not fixed a maximum. See C.C. Arts. 2679 and 2680 (Rev. 2004).

(c) The second and third paragraphs of this Article address the term's duration and enunciate a distinction between fixed terms and indeterminate terms. This distinction is important, *inter alia*, for purposes of termination of the lease. A lease with a fixed term terminates upon the expiration of the term but is susceptible of being reconducted. See C.C. Arts. 2720-2724 (Rev. 2004). A lease with an indeterminate term continues indefinitely until terminated through notice. See C.C. Arts. 2727-2729 (Rev. 2004).

(d) A term is fixed when, pursuant to the agreement of the parties, its terminal point is marked in advance by a particular date on the calendar or by the occurrence of a future event that is bound to occur, albeit on a date not yet known (e.g., the death of the lessee).

(e) A term is indeterminate if its terminal point is not fixed in advance but depends on the will of the parties subsequently expressed, such as a month-to-month lease or another periodical lease. An indeterminate term may be conventional, as when the parties agreed to a month-to-month lease, or it may be a legal term, as when the parties to a residential lease do not specify a term and thus trigger the application of the suppletive legal rules (see, e.g., C.C. Art. 2680 (Rev. 2004)) which provide that residential leases with an unspecified term are on a month-to-month basis. Although all the legal terms prescribed in Civil Code Article 2680 (Rev. 2004) are indeterminate, the reverse is not true--all indeterminate terms are not legal.

Art. 2679. Limits of contractual freedom in fixing the term

The duration of a term may not exceed ninety-nine years. If the lease provides for a longer term or contains an option to extend the term to more than ninety-nine years, the term shall be reduced to ninety-nine years.

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If the term's duration depends solely on the will of the lessor or the lessee and the parties have not agreed on a maximum duration, the duration is determined in accordance with the following Article.

Revision Comments -- 2004

(a) The first sentence of this Article imposes a quantitative limit on the otherwise unrestricted power of the parties to fix in advance the duration of the term of a lease. This limitation is dictated by public policy considerations. A lease for a duration longer than ninety-nine years differs little from a perpetual lease. It binds the parties and their successors for a period much longer than most people are able to envision and thereby imposes on them the risk of changing circumstances that they cannot anticipate. Such a lease also binds the property for too long a period, and thus keeps it out of commerce for most practical purposes. This is why many other civil codes impose similar, and usually shorter, maximum limitations on the duration of leases. See, e.g., Argentine C.C. Art. 1539 (ten years); Greek C.C. Art. 610 (thirty years or for the life of the lessee); Italian C.C. Arts. 1573, 1607, 1629 (30 years or for the life of the lessee, and ninety-nine years for rural lands intended for reforestation); Quebec C.C. Art. 1880 (100 years). The ninety-nine year maximum in this Article is derived from French law (see Decree of 18-29 December 1790) as well as from Louisiana jurisprudence. See State v. Board of Adm'rs of Tulane Education Fund, 125 La. 432, 51 So. 483 (1910) (upholding the validity of a ninety-nine year lease).

(b) The second sentence of this Article prescribes the consequences of a violation of the rule of the first sentence. A lease providing for an initial term that exceeds ninety-nine years is not for that reason invalid. Its term will simply be reduced by operation of law to ninety-nine years. The same is true for a lease that provides for a shorter initial term but allows either party the option of extending the lease's duration. (See C.C. Art. 2725 (Rev. 2004).) If the option is exercised so as to extend the lease to more than ninety-nine years from the beginning of the initial term, the lease will not be invalidated for that reason alone. Its duration will simply be reduced to ninety-nine years from the beginning of the initial term as provided by the second sentence of Civil Code Article 2679 (Rev. 2004).

(c) A lease for an indeterminate term, such as a year-to-year lease, that is allowed by the parties to last longer than ninety-nine years does not violate the rule of the first sentence of this Article. Since a lease for an indeterminate term can be terminated by either party through notice (see C.C. Arts. 2727-2729 (Rev. 2004)), the continuation of such a lease depends on the mutual and constantly-renewed consent of both parties. The fact that the lease is thus allowed to last for longer than ninety-nine years is due not to the parties' initial agreement, but rather to their subsequently expressed volition not to terminate the lease. The same is true of a lease for a fixed term shorter than ninety-nine years that is reconducted by the parties (see C.C. Arts. 2720-2723 (Rev. 2004)) so as to eventually last for a longer period. Here again, the ultimate duration of the lease is due not to the initial agreement of the parties in fixing the initial term, but rather to their subsequently-expressed volition to reconduct the lease. The same should be true for leases at will. See Comment (d).

(d) The second paragraph of this Article addresses situations in which the duration of the term is left entirely to the will of one party *and* in which the parties have *not* fixed a maximum term. This paragraph is intended to overrule Louisiana judicial decisions that have invalidated leases whose duration depended entirely on the will *of the lessee* on the theory that such leases have the potential of becoming perpetual. See Bristo v. Christine Oil & Gas Co., 139 La. 312, 71 So. 521 (1916); Leslie v. Blackwell, 370 So.2d 178 (La.App. 3 Cir. 1979). But see G.I.'s Club of

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Slidell v. American Legion Post #374, 504 So.2d 967 (La.App. 1 Cir. 1987). In *Bristo*, the court held that "to recognize that the defendant [lessee] has the right, without any obligation, to hold the plaintiff's land under a perpetual lease or option, would take the property out of commerce, and would be violative of the doctrine of ownership . . . ." 71 So. 521, at 522, (1916). The problem of the potential perpetuity of such a lease is also addressed by Civil Code Article 2678 (Rev. 2004), which prohibits perpetual leases, and by the first paragraph of Civil Code Article 2679 (Rev. 2004), which provides that a term agreed, or extended so as, to last longer than ninety-nine years is reduced to ninety-nine years. The rationale for the second paragraph of Civil Code Article 2679 (Rev. 2004) rests on a broader ground (which also explains why this provision has a broader scope than the jurisprudence it overrules) so as to encompass leases whose duration depends solely on the will *of the lessor*. The rationale is grounded on the inherent similarity of such leases to leases whose term has not been agreed to by the parties. Indeed, it can be said that, when the term's duration depends solely on the will of one party, there is in fact no agreement as to duration. Thus, it is appropriate to treat such a lease in the same fashion as a lease in which the parties were silent as to the duration of the term, and then to relegate it to Civil Code Article 2680 (Rev. 2004) for supplying the applicable term. This is a more equitable solution than that reached by those Louisiana cases (*supra*) that have treated as invalid agreements in which the terms' duration depended entirely on the will of the lessee. The same is true for leases whose duration depends solely on the will of the lessor. Since all the terms supplied by Civil Code Article 2680 (Rev. 2004) are indeterminate terms, and thus can be terminated by either party, the relegation to Civil Code Article 2680 (Rev. 2004) restores the necessary equilibrium between the parties without completely negating the volition of the party on whose will the duration was to depend.

(e) Leases in which the parties *have* fixed a maximum term but provided that one or the other party may terminate the lease at an earlier point do not fall within the scope of the second paragraph of Civil Code Article 2679 (Rev. 2004) and thus are not relegated by this provision to Civil Code Article 2680 (Rev. 2004). Such leases are perfectly valid. If the party that has the contractual right to terminate the lease before the end of the maximum term does not exercise this right, then the lease remains one with a fixed term and terminates upon the expiration of that term without the need of notice. See Article 2720 (Rev. 2004). If that party wants to exercise this right before the end of the term, then the lease becomes one with an indeterminate term and that party must give advance notice to the other party. See Article 2727 (Rev. 2004).

Art. 2680. Duration supplied by law; legal term

If the parties have not agreed on the duration of the term, the duration is established in accordance with the following rules:

(1) An agricultural lease shall be from year to year.

(2) Any other lease of an immovable, or a lease of a movable to be used as a residence, shall be from month to month.

(3) A lease of other movables shall be from day to day, unless the rent was fixed by longer or shorter periods, in which case the term shall be one such period, not to exceed one month.

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Revision Comments -- 2004

(a) This Article clarifies and supplements the provisions of Articles 2685 and 2687 of the Civil Code of 1870. It changes the law in two respects as explained in Comments (d) and (e).

(b) This Article applies when the parties have not agreed on the duration of the term. An agreement may be express or implied. See, e.g., C.C. Art. 2054 (Rev. 1984) which provides that "[w]hen the parties made no provision for a particular situation, it must be assumed that they intended to bind themselves not only to the express provisions of the contract, but also to whatever the law, equity, or usage regards as implied in a contract of that kind . . . ."

(c) By virtue of the express reference contained in the second paragraph of Civil Code Article 2679 (Rev. 2004), Civil Code Article 2680 (Rev. 2004) also applies to leases in which the parties, without fixing a maximum term, have agreed that the duration of the lease will depend solely on the will of either the lessor or the lessee.

(d) Once this Article becomes applicable, it provides the applicable term in a definite as opposed to a presumptive manner. This represents a change from the letter of Article 2687 of the Civil Code of 1870, which speaks of a presumptive term of one year in the case of an agricultural lease, and may represent a change from Article 2685 of the same code, which uses similar language ("considered") in the case of a residential lease. However, this change is more apparent than real. Civil Code Article 2680 (Rev. 2004) retains much of the flexibility of the source provisions, but this flexibility is available in determining whether the article is applicable, rather than in making it possible to displace it after it is found applicable. Moreover, several Louisiana cases have treated the presumptions of the source provisions as nearly irrebuttable. See, e.g., Jackson & Anderson v. Beling, 22 La.Ann. 377 (1870).

(e) Subparagraph (1) of Civil Code Article 2680 (Rev. 2004) deals with agricultural leases as defined in Civil Code Article 2671 (Rev. 2004) and supplies an indeterminate term from year to year. The one-year term is drawn from Article 2687 of the Civil Code of 1870, which, however, provides for a fixed term of one year rather than an indeterminate term from year to year. It is believed that this change is consistent with agricultural usage.

(f) Subparagraph (2) of Civil Code Article 2680 (Rev. 2004) reproduces the substance of Article 2685 of the Civil Code of 1870. It differs from the source provision in that it is not limited to a "house or other edifice" but encompasses any immovable (other than one that is the object of an agricultural lease). It also encompasses certain movables, such as trailers, that are rented for use as residences.

(g) Subparagraph (3) of Civil Code Article 2680 (Rev. 2004) is new. It fills a gap in the law which currently does not supply a term for leases of movables. The general term supplied by this provision is from day to day. However, if the rent is fixed by the parties by shorter periods, such as by the hour, the term shall be by the hour. Similarly, if the rent is fixed by longer periods not exceeding a month, such as by the week, then the term shall be from week to week.

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Section 4. Form

Art. 2681. Form

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A lease may be made orally or in writing. A lease of an immovable is not effective against third persons until filed for recordation in the manner prescribed by legislation.

Revision Comments -- 2004

(a) The first sentence of this Article restates the rule of Article 2683 of the Civil Code of 1870. The second sentence restates the rule currently found in the second paragraph of Civil Code Article 1839 (Rev. 1984) and R.S. 9:2721. Neither sentence changes the law.

(b) The recordation of leases is regulated by R.S. 9:2721, 2721.1, and 2722.

CHAPTER 3. THE OBLIGATIONS OF THE LESSOR AND THE LESSEE

Section 1. Principal Obligations

Art. 2682. The lessor's principal obligations

The lessor is bound:

(1) To deliver the thing to the lessee;

(2) To maintain the thing in a condition suitable for the purpose of which it was leased; and

(3) To protect the lessee's peaceful possession for the duration of the lease.

Revision Comments -- 2004

(a) This Article restates the substance of Article 2692 of the Civil Code of 1870 with some cosmetic changes in language. These changes are not intended to change the law. The words "without any clause to that effect" contained in the source provision have been omitted as self-evident.

(b) This Article serves to enunciate the three basic obligations of the lessor. These obligations, as well as the consequences of their breach, are defined further hereafter.

Art. 2683. The lessee's principal obligations

The lessee is bound:

(1) To pay the rent in accordance with the agreed terms;

(2) To use the thing as a prudent administrator and in accordance with the purpose for which it was leased; and

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(3) To return the thing at the end of the lease in a condition that is the same as it was when the thing was delivered to him, except for normal wear and tear or as otherwise provided hereafter.

Revision Comment -- 2004

This Article restates the three principal obligations of the lessee as defined in Article 2710 of the Civil Code of 1870 and pertinent Louisiana jurisprudence. This jurisprudence has long recognized that the obligation to return the thing at the end of the lease as that obligation is defined in Articles 2719 and 2720 of the Civil Code of 1870 is also one of the lessee's principal obligations. These obligations are defined further or modified in the more specific articles of this Title.

Section 2. Delivery

Art. 2684. Obligations to deliver the thing at the agreed time and in good condition

The lessor is bound to deliver the thing at the agreed time and in good condition suitable for the purpose for which it was leased.

Revision Comments -- 2004

(a) This Article restates the substance of the first sentence of Article 2693 of the Civil Code of 1870. It does not change the law. The jurisprudence interpreting the source provision continues to be relevant.

(b) The lessor's obligation to deliver the thing consists of: delivering the agreed thing; delivering the thing at the agreed time; and delivering the thing in good condition. Although not expressly mentioned in the source provision, delivery "at the agreed time" is a self-evident element of the obligation to deliver. What is "good condition" is determined by reference to the purpose for which the thing was leased as that purpose is defined in, or derived from, the contract.

(c) In keeping with the intent of the source provision as indicated by the phrase "free from any repairs" (C.C. Art. 2693 (1870)), the lessor's obligation to deliver the thing in good condition includes the obligation to make, *before delivery*, the repairs that are necessary in order for the thing to serve the purpose for which it was leased. This obligation is distinct from the lessor's obligation to make the repairs that become necessary *during the lease*. The latter obligation is addressed in Civil Code Article 2691 (Rev. 2004).

Art. 2685. Discrepancy between agreed and delivered quantity

If the leased thing is an immovable and its extent differs from that which was agreed upon, the rights of the parties with regard to such discrepancy are governed by the provisions of the Title of "Sale".

Revision Comments -- 2004

(a) This Article is derived from Article 2701 of the Civil Code of 1870. However, unlike the source provision which provides only for situations in which the extent of the delivered immovable is smaller than that which was agreed upon by the

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parties, Civil Code Article 2685 (Rev. 2004) addresses both that situation and the situation in which the extent of the delivered immovable is greater than that which was agreed upon. In both such situations, the rights of the parties will be governed by the provisions of the Title "Sale" (see, e.g, C.C. Arts. 2491-97 (Rev. 1993).

(b) Like the source provision, this Article does not apply to leases of movables. When the extent or quantity of the delivered movable or movables differs from that which was agreed upon, then, pursuant to Civil Code Article 2669 (Rev. 2004), the rights of the parties with regard to such a discrepancy will be governed by the provisions of the Titles of "Obligations in General" and "Conventional Obligations or Contracts."

Section 3. Use of the Thing by the Lessee

Art. 2686. Misuse of the thing

If the lessee uses the thing for a purpose other than that for which it was leased or in a manner that may cause damage to the thing, the lessor may obtain injunctive relief, dissolution of the lease, and any damages he may have sustained.

Revision Comments -- 2004

(a) This Article is derived in part from Article 2711 of the Civil Code of 1870 properly translated. The French text of the corresponding article of the 1825 Code (C.C. Art. 2681 (1825)) provided that the lessor could obtain dissolution of the lease "[if] the lessee makes another use of the thing than that for which it was intended, *or a use which may cause damage to* [the lessor]." The italicized phrase was erroneously translated into English as "*and if any loss is thereby sustained by* [the lessor]." This error, which unduly narrowed the lessor's right of dissolution, was either not detected or knowingly ignored by Louisiana jurisprudence. To the extent that it restores the original meaning conveyed by the French text, Civil Code Article 2686 (Rev. 2004) suppresses that jurisprudence.

(b) According to this Article, the lessor has *in principle* the right to obtain relief in two potentially different situations: (1) if the lessee uses the thing for a purpose other than that for which it was leased (and regardless of whether such use causes damage to the thing or the lessor); or (2) if the lessee uses the thing in a manner that *may* cause damage to the *thing*. However, the actual granting of relief, as well as the choice of the appropriate relief, is left to the discretion of the court upon proper weighing of all the circumstances of the particular case. Depending on the circumstances, the court may decide to grant none, one, any two, or all three of the remedies described in Civil Code Article 2686 (Rev. 2004).

(c) According to this Article, and in keeping with the principles enunciated in Civil Code Article 1987 (Rev. 1984) and Code of Civil Procedure Article 3601, the lessor need not show irreparable harm in order to obtain an injunction. The jurisprudence has adopted this principle even under the regime of Civil Code Article 2711 (1870), which did not expressly authorize injunctive relief. That jurisprudence continues to be relevant.

Art. 2687. Damage caused by fault

The lessee is liable for damage to the thing caused by his fault or that of a person who, with his consent, is on the premises or uses the thing.

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Revision Comments -- 2004

(a) This Article combines the substance of Articles 2721-2723 of the Civil Code of 1870, after omitting unnecessary verbiage. The omission of the word "only" found in Civil Code Article 2721 (1870) has only symbolic significance.

(b) However, this Article differs from the source provisions in that it defines more broadly the persons for whose fault the lessee is responsible for damage to the thing. According to the source provisions, the lessee was responsible for damage caused: by "his own fault" (C.C. Arts. 2721 and 2723 (1870)); by the fault of members of "his family" (C.C. Arts. 2722 and 2723 (1870)) or "household" (French text of (C.C. Arts. 2692 and 2693 (1825)); and by the fault of his sublessees (C.C. Art. 2722 (1870)). According to Civil Code Article 2687 (Rev. 2004), the lessee is responsible for the fault of all of the above persons, and in addition for the fault of all other persons "who, with his consent, [are] on the premises or [use] the thing," such as his invitees. The lessee is not responsible for damage caused by persons who use the thing without his consent, such as a passerby or a trespasser.

Art. 2688. Obligation to inform lessor

The lessee is bound to notify the lessor without delay when the thing has been damaged or requires repair, or when his possession has been disturbed by a third person. The lessor is entitled to damages sustained as a result of the lessee's failure to perform this obligation.

Revision Comments -- 2004

(a) This Article is new. It is derived in part from Article 2724 of the Civil Code of 1870, which imposed on agricultural lessees a duty to prevent encroachment upon the leased estate and to notify the lessor of such encroachment. Civil Code Article 2688 (Rev. 2004) reproduces not only the obligation to notify the lessor but extends that obligation to non-agricultural leases and expands its scope so as to encompass a duty to inform the lessor of any damage to, or a need for repair of, the thing.

(b) The imposition of the latter duty is a departure from present Louisiana jurisprudence under which the lessee is required to inform the lessor of damages or disrepairs only when the lessee seeks to repair and deduct the costs from the rent. This change is made in the interest of fairness. The lessee's obligation to inform the lessor is a proper counterweight to the lessor's obligation to keep the thing in proper condition and to make the necessary repairs. See C.C. Art. 2691 (Rev. 2004).

(c) The lessee's failure to give timely notice to the lessor as provided by Civil Code Article 2688 (Rev. 2004) gives rise to a right on the part of the lessor to demand damages. Such a failure does not give rise to a right of dissolution of the lease, nor does it relieve the lessor from the obligation to make repairs, or from any other responsibility the lessor may have under other provisions of law.

Art. 2689. Payment of taxes and other charges

The lessor is bound to pay all taxes, assessments, and other charges that burden the thing, except those that arise from the use of the thing by the lessee.

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Revision Comment -- 2004

This Article reproduces the substance of Article 2702 of the Civil Code of 1870. The words "unless there be a stipulation to the contrary" in the source provision have not been reproduced as unnecessary. The words "except those that arise from the use of the thing by the lessee" have been added in order to ensure that fees such as sewerage fees or water use fees which depend on the degree of use by the lessee would not be automatically borne by the lessor.

Section 4. Alterations, Repairs, and Additions

Art. 2690. Alterations by the lessor prohibited

During the lease, the lessor may not make any alterations in the thing.

Revision Comment -- 2004

This Article restates the substance of Article 2698 of the Civil Code of 1870. It does not change the law. The jurisprudence interpreting the source provision continues to be relevant. Civil Code Article 2690 (Rev. 2004) may be displaced by a contrary agreement that allows the making of such alterations, or by a statute, such as the Americans with Disabilities Act, that requires the making of such alterations.

Art. 2691. Lessor's obligation for repairs

During the lease, the lessor is bound to make all repairs that become necessary to maintain the thing in a condition suitable for the purpose for which it was leased, except those for which the lessee is responsible.

Revision Comments -- 2004

(a) This Article reproduces the substance of the second sentence Article 2693 of the Civil Code of 1870, except for the word "accidentally" which had no counterpart in the French text of the 1825 Code, Civil Code Article 2663 (1825).

(b) This Article is also intended to incorporate the substance of Civil Code Articles 2717 and 2718 (1870) which are not reproduced in this Revision as unnecessary. Since all repairs that are not expressly assigned to the lessee are borne by the lessor, it follows that the repairs mentioned in Civil Code Articles 2717 and 2718 (1870) should be borne by the lessor without any express provision to that effect. Although Civil Code Article 2692 (Rev. 2004) requires the lessee to "repair any deterioration," that article limits that requirement to deterioration caused by the lessee or his invitees and only "to the extent" such a deterioration "exceeds the normal or agreed use of the thing." Thus, Civil Code Articles 2691 and 2692 (Rev. 2004) together maintain the philosophy of the Civil Code of 1870 according to which the lessor, having bound himself to secure the lessee's enjoyment of the thing, must make all the necessary repairs, except those that are attributed to the fault of the lessee or are expressly assigned to the lessee by law or contract.

Art. 2692. Lessee's obligation to make repairs

The lessee is bound to repair damage to the thing caused by his fault or that of persons who, with his consent, are on the premises or use the thing, and to repair

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any deterioration resulting from his or their use to the extent it exceeds the normal or agreed use of the thing.

Revision Comments -- 2004

(a) The principle of this Article is derived from Articles 2715-2717 of the Civil Code of 1870. Although it uses different language than the source provisions, Civil Code Article 2692 (Rev. 2004) is nevertheless based on the same philosophy, namely that the lessee should bear responsibility for only that damage to, or repairs of, the thing that are attributable to his own fault or use or that of persons accountable to him. The Civil Code of 1870 assigns to the lessee those "necessary repairs . . . which it is incumbent on lessees to make . . . ." Art. 2715 (1870)) and then, perhaps in an attempt to provide legal certainty, provides a list of those repairs (C.C. Art. 2716 (1870)). However, because that list was merely illustrative (". . . and everything of that kind, according to the custom of the place." id.), the 1870 Code did not in fact produce the desired certainty. Moreover, even if that list were perfect, the fact that it was confined to leases of buildings would limit its utility in serving as a basis for this Revision which provides equally for all types of leases. This is why, rather than attempting to reproduce the casuistic listing of repairs contained in Civil Code Article 2716 (1870), Civil Code Article 2692 (Rev. 2004) extracts from that list the common denominators of the repairs enumerated in Civil Code Article 2716 (1870) and recasts them in language that is sufficiently general so as to apply all leases, including leases of movables.

(b) According to this Article, the lessee is bound to repair "[any] damage to the thing [that is] caused by his fault or that of persons who, with his consent, are on the premises or use the thing . . . ." This obligation is consistent with the lessee's responsibility "for the injuries and losses sustained through his own fault." C.C. Art. 2721 (1870). See also C.C. Art. 2687 (Rev. 2004).

(c) The lessee is also bound to repair "any deterioration" resulting from his use and the use of "persons who, with his consent, are on the premises or use the thing," but only to the extent that such deterioration exceeds the "normal or agreed use of the thing." In other words, as was the case under the Civil Code of 1870 (see C.C. Arts. 2719 and 2720 (1870)), the lessee is not responsible for repairing the deterioration that is caused by normal wear and tear of the thing. See also C.C. Art. 2683 (Rev. 2004). However, in some instances the parties may have agreed, expressly or tacitly, that the lessee may engage in uses that exceed, or differ from, the normal uses of a thing. In those instances, the lessee should not be responsible for deterioration resulting from uses that remain within the limits of the "agreed" use.

(d) Through the use of the phrase "unless the contrary hath been stipulated," Article 2715 of the Civil Code of 1870 allowed the lessor and the lessee to deviate from the division of responsibility for repairs prescribed by that article and its companion articles. The quoted words have not been reproduced in Civil Code Article 2692 (Rev. 2004) as being unnecessary. Since the provisions of Civil Code Article 2692 (Rev. 2004) are not "enacted for the protection of the public interest" (C.C. Art. 7 (Rev. 1987)), the parties retain the same freedom as under the old law to agree to a different division of responsibility for repairs than that provided by Civil Code Articles 2691 and 2692 (Rev. 2004).

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Art. 2693. Lessor's right to make repairs

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If during the lease the thing requires a repair that cannot be postponed until the end of the lease, the lessor has the right to make that repair even if this causes the lessee to suffer inconvenience or loss of use of the thing.

In such a case, the lessee may obtain a reduction or abatement of the rent, or a dissolution of the lease, depending on all of the circumstances, including each party's fault or responsibility for the repair, the length of the repair period, and the extent of the loss of use.

Revision Comments -- 2004

(a) The first paragraph of this Article reproduces the substance of the first sentence of Article 2700 of the Civil Code of 1870. It does not change the law.

(b) The second paragraph of this Article reproduces the principle contained in the second and third sentences of Article 2700 (1870), but without the confining details found therein. Thus, the reference to "repairs . . . be[ing] of such nature as to oblige the tenant to leave the house or the room and to take another house," has been deliberately avoided because Civil Code Article 2693 (Rev. 2004) is not confined to residential leases. Similarly, the reference to "repairs . . . continu[ing] for a longer time than one month" has also been avoided because Civil Code Article 2693 (Rev. 2004) applies as much to short-term leases as to long-term leases. Rather than reproducing the confining casuistry of the source provision, the second paragraph of Civil Code Article 2693 (Rev. 2004) enunciates a flexible formula which requires the court to consider all the circumstances before deciding which, if any, of the three options provided in that paragraph would be the most appropriate in the particular case.

Art. 2694. Lessee's right to make repairs

If the lessor fails to perform his obligation to make necessary repairs within a reasonable time after demand by the lessee, the lessee may cause them to be made. The lessee may demand immediate reimbursement of the amount expended for the repair or apply that amount to the payment of rent, but only to the extent that the repair was necessary and the expended amount was reasonable.

Revision Comment -- 2004

This Article restates the principles of Article 2694 of the Civil Code of 1870 with minor modifications and clarifications, such as the references to "reasonable time," the possibility of "immediate reimbursement," and the substitution of "necessary" for "indispensable" repairs.

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Art. 2695. Attachments, additions, or other improvements to leased thing

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In the absence of contrary agreement, upon termination of the lease, the rights and obligations of the parties with regard to attachments, additions, or other improvements made to the leased thing by the lessee are as follows:

(1) The lessee may remove all improvements that he made to the leased thing, provided that he restore the thing to its former condition.

(2) If the lessee does not remove the improvements, the lessor may:

(a) Keep the improvements and reimburse the lessee for their costs or for the enhanced value of the leased thing whichever is less; or

(b) Demand that the lessee remove the improvements within a reasonable time and restore the leased thing to its former condition. If the lessee fails to do so, the lessor may remove the improvements and restore the leased thing to its former condition at the expense of the lessee or keep the improvements without any obligation of reimbursement to the lessee.

Revision Comments -- 2004

(a) This Article applies to "attachments, additions, or other improvements" made to the leased thing by the lessee during the lease. Attachments and additions are examples of "improvements." "Other improvements" may include items mentioned in Civil Code Articles 463, 465, 466 (Rev. 1978), 491 (Rev. 1979), 493 (Rev. 1984), 495, 496, and 510 (Rev. 1979), such as buildings, other constructions, plantings, or other "works." Consistently with other provisions of the Civil Code as well as prevailing judicial usage, Civil Code Article 2695 (Rev. 2004) uses the term "improvement" in its technical meaning which differs from popular usage to the extent it encompasses items that may not actually "improve" the thing or enhance its value. See C.C. Arts. 2726 (Amended 1984), 493(Rev. 1984), 495, 497 (Rev. 1979), 558, 601, 602 (Rev. 1976), and 804 (Rev. 1990).

(b) Civil Code Article 2695 (Rev. 2004) provides a suppletive rule of law that applies only in the absence of a contrary agreement regarding the fate of the improvements at the end of the lease. The agreement may be made at any time, such as at the making of the lease contract, or at any time before or after the making of the improvement. The agreement may be express or implied. See, e.g., C.C. Art. 2054 (Rev. 1984) which provides that "[w]hen the parties made no provision for a particular situation, it must be assumed that they intended to bind themselves not only to the express provisions of the contract, but also to whatever the law, equity, or usage regards as implied in a contract of that kind . . . ."

(c) Civil Code Article 2695 (Rev. 2004) establishes a self-contained rule that departs from the rule of Article 2726 of the Civil Code of 1870. The latter article regulated this issue through a cross-reference to the Civil Code's provisions on accession to immovables, in particular Articles 493, 493.1, 493.2 (Rev. 1984), and 495 (Rev. 1979). Besides failing to provide for cases in which the leased thing is a movable, this cross-reference imported to the law of leases the numerous deficiencies and inequities of the law of accession. These deficiencies are noted in Symeonides,

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Developments in the Law, 1982-83: Property, 44 La. L. Rev. 505, 519-27 (1983); See Symeonides, Developments in the Law, 1983-84: Property, 45 La. L. Rev. 541, 541-49 (1984); Symeonides, Developments in the Law, 1985-86: Property, 47 La. L. Rev. 429, 444-52 (1986). Civil Code Article 2695 (Rev. 2004) attempts to cure these deficiencies by providing a special self-contained rule applicable directly to leases of immovables as well as of movables. Civil Code Article 2695 (Rev. 2004) applies only if the relationship between the two parties qualifies as a lease. For other relationships, such as those involving precarious possessors who are not lessees, Civil Code Articles 493 et seq. remain applicable.

(d) The phrasing and arrangement of Civil Code Article 2695 (Rev. 2004) make clear that the first option in determining the fate of the improvements upon termination of the lease belongs to the lessee. In the absence of a contrary agreement: (a) the lessee has the right to remove the improvements, even if he had made them without the lessor's consent; and (b) the lessor may not prevent their removal, even if they were made with his consent. Depending on the circumstances, the making of improvements without the lessor's consent may amount to a breach of the lessee's obligations under Civil Code Articles 2683(2), 2686, or 2687 (Rev. 2004) and if so the lessor has the remedies available through those articles. But at the termination of the lease, restoration of the thing to its former condition is also one of the lessee's obligations under Civil Code Article 2683(3) (Rev. 2004) and removal of the improvements is a means of discharging that obligation. Conversely, in the absence of a contrary agreement, the fact that the lessor consented to the making of the improvements does not deprive the lessee of the right to remove them, or the lessor of the right to force their removal at the end of the lease. See Comment (f).

(e) If the lessee removes the improvements but does not restore the thing to its former condition, the lessee is liable for damages under Civil Code Article 2687 (Rev. 2004).

(f) If the lessee does not exercise his right to remove the improvements, then, again in the absence of contrary agreement, the lessor gets to exercise the two main options provided in subparagraph (2) of Civil Code Article 2695 (Rev. 2004), namely: (a) keep the improvements, in which case he is bound to reimburse the lessee for their costs or for the enhanced value of the leased thing, whichever is less; or (b) demand that the lessee remove the improvements within a reasonable time and restore the thing to its former condition. If the lessee fails to do so, the lessor gets two further options: (I) have the improvements removed and the thing restored to its former condition at the expense of the lessee; or (ii) keep the improvements. In the latter case, the lessor owes no reimbursement to the lessee.

Section 5. Lessor's Warranties

Subsection 1. Warranty Against Vices or Defects

Art. 2696. Warranty against vices or defects

The lessor warrants the lessee that the thing is suitable for the purpose for which it was leased and that it is free of vices or defects that prevent its use for that purpose.

This warranty also extends to vices or defects that arise after the delivery of the thing and are not attributable to the fault of the lessee.

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Revision Comment -- 2004

This Article restates in part the principles of Articles 2692 and 2695 of the Civil Code of 1870.

Art. 2697. Warranty for unknown vices or defects

The warranty provided in the preceding Article also encompasses vices or defects that are not known to the lessor.

However, if the lessee knows of such vices or defects and fails to notify the lessor, the lessee's recovery for breach of warranty may be reduced accordingly.

Revision Comment -- 2004

The first paragraph of this Article restates in part the principle of Article 2695 of the Civil Code of 1870 with regard to vices or defects that are not known to the lessor. The second paragraph of this Article departs from the source provision by making an exception for vices or defects that were known to the lessee but not to the lessor.

Art. 2698. Persons protected by warranty

In a residential lease, the warranty provided in the preceding Articles applies to all persons who reside in the premises in accordance with the lease.

Revision Comment -- 2004

This Article addresses a problem encountered by Louisiana judicial decisions which had difficulty in deciding whether the lessor's warranty extends to members of the lessee's family or household and, if so, on what legal basis. See Vernon Palmer, Leases: The Law in Louisiana, § 3-17 (1982). This Article resolves this problem by expressly extending the warranty to the above persons as well as other persons who reside in the premises in accordance with the lease.

Art. 2699. Waiver of warranty for vices or defects

The warranty provided in the preceding Articles may be waived, but only by clear and unambiguous language that is brought to the attention of the lessee.

Nevertheless, a waiver of warranty is ineffective:

(1) To the extent it pertains to vices or defects of which the lessee did not know and the lessor knew or should have known;

(2) To the extent it is contrary to the provisions of Article 2004; or

(3) In a residential or consumer lease, to the extent it purports to waive the warranty for vices or defects that seriously affect health or safety.

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Revision Comments -- 2004

(a) This Article is new. It is derived from Louisiana jurisprudence, but also departs from it in some respects as explained below. This Article applies to the warranty for vices or defects as defined in Civil Code Articles 2696-2698 (Rev. 2004). It does not apply to the warranty of peaceful possession, which is defined in Civil Code Articles 2700-2702 (Rev. 2004) and which may not be waived.

(b) Civil Code Article 2699 (Rev. 2004) introduces the principle that, as a general proposition, the warranty for vices or defects is waivable. However, to be effective, a waiver: (a) must meet the conditions specified in the first paragraph of the Article; *and* (b) must not fall within *any one* of the three exceptions or prohibitions specified in the second paragraph.

(c) The first paragraph of Civil Code Article 2699 (Rev. 2004) provides that, to be effective, a waiver must be written in "clear and unambiguous language" and that language must be "brought to the attention of the lessee." The quoted phrases parallel language found in Civil Code Article 2548 (Rev. 1993) with regard to sales, and codifies pertinent Louisiana jurisprudence in lease cases. In summarizing the jurisprudence, Judge King stated: "It is well established that for the waiver of implied warranty in a contract of sale or lease to be effective that it must be (1) written in clear and unambiguous terms, (2) the waiver must be contained in the written contract, and (3) the waiver either must be brought to the attention of the buyer or lessee or explained to him. Cf. Louisiana National Leasing Corporation v. ADF Service, Inc., et al, supra, (Dissenting Opinion of Chief Justice Dixon); Theriot v. Commercial Union Ins. Co., 478 So.2d 741 (La.App. 3 Cir.1985) and cases cited therein; Thibodeaux v. Meaux's Auto Sales, Inc., 364 So.2d 1370 (La.App. 3 Cir.1978); Hendricks v. Horseless Carriage, Inc., 332 So.2d 892 (La.App. 2 Cir.1976); Prince v. Paretti Pontiac Co., 281 So.2d 112 (La.1973). Louisiana cases are generally in accord and constitute a recognition that where limitations of warranty are not the result of actual bargaining that they should not be given literal effect. Wolfe v. Henderson Ford, Inc., 277 So.2d 215 (La.App. 3 Cir.1973); The Work of the Louisiana Appellate Courts for the 1968-1969 Term-Particular Contracts, 30 La.L.Rev. 171, 214. An exclusion or waiver of warranty by which parties take themselves out of the coverage of specific or general law and make a law unto themselves must be strictly construed and our courts have been reluctant to give effect to stipulated waivers of the warranty implied by law. Wolfe v. Henderson Ford, Inc., supra; Harris v. Automatic Enterprises of Louisiana, Inc., 145 So.2d 335 (La.App. 4 Cir.1962)." J.L. Andrus v. Cajun Insulation Co., Inc., 524 So.2d 1239, at 1245-46 (La. App. 3rd Cir. 1988) (King, J., concurring).

(d) The second paragraph of Civil Code Article 2699 (Rev. 2004) introduces three *independent* exceptions to the principle of waivability enunciated in the first paragraph of the Article. When applicable, *any one* of these exceptions renders a waiver ineffective, even a waiver that meets the requirements of the first paragraph of Civil Code Article 2699 (Rev. 2004), namely a waiver written in "clear and unambiguous language that is brought to the attention of the lessee." The first two exceptions (clauses (1) and (2)) apply to all leases, including residential or consumer leases. The third exception (clause (3)) applies to residential leases or consumer leases only. These leases are defined in Civil Code Article 2671 (Rev. 2004).

(e) The first exception (stated in clause (1)) pertains to vices or defects which were not known to the lessee but of which the lessor "knew or should have known." The knowledge standard is subjective with regard to the lessee (actual knowledge) and objective with regard to the lessor ("knew or should have known.") A waiver is ineffective if: (a) the lessee did not know of the vice or defect; *and* (b) the lessor either knew or should have known of it. Conversely, a waiver is effective: (a) if,

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regardless of the lessor's knowledge, the lessee knew of the vice or defect; *or* (b) if, regardless of the lessee's knowledge, the lessor did not know nor should he have known of the vice or defect.

(f) The second exception (stated in clause (2)) applies to cases in which the waiver exceeds the limits of Civil Code Article 2004 (Rev. 1984). Civil Code Article 2004 (Rev. 1984) provides that "[a]ny clause is null that, in advance, excludes or limits the liability of one party for intentional or gross fault that causes damage to the other party . . . [or] excludes or limits the liability of one party for causing physical injury to the other party." A waiver that exceeds the limits of Civil Code Article 2004 (Rev. 1984) is ineffective, even if the waiver is otherwise effective under the other provisions of Civil Code Article 2699 (Rev. 2004).

(g) The third exception (stated in clause (3)) applies to residential or consumer leases only. See Civil Code Article 2671 (Rev. 2004). This exception reflects the philosophy of Louisiana jurisprudence which, "in recognition of the inequality of bargaining power between landlords and tenants," has been "very reluctant to find that the tenant has waived his legal rights," so much so that some authors speak of "[t]he aversion of Louisiana courts to waiver of this warranty." G. Armstrong & J. LaMaster, "The Implied Warranty of Habitability: Louisiana Institution, Common Law Innovation," 46 *La. L. Rev.* 195, 214, 215 (1985). Modern civil law codifications, as well as the majority of the states of the United States, now directly prohibit waivers of this warranty in residential and consumer leases. See, e.g., Quebec Civ. Code Arts. 1900, 1901, and 1910; N.Y. Real Prop. Law Sec. 235-b; Vt.St. 9:4457; Me.St. 10:9097(7); Wi.St. 101.953(3); Ca.Civ.Code Secs. 1797.4 and 1812.646. Rather than completely prohibiting waivers of this warranty, clause (3) adopts the middle position of limiting the prohibition to situations in which the waiver encompasses vices or defects that seriously affect health or safety. To the extent that a waiver purports to encompass those vices or defect, the waiver is ineffective even if it is otherwise effective under the other provisions of Civil Code Article 2699 (Rev. 2004). Conversely, a waiver that does not fall within the prohibition of clause (3) is nevertheless ineffective if it fails to meet the other requirements for an effective waiver specified in the other provisions of Civil Code Article 2699 (Rev. 2004).

(h) Civil Code Article 2699 (Rev. 2004) deals with the contractual obligations between the parties rather than with the delictual or quasi-delictual obligations that one party may incur vis a vis the other party, or vis a vis third parties. Consequently, Civil Code Article 2699 (Rev. 2004) does not supersede the provisions of R.S. 9:3221 which provides for delictual or quasi-delictual obligations incurred as a result of injury occurring in the leased premises. Section 3 of this Act amends and reenacts R.S. 9:3221 to provide that the amendment and reenactment of Civil Code Article 2699 does not change the law of R.S. 9:3221. Similarly, but also for additional reasons, Civil Code Article 2699 (Rev. 2004) does not supersede the provisions of R.S. 9:2795, which limits the delictual liability of the owner of property used for recreational purposes.

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Subsection 2. Warranty of Peaceful Possession

Art. 2700. Warranty of peaceful possession

The lessor warrants the lessee's peaceful possession of the leased thing against any disturbance caused by a person who asserts ownership, or right to possession of, or any other right in the thing.

In a residential lease, this warranty encompasses a disturbance caused by a person who, with the lessor's consent, has access to the thing or occupies adjacent property belonging to the lessor.

Revision Comments -- 2004

(a) The first paragraph of this Article restates the principles found in Articles 2692, 2696, and 2704 of the Civil Code of 1870. It reiterates one of the lessor's principal obligations (see C.C. Art. 2682 (Rev. 2004)) to ensure and protect the lessee's peaceful possession for the duration of the lease. The lessor is bound to not only refrain from interfering with the lessee's peaceful possession but also to defend and protect that possession against disturbances caused by third persons who claim a right in the leased thing.

(b) When the lessor interferes with the lessee's peaceful possession through the lessor's own acts or those of persons acting on the lessor's behalf, the lessor is in direct breach of this warranty obligation. The consequences of this breach are determined under the provisions of the Titles of "Obligations in General" and "Conventional Obligations or Contracts" which are made applicable by Civil Code Articles 2669 and 2719 (Rev. 2004). Depending on the circumstances, the lessee's remedies may consist of damages, injunctive relief, or dissolution of the lease. See Lacour v. Myer, 98 So.2d 308 (La.App. 1st Cir. 1957); Butler v. Jones, 21 So.2d 181 (La.App. Orl. 1945); Eddy v. Monaghan, 60 So.2d 717 (La.App. Orl. 1952); Fontenot v. Benoit, 128 So.2d 815 (La.App. 3 Cir. 1961); Lansalot v. Mihaljevich, 125 So. 183 (La.App. Orl. 1929).

(c) The lessor's warranty obligation extends to disturbances caused by third persons who do not act on the lessor's behalf but who assert ownership, or right to possession of, or any other right in, the leased thing. In such a case, the lessor is "bound to take all steps necessary to protect the lessee's possession" (C.C. Art. 2701 (Rev. 2004)). If the lessor fails to do so, the lessor breaches this warranty obligation and is answerable to the lessee accordingly. See Comment (c) under C.C. Art. 2701 (Rev. 2004).

(d) When the person who disturbs the lessee's possession does not claim a right in the thing, as in the case of a passerby, a trespasser, or a squatter, the lessor is not bound to protect the lessee's possession. See C.C. Art. 2702 (Rev. 2004). The second paragraph of Civil Code Article 2700 (Rev. 2004) introduces an exception to this principle in the case of a residential lease. The sentence provides that if the person who causes the disturbance had access to the leased thing with the lessor's consent or if that person, again with the lessor's consent, occupies adjacent property belonging to the lessor, then the lessor is bound to protect the lessee's possession even if the disturber does not claim a right in the thing. This exception is derived from Louisiana jurisprudence which has held the lessor responsible for disturbances committed by persons over whom the lessor had control, such as occupants of

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adjacent apartments owned by the lessor. See, e.g., Keenan v. Flanigan, 157 La. 749, 103 So. 30 (1925); Gayle v. Auto-Lec Stores, 174 La. 1044, 142 So. 258 (1932). The second paragraph of Civil Code Article 2700 (Rev. 2004) speaks only of residential leases. It is not intended to authorize an *a contrario* argument with regard to other leases in appropriate cases.

(e) As used in Civil Code Articles 2700, 2701, and 2702 (Rev. 2004), the term "disturbance" of possession is intended to have the same meaning as in Article 3659 of the Code of Civil Procedure, even though the latter article is applicable to immovables only. Code of Civil Procedure Article 3659 distinguishes between a "disturbance in fact" and a "disturbance in law." A "disturbance in fact" may be an "eviction" or any other physical act which, though falling short of eviction, "prevents the possessor . . . from enjoying his possession quietly, or which throws any obstacle in the way of that enjoyment." Id. A "disturbance in law" is "the execution, recordation, registry, or continuing existence of record of any instrument which asserts or implies a right of ownership or to the possession of . . . property or of a real right therein, or any claim or pretension of ownership or right to the possession thereof . . . ." Id. Both of these types of disturbances fall within the scope of the lessor's warranty of peaceful possession under Civil Code Article 2700 (Rev. 2004).

Art. 2701. Call in warranty

The lessor is bound to take all steps necessary to protect the lessee's possession against any disturbance covered by the preceding Article, as soon as the lessor is informed of such a disturbance. If the lessor fails to do so, the lessee may, without prejudice to his rights against the lessor, file any appropriate action against the person who caused the disturbance.

If a third party brings against the lessee an action asserting a right in the thing or contesting the lessee's right to possess it, the lessee may join the lessor as a party to the action and shall be dismissed from the action, if the lessee so demands.

Revision Comments -- 2004

(a) This Article is derived from Articles 2692, 2696, and 2704 of the Civil Code of 1870. The scope of this Article is co-extensive with the scope of the lessor's warranty obligation as defined in Civil Code Article 2700 (Rev. 2004). Thus, both paragraphs of Civil Code Article 2701 (Rev. 2004) apply only when the disturbance or action in question is one of those that fall within the lessor's warranty.

(b) The lessee is "bound to notify the lessor without delay . . . when his possession has been disturbed by a third person," C.C. Art. 2688 (Rev. 2004) and the lessor is bound to take prompt and effective steps to defend and protect the lessee's possession. If the lessor fails to do so, the lessee may file against the person who caused the disturbance any appropriate action, including a possessory action or an action for injunction. See Civil Code Article 3440 (Rev. 1982) which provides that "the possessory action is available to a precarious possessor, such as a lessee . . ., against anyone except the person for whom he possesses." For the rationale and import of the latter article, see comments under Civil Code Article 3440 (Rev. 1982).

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(c) The filing of such an action by the lessee is "without prejudice to his rights against the lessor." A lessor who fails to take prompt and effective steps to protect the lessee's possession is in breach of his warranty obligation and thus is answerable to the lessee accordingly. Article 2696 of the Civil Code of 1870 provided that "[i]f the lessee be evicted, the lessor is answerable for the damage and loss which he sustained by the interruption of the lease." Although this provision has not been reproduced in this Revision, the same result obtains under the provisions of the Titles of "Obligations in General" and "Conventional Obligations or Contracts" which are made applicable by Civil Code Article 2669 (Rev. 2004). Under these provisions, the lessee may be entitled to a remedy even if the disturbance in question fell short of eviction. For the difference between a disturbance that amounts to eviction and a disturbance that falls short of eviction, see C.C.P. Art. 3659. Additionally, under Civil Code Article 2719 (Rev. 2004), the lessee "may obtain dissolution of the lease pursuant to the provisions of the Title of 'Conventional Obligations or Contracts.'"

(d) The second paragraph of Civil Code Article 2701 (Rev. 2004) reproduces in part Article 2704 of the Civil Code of 1870, which provided that "if the lessee is cited to appear before a court of justice to answer to the complaint of the person thus claiming the whole or a part of the thing leased, or claiming some servitude on the same, he shall call the lessor in warranty, and shall be dismissed from the suit if he wishes it, by naming the person under whose rights he possesses."

Art. 2702. Disturbance by third persons without claim of right

Except as otherwise provided in Article 2700, the lessor is not bound to protect the lessee's possession against a disturbance caused by a person who does not claim a right in the leased thing. In such a case, the lessee may file any appropriate action against that person.

Revision Comments -- 2004

(a) The first sentence of this Article restates the principle of Article 2703 of the Civil Code of 1870. The lessor is not bound to protect the lessee's possession against a disturbance caused by a person such as a bystander, a squatter, or a trespasser who does not claim a right in the leased thing. With regard to residential leases, however, this principle, is subject to the exception provided in the second paragraph of Civil Code Article 2700 (Rev. 2004).

(b) The second sentence of this Article recasts in broader and more accurate terms the principle enunciated in the last phrase of Article 2703 of the Civil Code of 1870. The English version of that sentence in the Civil Code of 1870 left the impression that the lessee's remedy was confined to an action for damages ("the lessee has a right of action for damages sustained against the person occasioning such disturbance"). However, the French version of the corresponding article of the 1808 and 1825 codes made it clear that an action for damages was only one of the lessee's remedies ("sauf au preneur a les poursuivre en son nom, et a demander, s'il y echet, des dommages -- interets de ces voies de fait.") Consistently with this principle, Louisiana courts have not hesitated to grant injunctive relief to a lessee, even though at that time lessees and other precarious possessors were not allowed to bring a possessory action in their own name. See Indian Bayou Hunting Club, Inc. v. Taylor, 261 So.2d 669 (La.App. 3 Cir. 1972) (relying on C.C.P. Art. 3663(2); Caney Hunting Club, Inc. v. Tolbert, 294 So.2d 894 (La.App. 2 Cir. 1974) (relying on C.C.P. Art. 3601). With the enactment of Civil Code Article 3440 (Rev. 1982), which allows a precarious possessor to file in his own name a possessory action "against anyone

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except the person for whom he possesses," there should be no doubt that the lessee may file in his own name any appropriate action against the disturber. The second sentence of Civil Code Article 2702 (Rev. 2004) reaffirms this principle.

Section 6. Payment of Rent

Art. 2703. When and where rent is due

In the absence of a contrary agreement, usage, or custom:

(1) The rent is due at the beginning of the term. If the rent is payable by intervals shorter than the term, the rent is due at the beginning of each interval.

(2) The rent is payable at the address provided by the lessor and in the absence thereof at the address of the lessee.

Revision Comment -- 2004

This Article is derived in part from Louisiana jurisprudence and in part from foreign civil codes. It is believed that this Article conforms with current usage in Louisiana.

Art. 2704. Nonpayment of rent

If the lessee fails to pay the rent when due, the lessor may, in accordance with the provisions of the Title of "Conventional Obligations or Contracts", dissolve the lease and may regain possession in the manner provided by law.

Revision Comment -- 2004

This Article is based on Paragraph A of Article 2712 of the Louisiana Civil Code of 1870. (Paragraph B of that article will be transferred to the Revised Statutes; See R.S. 9:3259.2 as enacted by this Act). This Article provides that the lessee's failure to pay the rent when due entitles the lessor to cause a dissolution of the lease as provided in the Title on "Conventional Obligations or Contracts" (see, e.g., C.C. Arts. 2013-2024 (Rev. 1984) and to regain possession of the thing in the manner provided by law (see, e.g., C.C.P. Arts. 4701-4705 and 4731-4735).

Art. 2705. Abatement of rent for unforeseen loss of crops

In the absence of contrary agreement, the agricultural lessee may not claim an abatement of the rent for the loss of his unharvested crops unless the loss was due to an unforeseeable and extraordinary event that destroyed at least one-half of the value of the crops. Any compensation that the lessee has received or may receive in connection with the loss, such as insurance proceeds or government subsidies, shall be taken into account in determining the amount of abatement.

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Revision Comment -- 2004

The first sentence of this Article reproduces the substance of Articles 2743 and 2744 of the Louisiana Civil Code of 1870. The second sentence is new. As was the case under the source provisions, the lessee's right to claim abatement of the rent for accidental loss of his crop is an extremely limited right which exists only with regard to unharvested, not harvested, crops.

Art. 2706. Loss of crop rent

When the rent consists of a portion of the crops, then any loss of the crops that is not caused by the fault of the lessor or the lessee shall be borne by both parties in accordance with their respective shares.

Revision Comment -- 2004

This Article is drawn from the general principles of co-ownership and from R.S. 9:3204 (replaced by Civil Code Article 2677 (Rev. 2004)), which provides that "[i]n a lease of land for part of the crop, that part which the lessor is to receive is considered at all times the property of the lessor." Since in leases of the type contemplated by Civil Code Article 2706 (Rev. 2004), the parties co-own the crop, they should bear proportionally the risk of accidental loss of the co-owned, unharvested *or* harvested, crop.

Section 7. Lessor's Security Rights

Art. 2707. Lessor's privilege

To secure the payment of rent and other obligations arising from the lease of an immovable, the lessor has a privilege on the lessee's movables that are found in or upon the leased property.

In an agricultural lease, the lessor's privilege also encompasses the fruits produced by the land.

Revision Comments -- 2004

(a) This Article continues the privilege granted by Civil Code Article 2705 (1870), but slightly modifies its expression and consequences. Former Civil Code Article 2705 (1870) granted to the lessor a "right of pledge" over the movables of the lessee that were found on the property leased. This impliedly gave the lessor the privilege of a pledgee (C.C. Art. 3157). Civil Code Article 3218 (1870) then declared that the lessor's right, was of a "higher nature than a mere privilege" because the lessor, could "take the effects themselves and retain them until he is paid." The Code thus rather clearly stated that the lessor not only enjoyed a privilege over the lessee's property, but that he had the same right as a pledgee who, if the debtor defaults may simply continue to hold the pledged property until he is paid and is not required to execute upon it. Notwithstanding that the rather clear provisions of the Code equating the lessor's rights to a form of pledge, it was also obvious that his "possession" which is the essence of pledge existed only in principle and fictitiously, if at all.

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(b) Attempts by a lessor to enforce his "pledge" extra-judicially by taking actual possession of the lessee's movables, were almost universally rejected by the courts as being an unlawful interference with or implied termination of the lease. They thus held that the lessor had no right of self-help and could not obtain actual possession of the lessee's property by "padlocking" the premises and excluding the lessee from them or by physically removing the lessee's effects from the premises, except under the very narrow circumstances where the lessee had clearly abandoned the premises without removing his property. See: Bunel of New Orleans, Inc. v. Cigali, 348 So.2d 993 (La.App. 4 Cir. 1977); Lucas v. Ludwig, 313 So.2d 12 (La.App. 4 Cir. 1975), Reh. Den. (1975), Writ Ref. (1975); Mena v. Barnard, 113 So.2d 332 (La.App. 2 Cir. 1959), Reh. Den. (1959); Reed v. Walthers, 193 So. 253 (La.App. Orl.1940); Lansalot v. Mihaljevich, 125 So. 183 (La.App. Orl. 1929); Pelletier v. Sutter et al., 121 So. 364 (La.App. Orl. 1929); and Wolf v. Cuccia, 144 La. 336, 80 So. 581 (1919).

(c) Civil Code Articles 2705 and 3218 (1870) were thus construed as ordinarily requiring the lessor to proceed judicially, originally by a writ of provisional seizure, or after the latter was abolished, by way of sequestration and as an incident to a suit for the rent, unless the lessee voluntarily surrendered his property to the lessor in satisfaction of the debt or recognition of the privilege. (See C.C.P Art. 3572) This pragmatically placed the so-called pledge of the lessor in about the same category as any that of any other non-possessory privilege.

(d) Under Civil Code Article 2707 (Rev. 2004), the lessor rights are defined simply as a privilege on the lessee's movables that are found in or upon the leased property. Civil Code Article 3218 (1870) is repealed and Civil Code Article 3219 (1870) is amended to provide that the manner in which the privilege is enforced is regulated by the Title of Lease. Consequently, absent a contemporaneous agreement or voluntary surrender of the property by the debtor, enforcement of the privilege requires, like all other non-possessory privileges, a judicial seizure and sale of property as an incident to the enforcement of the secured obligation itself. The change in the Article does not affect either the nature or priority of the privilege vis a vis other creditors of the lessee, nor the existence of a privilege in favor of the lessor, which is continued unabated by Civil Code Article 2707 (Rev. 2004).

(e) The second and third paragraphs of former Civil Code Article 2705 (1870) also are omitted from Civil Code Article 2707 (Rev. 2004). The second paragraph of the Civil Code Article 2705 (1870) contained a list of movable property subject to the privilege. With the exception of a reference to growing crops, explained below, Civil Code Article 2707 (Rev. 2004) simply subjects to the privilege "the lessee's movables that are found in or upon the leased property."

(f) The third paragraph of former Civil Code Article 2705 (1870) contained a list of property of the lessee that was exempt from seizure. R.S. 13:3881 describes property that is exempt from seizure "under any writ, mandate, or process whatsoever" and largely duplicates the third paragraph of former Civil Code Article 2705 (1870). Although Civil Code Article 2707 (Rev. 2004) provides that the privilege encompasses all of the lessee's movables that are found in or upon the leased property, it also assumes that absent a particular waiver, R.S. 13:3881 is applicable to the property it lists when the lessor attempts to execute his privilege by writ of sequestration or fieri facias and thus provides the lessee substantially the same protection as did Civil Code Article 2705 (1870). It should be noted, perhaps, that R.S. 13:3881(B)(2) which makes the exemption inapplicable to "property on which the debtor has voluntarily granted a lien" is not intended to apply to the lessor's privilege. The paragraph is based on an implied waiver of the exemption, since granting a "lien" implicitly is a consent to the sale of the property over which the "lien" is granted. However, the action of the lessee in merely agreeing to lease

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property, can hardly be construed as being expressive of a present intention to waive the exemption from seizure given him by law of all of the future property he may bring onto the premises of whatever nature it may be or value it may have. Nor is it reasonable to assume that merely placing such property on the premises represents a present expression of an intention by a debtor to waive a beneficial right given to him by law in favor of a creditor who has already extended the credit.

(g) Although Civil Code Article 2707 (Rev. 2004) grants a privilege over all of the movables of the lessee that or found in or upon the leased property, the second paragraph of Civil Code Article 2707 (Rev. 2004) also specifically extends the privilege, in the case of an agricultural lease, to the fruits produced by the land. This was done to set at rest any lingering doubts as to the nature of the fruits produced by an agricultural lessee before they are gathered and recognize the applicability of Civil Code Article 474 (Rev. 1978) which rather clearly characterizes growing crops as being "movables by anticipation" when grown by a lessee.

(h) Neither does Civil Code Article 2707 (Rev. 2004) modify the rule of Civil Code Article 2710 (Rev. 2004), which extinguishes the privilege as to movables that are removed from the leased property for more than fifteen days, or that cannot be identified, or that no longer belong to the lessee.

Art. 2708. Lessor's privilege over sublessee's movables

The lessor's privilege extends to the movables of the sublessee but only to the extent that the sublessee is indebted to his sublessor at the time the lessor exercises his right.

Revision Comments -- 2004

(a) This Article maintains the rule of former Civil Code Article 2706 (1870) that the lessor's privilege extends to the property of a sub-lessee of the premises, but only to the extent that the sublessee is indebted to the sublessor when the lessor exercises his right. The provision of Civil Code Article 2706 (1870) that the sublessee could not claim the benefit, in such a case, of payments made to the sublessor in anticipation of the time they were due under the contract of sublease has been omitted. Since the contract of lease need not be in writing, it is difficult to see how, in the first instance, that a payment of a future installment of rent made by the sublessee and accepted by the sublessor, is not an implied amendment of the terms of the lease as to the time and method of payment of the installment, which was not prohibited by Civil Code Article 2706 (1870).

(b) The underlying premise of Civil Code Article 2708 (Rev. 2004) is that the lessor is in fact doing little more than indirectly exercising the privilege enjoyed by the sublessor (who as a lessor of the sublessee is entitled to a privilege over the sublessee's property). A lessor seldom executes the lease in reliance upon the financial worth of a sublessee and in the rare case in which he might do so, other means of security are available if he wishes to use the sublessee's rent as security and protect against a waiver or payment by anticipation in advance of a default by the lessee.

(c) Civil Code Article 2708 (Rev. 2004) by its terms grants a privilege over the sublessee's property, directly to the lessor in his own right independently of the rights of the sublessor to the extent of the rent due by the sublessee. The sublessee may, of course raise any defense to the claim of the lessor that he could raise against the sublessor, since his property is liable to no greater extent that his obligation.

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Furthermore, since the privilege created by Civil Code Article 2708 (Rev. 2004) is security for the rental obligation of the lessee, there is no implication that there is a subrogation of the lessor to any other the rights of the sublessor or an imposition of personal liability by the sublessee to the lessor.

Art. 2709. Lessor's right to seize movables of third persons

The lessor may lawfully seize a movable that belongs to a third person if it is located in or upon the leased property, unless the lessor knows that the movable is not the property of the lessee.

The third person may recover the movable by establishing his ownership prior to the judicial sale in the manner provided by Article 1092 of the Code of Civil Procedure. If he fails to do so, the movable may be sold as though it belonged to the lessee.

Revision Comments -- 2004

(a) The provisions of former Civil Code Articles 2707 and 2708 (1870) that subjected movables of third persons to the privilege if the movables were in a house, store, or shop unless they were there only transiently or accidentally have been suppressed. Civil Code Article 2709 (Rev. 2004) omits reference to the existence of the privilege over the property of a third person.

(b) Civil Code Article 2709 (Rev. 2004) extends its provisions not only to property that is located in a house, store, or shop as did former Civil Code Article 2707 (1870), but to any movables in or upon the leased property.

(c) Civil Code Article 2709 (Rev. 2004) provides that the lessor "may lawfully" seize a third person's property if the lessor does not know that the property is not that of the lessee. It further provides that if a third person's property is in fact seized, it may be sold "as though it belonged to the lessee", unless the third person intervenes pursuant to the provisions of C.C.P. Art. 1092 and proves his ownership before the judicial sale occurs. Civil Code Article 2709 (Rev. 2004) relieves the lessor who in good faith causes a third person's property to be seized and sold from any liability for damages for wrongful seizure.

Art. 2710. Enforcement of the lessor's privilege

The lessor may seize the movables on which he has a privilege while they are in or upon the leased property, and for fifteen days after they have been removed, if they remain the property of the lessee and can be identified.

The lessor may enforce his privilege against movables that have been seized by the sheriff or other officer of the court, without the necessity of a further seizure thereof, as long as the movables or the proceeds therefrom remain in the custody of the officer.

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Revision Comments -- 2004

(a) The provisions of this Article continue and restate the provisions of paragraphs A and B of the former Civil Code Article 2709 (1870) continuing the privilege over the lessee's property for fifteen days after it is removed from the leased property as long as it can be identified and remains the lessee's property. Civil Code Article 2710 (Rev. 2004) modifies former Civil Code Article 2709 (1870) to the extent that Civil Code Article 2709 (1870) extinguished the privilege when the property was taken from the leased premises with the consent of the lessor. This condition is omitted from Civil Code Article 2710 (Rev. 2004) so that the privilege continues even if the removal from the premises is done with the consent of the lessor. Part of the difficulty with Civil Code Article 2709 (1870) was that an action for eviction (which is not in itself an action for the rent) is a demand by the lessor that the lessee quit the premises and remove his property from it. It was not deemed not reasonable that by demanding a defaulting lessee vacate the premises, or failing that by recovering possession of his premises by the expeditious remedy of eviction, the lessor has waived his rights of security because he has "consented to the removal" of the property from the premises.

(b) The second paragraph of Civil Code Article 2710 (Rev. 2004) continues the provisions of former Civil Code Article 2709 (1870) that if movables subject to the privilege are seized by another creditor of the lessee and as long as the property remains in custodia legis, the lessor may intervene in the proceedings and assert his privilege, without the necessity of himself provoking a seizure.

Section 8. Transfer of Interest by the Lessor or the Lessee

Art. 2711. Transfer of thing does not terminate lease

The transfer of the leased thing does not terminate the lease, unless the contrary had been agreed between the lessor and the lessee.

Revision Comments -- 2004

(a) This Article is based on Article 2733 of the Louisiana Civil Code of 1870, which provided that "[i]f the lessor sells the thing leased, the purchaser can not turn out the tenant before his lease has expired, unless the contrary has been stipulated in the contract." The history of the source provision suggests that it was intended as an exception to the requirement of recordation, that is, it was intended to make an unrecorded lease of an immovable assertible against the transferee. See Stadnik, The Doctrinal Origins of the Juridical Nature of Lease in the Civil Law, 54 Tul. L. Rev. 1094, 1135 (1980). However, both the jurisprudence and the legislature have taken a contrary position which is now codified in R.S. 9:2721 et seq., the public records statute. This statute provides that "[n]o . . . lease . . . affecting immovable property shall be binding on or affect third persons . . . unless and until filed for registry in the office of the parish recorder of the parish where the land or immovable is situated." This principle is reiterated in Civil Code Article 2712 (Rev. 2004), which applies to immovables only and to that extent functions as an exception from the rule of Civil Code Article 2711 (Rev. 2004) by providing that an unrecorded lease is not assertible against the transferee.

(b) If the leased thing is a movable or an immovable subject to a recorded lease, then Civil Code Article 2712 (Rev. 2004) is inapplicable, and, in the absence of a contrary agreement between the lessor and the lessee, the lease continues in effect between the original parties despite the transfer of the thing by the lessor. This is consistent with the principle that "a lease of a thing that does not belong to the lessor

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may nevertheless be binding on the parties," Civil Code Article 2674 (Rev. 2004), and that "ownership of the thing by the lessor is not an essential element of the contract of lease." Comment (c) under Civil Code Article 2674 (Rev. 2004). For example, the lessor remains bound to warrant the lessee's peaceful possession. This principle was expressly stated in Article 2682 of the Civil Code of 1870 which provided that "[h]e who lets out the property of another, warrants the enjoyment of it against the claim of the owner." Although Civil Code Article 2682 (1870) is not reproduced in this Revision, the underlying principle is implicit in both Civil Code Article 2674 (Rev. 2004) and Civil Code Article 2711 (Rev. 2004). Similarly, the lessor is entitled to collect rent, and the lessee may not refuse to pay rent or perform his other obligations because of the lessor's lack of ownership. Comment (c), C.C. Art. 2674 (Rev. 2004).

(c) Conversely, the transferee of a movable or an immovable subject to an unrecorded lease may not evict the lessee "because [his] right to use [the leased thing] has been alienated prior to his acquisition." Port Arthur Towing Co. v. Owens-Illinois, Inc., 352 F.Supp. 392 at 398 (W.D. La. 1972), affirmed 492 F.2d 688 (5 Cir. 1974). See also R.S. 9:2721(C) (providing that the acquirer of immovable property "subject to a recorded lease agreement that is not divested by the acquisition, shall take the property subject to all of the provisions of the lease,") Carmouche v. Jung, 157 La. 441, 102 So. 518 (1924); Clague v. Townsend, 1 Mart. (N.S.) 264 (1823); Walker v. Van Winkle, 8 Mart. (N.S.) 560 (1830). See also Hardy v. Lemons, 36 La.Ann. 146 (1884) (a lessee of a horse or other movable property cannot be divested of possession thereof, by the lessor's sale of it to a third party). The transferee does not, by virtue of the transfer alone, become the lessor and does not assume the lessor's obligations (see C.C. Arts. 1821 et seq. (Rev. 1984). Nor is the transferee subrogated to the lessor's rights (see C.C. Arts. 1821 et seq. (Rev. 1984), except the right to protect the thing from abuse or waste by the lessee. See C.C. Arts. 2686 and 2687 (Rev. 2004).

Art. 2712. Transfer of immovable subject to unrecorded lease

A third person who acquires an immovable that is subject to an unrecorded lease is not bound by the lease.

In the absence of a contrary provision in the lease contract, the lessee has an action against the lessor for any loss the lessee sustained as a result of the transfer.

Revision Comments -- 2004

(a) Civil Code Article 2681 (Rev. 2004) provides that "[a] lease of an immovable is not effective against third persons until filed for recordation in the manner prescribed by legislation." The public records statutes, R.S. 9:2721 et. seq., also provide to the same effect, define the pertinent terms such as "third person," and prescribe in detail the specific requirements and standards. The first paragraph of Civil Code Article 2712 (Rev. 2004) reiterates the principles of the public records statutes and should be interpreted accordingly in *pari materia* with those statutes.

(b) Civil Code Article 2711 (Rev. 2004) deals with the relationship between the lessor and the lessee and provides that, in the absence of a contrary agreement between them, the transfer of the leased thing does not terminate the lease. In contrast, the first paragraph of Civil Code Article 2712 (Rev. 2004) deals with the relationship between the lessee and a "third person" who--usually through a transfer from the lessor--acquires an immovable that is subject to an unrecorded lease. This paragraph provides that the third person is not--by virtue of this acquisition alone--bound by the lease.

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(c) The second paragraph of Civil Code Article 2712 (Rev. 2004) returns to the relationship between the lessor and the lessee and defines the lessee's rights vis a vis the lessor for any loss the lessee may have sustained as a result of the transfer. For example, if the third person transferee exercises his right to evict the lessee before the end of the term, then the lessor--who has put the transferee in that position--is in breach of his obligation of warranty of peaceful possession. See C.C. Art. 2700 (Rev. 2004). Because of the seriousness of this breach, Civil Code Article 2712 (Rev. 2004) gives the lessee an express cause of action to recover any loss the lessee sustained. This remedy is in keeping with the general law of obligations, as well as Articles 2735 *et seq*. of the Civil Code of 1870. (These articles required the lessor to indemnify the lessee even in cases in which the lease granted to the lessor the right to terminate the lease by transferring the thing, as long as the lease was silent on the issue of indemnification.) Like all other obligations under the lease, the lessor's obligation to warrant the lessee's peaceful possession is binding between the lessor and the lessee even if the lease is not recorded or is not in writing. (See C.C. Art. 2681 (Rev. 2004) which provides that even an oral lease is binding between the parties, although with regard to third parties a lease is ineffective unless recorded.) The lessee's failure to record the lease explains why the lessee will not be protected vis-a-vis the third person transferee who relied on the public records. Such failure, however, may not be invoked by the lessor as an excuse for breaching his obligations with impunity.

(d) The lessee's rights described in comment (c) may be negated or modified by "a contrary provision in the lease contract," such as a provision that reserves to the lessor the right to transfer the immovable before the end of the term. If, in exercising this right, the lessor remains within the confines of that provision and complies with the notice requirements of Civil Code Article 2718 (Rev. 2004), the lessor should ordinarily be able to defeat an action by the lessee. Article 2734 of the Civil Code of 1870 provided a similar solution for cases in which the lessor "ha[d] reserved to himself in the agreement, the right of taking possession of the thing leased whenever he should think proper." In such cases, the Article provided, the lessor who had complied with the notice requirements was "not bound to make any indemnification to the lessee, unless it be specified by the contract." A somewhat different solution was provided by the Civil Code of 1870 for cases in which the lease allowed the lessor to transfer the thing and the transferee to take immediate possession of it. In such cases, the Code provided in Civil Code Article 2735 (1870) that "if no indemnification has been stipulated, the lessor shall be bound to indemnify the lessee in the . . . manner [provided in Civil Code Articles 2736-2741 (1870)]." The second paragraph of Civil Code Article 2712 (Rev. 2004) is similar to Civil Code Article 2735 (1870) in that both provisions give primacy to an agreement of the parties on the issue of indemnification. However, unlike Civil Code Article 2735 (1870), the above paragraph contains no presumption in favor of indemnification in those cases in which the lease allowed the lessor to transfer the thing and the transferee to take immediate possession of it.

Art. 2713. Lessee's right to sublease, assign, or encumber

The lessee has the right to sublease the leased thing or to assign or encumber his rights in the lease, unless expressly prohibited by the contract of lease. A provision that prohibits one of these rights is deemed to prohibit the others, unless a contrary intent is expressed. In all other respects, a provision that prohibits subleasing, assigning, or encumbering is to be strictly construed against the lessor.

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Revision Comment -- 2004

The first sentence of this Article restates the principle of Article 2725 of the Civil Code of 1870. The second sentence is new. The third sentence restates the principle of the second paragraph of Civil Code Article 2725 (1870) properly understood. That paragraph provided that "[t]he interdiction [of the right to sublease] . . . is always construed strictly." In derogation of general principles of interpretation, some cases have erroneously construed such interdiction *against the lessee*. The third sentence of Civil Code Article 2713 (Rev. 2004) corrects this error.

CHAPTER 4. TERMINATION AND DISSOLUTION

Section 1. Rules Applicable to All Leases

Art. 2714. Expropriation; loss or destruction

If the leased thing is lost or totally destroyed, without the fault of either party, or if it is expropriated, the lease terminates and neither party owes damages to the other.

Revision Comments -- 2004

(a) This Article is derived from Civil Code Article 2728 (1870) and from the first sentence of Civil Code Article 2697 (1870). The former article provided that the lease terminates by "the loss of the thing leased," apparently contemplating a total loss of the thing. The latter article provided that the lease also terminates if the thing is "totally destroyed by an unforseen event" or is "taken for a purpose of public utility." The scope of Civil Code Article 2714 (Rev. 2004) is coextensive with that of the source provisions in that it contemplates total loss or total destruction of the thing, or expropriation of the whole thing. (If the loss or destruction is only partial, or only part of the thing is expropriated, the applicable article is Civil Code Article 2715 (Rev. 2004).)

(b) If the loss or destruction is total, or if the whole thing is expropriated, then under Civil Code Article 2714 (Rev. 2004), the lease terminates, regardless of whether the events that brought about the loss or destruction are attributable to the fault of either party. Although this Article contains the phrase "without the fault of either party," that phrase addresses the parties' right to claim damages. That is, if the loss or destruction was not attributable to the fault of either party, then "neither party owes damages to the other." Conversely, if the loss or destruction was attributable to the fault of one party then, of course, that party would owe damages to the other, but the lease would also terminate for the simple reason that the destruction of the whole object of the contract renders performance impossible. *Cf.* C.C. Art. 1876 (Rev. 1984). This is consistent with Civil Code Article 2728 (1870), which provided that the loss of the thing terminated the lease, without making any reference to the parties' fault. See also C.C. Art. 751 (Rev. 1977) (providing that a predial servitude is extinguished by "the total destruction of the dominant estate or the part of the servient estate burdened with the servitude," again without any reference to the parties' fault); Austrian Civil Code Article 1112 (providing that the lease terminates if the thing is destroyed and that "[i]f this happens through the fault of one party, the other is entitled to indemnification; if it happens by accident, neither of the parties is liable to the other therefor.") While it is true that Civil Code Article 2697 (1870) spoke of destruction caused "by an unforeseen event," thus contemplating something beyond the control of the parties, that reference was tied to the last sentence of the article which releases the lessor from the obligation to pay damages. The same is true

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under Civil Code Article 2714 (Rev. 2004), in the sense that if the loss or destruction is "without the fault of either party," then "neither party owes damages to the other."

(c) Expropriation of the whole thing also results in the total loss of use of the thing and thus terminates the lease. (For partial expropriation, see Civil Code Article 2715 (Rev. 2004). The jurisprudence has held that the fact that the lease terminates does not deprive the lessee of the right to demand compensation from the expropriating authority if such compensation is otherwise due. See Holland v. State, Dept. of Transp., 554 So.2d 727 (La.App. 2 Cir. 1989), writ denied 559 So.2d 125 (La. 1990); State, Through Dept. of Highways v. Champagne, 371 So.2d 626 (La.App. 1 Cir. 1979), reversed in part on other grounds 379 So.2d 1069 (La. 1980), on remand, 391 So.2d 1234 (La.App. 1 Cir. 1980). This jurisprudence continues to be relevant.

(d) When the requirements of Civil Code Article 2714 (Rev. 2004) are met, the lease terminates "of right" or "by operation of law," that is, without the need for judicial intervention. The quoted words are translations of the French terms *de plein droit*, which were contained in the French text of the predecessor of Civil Code Articles 2697 and 2728 (1870) in the 1825 Code, but were not reproduced in the English translation of that Code. They are also not reproduced in Civil Code Article 2714 (Rev. 2004), because they are self-evident. *Cf.* C.C. Arts. 613 (Rev. 1976) and 751 (Rev. 1977).

(e) The fact that the lease terminates by operation of law does not mean that such termination is inescapable. The jurisprudence has held that the parties may prevent such termination by inserting appropriate clauses in the lease contract. See Cerniglia v. Napoli, 517 So.2d 1209 (La.App. 4 Cir. 1987); S. Gumbel Realty & Securities Co. v. Levy, 156 So. 70 (La.App. Orleans 1934). This jurisprudence continues to be relevant.

Art. 2715. Partial destruction, loss, expropriation, or other substantial impairment of use

If, without the fault of the lessee, the thing is partially destroyed, lost, or expropriated, or its use is otherwise substantially impaired, the lessee may, according to the circumstances of both parties, obtain a diminution of the rent or dissolution of the lease, whichever is more appropriate under the circumstances. If the lessor was at fault, the lessee may also demand damages.

If the impairment of the use of the leased thing was caused by circumstances external to the leased thing, the lessee is entitled to a dissolution of the lease, but is not entitled to diminution of the rent.

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Revision Comments -- 2004

(a) This Article is derived in part from two separate provisions of the Civil Code of 1870: (a) the second sentence of Civil Code Article 2697 (1870), which dealt with cases of partial destruction of the leased thing; and (b) Civil Code Article 2699 (1870), which dealt with cases in which the leased thing "cease[s] to be fit for the purpose for which it was leased, or . . . [its] use [is] much impeded . . . ." Both provisions contemplated situations in which neither the lessor nor the lessee were at fault. However, while the former provision allowed for either diminution of the rent or dissolution of the lease, the second provision allowed only for dissolution of the lease. Reasoning that dissolution is a more drastic remedy than diminution of the rent, the jurisprudence concluded that the permission of the major also includes the minor and thus has granted the remedy of diminution in cases covered by Civil Code Article 2699 (1870). See, e.g., Hinrich v. City of New Orleans, 50 La.Ann. 1214, 24 So. 224 (1898); Foucher v. Choppin, 17 La.Ann. 321 (1865). Civil Code Article 2715 (Rev. 2004) grants both remedies, but only with regard to cases falling within the scope of the first paragraph of the Article.

(b) Civil Code Article 2715 (Rev. 2004) applies to cases of partial destruction, loss, or expropriation of the leased thing. For cases of total destruction, loss, or expropriation, see Civil Code Article 2714 (Rev. 2004). Civil Code Article 2715 (Rev. 2004) also applies to other cases in which the use of the thing is "otherwise substantially impaired." The quoted phrase is intended to have the same meaning as the phrase "much impeded" in the source provision. The first paragraph of Civil Code Article 2715 (Rev. 2004) provides that if these events were not attributable to the fault of the lessee, then the lessee is entitled to either diminution of the rent or dissolution of the lease, "whichever is more appropriate under the circumstances." If these events were attributable to the fault of the lessor, then the lessee may also demand damages, in addition to diminution of the rent or dissolution of the lease.

(c) The second paragraph of Civil Code Article 2715 (Rev. 2004) introduces an exception from the rule of the first paragraph to the extent it allows only for dissolution of the lease but not for diminution of the rent. The exception applies only to cases in which the use of the leased thing is "otherwise substantially impaired" (that is, in cases other the partial destruction, loss, or expropriation of the thing) and in which the impairment of use is caused by "circumstances external to the leased thing." One example of such a circumstance is the one provided by Article 2699 of the Civil Code of 1870 (a neighbor who, "by raising his walls . . . intercept[s] the light of a house leased . . ."). Another is a zoning or other governmental regulation that results in or imposes substantial restrictions on the use of the leased thing. As these examples indicate, the circumstances contemplated by this paragraph must not be attributable to the fault of the lessor. If such fault is shown, however, then the lessee's remedies are not confined to dissolution of the lease.

Art. 2716. Termination of lease granted by a usufructuary

A lease granted by a usufructuary terminates upon the termination of the usufruct.

The lessor is liable to the lessee for any loss caused by such termination, if the lessor failed to disclose his status as a usufructuary.

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Revision Comments -- 2004

(a) The first paragraph of this Article restates the rule found in the first sentence of Civil Code Article 2730 (1870) and in the second sentence of Civil Code Article 567 (Rev. 1976).

(b) The second paragraph of Civil Code Article 2716 (Rev. 2004) recasts in affirmative terms the language of the second paragraph of Civil Code Article 2730 (1870), and resolves an ambiguity inherent in the source provision. Under the new paragraph, the lessor is liable for the termination of the lease not only when he affirmatively represented himself as the owner of the thing, but also when he failed to disclose the fact that he was merely a usufructuary.

(c) The source provision also refers to the "heirs of the lessor" as being responsible for indemnification, thus giving the impression that the article contemplated only situations in which the usufruct had terminated by the death of the usufructuary. Although justifiable from a literal perspective, that impression was not accurate. Indeed, both the language of the first paragraph of Civil Code Article 2730 (1870) and the source from which it was derived suggest that the article was not confined to cases in which the usufruct terminates by death, but was instead intended to encompass terminations from any other cause. The same is true of Civil Code Article 2716 (Rev. 2004). Consequently, the words "heirs of the lessor" have been replaced by the word "lessor." If the lessor dies, his heirs will, of course, be responsible, since this obligation is heritable.

Art. 2717. Death of lessor or lessee

A lease does not terminate by the death of the lessor or the lessee or by the cessation of existence of a juridical person that is party to the lease.

Revision Comments -- 2004

(a) This Article reproduces the principle of Article 2731 of the Civil Code of 1870 and codifies the jurisprudence that extended that principle to juridical persons. As provided in the source provision, the death of either the lessor or the lessee does not dissolve or terminate the lease. The obligations created by the lease contract are not "strictly personal" as this tern is defined by Civil Code Article 1766 (Rev. 1984). Rather they are heritable obligations (see Civil Code Article 1765 (Rev. 1984)) and hence they may be enforced by or against the heirs of the lessor or the lessee. See Cheney v. Haley, 142 So. 312 (La.App. 2 Cir. 1932); Dyer v. Wilson, 190 So. 851 (La.App. 2 Cir. 1939).

(b) The same principle applies when a party to the lease is a juridical person, such as a partnership or corporation or any other "entity to which the law attributes personality." C.C. Art. 24 (Rev. 1987). When, for whatever reason, that personality ceases to exist, the lease does not necessarily terminate. Since the obligations created by the lease are "heritable," they may be enforced by or against that person's successors.

(c) Article 2732 of the Louisiana Civil Code of 1870 provided that "[t]he lessor can not dissolve the lease for the purpose of occupying himself the premises, unless that right has been reserved to him by the contract." That Article is not reproduced in this Revision because it is self-evident.

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Art. 2718. Leases with reservation of right to terminate

A lease in which one or both parties have reserved the right to terminate the lease before the end of the term may be so terminated by giving the notice specified in the lease contract or the notice provided in Articles 2727 through 2729, whichever period is longer. The right to receive this notice may not be renounced in advance.

Revision Comments -- 2004

(a) This Article deals with leases in which the parties have agreed on a maximum term, but have also agreed that the lessor, the lessee, or both, will have the right to terminate the lease at an earlier time for reasons other than a breach by the other party. If the party entitled to this right does not exercise it, then the lease is treated as one with a fixed term, which terminates upon the expiration of the term as provided in Civil Code Article 2720 (Rev. 2004) without the need to give notice. Civil Code Article 2718 (Rev. 2004) becomes operative when the party that has the contractual right to terminate the lease before the end of the term wants to exercise this right. Civil Code Article 2718 (Rev. 2004) provides that this party must give to the other party the notice specified in the lease contract, if any is specified, or the notice prescribed in Civil Code Articles 2727-2729 (Rev. 2004), whichever provides for a longer notice period. Civil Code Article 2718 (Rev. 2004) also provides that this right to be given notice may not be renounced in advance.

(b) Article 2732 of the Civil Code of 1870 provided indirectly that the lessor could "dissolve the lease for the purpose of occupying himself the premises," if that right has been "reserved to him by the contract." Civil Code Article 2718 (Rev. 2004) preserves this right, subject to the notice requirements provided in the Article. Article 2735 of the Civil Code of 1870 provided -- in effect and indirectly -- that the lessor could reserve in the contract of lease the right to terminate the lease by transferring the thing. Civil Code Article 2718 (Rev. 2004) preserves this right, subject to the notice requirements provided in the Article. However, Civil Code Article 2718 (Rev. 2004) is broader than either of the source provisions in that it also encompasses cases in which the lessor has reserved the right to terminate the lease for other reasons. In addition, Civil Code Article 2718 (Rev. 2004) encompasses cases in which the same right to terminate has been reserved to the lessee.

(c) Civil Code Article 2718 (Rev. 2004) does not address questions of any indemnification that may be owed by the party who exercises the right to terminate the lease before the end of the term. Whether such indemnification is owed will depend on a proper interpretation of the lease contract, including consideration of applicable customs and usages. Articles 2734-2740 of the Civil Code of 1870, which provided for such indemnification for certain cases, are not reproduced in this Revision. The starting premise of Civil Code Article 2718 (Rev. 2004) is that, subject to the overriding obligation of good faith enunciated in Civil Code Article 1770 (Rev. 1984), the mere exercise of the right granted by the contract to either the lessor or the lessee to terminate the contract as provided in Civil Code Article 2718 (Rev. 2004) does not, in and of itself, give rise to a duty to indemnify the other party.

Art. 2719. Dissolution for other causes

When a party to the lease fails to perform his obligations under the lease or under this Title, the other party may obtain dissolution of the lease pursuant to the provisions of the Title of "Conventional Obligations or Contracts".

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

Revision Comments -- 2004

(a) This Article reproduces the substance of Article 2729 of the Civil Code of 1870. It may be changing the law as explained in Comment (b).

(b) Article 2729 of the Civil Code of 1870 provided for the dissolution of leases "in the manner expressed concerning contracts in general." At the time this cross-reference was made, the pertinent articles of the Civil Code of 1870 (*e.g.*, C.C. Arts. 2046 and 2047) provided only for a *judicial* dissolution of contracts but did not authorize extra-judicial dissolution on the initiative of one party only. Although it has been argued that cases interpreting Article 2046 of the Civil Code of 1870 allowed such extra-judicial dissolution in cases of "active breach" (see Comment (a) under C.C. Arts. 2013 and 2015 (Rev. 1984) and cases cited therein), none of these cases involved a contract of lease. The jurisprudence on leases has steadfastly adhered to the principle that judicial intervention is necessary. See Vernon Palmer, Leases: The Law in Louisiana, § 5-18 (1982). The first express legislative authorization for extra-judicial dissolution of contracts in general was made by the 1984 revision of the Civil Code's Obligations provisions in the circumstances described in C.C. Arts. 2013 and 2015-2017 (Rev. 1984). Whether the above-quoted cross-reference in Article 2729 of the Civil Code of 1870 should somehow be "updated" so as to encompass these new articles on extra-judicial dissolution, or whether the cross-reference should instead be read in light of the pre-1984 obligations articles of the 1870 code which did not authorize extra-judicial dissolution, is a question that has not been answered by the jurisprudence on leases. Civil Code Article 2719 (Rev. 2004) resolves this question by authorizing the application of all the pertinent articles of the Title of "Conventional Obligations or Contracts" dealing with dissolution (see, e.g., C.C. Arts. 2013-2024 (Rev. 1984)), *including* those that authorize extra-judicial dissolution on the initiative of one party and at his or her own risk.

(c) Civil Code Article 2719 (Rev. 2004) applies when a party "fails to perform" his obligations under the lease or under this Title. Failure to perform is defined by Civil Code Article 1994 (Rev. 1984) as "nonperformance, defective performance, or delay in performance." However, under Civil Code Article 2014 (Rev. 1984), "[a] contract may not be dissolved when the obligor has rendered a substantial part of the performance and the part not rendered does not substantially impair the interest of the obligee." This is consistent with the position of the jurisprudence that has refused to dissolve leases for minor violations, a position that is often synopsized in the phrase "abrogation of leases is not favored by law." Tullier v. Tanson Enterprises, Inc., 359 So.2d 654 (La.App. 1 Cir. 1978) reversed on other grounds 367 So.2d 773 (La. 1979); Arbo v. Jankowski, 39 So.2d 458 (La.App. Orl. 1949); Lillard v. Hulbert, 9 So.2d 852 (La.App. 1 Cir. 1942); Kling v. Maloney, 7 La. App. 751 (La.App. Orleans 1927); United Shoe Stores v. Burt, 142 So. 370 (La.App. 2 Cir. 1932); Vernon Palmer, Leases, § 5-19 (1982). This jurisprudence continues to be relevant in granting judicial dissolution under Civil Code Article 2719 (Rev. 2004). *A fortiori*, this jurisprudence is relevant in judging the propriety of extra-judicial dissolution.

(d) Because a lease is a contract "providing for continuous or periodic performance," (Civil Code Article 2019 (Rev. 1984)), the effect of its dissolution "shall not be extended to any performance already rendered." *Id*. See also Comment (b) under Civil Code Article 2019 (Rev. 1984). In other words, dissolution is *ex tunc* only or what is called in French legal literature *resiliation*. See Comment (c) under C.C. Art. 2019 (Rev. 1984). This is consistent with the jurisprudence on leases. See Palmer, *supra*, at § 5-18.

Section 2. Leases With A Fixed Term

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

Art. 2720. Termination of lease with a fixed term

A lease with a fixed term terminates upon the expiration of that term, without need of notice, unless the lease is reconducted or extended as provided in the following Articles.

Revision Comments -- 2004

(a) This Article, as well as this Section, applies only to leases "with a fixed term" as defined by Civil Code Article 2678 (Rev. 2004) as opposed to leases with an indeterminate term. The latter are governed by Civil Code Articles 2727-2729 (Rev. 2004).

(b) The term of a lease is fixed when the parties agreed that the lease would "terminate at a designated date or upon the occurrence of a designated event." Civil Code Article 2678 (Rev. 2004). Basic principles of contract law dictate that when the specified date arrives, or the specified event occurs, the lease should terminate without the need of notice and without the need of any judicial action or declaration. This is what Civil Code Article 2720 (Rev. 2004) provides and in so doing reproduces the substance of the first sentence of Civil Code Article 2686 (1870) ("[t]he parties must abide by the agreement as fixed at the time of the lease") and by Civil Code Article 2727 (1870) which provided that "[t]he lease ceases *of course*, at the expiration of the time agreed on." The italicized words are a translation of the French words *de plein droit*, which could be more accurately translated as "by operation of law." These words have not been reproduced in Civil Code Article 2720 (Rev. 2004) as unnecessary.

(c) The last clause of Civil Code Article 2720 (Rev. 2004) provides that the lease does not terminate if it has been reconducted or extended as provided in Civil Code Articles 2721 and 2725 (Rev. 2004). The principle of the continuity of a reconducted lease is reiterated in Civil Code Article 2724 (Rev. 2004).

Art. 2721. Reconduction

A lease with a fixed term is reconducted if, after the expiration of the term, and without notice to vacate or terminate or other opposition by the lessor or the lessee, the lessee remains in possession:

(1) For thirty days in the case of an agricultural lease;

(2) For one week in the case of other leases with a fixed term that is longer than a week; or

(3) For one day in the case of a lease with a fixed term that is equal to or shorter than a week.

Revision Comments -- 2004

(a) This Article is derived from Articles 2688, 2689, and 2691 of the Civil Code of 1870 and pertinent Louisiana jurisprudence. It clarifies and changes the law, as explained below.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

(b) This Article applies only to leases the term of which: (a) is "fixed" as defined by Civil Code Article 2678 (Rev. 2004), (as opposed to leases whose term is "indeterminate"); and (b) has expired.

(c) In contrast to Articles 2688 and 2689 of the Civil Code of 1870 which were confined to a "lease of a predial estate" and a lease of "a house or of a room," respectively, this Article applies to leases of all immovables and, for that matter, all movables. To this extent, this Article changes the law and overrules the jurisprudential thesis that there could be no reconduction of a lease of movables. See National Automatic Fire Alarm Co. v. New Orleans & N.E.R.R. Co., 2 Orleans App. 421 (La.App. Orleans 1905).

(d) Article 2691 of the Civil Code of 1870 provided that "[w]hen notice has been given, the tenant . . . can not pretend that there has been a tacit renewal of the lease." Articles 2689 and 2688 of the Civil Code of 1870 provided respectively that reconduction occurs only if the lessee's continued possession after the expiration of the term was "without any opposition being made thereto by the lessor" or "without any step having been taken . . . by the lessor . . . to cause [the lessee] to deliver up the possession. . . ." From these articles flows the principle that reconduction does not occur if *the lessor* has given notice of termination or has in other ways expressed his opposition to the lessee's continuous possession. This principle is now contained in Civil Code Article 2721 (Rev. 2004) in the phrase "without notice of termination or other opposition by the lessor *or the lessee*." The italicized words indicate a change from the language of the source provisions all of which contemplated notice or opposition by the lessor only. However, the change is more apparent than real. Since reconduction owes its source to a presumed tacit agreement of the parties, it should follow that *either party*, through a clear manifestation of a contrary intent, should be able to prevent such an agreement from being formed. Louisiana jurisprudence has long recognized this principle and has held that the Civil Code articles providing for reconduction have "no application whatever when *either party* has clearly announced his intention *not to renew* the lease on same terms . . . [since] the purpose of law is not to *force* a contract upon parties unwilling to contract, but merely to establish a rule of evidence, or presumption, as to their intention. . ." Ashton Realty Co. v. Prowell, 165 La. 328, 115 So. 579, at p. 581 (1928) (emphasis added). See also Prisock v. Boyd, 199 So.2d 373 (La.App. 2 Cir. 1967); Waller Oil Co., Inc. v. Brown, 528 So.2d 584 (La.App. 2 Cir. 1988). While it is true that the lessee's continued possession after the expiration of the term normally justifies the inference that he intends to continue the lease, such inference is negated by an express contrary statement. For example if, in a residential lease with a fixed term of one year, the lessee requests the lessor's permission to occupy the premises for ten days after the end of the year "so as to have enough time to move out his furniture," and the lessor does not object or does not respond, the lessee's remaining in possession for these ten days should not lead to reconduction in light of his intent, expressed in his request and communicated to the lessor, not to continue the lease.

(e) In order for reconduction to occur, the lessee must have remained in unopposed possession for a certain period of time after the expiration of the term of the lease. Under the Civil Code of 1870, this period was "one month" for agricultural leases and "a week" for leases "of a house or of a room." C.C. Arts. 2688 and 2689 (1870). Under Civil Code Article 2721 (Rev. 2004), the length of this period depends on the type of lease or the length of the expired term. Thus, for agricultural leases, this period is thirty days, regardless of the length of the expired term. For other leases that have a fixed term that is longer than a week, such as a residential lease for a year, a semester, or a month, this period is one week. Finally, for leases with a fixed term of one week or shorter, such as a lease of a movable for a weekend, this period is one day.

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Art. 2722. Term of reconducted agricultural lease

The term of a reconducted agricultural lease is from year to year, unless the parties intended a different term which, according to local custom or usage, is observed in leases of the same type.

Revision Comments -- 2004

(a) This Article is derived from Article 2688 of the Louisiana Civil Code of 1870 and pertinent Louisiana jurisprudence. It clarifies and changes the law, as explained below.

(b) Civil Code Article 2722 (Rev. 2004) defines the term of an agricultural lease that has been reconducted pursuant to Civil Code Article 2721 (Rev. 2004). Article 2688 of the Civil Code of 1870 provided that a reconducted agricultural lease "shall continue only for the year next following the expiration of the lease." The word "only" has been construed away by Louisiana courts. In Dyer v. Wilson, 190 So. 851 (La.App. 2 Cir. 1939), the court rejected an argument to the contrary and held that the quoted language means that "reconduction . . . is . . . only for one year at a time. It does not, however, fix any maximum number of yearly periods." *Dyer*, *supra,* at p. 853. Civil Code Article 2722 (Rev. 2004) adopts the position that there should be no maximum yearly periods by using the words "from year to year." The quoted phrase also signifies that the reconducted lease is one for an indeterminate rather than a fixed term and thus answers a question that was not answered by the text of Civil Code Article 2688 (1870).

(c) However, in contrast to the source provision, Civil Code Article 2722 (Rev. 2004) also allows for the possibility that the term of the reconducted lease may be something other than from year to year, if it is shown that "the parties intended a different term which, according to local custom or usage, is observed in leases of the same type." This provision may prove useful when the initial term was shorter than a year, such as "one farming season," but also when it was longer than a year.

(d) Because a reconducted lease is a lease for an indeterminate term, the reconducted lease continues indefinitely until terminated by notice as directed in Civil Code Articles 2727-2729 (Rev. 2004).

Art. 2723. Term of reconducted nonagricultural lease

The term of a reconducted nonagricultural lease is:

(1) From month to month in the case of a lease whose term is a month or longer;

(2) From day to day in the case of a lease whose term is at least a day but shorter than a month; and

(3) For periods equal to the expired term in the case of a lease whose term is less than a day.

Revision Comments -- 2004

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

(a) This Article is derived from Article 2689 of the Louisiana Civil Code of 1870 and pertinent Louisiana jurisprudence. However, in contrast to the source provision which was confined to the lease of "a house or room," Civil Code Article 2723 (Rev. 2004) applies to all non-agricultural leases of immovables as well as movables.

(b) This Article defines the term of a lease that has been reconducted pursuant Civil Code Article 2721 (Rev. 2004). Under Civil Code Article 2723 (Rev. 2004), the term of a reconducted lease is always an indeterminate term of the periodical type, that is, it is measured in periods such as from month-to-month. The length of these periods depends on the length of the original term, as explained below.

(c) Article 2689 of the Civil Code of 1870 did not define the term of a reconducted lease of "a house or of a room" but simply provided that the lease "shall be presumed to have been continued." The jurisprudence has treated such leases as leases for an indeterminate term and then applied to them the month-to-month period provided by Civil Code Article 2685 (1870) for leases of an unspecified duration. See Bowles v. Lyon, 6 Rob. 262 (1843); Garner v. Perrin, 403 So.2d 814 (La.App. 2 Cir. 1981); Weaks Supply Co. v. Werdin, 147 So. 838 (La.App. 2 Cir. 1933); Standard Oil Co. of N.J. v. Edwards, 32 So.2d 102 (La.App. 1 Cir. 1947). Clause (1) of Civil Code Article 2723 (Rev. 2004) is consistent with this jurisprudence for those leases falling within the scope of this clause.

(d) Clause (2) of Civil Code Article 2723 (Rev. 2004) applies to leases whose expired term was shorter than a month but equal to or longer than a day. In such cases, the reconducted lease shall be from day to day. Clause (3) of Civil Code Article 2723 (Rev. 2004) applies to all leases whose term was shorter than a day and provides that the reconducted lease shall be for periods equal to the expiring term. Thus, a lease of a movable for one hour becomes a lease by the hour if reconducted pursuant to the preceding article.

(e) Because a reconducted lease is a lease for an indeterminate term, the reconducted lease continues indefinitely until terminated by notice as directed in Civil Code Articles 2727-2729 (Rev. 2004). This is consistent with Civil Code Article 2689 (1870) and Louisiana jurisprudence.

Art. 2724. Continuity of the reconducted lease

When reconduction occurs, all provisions of the lease continue for the term provided in Article 2722 or 2723.

A reconducted lease is terminated by giving the notice directed in Articles 2727 through 2729.

Revision Comment -- 2004

This Article is new. It codifies the position taken by Louisiana jurisprudence to the effect that a reconducted lease is not a new lease but rather a continuation of the old lease under the same terms and conditions, except for duration. See Comegys v. Shreveport Kandy Kitchen, 162 La. 103, 110 So. 104 (1926); Weaks Supply Co. v. Werdin, 147 So. 838 (La.App. 2 Cir. 1933). This principle has important ramifications, not only as between the parties who can insist on compliance with the terms of the original lease, but also with regard to third parties. Thus, a lessor's privilege created during the original lease continues in existence after reconduction. See Comegys, *supra*; Acadiana Bank v. Foreman, 352 So.2d 674 (La. 1977).

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

Art. 2725. Extension

If the lease contract contains an option to extend the term and the option is exercised, the lease continues for the term and under the other provisions stipulated in the option.

Revision Comments -- 2004

(a) This Article is new. It is derived from principles inherent in the Civil Code and elaborated upon by Louisiana courts under the doctrine of renewal. See Blanchard v. Shrimp Boats of La., 305 So.2d 748 (La.App. 4 Cir. 1974); Vernon Palmer, Leases, § 2-15 (1982). This Article avoids use of the word "renewal" precisely in order to avoid the connotation that the extended lease is a "new" lease rather than a continuation of the old lease.

(b) This Article applies only when the lease contract contains an option to extend the term of the lease, popularly known as "option to renew." If the option is validly exercised before the expiration of the term, the lease continues and is considered the same lease, not only as between the parties, but also vis-à-vis third parties. However, with regard to leases of immovables, the continuity of the old lease vis-à-vis third parties will depend, at a minimum, on whether or not the option to renew (and the lease that contained it) was recorded. If it was not recorded, then under Civil Code Articles 2681 and 2712 (Rev. 2004) and basic principles of the law of registry, the option would not be assertible against third parties. If the option was recorded, the next question is whether the exercise of the option must also be recorded in order to be assertible against third parties. One Louisiana court gave an affirmative answer (Julius Gindi & Sons v. E.J.W. Enterprises, 438 So.2d. 594 (La.App. 4 Cir. 1983), while another gave a negative answer to this question (Thomas v. Lewis, 475 So.2d 52 (La.App. 2 Cir. 1985). The latter court reasoned that the fact that the original option was recorded was sufficient to put third parties on notice of potential claims against the property and that it was not necessary to also record the exercise of the option to renew.

Art. 2726. Amendment

An amendment to a provision of the lease contract that is made without an intent to effect a novation does not create a new lease.

Revision Comment -- 2004

This Article is new but does not change the law. It recasts in more specific language the general principles of the law of novation, and particularly those found in Civil Code Articles 1880 and 1881 (Rev. 1984). The latter articles have already overruled cases such as Weaks Supply Co. v. Verdin, 147 So. 838 (La.App. 2 Cir. 1933) which had held that an agreement to alter the stipulated rent is a novation of the lease. See Comment (a) under C.C. Art. 1881 (Rev. 1984). However, because Civil Code Article 1881 (1870) is often overlooked by some courts (see, e.g., Misse v. Dronet, 493 So.2d 271 (La.App. 3 Cir. 1986) which adheres to the overruled jurisprudence), it is thought necessary to expressly incorporate the principles of that article in an article applicable specifically to lease contracts. This is the purpose of Civil Code Article 2726 (Rev. 2004). For an excellent discussion of the difference between an amendment or "modification" and a novation of leases, see George Armstrong, Louisiana Landlord and Tenant Law, § 2.4 (1987).

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

Section 3. Leases With Indeterminate Term

Art. 2727. Termination of lease with an indeterminate term

A lease with an indeterminate term, including a reconducted lease or a lease whose term has been established through Article 2680, terminates by notice to that effect given to the other party by the party desiring to terminate the lease, as provided in the following Articles.

Revision Comment -- 2004

This Article is based on Civil Code Articles 2686 (as amended 1924) and 2024 (Rev. 1984). It applies to all leases that have an indeterminate term. This encompasses leases whose term has been established through Civil Code Article 2680 (Rev. 2004) and leases that are reconducted as provided in Civil Code Articles 2721-2724 (Rev. 2004).

Art. 2728. Notice of termination; timing

The notice of termination required by the preceding Article shall be given at or before the time specified below:

(1) In a lease whose term is measured by a period longer than a month, thirty calendar days before the end of that period;

(2) In a month-to-month lease, ten calendar days before the end of that month;

(3) In a lease whose term is measured by a period equal to or longer than a week but shorter than a month, five calendar days before the end of that period; and

(4) In a lease whose term is measured by a period shorter than a week, at any time prior to the expiration of that period.

A notice given according to the preceding Paragraph terminates the lease at the end of the period specified in the notice, and, if none is specified, at the end of the first period for which the notice is timely.

Revision Comments -- 2004

(a) This Article is new. It changes the law as explained below. It is derived from the general principle of Civil Code Article 2024 (Rev. 1984) which provides that "[a] contract of unspecified duration may be terminated at the will of either party by giving notice, *reasonable in time*. . . ." In the interest of legal certainty, Civil Code Article 2728 (Rev. 2004) determines and defines this reasonableness rather than leaving that determination to be made by the courts on a case by case basis.

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(b) Civil Code Article 2686 (as amended 1924) provided that the notice must be given "at least ten days before the expiration of the month, which has begun to run." This enigmatic provision is also problematic in that, *inter alia*, it would not work in leases whose term is measured by periods shorter than ten days, such as a lease by the week or by the day. Civil Code Article 2728 (Rev. 2004) replaces this provision with a set of rules that define the time at which notice must be given in a way that correlates with the length of the term of the lease that is to be terminated. Thus, in a year-to-year lease, the notice must be given at least thirty days before the end of the year (clause (1)); in a month-to-month lease, ten days before the end of that month (clause (2)); in a week-to-week or bi-weekly lease, five days before the end of the week or bi-weekly period (clause (3)); and in a lease by the day or by the hour, at any time before the end of the day or the hour (clause (4)).

(c) A notice given at the time specified in the first paragraph of Civil Code Article 2728 (Rev. 2004) causes the termination of the lease at the time specified in the second paragraph. The second paragraph provides that termination occurs "at the end of the period specified in the notice, and, if none is specified, at the end of the first period for which the notice is timely." For example, on September 15, 2005, a lessee gives notice of termination of a month-to-month lease that began on January 1, 2005. This notice is timely for terminating the lease on September 30, 2005 and will so terminate it if no other period is specified in the notice. However, if the notice provides that the lease is to be terminated on October 31 rather than September 30, then the lease will terminate on October 31. If the lessor does not want the lease to last until October 31, he can give his own notice of termination before September 20 and thus cause termination on September 30.

Art. 2729. Notice of termination; form

If the leased thing is an immovable or is a movable used as residence, the notice of termination shall be in writing. It may be oral in all other cases.

In all cases, surrender of possession to the lessor at the time at which notice of termination shall be given under the preceding Article shall constitute notice of termination by the lessee.

Revision Comments -- 2004

(a) This Article is new. It departs from the requirement of written notice prescribed by Civil Code Article 2686 (as amended 1924) in that it sanctions other forms of notice: (1) in leases of movables other than those used as residences; and (2) in the cases provided in the second paragraph.

(b) The second paragraph provides that "[i]n all cases," that is, even in leases of immovables or movables used as residence, surrender of possession to the lessor shall be deemed a sufficient notice of termination by the lessee, provided it is timely under Civil Code Article 2728 (Rev. 2004). This rule is consistent with Louisiana jurisprudence. See e.g., Lafayette Realty Co. v. Travia, 11 Orleans App. 275 (La.App. Orleans 1914).

Section 2. Civil Code Articles 650 and 3219 are hereby amended and reenacted to read as follows:

Art. 650. Inseparability of servitude

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

A predial servitude is inseparable from the dominant estate and passes with it. The right of using the servitude cannot be alienated, leased, or encumbered separately from the dominant estate.

The predial servitude continues as a charge on the servient estate when ownership changes.

Revision Comment -- 2004

This Article is amended by adding the words "leased" to the second sentence of the Article. This amendment does not change the law. Rather, it transfers to this Article the content of Article 2680 of the Civil Code of 1870, which provided that "[a] right of servitude can not be leased separately from the property to which it is annexed."

* * *

Art. 3219. Method of enforcement of lessor's privilege

The privilege of the lessor and the manner in which it is enforced ~~on~~ against the property subject to it, ~~in the manner~~ are described in the ~~title: *Of Lease*~~ Title of "Lease".

Section 3. R.S. 9:3221 is hereby amended and reenacted and R.S. 9:3259.2 is hereby enacted to read as follows:

§3221. Assumption of responsibility by lessee; liability of owner

~~The~~ Notwithstanding the provisions of Louisiana Civil Code Article 2699, the owner of premises leased under a contract whereby the lessee assumes responsibility for their condition is not liable for injury caused by any defect therein to the lessee or anyone on the premises who derives his right to be thereon from the lessee, unless the owner knew or should have known of the defect or had received notice thereof and failed to remedy it within a reasonable time.

* * *

§3259.2. Application for or receipt of government funds not a defense to action to evict

The application for or the receipt of entitlements or funds, under any federal or state rent subsidy program or rent subsidy assistance, shall not be considered payment of rent and shall not be a defense to an action to evict the lessee.

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Section 4. Civil Code Article 3218 is hereby repealed in its entirety.

Section 5. Chapter 3 of Title IX of Book III of the Civil Code, comprised of Articles 2745 through 2777, is hereby redesignated as Chapter 5 of Title IX of Book III of the Civil Code.

Section 6. The headings, source lines, and comments in this Act are not part of the law and are not enacted into law by virtue of their inclusion in this Act.

Section 7. This Act shall become effective on January 1, 2005.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Ansardi HB No. 38

Abstract: Revises and reorganizes the Civil Code Articles on lease.

Proposed law provides for the following major substantive revisions:

(1) Changes the term "price" to the term "rent". Under this revision, the hiring of services is no longer a form of lease, but is instead an innominate contract. **(Article 2668)**

(2) Codifies Louisiana jurisprudence to provide that a contract to enter into a lease at a future time is enforceable. Present Civil Code is silent. **(Article 2670)**

(3) Provides that a mineral lease is governed by the Mineral Code. **(Article 2672)**

(4) Codifies Louisiana jurisprudence to provide that a lease may not exceed 99 years. Present Civil Code is silent. **(Article 2679)**

(5) Clarifies the rules on determining the duration of a lease, when the parties have not agreed on a definite term. Provides that, **unless the parties have provided otherwise,** the duration of a lease is established by the following rules: (a) an agricultural lease shall be from year to year; (b) any other lease of an immovable, or a lease of a movable to be used as a residence, shall be from month to month; and (c) a lease of all other movables shall be from day to day, unless the rent was fixed by longer or shorter periods, in which case the term shall be one such period, not to exceed one month. Present Civil Code is silent on the term for lease of movables. **(Article 2680)**

(6) Provides that in a residential lease, the warranties provided by the lessor against vices or defects known **(Article 2696)** or unknown **(Article 2697)** to the lessor apply to all persons who reside in the premises in accordance with the contract of lease. **(Article 2698)**

(7) Adds guidelines for the waiver of warranties for vices or defects which is currently not provided for in the Civil Code. Provides that warranties may be waived by clear and unambiguous language that is brought to the attention of the lessee; provides however, that a waiver is ineffective: (a) to the extent it pertains to a vice or defect

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of which the lessee did not know and that the lessor knew or should have known, (b) to the extent it is contrary to the provisions of Civil Code Article 2004, or (c) in a residential or consumer lease, to the extent it purports to waive a warranty for a vice or defect that seriously affects health or safety. **(Article 2699)**

(8) Provides that in the absence of a contrary agreement, usage, or custom: (a) the rent is due at the beginning of the term and if the rent is payable by intervals shorter than the term, the rent is due at the beginning of each interval and (b) the rent is payable at the address provided by the lessor and in the absence thereof at the address of the lessee. **(Article 2703)**

(9) Provides that the procedure for the dissolution of the lease and the eviction of the lessee is provided for by Code of Civil Procedure. **(Article 2704)**

(10) Changes present law to provide that a lessor's privilege extends to the movables of a sublessee, but only to the extent that the sublessee is indebted to the sublessor at the time the lessor exercises the privilege. **(Article 2708)**

(11) Authorizes the lessor to seize a third person's property if he does not know that the property is not that of the lessee. Provides for recovery of ownership by the third person by establishing ownership prior to the judicial sale. **(Article 2709)**

(12) Authorizes the lessee to terminate the lease by giving legal notice, if he has reserved this right. **(Article 2718)**

(13) Provides that the right to use a predial servitude cannot be leased separately from the dominate estate. Present Civil Code provides that the right to use a predial servitude cannot be alienated or encumbered separately from the dominant estate. **(Article 650)**

(14) **Repeals C.C. Art. 3218** providing that a lessor's security rights on the movables on the leased thing is of a higher nature than a mere privilege.

(15) Clarifies **R.S. 9:3221** to provide that the amendments to C.C. Art. 2699 do not change the law relative to R.S. 9:3221. (R.S. 9:3221 provides that a lessee may assume responsibility for the condition of a premises and that the owner of the premises will not be liable for injury caused by any defect therein, unless the owner knew or should have known of the defect or had received notice thereof and failed to remedy it within a reasonable time.)

(19) Adds **R.S. 9:3259.2** to provide that the application for or receipt of governmental entitlements or funds shall not be considered payment of rent and shall not be a defense to an action to evict the lessee.

Effective January 1, 2005.

(Amends C.C. Arts. 650, 2668-2729, and 3219 and R.S. 9:3221; Adds R.S. 9:3259.2; Repeals C.C. Art. 3218; Redesignates C.C. Arts. 2745-2777 as Ch. 5 of Book III of Title IX)

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