

Regular Session, 2008

HOUSE BILL NO. 527

BY REPRESENTATIVE TIM BURNS

(On Recommendation of the Louisiana State Law Institute)

CIVIL/DONATIONS: Provides for the continuous revision of the law regarding donations

1 AN ACT

2 To amend and reenact Chapter 1 of Title II of Book III of the Civil Code, to be comprised  
3 of Articles 1467 through 1469, and Chapter 5 of Title II of Book III of the Civil  
4 Code, to be comprised of Articles 1523 through 1569.1, relative to donations; to  
5 provide relative to methods of acquiring property gratuitously; to provide rules on  
6 donations; to provide formal requirements for making donations; to provide for  
7 effectiveness of donations; to provide rules for the acceptance of donations; to  
8 provide for exceptions to the rule of irrevocability of donations; to provide for  
9 revocation for ingratitude; to provide for dissolution of donations; to provide actions  
10 for dissolving donations; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Chapter 1 of Title II of Book III of the Civil Code, comprised of Articles  
13 1467 through 1469, and Chapter 5 of Title II of Book III of the Civil Code, comprised of  
14 Articles 1523 through 1569.1, are hereby amended and reenacted to read as follows:

15 TITLE II. DONATIONS

16 CHAPTER 1. GENERAL DISPOSITION

17 Art. 1467. Methods of acquiring or disposing gratuitously

18 Property can neither be acquired nor disposed of gratuitously except by  
19 donations inter vivos or mortis causa, made in one of the forms hereafter established.

20 Revision Comment - 2008

21 This Article reproduces the substance of Civil Code Article 1467 (1870). It  
22 is not intended to change the law.

1        Art. 1468. Donations inter vivos; definition

2                A donation inter vivos is a contract by which a person, called the donor,  
3        gratuitously divests himself, at present and irrevocably, of the thing given in favor  
4        of another, called the donee, who accepts it.

5                                Revision Comments - 2008

6                (a) This Article reproduces the substance of Civil Code Article 1468 (1870).  
7        It is not intended to change the law.

8                (b) A donation inter vivos must be accepted during the donor's lifetime. See  
9        Article 1534.

10                (c) In this draft, the word "thing" refers to the object of the donation rather  
11        than to "a" thing as such. Thus, the "thing given" may be a corporeal movable or  
12        immovable thing or an incorporeal, such as a real right, an obligation, etc.

13                (d) See Article 1541 which states that a donation transfers ownership when  
14        the donation is accepted. See also Article 2439, regarding sale and transfer of  
15        ownership, which states that a sale "... transfers ownership of a thing."

16        Art. 1469. Donation mortis causa; definition

17                A donation mortis causa is an act to take effect at the death of the donor by  
18        which he disposes of the whole or a part of his property. A donation mortis causa  
19        is revocable during the lifetime of the donor.

20                                Revision Comment - 2008

21                This Article reproduces the substance of former Civil Code Article 1469. It  
22        is not intended to change the law.

23                                \*           \*           \*

24                                CHAPTER 5. DONATIONS INTER VIVOS

25                                SECTION 1. GENERAL DISPOSITIONS

26        Art. 1523. Onerous donation

27                The rules peculiar to donations inter vivos do not apply to a donation that is  
28        burdened with an obligation imposed on the donee that results in a material  
29        advantage to the donor, unless at the time of the donation the cost of performing the  
30        obligation is less than two-thirds of the value of the thing donated.

31                                Revision Comment - 2008

32                This Article is based on the provisions of Articles 1511, 1524, and 1526 of  
33        the Louisiana Civil Code (1870). It is not intended to change the law.

1        Art. 1524. Remunerative donations

2                The rules peculiar to donations inter vivos do not apply to a donation that is  
3        made to recompense for services rendered that are susceptible of being measured in  
4        money unless at the time of the donation the value of the services is less than two-  
5        thirds of the value of the thing donated.

6                                Revision Comment - 2008

7                This Article is based on the provisions of Articles 1525, 1526 and 1510 of the  
8        Louisiana Civil Code (1870). It is not intended to change the law.

9        Art. 1525. Charges or conditions imposed by donor

10                The donor may impose on the donee any charges or conditions he pleases,  
11        provided they contain nothing contrary to law or good morals.

12                                Revision Comment - 2008

13                This Article reproduces the text of Civil Code Article 1527 (1870) verbatim.  
14        It is not intended to change the law. The imposition of a condition on a donation  
15        does not necessarily make the donation onerous. See Article 1523.

16        Art. 1526. Donation of future property; nullity

17                A donation inter vivos can have as its object only present property of the  
18        donor. If it includes future property, it shall be null with regard to that property.

19                                Revision Comment - 2008

20                This Article reproduces the substance of Civil Code Article 1528 (1870). It  
21        is not intended to change the law. However, see Article 1738.

22        Art. 1527. Donation conditional on will of donor; nullity

23                A donation inter vivos is null when it is made on a condition the fulfillment  
24        of which depends solely on the will of the donor.

25                                Revision Comment – 2008

26                This Article reproduces the substance of Civil Code Article 1529 (1870). It  
27        is not intended to change the law.

28        Art. 1528. Donation conditional on payment of future or unexpressed debts and  
29        charges; nullity

30                A donation is also null if it is burdened with an obligation imposed on the  
31        donee to pay debts and charges other than those that exist at the time of the donation,  
32        unless the debts and charges are expressed in the act of donation.

## Revision Comments - 2008

(a) This Article reproduces the substance of Civil Code Article 1530 (1870). It is not intended to change the law.

(b) This draft is very close to the text of Civil Code Article 1530 (1870), but the clause referring to the "act that was to be annexed to it" has been removed.

(c) The obligation imposed on the donee under this Article must not otherwise be prohibited, and the discharge of the debts and charges must be permissible under the law of obligations.

Art. 1529. Stipulation for right of return to donor

The donor may stipulate the right of return of the thing given, either in the case of his surviving the donee only, or in the case of his surviving the donee and the donee's descendants.

The right may be stipulated only for the advantage of the donor.

## Revision Comment – 2008

This Article reproduces the substance of Civil Code Article 1534 (1870). It is not intended to change the law.

Art. 1530. Right of return; effect

The effect of the right of return is that the thing donated returns to the donor free of any alienation, lease, or encumbrance made by the donee or his successors after the donation.

The right of return shall not apply, however, to a good faith transferee for value of the thing donated. In such a case, the donee and his successors by gratuitous title are, nevertheless, accountable for the loss sustained by the donor.

## Revision Comments - 2008

(a) This Article is based on Civil Code Article 1535 (1870). It may change the law in instances in which the thing donated has been transferred to a good faith transferee for value. See Comment (b).

(b) The second paragraph addresses the situation in which the thing donated has been transferred to a good faith transferee for value, in which case the good faith transferee need not return the thing but the donee "and his successors by gratuitous title" are accountable for the loss sustained by the donor. The word "his" restricts the application to a chain of gratuitous donees from the donor, so that it does not apply to a gratuitous transferee from a transferee for value. The words "and his successors by gratuitous title" are designed to cover the situation in which the first donee donates the thing by gratuitous title to a second donee who then transfers it to a good faith transferee for value. In that instance, the donee and his successors by gratuitous title would be accountable to the donor, but the transferee for value would not be.

## 1           SECTION 2. OF THE FORM OF DONATIONS INTER VIVOS

2           Art. 1531. Form required for donations

3                   A donation inter vivos shall be made by authentic act under the penalty of  
4           absolute nullity, unless otherwise expressly permitted by law.

5                               Revision Comments - 2008

6                   (a) This Article reproduces the substance of Civil Code Article 1536 (1870).  
7           It is not intended to change the law.

8                   (b) Donations of both immovable and movable property must be made by  
9           notarial act unless a particular exception applies. There are numerous exceptions to  
10          this Article including Article 1533 (manual gift) and Article 1540 (stock certificates  
11          and negotiable instruments).

12           Art. 1532. Identification of donor, donee, and the thing donated required

13                   The act of donation shall identify the donor and the donee and describe the  
14          thing donated. These requirements are satisfied if the identities and description are  
15          contained in the act of donation or are reasonably ascertainable from information  
16          contained in it, as clarified by extrinsic evidence, if necessary.

17                               Revision Comment - 2008

18                   This Article is based on the provisions of Civil Code Article 1538 (1870).  
19          It is not intended to change the law but it clarifies essential requirements of an act  
20          of donation. The concept of reasonable ascertainability follows the language of the  
21          provisions of Article 1575 regarding the necessity to date an olographic will.

22           Art. 1533. Manual gift

23                   The donation inter vivos of a corporeal movable may also be made by  
24          delivery of the thing to the donee without any other formality.

25                               Revision Comments - 2008

26                   (a) This Article reproduces the substance of Civil Code Article 1539 (1870).  
27          There is a change in language from former Article 1539, which referred to the  
28          "manual gift," and refers to it as the "giving of corporeal movable effects,  
29          accompanied by a real delivery," which is specified as not being "subject to any  
30          formality."

31                   (b) The word "also" is purposefully used in this Article to make clear that the  
32          donation of a corporeal movable does not always require delivery to be effective.  
33          If the donation is made by authentic act, physical delivery to the donee is not  
34          necessary. See also Article 2477 which lists the methods of making delivery of  
35          things subject to the contract of sale.

36                   (c) This Article refers only to the donation itself; it does not state how the  
37          donation may be accepted. See also Article 1534, regarding acceptance of donations.

1        Art. 1534. Donation effective from time of acceptance

2                A donation inter vivos is without effect until it is accepted by the donee. The  
3        acceptance shall be made during the lifetime of the donor.

4                The acceptance of a donation may be made in the act of donation or  
5        subsequently in writing.

6                When the donee is put into corporeal possession of a movable by the donor,  
7        possession by the donee also constitutes acceptance of the donation.

8                                Revision Comments - 2008

9                (a) The concept of this Article is derived from Civil Code Article 1540  
10        (1870). In *Tweedel v. Brasseaux*, 433 So.2d 133, 139 (La. 1983), the Supreme Court  
11        upheld an acceptance signed prior to the signing of the act of donation. According  
12        to the Court: "[T]he minor discrepancy [in the dates] was known to all parties at the  
13        time. The fact that the donees' signatures were affixed the preceding day is of little  
14        significance. There is no legal provision or jurisprudence which reprobates the idea  
15        of donees signing an acceptance immediately prior to a donation. Acceptance in  
16        precise terms in the same act as a donation is valid, even though signed prior to the  
17        time the act is signed by the donors." This Article is not intended to change the  
18        result in *Tweedel*.

19                (b) See also Civil Code Articles 3421 and 3424 regarding possession.

20        Art. 1535. Acceptance in person or by mandatary

21                The donee may accept a donation personally or by a mandatary having power  
22        to accept a donation for him.

23                                Revision Comment - 2008

24                This Article is based on Civil Code Article 1542 (1870). It is not intended  
25        to change the law.

26        Art. 1536. Acceptance during lifetime of donee

27                The acceptance shall be made during the lifetime of the donee. If the donee  
28        dies without having accepted the donation, the acceptance cannot be made by his  
29        successors.

30                                Revision Comment - 2008

31                This Article reproduces the substance of Civil Code Article 1544 (1870). It  
32        is not intended to change the law.

33        Art. 1537. Acceptance by creditor prohibited

34                If the donee refuses or neglects to accept the donation, his creditors may not  
35        accept it in his stead.

## Revision Comment - 2008

This Article is based on Civil Code Article 1543 (1870). It is not intended to change the law.

Art. 1538. Unemancipated minor; persons authorized to accept

A donation made to an unemancipated minor may be accepted by a parent or other ascendant of the minor or by his tutor, even if the person who accepts is also the donor.

## Revision Comments - 2008

(a) This Article is based on Civil Code Article 1546 (1870). It is not intended to change the law.

(b) If the parent is not the child's tutor, it is permissible for either the tutor or the parent to accept. This Article expressly permits the donor to accept the donation if he is authorized to accept on behalf of the minor.

Art. 1539. Thing acquired subject to existing charges

The donee acquires the thing donated subject to all of its charges, even those that the donor has imposed between the time of the donation and the time of the acceptance.

## Revision Comment - 2008

This Article reproduces the substance of Civil Code Article 1551 (1870). It is not intended to change the law.

Art. 1540. Form for donation of certain incorporeal movables

The donation or the acceptance of a donation of an incorporeal movable of the kind that is evidenced by a certificate, document, instrument, or other writing, and that is transferable by endorsement or delivery, may be made by authentic act or by compliance with the requirements otherwise applicable to the transfer of that particular kind of incorporeal movable.

In addition, an incorporeal movable that is investment property, as that term is defined in Chapter 9 of the Louisiana Commercial Laws, may also be donated by a writing signed by the donor that evidences donative intent and directs the transfer of the property to the donee or his account or for his benefit. Completion of the transfer to the donee or his account or for his benefit shall constitute acceptance of the donation.

## Revision Comments - 2008

(a) This Article is new. It is based in part on the provisions of Civil Code Article 1536(1870).

(b) In this Article, the words "for his benefit" are included to cover situations when the transfer may not be directly to the donee's account, but would be used to pay something for his benefit, as for example, if the transfer is made to a bank to pay off a child's debt. The same phrase is used in Article 1505 concerning life insurance and retirement benefits.

(c) Under this Article, a donation is valid if it is valid under the negotiable instruments law. See R.S. 10:3-203 (b). See also Molero Capone, Susan, "Donations Inter Vivos of Negotiable Instruments and Items of a Commercial Nature", 33 Loyola Law Review 1053, 1062 (1988). According to Ms. Molero Capone: "It is submitted that under subsection 201(4) [now 10:3-203(e)] whether classified as corporeal or incorporeal, and whether cashed prior to or after the donor's death, a donor's personal check is properly donated as to form by the mere transfer if the check meets the requisites of a negotiable instrument." See also *Succession of Walker*, 533 So.2d 70 (La. App. 3 Cir. 1988).

Art. 1541. Effects of acceptance

A donation is effective upon acceptance. When the donation is effective, the ownership or other real right in the thing given is transferred to the donee.

## Revision Comment - 2008

(a) This Article is based on the provisions of Civil Code Article 1550 (1870). It is not intended to change the law.

(b) Under this Article delivery is not required if the acceptance is made by a means other than corporeal possession. See for example Article 1531. See also Article 1534, to the effect that if the donee is put into corporeal possession of a movable by the donor, possession by the donee also constitutes acceptance of the donation.

(c) This Article makes reference to the transfer of a "real right" to make it clear that the object of a donative transfer may involve not only ownership of a thing, but other real rights as well. Thus, for instance, under this Article a right of usufruct given by inter vivos is transferred to the donee when the donation becomes effective. See also Comment (c) to Article 1468, explaining that the thing given by donation may be a real right.

(d) See Article 1541 which states that a donation transfers ownership when the donation is accepted. See also Article 2439, regarding sale and transfer of ownership, which states that a sale "... transfers ownership of a thing."

Arts. 1542 to 1558. [Reserved]



SECTION 3. EXCEPTIONS TO THE RULE OF THE IRREVOCABILITY OF  
DONATIONS INTER VIVOS

Art. 1559. Causes for revocation or dissolution

A donation inter vivos may be revoked because of ingratitude of the donee or dissolved for the nonfulfillment of a suspensive condition or the occurrence of a resolutive condition. A donation may also be dissolved for the nonperformance of other conditions or charges.

Revision Comments - 2008

(a) This Article is based on the provisions of Article 1559 of the Louisiana Civil Code (1870). It clarifies the law and the text is made more technically accurate.

(b) The language of this Article is intended to coordinate with Civil Code Article 1767 on conditional obligations.

(c) The fourth "cause" or ground for revocation or dissolution under the source Article, the legal or conventional return, has been eliminated as technically incorrect. The return could be a consequence, but it is never a ground for revocation.

Art. 1560. Revocation for ingratitude

Revocation on account of ingratitude can take place only in the following cases:

- (1) If the donee has attempted to take the life of the donor; or
- (2) If he has been guilty towards him of cruel treatment, crimes or grievous injuries.

Revision Comments – 2008

(a) This Article is based on the provisions of Article 1560 of the Louisiana Civil Code. It changes the law in part by eliminating the third ground for revoking a donation for ingratitude, refusing the donor food when in distress.

(b) This Article preserves "cruel treatment" as a ground for revocation. Of the three causes listed in Article 1560 (1870) as grounds for revocation for ingratitude, "grievous injuries" is by far the most litigated one. In general, "grievous injuries" sufficient to revoke a donation has been defined as any act "naturally offensive" to the donor. *Perry v. Perry*, 507 So.2d 881 (La. App. 4 Cir. 1987).

(c) Under this Article, an act of the donee that is offensive to the donor is not to be considered a ground for revocation of a donation unless the offense is serious. The jurisprudence has held that cruel treatment or grievous injury sufficient to revoke a donation may include adultery by a spouse; filing suit against a parent falsely alleging criminal activity; and slandering the memory of the donor. See, for example, *Perry v. Perry*, 507 So.2d 881 (La. App. 4 Cir. 1987); *Spruiell v. Ludwig*,

1 568 So.2d 133 (La. App. 5 Cir. 1990); *Sanders v. Sanders*, 768 So.2d 739 (La. App.  
2 2 Cir. 2000).

3 Art. 1561. Revocation for ingratitude; prescription, parties

4 An action of revocation for ingratitude shall be brought within one year from  
5 the day the donor knew or should have known of the act of ingratitude.

6 If the donor dies before the expiration of that time, the action for revocation  
7 may be brought by the successors of the donor, but only within the time remaining,  
8 or if the donor died without knowing or having reason to know of the act, then within  
9 one year of the death of the donor.

10 If the action has already been brought by the donor, his successors may  
11 pursue it.

12 If the donee is deceased, the action for revocation may be brought against  
13 his successors.

14 Revision Comments – 2008

15 (a) This Article changes the law in part by providing that an action for  
16 revocation must be brought within one year from the day the donor knew or should  
17 have known of the act of ingratitude, if that day occurs prior to the time he actually  
18 knew. Under Article 1561 (1870), an action for revocation must be brought one year  
19 from the day of the act of ingratitude or from the day that the act was made known  
20 to the donor.

21 (b) As under the source Article, in instances in which the action for  
22 revocation has not prescribed prior to the donor's death the second paragraph allows  
23 the donor's heirs and other successors to bring the suit for revocation, but it does not  
24 extend the time for them to bring the action. It must be brought within the same time  
25 period, unless the donor died without knowing or having reason to know of the act,  
26 in which case it must be brought within one year of the donor's death.

27 (c) This Article is not intended to amend the provisions of Articles 428 and  
28 801 of the Code of Civil Procedure which remain in full force and effect.

29 (d) Under this Article, an action for revocation can be brought against the  
30 donee's successors only when the donee is deceased.

31 (e) For the definition of "successor", see Civil Code Article 3506(28).

32 Art. 1562. Revocation for ingratitude, effect on alienations, leases or encumbrances

33 Revocation for ingratitude does not affect an alienation, lease, or  
34 encumbrance made by the donee prior to the filing of the action to revoke. When an  
35 alienation, lease or encumbrance is made after the filing of the action and the thing  
36 given is movable, the alienation, lease or encumbrance is effective against the donor

only when it is an onerous transaction made in good faith by the transferee, lessee or creditor. When an alienation, lease or encumbrance is made after the filing of the action and the thing given is immovable, the effect of the action to revoke is governed by the law of registry.

## Revision Comments – 2008

(a) This Article amends the language but preserves the substance of Article 1562 of the Civil Code of 1870. It is not intended to change the law.

(b) A donor who files an action to revoke a donation of an immovable should file a notice of lis pendens in the public records in order to affect third parties. It is intended that a third party in good faith can rely on the absence of a notice of lis pendens in the public records. See Civil Code Article 3338. As stated in *Ducote v. McCrossa*, 675 So.2d 817, 818 (La. App. 4 Cir. 1996): "The recordation of the notice of lis pendens makes the outcome of the suit as to which notice is given binding on third parties and that is the only purpose of the notice of lis pendens."

(c) Under this Article, any notice of lis pendens must comply with the requirements of the Code of Civil Procedure. C.C.P. Arts. 3751-3753.

(d) This Article is intended to protect good faith transferees only. It does not protect sham or fraudulent transactions, nor does it protect individuals who have acted in bad faith. In cases involving immovable property, the principles of recordation apply. See Article 2021.

### Art. 1563. Revocation for ingratitude, restoration

In case of revocation for ingratitude, the donee shall return the thing given.

If he is not able to return the thing itself, then the donee shall restore the value of the

thing donated, measured as of the time the action to revoke is filed.

## Revision Comments – 2008

(a) This Article clarifies the law by expressly providing that, as a general rule, in cases when the donation is revoked for ingratitude the donee must return the thing in kind. Thus, the donee is not entitled to retain the thing and simply return the value thereof to the donor, unless the donor consents to this.

(b) Where ingratitude is concerned, this Article provides that the donee shall return the thing given, but, if he is not able to return it, then he shall restore the value of the thing donated, measured as of the time the action to revoke is filed. That rule is modified by a new Article 1569.1, which supplements Article 1563, and applies to both an action to revoke for ingratitude and an action to dissolve for nonperformance of a condition.

(c) When a donation is revoked or dissolved, the donee must also return the fruits and products of the thing donated. See Article 1569.

Art. 1564. [Reserved]

1        Art. 1565. Dissolution for non-fulfillment of suspensive condition or for occurrence  
2                    of resolutive condition

3                    If a donation is subject to a suspensive condition, the donation is dissolved  
4                    of right when the condition can no longer be fulfilled.

5                    If a donation is subject to a resolutive condition, the occurrence of the  
6                    condition does not of right operate a dissolution of the donation. It may be dissolved  
7                    only by consent of the parties or by judicial decree.

8                    Revision Comments – 2008

9                    (a) This Article is based on the provisions of former Article 1565 and current  
10                    Article 1773 of the Louisiana Civil Code. It is not intended to change the law.

11                    (b) Under this Article, when the suspensive condition can no longer be  
12                    fulfilled, the donation is dissolved by operation of law without necessity of  
13                    instituting an action for dissolution.

14        Art. 1566. Non-fulfillment of conditions or nonperformance of charges that donee  
15                    can perform or prevent

16                    If a donation is made on a condition that the donee has the power to perform  
17                    or prevent, or depends on the performance of a charge by the donee, the non-  
18                    fulfillment of the condition or the nonperformance of the charge does not, of right,  
19                    operate a dissolution of the donation. It may be dissolved only by consent of the  
20                    parties or by judicial decree.

21                    Revision Comments – 2008

22                    (a) This Article reproduces the substance of Civil Code Article 1566 (1870).  
23                    It is not intended to change the law.

24                    (b) The non-fulfillment of conditions that the donee has the power to  
25                    perform or prevent does not operate a dissolution of the donation as of right, as is the  
26                    case in the Article 1565 when a suspensive condition can no longer be fulfilled.

27                    (c) The remedy or limitation of the donor under this Article is the same as  
28                    provided in Article 1565. As in the case of a resolutive condition under Article  
29                    1565, this Article authorizes the parties to agree to a dissolution of the donation;  
30                    otherwise a suit and judicial declaration of dissolution is required.

31                    (d) This Article eliminates use of the term "potestative conditions" contained  
32                    in the source Article as technically inaccurate under present law, but preserves the  
33                    underlying theory behind the rule. See Civil Code Article 1770, Comment (e). A  
34                    "potestative condition" was a condition that depended solely on the will of the  
35                    obligor.

1        Art. 1567. Dissolution for non-execution of other condition; prescription

2                An action to dissolve a donation for failure to fulfill the conditions or perform  
3        the charges imposed on the donee prescribes in five years, commencing the day that  
4        the donee fails to perform the charges or fulfill his obligation or ceases to do so.

5                                Revision Comments – 2008

6                (a) This Article clarifies the law by expressly providing that the prescriptive  
7        period for bringing suits to revoke donations for nonfulfillment of a condition is five  
8        years. The Article removes the uncertainty in the source Article which referred to  
9        the "usual prescription" for actions of this kind. While the Civil Code provides a ten  
10       year prescription for personal actions, in *Succession of Comeaux*, 896 So.2d 1223  
11       (La. App. 3 Cir. 2005), the court held that the "usual" prescription of Article 1567  
12       is the prescription of five years for actions to annul a testament under Civil Code  
13       Article 3497. See also *DiMattia v. DiMattia*, 282 So.2d 554 (La. App. 1 Cir. 1973),  
14       holding that plaintiff's suit to revoke a donation for failure to comply with the  
15       conditions imposed on the donee was subject to the prescription of five years.

16                (b) This Article intentionally makes a distinction between the donee's failure  
17        to perform charges and the donee's ceasing to perform them, because of the  
18        sophisticated distinction between those terms as actions or non-actions. In case of  
19        failure to perform, the donee does not begin performance, but in the case of ceasing  
20        to perform, the donee starts the performance and then stops performing.

21        Art. 1568. Dissolution for non-execution of condition

22                In case of dissolution of a donation of an immovable for the failure of the  
23        donee to fulfill conditions or perform charges, the property shall return to the donor  
24        free from all alienations, leases, or encumbrances created by the donee or his  
25        successors, subject to the law of registry. If the thing cannot be returned free from  
26        alienations, leases, or encumbrances, the donor may, nevertheless, accept it subject  
27        to the alienation, lease, or encumbrance, but the donee shall be accountable for any  
28        diminution in value. Otherwise, the donee shall restore the value of the thing  
29        donated, measured as of the time the action to dissolve is filed.

30                In case of dissolution of a donation of a movable for failure to fulfill  
31        conditions or perform charges, an alienation, lease, or encumbrance created by the  
32        donee or his successors is effective against the donor only when it is an onerous  
33        transaction made in good faith by the transferee, lessee, or creditor.

34                                Revision Comments – 2008

35                (a) This Article changes the law in part by providing that, when immovable  
36        property is concerned, in cases of revocation for failure to fulfill conditions, the  
37        property must be returned to the donor even if the donee has alienated, leased, or

encumbered the immovable by onerous title. Under former Article 1568, as amended by Act 527 of 1985, the revoking donor had no right to a return in kind of the property if the immovable has been alienated to a third party by onerous title. This Article removes that distinction and makes all transferees of the donee of a conditional donation subject to the same rights and obligations. Under this Article the principles of recordation apply to a transfer made by the donee or his successors to a third party, whether the transfer is onerous or gratuitous. See Article 3338; R.S. 9:2721, et seq.

(b) The first paragraph of this Article deals with immovable property, and the second paragraph deal with movable property. The second paragraph purposefully does not refer to the "law of registry." There are some times when the law of registry may affect movable property, as for example, a title certificate to an automobile, a registration of a stock certificate or a creditor's rights under Chapter 9 of the Commercial Laws when a security interest is perfected. Even though there is no reference in the second paragraph to the law of registry where movable property is concerned, the matter is covered by special laws.

(c) The second paragraph of this Article is modeled on the provisions of Article 1562, when the action is revocation for ingratitude. Thus, for movables the same rule and the same remedy that apply to revocation for ingratitude will apply when dissolution of a donation for failure to fulfill a condition or perform a charge is involved. In the case of dissolution, unlike a revocation for ingratitude, the public records doctrine is clearly applicable because the condition or charge must be of public record in order to affect third parties. That would not be true for ingratitude because there is no condition to be recorded; the activity that gives rise to the action to revoke is not something that a third party might necessarily know.

Art. 1569. Revocation or dissolution, donee's liability for fruits

When a donation is revoked or dissolved, the donee or his successor is bound to restore or to pay the value of the fruits and products of the things given from the date of written demand.

If the donation is dissolved for nonperformance of a condition or a charge that the donee had the power to perform, the court may order the donee or his successor to restore the value of the fruits and products received after his failure to perform if the failure to perform is due to his fault.

Revision Comments – 2008

(a) This Article reproduces the principle of Civil Code Article 1569 (1870) by providing that, as a general rule, in cases of revocation, the donee must return the fruits and products only from the day of judicial demand.

(b) Under the second paragraph, however, the court has discretion to order the return of fruits and products from an earlier date if the conditions imposed by the donor were not fulfilled due to the donee's fault.

Art. 1569.1. Dissolution for non-execution of condition, donee unable to return  
thing in same condition

When a donee or his successor is obligated to return a thing and he cannot  
restore it in essentially the same condition as it was at the time of the donation, the  
donor may elect to receive the thing in its present condition and require its return.  
In that event, the donee shall be accountable for any diminution in value at the time  
of the delivery.

#### Revision Comment – 2008

This Article is new. It is not intended to change the law, however, it is intended to make it clear that in instances when the donor is entitled to dissolve the donation for non-execution of the conditions imposed on the donee, the donor may elect to take back the thing has sustained deterioration. In such a case, the donee can be held accountable for the diminution in value of the object donated.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Tim Burns

HB No. 527

**Abstract:** Provides for the continuous revision of the law on donations.

Proposed law provides for the continuous revision of the law on donations. The following is a summary of the most significant changes. A DETAILED DIGEST follows this summary.

- (1) Present law (C.C. Art. 1535) provides that if the right of return is stipulated and the thing is returned to the donor, it returns free and clear of encumbrance.

Proposed law changes the law in that the right of return is subject to the right of a good faith transferee for value and provides that the donee and his successors are held accountable for losses sustained by the donor when the thing cannot be returned due to the rights acquired by a good faith transferee.

- (2) Present law (C.C. Art. 1538) provides that an act of donation shall contain a detailed estimate of the things given.

Proposed law clarifies the law by providing that the act of donation shall identify both the donor and the donee and describe the object that is given and provides that the codal identification requirements are satisfied if the identity of the parties and the object of the donation are reasonably ascertainable from information contained in the act.

- (3) Present law (C.C. Art. 1536) provides that a donation of an incorporeal movable, such as rents, credits, rights, or actions, shall be made by notarial act.

Proposed law does not change the law, but further requires that a donation of an incorporeal movable evidenced by a certificate, document, instrument, or other writing may be made by authentic act or as provided in special rules applicable to the particular kind of movable.

Proposed law provides that investment property may be donated by a document directing the transfer of the property in favor of the donee or for his benefit.

- (4) Present law (C.C. Art. 1559) provides that grounds for revocation or dissolution of a donation are the donee's ingratitude, the nonfulfillment or nonperformance of conditions to which the donation was subject, or the legal or conventional return.

Proposed law clarifies the law and makes it more technically accurate by eliminating the legal or conventional return as a ground for invalidating a donation.

Present law (C.C. Art. 1560) provides that a donation may be revoked for ingratitude when the donee has attempted to kill the donor, has engaged in cruel treatment towards the donor, or has refused the donor food when in distress.

Proposed law changes the law by eliminating failing to provide food to the donor as a ground for revoking a donation for ingratitude.

- (5) Present law (C.C. Art. 1563) provides that in case of revocation the donee shall return the value of the thing given, along with the fruits from the day the action for revocation was brought.

Proposed law clarifies the law by expressly providing that in cases of revocation, the donee's principal obligation is to return the thing.

- (6) Present law (C.C. Art. 1567) provides that an action for revocation or rescission of a donation based on the nonperformance of conditions imposed on the donee is subject to the usual prescription.

Proposed law clarifies the law by providing that such an action is subject to the prescription of five years.

- (7) Present law (C.C. Art. 1568) provides that in case of revocation or dissolution of a donation of an immovable for nonexecution of the conditions, the property shall be returned to the donor unless the donee has alienated the property by onerous title; in the latter case, the donee shall return the value of the immovable at the time of the donation.

Proposed law changes the law by providing that when the donee fails to fulfill the conditions, the immovable donated shall be returned to the donor, even if the donee had alienated, leased, or encumbered the immovable.

- (8) Present law (C.C. Art. 1569) provides that in cases of revocation the donee need not return the fruits gathered prior to the filing of the suit for revocation.

Proposed law changes the law by providing the trial court discretion to award restoration of fruits and products if the donee's failure to perform was due to his fault.

Proposed law provides that when the donee is unable to return the thing in the condition that it was at the time of the donation the donor may require its return and hold the donee accountable for any diminution in value.



**DETAILED DIGEST:**

Present law (C.C. Art. 1467) provides that property can only be disposed of gratuitously by donation in one of the forms provided by law.

Proposed law does not change the law.

Present law (C.C. Art. 1468) provides that a donation inter vivos is an act by which the donor gratuitously divests himself of property by consent in favor of the accepting donee, and which is irrevocable.

Proposed law does not change the law.

Present law (C.C. Art. 1469) provide that a donation mortis causa is an act by which the donor divests himself of his property that is effective at the donor's death, and which is revocable while the donor is alive.

Proposed law does not change the law.

Present law (C.C. Arts. 1524, 1526) provides that the rules peculiar to donations inter vivos do not apply to a donation subject to charges, except when the value of the thing given exceeds the value of the charge by fifty percent or more.

Proposed law does not change the law.

Present law (C.C. Arts. 1525, 1526) provides that the rules peculiar to donations inter vivos do not apply to remunerative donations except when the value of the gift exceeds the value of the services by fifty percent or more.

Proposed law does not change the law.

Present law (C.C. Art. 1527) provides that the donor may impose any changes or conditions provided that the charges do not violate public policy or good morals.

Proposed law does not change the law.

Present law (C.C. Art. 1529) provides that a donation conditioned on the will of the donor is null.

Proposed law does not change the law.

Present law (C.C. Art. 1530) provides that a donation conditioned on payment of future unexpressed debts or charges is null.

Proposed law does not change the law.

Present law (C.C. Art. 1534) provides that the donor may stipulate the right of return of the thing given in certain cases.

Proposed law does not change the law.

Present law (C.C. Art. 1535) provides that if the right of return is stipulated and the thing is returned to the donor, it returns free and clear of encumbrance.

Proposed law changes the law in that the right of return is subject to the right of a good faith transferee for value.

Proposed law changes the law in that the donee and his successors are held accountable for losses sustained by the donor when the thing cannot be returned due to the rights acquired by a good faith transferee.

Present law (C.C. Art. 1536) provides that donations of immovable property or incorporeal rights shall be passed before a notary public and two witnesses.

Proposed law does not change the law.

Present law (C.C. Art. 1538) provides that an act of donation shall contain a detailed estimate of the things given.

Proposed law clarifies the law by providing that the act of donation shall identify both the donor and the donee and describe the object that is given.

Proposed law clarifies the law by providing that the codal identification requirements are satisfied if the identity of the parties and the object of the donation are reasonably ascertainable from information contained in the act.

Present law (C.C. Art. 1539) provides that a corporeal movable thing can be donated by delivery and is not subject to any other formality.

Proposed law does not change the law.

Present law (C.C. Art. 1540) provides that a donation is effective from the time of acceptance by the donee.

Proposed law does not change the law.

Present law clarifies the law by expressly providing that possession by the donee of a movable delivered to him by the donor constitutes acceptance.

Present law (C.C. Arts. 1542-43) provides that a donation may be accepted by the donee in person or by mandatary.

Proposed law does not change the law.

Present law (C.C. Art. 1543) provides that a donation shall be accepted during the lifetime of the donee.

Proposed law does not change the law.

Present law (C.C. Art. 1543) provides that if the donee fails to accept a donation, the donation cannot be accepted by his creditors.

Proposed law does not change the law.

Present law (C.C. Art. 1546) provides that a donation made to an unemancipated minor shall be accepted by his tutor; and may be accepted by a parent or other ancestor when the parent or ancestor is either the donor or the minor's tutor.

Proposed law does not change the law.

Present law (C.C. Art. 1551) provides that a donee acquires the thing donated subject to all charges burdening the same, even those imposed after the donation.

Proposed law does not change the law.

Present law (C.C. Art. 1536) provides that a donation of an incorporeal movable, such as rents, credits, rights, or actions, shall be made by notarial act.

Proposed law does not change the law.

Proposed law provides that a donation of an incorporeal movable evidenced by a certificate, document, instrument, or other writing may be made by authentic act or as provided in special rules applicable to the particular kind of movable.

Proposed law provides that investment property may be donated by a document directing the transfer of the property in favor of the donee or for his benefit.

Present law (C.C. Art. 1550) provides that a donation is perfected by the donee's acceptance.

Proposed law does not change the law.

Present law (C.C. Art. 1559) provides that grounds for revocation or dissolution of a donation are the donee's ingratitude, the nonfulfillment or nonperformance of conditions to which the donation was subject, or the legal or conventional return.

Proposed law clarifies the law and makes it more technically accurate by eliminating the legal or conventional return as a ground for invalidating a donation.

Present law (C.C. Art. 1560) provides that a donation may be revoked for ingratitude when the donee has attempted to kill the donor, has engaged in cruel treatment towards the donor, or has refused the donor food when in distress.

Proposed law changes the law by eliminating failing to provide food to the donor as a ground for revoking a donation for ingratitude.

Present law (C.C. Art. 1561) provides that an action of revocation for ingratitude shall be brought within one year of the act of ingratitude.

Proposed law does not change the law.

Present law (C.C. Art. 1562) provides that an action for revocation does not affect donations or encumbrances made by the donee prior to the filing of the action for revocation.

Proposed law does not change the law.

Present law (C.C. Art. 1563) provides that in case of revocation the donee shall return the value of the thing given, along with the fruits from the day the action for revocation was brought.

Proposed law clarifies the law by expressly providing that in cases of revocation, the donee's principal obligation is to return the thing.

Present law (C.C. Art. 1565) provides that when a donation is subject to a suspensive condition that can no longer be accomplished, the donation is dissolved of right.

Proposed law does not change the law.

Present law (C.C. Art. 1566) provides that if the donation is subject to a condition that the donee can perform or prevent, the nonperformance of the condition does not result in an automatic dissolution of the donation; it shall be sued for and decreed judicially.

Proposed law does not change the law.

Present law (C.C. Art. 1567) provides that an action for revocation or rescission of a donation based on the nonperformance of conditions imposed on the donee is subject to the usual prescription.

Proposed law clarifies the law by providing that such an action is subject to the prescription of five years.

Present law (C.C. Art. 1568) provides that in case of revocation or dissolution of a donation of an immovable for nonexecution of the conditions, the property shall be returned to the donor unless the donee has alienated the property by onerous title; in the latter case, the donee shall return the value of the immovable at the time of the donation.

Proposed law changes the law by providing that when the donee fails to fulfill the conditions, the immovable donated shall be returned to the donor, even if the donee had alienated, leased, or encumbered the immovable.

Present law (C.C. Art. 1569) provides that in cases of revocation the donee need not return the fruits gathered prior to the filing of the suit for revocation.

Proposed law changes the law by providing the trial court discretion to award restoration of fruits and products if the donee's failure to perform was due to his fault.

Proposed law provides that when the donee is unable to return the thing in the condition that it was at the time of the donation the donor may require its return and hold the donee accountable for any diminution in value.

(Amends C.C. Arts. 1467-1469 and 1523-1569.1)