
DIGEST

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Abramson

HB No. 615

Abstract: Provides for utility servitudes for enclosed estates.

Present law (C.C. Art. 689) includes utilities in the right of passage for enclosed estates.

Proposed law (C.C. Art. 689) removes utilities from the right of passage.

Proposed law enacts Chapter 1-A of Code Title IV of Code Book II of Title 9, to be comprised of R.S. 9:1261 through 1270, establishing the right to a utility servitude for enclosed estates.

Proposed law (R.S. 9:1261) provides that the owner of an estate that has no access to a public utility may claim over neighboring property a utility servitude to the nearest public utility.

Proposed law (R.S. 9:1261) provides that he is bound to compensate his neighbor for the utility servitude acquired and indemnify him for the damage he may occasion.

Present law (C.C. Art. 689) provides that new or additional maintenance burdens imposed upon the servient estate or intervening lands resulting from the utility servitude shall be the responsibility of the owner of the dominant estate.

Proposed law (C.C. Art. 689) repeals present law.

Proposed law (R.S. 9:1262) provides that the utility servitude shall be limited to the rights reasonably necessary to provide utility services to the dominant estate.

Proposed law (R.S. 9:1263) provides that the owner of the dominant estate may construct on the right-of-way of the utility servitude the works that are reasonably necessary for the exercise of the servitude. Provides that the works constructed on the servient estate shall not be substantially different from those required to provide the utility to an ordinary household.

Present law (C.C. Art. 691) provides that the utility crossing shall be constructed in compliance with all appropriate and applicable federal and state standards so as to mitigate all hazards posed by the passage and the particular conditions of the servient estate and intervening lands.

Proposed law (C.C. Art. 691) repeals present law.

Proposed law (R.S. 9:1263) provides that the works shall be constructed and maintained in compliance with applicable federal and state standards and in a manner to lessen hazards posed

by the servitude.

Present law (C.C. Art. 692) provides that the location of the utility right-of-way shall coincide with the location of the servitude of passage unless an alternate location providing access to the nearest utility is least injurious to the servient estate and intervening lands.

Present law (C.C. Art. 692) provides that the court shall evaluate and determine that the location of the servitude of passage or utility shall not affect the safety of the operations or significantly interfere with the operations of the owner of the servient estate or intervening lands prior to the granting of the servitude of passage or utility.

Proposed law (C.C. Art. 692) repeals present law.

Proposed law (R.S. 9:1264) provides that the owner of the dominant estate may not demand location of the right-of-way anywhere he chooses. Provides that the right-of-way generally shall be taken along the shortest route from the dominant estate to the public utility at the location least injurious to the intervening lands. Further provides that the right-of-way shall not be fixed at a location that significantly affects the safety of operations on, or unreasonably interferes with the enjoyment of, the servient estate.

Proposed law (R.S. 9:1265) provides that if the owner of an estate deprives himself of access to a public utility as a result of his voluntary act or omission, his neighbors are not bound to furnish a servitude to him or his successors for access to that utility.

Proposed law (R.S. 9:1266) provides that when in the case of partition, or a voluntary alienation of an estate, property alienated or partitioned becomes deprived of access to a public utility, a utility servitude shall be furnished gratuitously by the owner of the land on which access to the public utility previously existed, even if it is not the shortest route to the public utility, and even if the act of alienation or partition does not mention a utility servitude.

Proposed law (R.S. 9:1267) provides that the owner of the dominant estate has no right to the relocation of the right-of-way after it is fixed. Provides that the owner of the servient estate has the right to demand relocation of the right-of-way to a more convenient place at his own expense, provided that it affords the same facility to the owner of the dominant estate.

Proposed law (R.S. 9:1268) provides that the right for compensation and indemnity against the owner of the dominant estate may be lost by prescription. Provides that the accrual of this prescription has no effect on the utility servitude.

Present law defines "utility" in Civil Code Article 696.1 as a service such as electricity, water, sewer, gas, telephone, cable television, and other commonly used power and communication networks required for the operation of an ordinary household or business.

Proposed law repeals present law.

Proposed law (R.S. 9:1269) defines "utility" as a service such as electricity, water, sewer, gas, telephone, cable television, and other commonly used power and communication networks of the kind required for the operation of an ordinary household, whether the service is provided to a household or business.

Proposed law (R.S. 9:1270) provides that a utility servitude under this Chapter is regulated by application of the rules governing predial servitudes to the extent that their application is compatible with the rules governing a utility servitude.

(Amends C.C. Arts. 689-692, 694, and 705; Adds R.S. 9:1261-1270; Repeals C.C. Art. 696.1)