

Regular Session, 2012

HOUSE BILL NO. 468

BY REPRESENTATIVES ABRAMSON AND THOMPSON

PROPERTY/SERVITUDES: Provides for utilities in the right of passage for enclosed estates

1 AN ACT

2 To amend and reenact Civil Code Articles 689, 690, 691, 692, 694, 705, and 707 and to
3 enact Civil Code Article 696.1, relative to enclosed estates; to provide for the right
4 of passage for utilities; to provide for definitions; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Civil Code Articles 689, 690, 691, 692, 694, 705, and 707 are hereby
7 amended and reenacted and Civil Code Article 696.1 is hereby enacted to read as follows:

8 Art. 689. Enclosed estate; right of passage

9 The owner of an estate that has no access to a public road or utility may claim
10 a right of passage over neighboring property to the nearest public road or utility. He
11 is bound to indemnify his neighbor for the damage he may occasion.

12 Art. 690. Extent of passage

13 The right of passage for the benefit of an enclosed estate shall be suitable for
14 the kind of traffic or utility that is reasonably necessary for the use of that estate.

15 Art. 691. Constructions

16 The owner of the enclosed estate may construct on the right of way the type
17 of road, utility, or railroad reasonably necessary for the exercise of the servitude.

18 Art. 692. Location of passage

19 The owner of the enclosed estate may not demand the right of passage
20 anywhere he chooses. The passage generally shall be taken along the shortest route

1 from the enclosed estate to the public road or utility at the location least injurious to
2 the intervening lands.

3 * * *

4 Art. 694. Enclosed estate; voluntary alienation or partition

5 When in the case of partition, or a voluntary alienation of an estate or of a
6 part thereof, property alienated or partitioned becomes enclosed, passage shall be
7 furnished gratuitously by the owner of the land on which the passage was previously
8 exercised, even if it is not the shortest route to the public road or utility, and even if
9 the act of alienation or partition does not mention a servitude of passage.

10 * * *

11 Art. 696.1. Utility

12 As used in this Section, a utility is a service such as electricity, water, sewer,
13 gas, telephone, cable television, and other commonly used power and
14 communication networks required for the operation of an ordinary household or
15 business.

16 * * *

17 Art. 705. Servitude of passage

18 The servitude of passage is the right for the benefit of the dominant estate
19 whereby persons, animals, utilities, or vehicles are permitted to pass through the
20 servient estate. Unless the title provides otherwise, the extent of the right and the
21 mode of its exercise shall be suitable for the kind of traffic or utility necessary for
22 the reasonable use of the dominant estate.

23 * * *

24 Art. 707. Servitudes; apparent or nonapparent

25 Predial servitudes are either apparent or nonapparent. Apparent servitudes
26 are those that are perceivable by exterior signs, works, or constructions; such as a
27 roadway, a utility, a window in a common wall, or an aqueduct.

1 Nonapparent servitudes are those that have no exterior sign of their existence;
2 such as the prohibition of building on an estate or of building above a particular
3 height.

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)]

Abramson

HB No. 468

Abstract: Includes utilities in the right of passage for enclosed estates.

Present law provides that the owner of an estate that has no access to a public road may claim a right of passage over neighboring property to the nearest public road, and that he is bound to indemnify his neighbor for the damage he may occasion.

Present law provides for the extent, location, and relocation of passage, and the type of construction reasonably necessary for the exercise of the servitude.

Present law provides that the right for indemnity against the owner of the enclosed estate may be lost by prescription, but that the accrual of this prescription has no effect on the right of passage.

Proposed law retains present law and includes utilities in the right of passage for enclosed estates.

Proposed law defines "utility" 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.

Present law defines the "servitude of passage" as the right for the benefit of the dominant estate whereby persons, animals, or vehicles are permitted to pass through the servient estate. Unless the title provides otherwise, the extent of the right and the mode of its exercise shall be suitable for the kind of traffic necessary for the reasonable use of the dominant estate.

Proposed law includes utilities in the definition of "servitude of passage".

(Amends C.C. Arts. 689, 690, 691, 692, 694, 705, and 707; Adds C.C. Art. 696.1)