

## **2010 REVISION OF THE LAW OF USUFRUCT**

**BY**

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Act No. 881 of the 2010 Regular Session of the Louisiana Legislature adopted a comprehensive revision of the Louisiana Civil Code provisions on the law of usufruct, which are found in Articles 535 through 629 of the Louisiana Civil Code. The Revision is the result of a four-year study requested by the Legislature in 2006, authorizing and requesting the Louisiana State Law Institute to study and make recommendations to the Legislature on the laws of usufruct and naked ownership, expressly in light of Hurricanes Katrina and Rita. The law of usufruct was substantially revised in 1976 as part of the ongoing revision and modernization of the Louisiana Civil Code begun by the Law Institute years earlier. The 2010 Revision does not effect a fundamental change in the Louisiana law of usufruct, but instead focuses primarily on clarification of the law and seeks to implement the legislative mandate by providing more modern and flexible rules that take into account societal and legal developments that have taken place since 1976. In one sense, the devastation brought on by the hurricanes prompted the Institute to review and revise the law of usufruct, but the timing was especially opportune because it also enabled the Institute to review the entire law of usufruct and to determine important areas of the law that needed to be revised for other reasons. In the interest of clarifying uncertainties and removing

potential ambiguities, the Institute took full advantage of the opportunity to clarify both minor and major matters.

There have been a number of substantial changes in other areas of Louisiana law since 1976 that have impacted the law of usufruct. An example of such a change is the enormous revision of the law of successions, donations and wills, over the last 25 years, which included the adoption of new rules regarding the payment of “estate debts” and the removal of a number of archaic terms and phrases in succession law. Also, the upheaval or “revolution” regarding forced heirship that began in 1989 and culminated in 1997, made Revision of the law of usufruct especially important where a surviving spouse is concerned. And, with the passage of time, it became apparent that some of the innovations in the law of usufruct that were hailed when they were implemented in 1976 had unanticipated consequences and had given rise to practical problems and theoretical issues that, in retrospect, needed clarification. As a result, pretermitted the immediate issues regarding hurricanes and other natural disasters, the task of revising the law of usufruct proved to be a great deal more complicated and more sophisticated than expected. Although the 2010 Revision of the law does not represent a radical departure in the law of usufruct, it is nevertheless truly “comprehensive” and not merely cosmetic or stylistic. It is a progressive step in modernizing the rules to make them more practical and workable, and to make them theoretically consistent and, one hopes, clearer than they had been.

Some of the changes made necessary or appropriate by developments in the law since 1976 are as follows. Article 549 changes the term “legal entity” to “juridical person,” a seemingly minor change but one which is consistent with the new designation of “person” in Civil Code article 24. The change has some importance in the 30-year limitation of a usufruct in favor of a juridical person (formerly a “legal entity”) or with reference to the dissolution of a “juridical person.” See La. Civ. Co. Art. 608.

In 1976 Article 553 resolved an unsettled issue and clarified the law to provide that the usufructuary has the right to vote shares of stock. In 2010 the article needed to be amended to recognize innovations regarding other forms of business associations than corporations and to clarify rights that technically do not constitute “voting,” but are akin to it. The new article expands the effect of the rule to include the new business entity, the limited liability company, which in its short existence has far surpassed the corporation in popularity as a form of business organization. It also recognizes that in other juridical entities the usufructuary may exercise rights that are similar to voting rights in corporations, such as management.

Before 1976 a usufructuary had only a limited power to dispose of nonconsumable property without the consent of the naked owner. The power was limited to items that were subject to decay as a result of depreciation or wear and tear. The 1976 Revision greatly expanded the rights of usufructuaries by providing that the grantor of a usufruct could authorize the usufructuary to “dispose” of nonconsumable property. In the context of the

1976 Revision, it was generally assumed at the time that the new “power to dispose” essentially referred only to the power to sell, but that limitation was not expressed. None of the language of the 1976 Revision addressed the issue whether the power to “dispose” included the power to grant a mortgage or security interest, or to lease the property beyond the term of the usufruct, all of which were “dispositions,” and if it did include them, the ramifications of such actions.

The “power to dispose” has become increasingly important over time, especially in the area of forced heirship, where it may significantly affect the rights of a forced heir. It is now clear that the grant of such power to a surviving spouse who has usufruct over property that is part of a forced heir’s legitime does not constitute an impingement on the legitime. La. Civ. Co. Art. 1499.

Articles 568 through 568.3 of the Revision now provide detailed rules on the “disposition” of nonconsumable things by the usufructuary. The Revision does not change the rule that the usufructuary may not dispose of nonconsumables unless the power has been granted to him, but it substantially revises the rules in other ways. Before the Revision, Article 568 simply provided that after the sale of nonconsumables by the usufructuary, the usufruct became a usufruct of “money,” a result that is consistent with the idea that “disposition” was intended only to include sales. Article 568 of the Revision now makes it clear that the right to “dispose” of a nonconsumable is not limited to sales, and includes the rights to alienate, lease and encumber the thing, but does not include the right to donate

the thing, unless that right is expressly granted. These new articles provide specific rules governing the effects of alienating property, encumbering property, and leasing property subject to the usufruct beyond the termination of the usufruct. Those new provisions are discussed in greater detail in the Redactor's "Comments" to the Articles themselves.

Article 577 adds "force majeure" as a cause for need of ordinary repairs for which the usufructuary is responsible. Although the term "force majeure" is French, it has an accepted meaning in both common law and civil law jurisdictions, particularly in the area of insurance law. The term means a superior or irresistible force, and the addition of this term is an important and useful innovation, particularly in light of natural events such as hurricanes, which did not properly fit under the category of "accident." Similarly, Article 583 now adds "force majeure" to the list of causes of total destruction of property for which restoration of the property is not mandatory, and Article 613 adds "force majeure" to the causes of loss of property for which usufruct terminates.

Most usufructs arise when a person dies, and are created either by testament or under the laws of intestacy, but a usufruct may be established by donation inter vivos, and there are slightly different rights and duties imposed on the usufructuary whose usufruct is established inter vivos instead of mortis causa.

The Revision preserves the distinction between consumable and nonconsumable things, a distinction that has proved to be useful and workable. It also preserves the obligation of a usufructuary to act as a prudent administrator. La. Civ. Co. Art. 539.

The distinction between the kinds of fruits, natural and civil, is preserved, and the rules regarding apportionment of fruits have not been changed. Rules regarding improvements and alterations are preserved, as are the rules regarding liability for repairs, whether ordinary or extraordinary.

All of the changes are discussed in the Redactor's "Comments" to the various Code articles, which explain why the Institute believed that a change was needed and what change was made. Taken item by item, or article by article, the general trend of changes in the law may not be as apparent as a broad over-all view will show it to be. Essentially, usufruct has changed considerably over the years, especially the last 50, and today usufruct differs substantially from usufruct as it has existed over the previous 2,000 years in Rome, France and Louisiana. The metamorphosis has occurred for a number of reasons, some sociological, some technological, some legal. Among other things, changes in the nature of the family, the emancipated role of women, the forms of wealth, and the widespread acceptance of the trust in Louisiana since the adoption of the Trust Code in 1964, have all caused usufruct to evolve into an almost new and different institution. The revisions of 1976 and 2010 have recognized the changing nature of usufruct and have adapted it to be workable when usufruct is appropriate. Justice Oliver Wendell Holmes observed that "the life of the law has not been logic, it has been experience," and the revisions of the law of usufruct in 1976 and in 2010 illustrate and validate Justice Holmes's observation. But it should be observed that there is often "logic" in the "experience," and Louisiana has every

reason to be justly proud of the way it has adapted an old and honored institution so that it remains a useful, functioning institution, but more modern, and one that is theoretically consistent internally and workable practically.

**LOUISIANA STATE LAW INSTITUTE**

**REVISION OF THE**

**LOUISIANA LAW OF SUCCESSIONS**

**CIVIL CODE ARTICLES ON USUFRUCT**

**WITH REVISION COMMENTS**

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**REVISED ARTICLES ON USUFRUCT  
WITH 2010 REVISION COMMENTS**

**Art. 538. Usufruct of consumable things**

If the things subject to the usufruct are consumables, the usufructuary becomes owner of them. He may consume, alienate, or encumber them as he sees fit. At the termination of the usufruct he is bound either to pay to the naked owner the value that the things had at the commencement of the usufruct or to deliver to him things of the same quantity and quality.

**Revision Comments 2010**

This article reproduces and clarifies the substance of Article 538. It is not intended to change the law.

**Art. 549. Capacity to receive usufruct**

Usufruct may be established in favor of a natural person or a juridical person.

**Revision Comments 2010**

This article is based on Article 549 as revised in 1976. It is not intended to change the law. The change in language is intended to make the article more technically accurate and consistent with the definition of "person" in Article 24, which provides that there are two kinds of persons—natural and juridical. Under this article, usufruct may be established in favor of either kind of person, but it

1 may not be established in favor of something that is not a person, for example, a  
2 trust, which is a "relationship", not an entity. See La. R.S. 9:1731 and comments  
3 to Article 608, *infra*. A usufruct may be held in trust. See La. R.S. 9:1771, and  
4 revision comment (c) thereto. Technically, when a usufruct is held in trust, the  
5 gift or legacy of the usufruct is made to the trustee in his capacity as such.  
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#### 8 Art. 553. Voting of shares of stock and other rights 9

10 The usufructuary has the right to vote shares of stock in corporations and  
11 to vote or exercise similar rights with respect to interests in other juridical  
12 persons, unless otherwise provided.

#### 13 14 Revision Comments 2010 15

16 This article is based on Article 553. It is not intended to change the law.  
17 This article expands the rule to allow the usufructuary to exercise rights similar to  
18 voting rights in juridical persons that are not corporations, such as limited liability  
19 companies.  
20

21 By way of illustration, this article is intended to allow the usufructuary to  
22 exercise management rights of members of limited liability companies. See R.S.  
23 12: 1311 et seq. As a member of an LLC, the usufructuary would have the same  
24 powers and responsibilities as other members, including fiduciary duties. See  
25 R.S. 12: 1314, relative to duties of members and managers of a limited liability  
26 company.  
27

#### 28 29 Art. 558. Improvements and alterations 30

31 The usufructuary may make improvements and alterations on the property  
32 subject to the usufruct at his cost and with the written consent of the naked  
33 owner. If the naked owner fails or refuses to give his consent, the usufructuary  
34 may, after notice to the naked owner and with the approval of the court, make at

1 his cost those improvements and alterations that a prudent administrator would  
2 make.

3  
4 Revision Comments 2010

5  
6 This article reproduces the substance of Civil Code Article 558. It is not  
7 intended to change the law.

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10 Art. 567. Contracts affecting the usufructuary's liability  
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12 The usufructuary may lease, alienate, or encumber his right. All such  
13 contracts cease of right at the end of the usufruct.

14 If the usufructuary leases, alienates, or encumbers his right, he is  
15 responsible to the naked owner for the abuse that the person with whom he has  
16 contracted makes of the property.

17 Revision Comments 2010

18  
19 (a) This article reproduces the substance of Civil Code Article 567. It is  
20 intended to clarify the law regarding the usufructuary's liability in cases where the  
21 usufructuary leases, alienates, or encumbers his right.

22  
23 (b) There is a significant distinction between leasing, alienating or  
24 encumbering "his right," and "disposing" of the thing itself. The right to  
25 dispose of the thing may be granted pursuant to the provisions of Article  
26 568. Article 567 covers the situation where the usufructuary has not been  
27 granted the power to "dispose" of the property, as in the case of an Article  
28 890 usufruct arising from intestacy. Also, even if granted the power to  
29 "dispose" of the property, the usufructuary may choose simply to deal with  
30 his right and not to dispose of the property itself, in which case Article 567  
31 would govern.

32  
33 (c) This Article clarifies that the liability of the usufructuary is to  
34 the naked owner, which is appropriate as a corollary to the usufructuary's  
35 duty to act as a prudent administrator.

1  
2 Art. 568. Disposition of nonconsumable things

3       The usufructuary may not dispose of nonconsumable things unless the  
4 right to do so has been expressly granted to him. Nevertheless, he may  
5 dispose of corporeal movables that are gradually and substantially impaired by  
6 use, wear, or decay, such as equipment, appliances, and vehicles, provided  
7 that he acts as a prudent administrator.

8       The right to dispose of a nonconsumable thing includes the rights to  
9 lease, alienate, and encumber the thing. It does not include the right to alienate  
10 by donation inter vivos, unless that right is expressly granted.

11  
12 Revision Comments 2010

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14       (a) This article reproduces the substance of Civil Code Article 568. It is  
15 intended to clarify the rights and obligations of the usufructuary who has a power  
16 of disposition over nonconsumables.

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18       (b) Paragraph one restates the rule that, except for things subject to  
19 wear and tear, the usufructuary may not dispose of nonconsumables, unless the  
20 right to do so has been expressly granted to him. Paragraph two introduces an  
21 important clarification in that it defines the right to dispose as including the rights  
22 to “lease, alienate, and encumber” the thing. Under this article, it is now clear that  
23 a usufructuary who has the right to dispose may not only alienate the thing by  
24 sale, exchange, or giving in payment, but may also encumber the thing by  
25 mortgage or otherwise.

26  
27       (c) This article provides important limitations on the usufructuary’s right  
28 to dispose of the thing. First of all, as under prior law, the usufructuary’s right to  
29 dispose is subject to his obligation to act as a prudent administrator. Secondly,  
30 as a policy matter, the usufructuary does not have the right to alienate the thing  
31 by donation inter vivos unless such a right has been expressly granted to him.  
32 The usufructuary’s right to donate is regulated in Article 568.1, *infra*.

1 Art. 568.1. Donation and alienation.

2  
3 If a thing subject to the usufruct is donated inter vivos by the usufructuary,  
4 he is obligated to pay to the naked owner at the termination of the usufruct the  
5 value of the thing as of the time of the donation. If a thing subject to the usufruct  
6 is otherwise alienated by the usufructuary, the usufruct attaches to any money or  
7 other property received by the usufructuary. The property received shall be  
8 classified as consumable or nonconsumable in accordance with the provisions of  
9 this Title, and the usufruct shall be governed by those provisions subject to the  
10 terms of the act establishing the original usufruct. If, at the time of the alienation,  
11 the value of the property received by the usufructuary is less than the value of  
12 the thing alienated, the usufructuary is bound to pay the difference to the naked  
13 owner at the termination of the usufruct.

14  
15 Revision Comments 2010

16  
17 (a) This article provides rules governing the alienation by the  
18 usufructuary of things subject to the usufruct. It changes the law in part in that  
19 there is no authority under prior law authorizing the usufructuary to donate things  
20 subject to the usufruct.

21  
22 (b) A donation is an alienation, but under this article an exception is  
23 carved out for donations. The usufructuary is not entitled to donate  
24 nonconsumable things subject to the usufruct unless this right has been  
25 expressly granted to him. If the right to donate has been expressly granted, then  
26 the usufructuary may donate things by inter vivos transfer and is obligated to  
27 account to the naked owner at the termination of the usufruct for the value that  
28 the things donated had at the time of the gratuitous transfer. Whether the  
29 usufructuary "uses" or alienates by onerous or gratuitous title, he must always  
30 act in good faith and as a prudent administrator. See Article 539; see also  
31 Articles 1759 and 1983. Those requirements are implicit in the obligations that  
32 this Article imposes on the usufructuary to pay the naked owner at the  
33 termination of the usufruct.

1  
2 (c) If the property received by the usufructuary is consumable, then  
3 under the provisions of this Title, the usufructuary will be bound to pay to the  
4 naked owner at the termination of the usufruct the value of the consumables that  
5 he received, and under the regular provisions governing usufruct the  
6 usufructuary will become the "owner" of the consumable property. See Civil Code  
7 Article 538. This will leave open the question of whether he may have sold the  
8 property for too low a price, and he is always subject to the obligation of acting as  
9 a prudent administrator. See Civil Code Article 576 and revision comment (b). If  
10 the usufructuary receives property that is nonconsumable, the usufruct will attach  
11 to it and the usufructuary will be bound to deliver the thing received to the naked  
12 owner at the termination of the usufruct. See Civil Code Article 539.  
13

14 (d) The provisions expressed in comment (a) are the provisions to which  
15 Article 568.1 refers when it states that the usufruct "shall be governed by those  
16 provisions." This Article expressly refers to the act "establishing the original  
17 usufruct", because if that act granted authority to dispose of nonconsumables,  
18 that grant would be a continuing grant of authority and would apply to the new  
19 nonconsumables that have been received.  
20

21  
22 Art. 568.2. Right to lease

23 The right to dispose of a nonconsumable thing includes the right to lease  
24 the thing for a term that extends beyond the termination of the usufruct. If at  
25 the termination of the usufruct, the thing remains subject to the lease, the  
26 usufructuary is accountable to the naked owner for any diminution in the value  
27 of the thing at that time attributable to the lease.

28  
29 Revision Comments 2010  
30

31 (a) This article changes the law in part by allowing a usufructuary with  
32 the right to dispose the authority to lease things subject to the usufruct for a term  
33 that goes beyond the existence of the usufruct. Under prior law, the usufructuary  
34 could lease the property subject to the usufruct, but, unless confirmed or ratified  
35 by the naked owner, any such lease would terminate at the end of the usufruct,  
36 regardless of the length of the term conventionally agreed by the usufructuary  
37 and the lessee. See Civil Code Article 567 (1976); Yiannopoulos, *Personal*  
38 *Servitudes*, 3 Louisiana Civil Law Treatise (4<sup>th</sup> ed. 2000), at 188-189. See also

1 Civil Code Article 2716, which provides: "A lease granted by a usufructuary  
2 terminates upon the termination of the usufruct. The lessor is liable to the lessee  
3 for any loss caused by such termination, if the lessor failed to disclose his status  
4 as a usufructuary." It is important to note that the usufructuary's right to lease for  
5 a term beyond the term of the usufruct only obtains when the usufructuary has  
6 been granted the power to dispose of the thing. There is a significant distinction  
7 between the usufructuary's "leasing, alienating, or encumbering" his right and  
8 disposing of the thing itself. See the discussion in comment to Article 567, supra.

9  
10 (b) As in other cases, the usufructuary's right to lease is subject to his  
11 obligation to act as a prudent administrator. See Article 539. Even if he acts as a  
12 prudent administrator, under the provisions of this article the usufructuary who  
13 leases a thing beyond the term of the lease is accountable to the naked owner at  
14 the termination of the usufruct for any diminution in the value of the thing at that  
15 time that is attributable to the lease.

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18 Art. 568.3. Requirement to remove encumbrance

19 If, at the termination of the usufruct, the thing subject to the usufruct is  
20 burdened by an encumbrance established by the usufructuary to secure an  
21 obligation, the usufructuary is bound to remove the encumbrance.

22  
23 Revision Comments 2010

24  
25 (a) This article is intended to address the situation in which a  
26 usufructuary with a right to dispose has elected to encumber a nonconsumable  
27 thing subject to the usufruct to secure a debt. While the article does not  
28 expressly provide for the termination of the encumbrance at the end of the  
29 usufruct, the article obligates the usufructuary to remove the encumbrance at the  
30 time the usufruct terminates.

31  
32 (b) There is no simple rule to fit all cases. For example, a usufructuary  
33 who encumbers property to discharge or pay off a pre-existing debt of the grantor  
34 will be entitled to reimbursement from the naked owner for paying off that debt,  
35 and that right will be an offset against the amount needed to pay to remove the  
36 new encumbrance. Also, a usufructuary and naked owner may agree on a  
37 different resolution that may be fair and appropriate given all circumstances. For  
38 example, it may be advantageous to leave the encumbrance in place. In the  
39 absence of such an agreement, this Article establishes the base-line rule or  
40 starting point, which is that the encumbrance must be removed. The rule is not

1 onerous because the usufructuary will have received the proceeds of the  
2 encumbrance, directly or indirectly, which he may have spent or used to improve  
3 the property for which he may receive reimbursement. Also there may be  
4 incidental tax benefits for the usufructuary, such as the ability to deduct  
5 depreciation on improvements made with those proceeds.

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9 Art. 569. Duties with regard to things gradually or totally impaired

10 If the usufructuary has not disposed of corporeal movables that are by their  
11 nature impaired by use, wear, or decay, he is bound to deliver them to the owner in  
12 the state in which they may be at the end of the usufruct.

13 The usufructuary is relieved of this obligation if the things are entirely worn  
14 out by normal use, wear, or decay.

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16 Revision Comments 2010

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18 This Article reproduces the substance of Article 569 of the Louisiana Civil  
19 Code. It is not intended to change the law.

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21  
22 Art. 573. Dispensation of security

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24 A. Security is dispensed when any of the following occur:

25  
26 (1) A person has a legal usufruct under Civil Code Article 223 or 3252.

27  
28 (2) A surviving spouse has a legal usufruct under Civil Code Article 890

29 unless the naked owner is not a child of the usufructuary or if the naked owner is  
30 a child of the usufructuary and is also a forced heir of the decedent, the naked  
31 owner may obtain security but only to the extent of his legitime.

32 (3) A parent has a legal usufruct under Civil Code Article 891 unless



1 the naked owner is not a child of the usufructuary.

2 (4) A surviving spouse has a legal usufruct under Civil Code Article  
3 2434 unless the naked owner is a child of the decedent but not a child of the  
4 usufructuary.

5 B. A seller or donor of property under reservation of usufruct is not  
6 required to give security.

7 Revision Comments 2010

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9 This article reproduces the substance of Civil Code Article 573. It is not  
10 intended to change the law. As revised, the article does not expressly provide  
11 that security is "dispensed by operation of law," because such a statement is  
12 unnecessary.

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15 Art. 574. Delay in giving security

16 A delay in giving security does not deprive the usufructuary of the fruits  
17 derived from the property since the commencement of the usufruct.

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19 Revision Comments 2010

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21 This article reproduces the substance of Civil Code Article 574 with a  
22 minor grammatical change. It is not intended to change the law.

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25 Art. 575. Failure to give security

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28 If the usufructuary does not give security, the court may order that the  
29 property be delivered to an administrator appointed in accordance with Articles  
30 3111 through 3113 of the Code of Civil Procedure for administration on behalf of  
the usufructuary. The administration terminates if the usufructuary gives security.

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2 Revision Comments 2010

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4 This article reproduces the substance of Civil Code Article 575. It is not  
5 intended to change the law.  
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9 Art. 577. Liability for repairs

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11 The usufructuary is responsible for ordinary maintenance and repairs for  
12 keeping the property subject to the usufruct in good order, whether the need for  
13 these repairs arises from accident or force majeure, the normal use of things, or  
14 his fault or neglect.

15 The naked owner is responsible for extraordinary repairs, unless they  
16 have become necessary as a result of the usufructuary's fault or neglect in which  
17 case the usufructuary is bound to make them at his cost.

18  
19 Revision Comments 2010

20  
21 (a) This article adds "force majeure" as one of the causes of a need for  
22 repairs for which the usufructuary is responsible. It changes the law in part.  
23 Under the 1976 revision of Article 577 the usufructuary must make ordinary  
24 repairs if the need for repairs arises from "accident, from the normal use of the  
25 things, or from his fraud or neglect", but force majeure is not included in that list  
26 as a cause of the need for ordinary repairs for which the usufructuary is  
27 responsible. The new article adds it.

28  
29 (b) Under this revision, the obligation to make ordinary repairs also  
30 includes those ordinary repairs made necessary by force majeure events,  
31 including hurricanes. This is consistent with the usufructuary's obligation to enjoy  
32 the things subject to the usufruct as a prudent administrator. See Civil Code  
33 Article 539. See also, generally, Yiannopoulos, *Personal Servitudes*, 3 Louisiana  
34 Civil Law Treatise (4<sup>th</sup> ed. 2000), at 256-258.

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37 Art. 580. Reimbursement for necessary repairs

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2 If, after the usufruct commences and before the usufructuary is put in  
3 possession, the naked owner incurs necessary expenses or makes repairs for  
4 which the usufructuary is responsible, the naked owner has the right to claim the  
5 cost from the usufructuary and may retain the possession of the things subject to  
6 the usufruct until he is paid.

7  
8 Revision Comments 2010

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10 This article reproduces the substance of Civil Code Article 580. It is not  
11 intended to change the law.

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14 Art. 581. Liability for necessary expenses

15  
16 The usufructuary is answerable for all expenses that become necessary  
17 for the preservation and use of the property after the commencement of the usufruct.

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19 Revision Comments 2010

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21 This article reproduces the substance of Civil Code Article 581. It is not  
22 intended to change the law.

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25 Art. 583. Ruin from accident, force majeure or age

26 Neither the usufructuary nor the naked owner is bound to restore  
27 property that has been totally destroyed through accident, force majeure, or age.

28 If the naked owner elects to restore the property or to make extraordinary  
29 repairs, he shall do so within a reasonable time and in the manner least  
30 inconvenient and onerous for the usufructuary.

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Revision Comments 2010

This article clarifies the law by adding “force majeure” to the list of causes of destruction of property for which the usufructuary is not responsible. Under article 583, as revised in 1976, the owner is not obligated to restore the property when the same is destroyed “through accident or because of age”. See, generally, Yiannopoulos, *Personal Servitudes*, 3 Louisiana Civil Law Treatise (4<sup>th</sup> ed. 2000), at 273.

Art. 584. Periodic charges.

The usufructuary is bound to pay the periodic charges, such as property taxes that may be imposed, during his enjoyment of the usufruct.

Revision Comments 2010

This article amends the language of Civil Code Article 584 in order to make it more technically accurate. The intent of this revision is to clarify the law, by providing that the usufructuary is liable for “periodic” charges, and not just annual ones. In addition, the article provides that the liability of the usufructuary for charges includes those that may be imposed during the existence of the usufruct, in order to make it clear that the usufructuary is liable for charges that are imposed after the usufruct commences, i.e. even if the charges had not already been imposed at the commencement of the usufruct.

Art. 586. Liability for debts; usufruct inter vivos

When the usufruct is established inter vivos, the usufructuary is not liable for debts of the grantor, but if the debt is secured by an encumbrance of the thing subject to the usufruct, the thing may be sold for the payment of the debt.

Revision Comments 2010

This article restates the principle that a usufructuary of an inter vivos usufruct is not liable for the debts of the grantor .It is intended to clarify the rule of

1 prior law to the effect that if the property subject to the usufruct is subject to an  
2 encumbrance that secures a debt, the thing may be sold for the payment of the  
3 debt. It is not intended to change the law.

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5  
6 Art. 587. Liability for debts; usufruct established mortis causa

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8       When the usufruct is established mortis causa, the usufructuary  
9 is not liable for estate debts, but the property subject to the usufruct may  
10 be sold for the payment of estate debts, in accordance with the rules  
11 provided for the payment of the debts of an estate in Book III of this  
12 Code.

13 Revision Comments 2010

14  
15       (a) Under current law, a legacy of a usufruct is a particular legacy. See  
16 La Civil Code Art. 1587 and revision comment (b) to that article. Thus, the  
17 classifications of “usufruct under universal title”, “universal usufruct, and “usufruct  
18 under particular title” have been eliminated. Formerly it was necessary to have a  
19 separate article for usufructs under particular title (Civil Code Article 588, as  
20 revised in 1976), but such an article is no longer needed.

21  
22       (b) This Article was also thought to be necessary because, after  
23 the adoption of the usufruct law in 1976, the law of successions was  
24 revised and a complete chapter on payment of estate debts was added,  
25 with a new classification of debts as being “estate debts,” which debts are  
26 in turn subdivided into “debts of the decedent” and “administration  
27 expenses.” See Civil Code Article 1415. These new terms of art, and the  
28 concepts they represent, and the manner in which they operate,  
29 necessitated a change in the language of the article to appropriately  
30 incorporate them into this new Article. Under the rules for payment of  
31 debts of an estate, adopted after 1976, a successor's personal liability is  
32 limited “to the extent of the value of the property received by him”. See  
33 Civil Code Article 1416. The liability is in rem in the sense that the  
34 property may be sold in order to pay an estate debt, and the allocation of  
35 the liability to property depends on the application of the rules in the  
36 chapter on payment of estate debts. This Article removes the archaic  
37 references to classifications that existed in 1976, but no longer exist, and

1 properly coordinates the mortis causa usufructuary's liability for debts with  
2 the newer rules regarding payment of estate debts.

3  
4  
5 Art. 588. Discharge of debt on encumbered property; usufruct established inter  
6 vivos

7  
8       When property subject to a usufruct established inter vivos is encumbered  
9 to secure a debt before the commencement of the usufruct, the usufructuary may  
10 advance the funds needed to discharge the indebtedness. If he does so, the  
11 naked owner shall reimburse the usufructuary, without interest, at the termination  
12 of the usufruct, for the principal of the debt the usufructuary has discharged, and  
13 for any interest the usufructuary has paid that had accrued on the debt before the  
14 commencement of the usufruct.

15 Revision Comments 2010

16  
17       (a) This article simplifies the language of the source provision, which  
18 enumerated the kinds of encumbrances with which the usufruct could be  
19 burdened at the time of the commencement of the usufruct. Under this article, the  
20 usufructuary of an inter vivos usufruct who advances the funds necessary for the  
21 discharge of an encumbrance existing on the property at the time of the  
22 commencement of the usufruct is entitled to recover not only the amount of the  
23 principal of the debt he has discharged, but also any interest paid by him that had  
24 accrued on the debt prior to the commencement of the usufruct. Under the  
25 source provision, the usufructuary was entitled to obtain reimbursement "only for  
26 the capital he has expended".

27  
28       (b) As under prior law, the usufructuary of an inter vivos usufruct is not  
29 personally liable for obligations burdening the property at the commencement of  
30 the usufruct. As stated by one authority: "if the usufruct is established by inter  
31 vivos juridical act, the usufructuary is not bound to discharge secured obligations  
32 burdening the property subject to the usufruct". Yiannopoulos, *Personal*  
33 *Servitudes*, 3 Louisiana Civil Law Treatise (4<sup>th</sup> ed. 2000) at 287.

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Art. 589. Discharge of debt on encumbered property by mortis causa usufructuary

If the usufructuary of a usufruct established mortis causa advances funds to discharge an estate debt charged to the property subject to the usufruct, the naked owner shall reimburse the usufructuary, without interest, at the termination of the usufruct, but only to the extent of the principal of the debt he has discharged and for any interest he has paid that had accrued on the debt before the commencement of the usufruct.

Revision Comments 2010

(a) This article contemplates a situation in which an estate debt has been charged against property that is subject to a mortis causa usufruct under the rules regulating the liability of successors for payment of estate debts. See Civil Code Articles 1421-1427. It allows the usufructuary who advances funds to discharge such a debt to obtain reimbursement from the naked owner for the principal of the debt discharged and for interest paid that had accrued prior to the commencement of the usufruct.

(b) Under this article, the mortis causa usufructuary who advances funds to pay an encumbrance burdening the property at the time of commencement of the usufruct has the same rights as an inter vivos usufructuary who pays such a mortgage. See comments (a) and (b) to Article 588 of this revision.

(c) Article 589 previously provided that, while neither the "universal usufructuary" nor the "usufructuary under universal title" was liable for the payment of the estate debts, the property subject to the usufruct could be "seized and sold for the payment of succession debts." The classifications of "universal usufructuary" and "usufructuary under universal title" have been eliminated, but the rule that property subject to the usufruct may be sold to pay estate debts has been retained. See revised Article 587 and revision comments (a) and (b) to that article, supra.

1 (d) The sources of this article are former Civil Code Articles 588, 590,  
2 591 and 592. Former Article 591 provided that a "universal usufructuary" was  
3 required to advance the funds necessary to pay all of the debts of the succession  
4 and the usufructuary "under universal title" was required to contribute to the  
5 payment of the debts of the succession also in proportion to the value of the  
6 property subject to the usufruct. The classifications have been eliminated, and  
7 the mandatory language of former Article 591 is not included in this article.

8  
9  
10 Article 590. Encumbered property; discharge of debt on encumbered property by  
11 naked owner

12  
13 If the usufructuary fails or refuses to advance the funds needed to  
14 discharge a debt secured by property subject to the usufruct, or an estate debt  
15 that is charged to the property subject to the usufruct, the naked owner may  
16 advance the funds needed. If he does so, the naked owner may demand that the  
17 usufructuary pay him interest during the period of the usufruct. If the naked  
18 owner does not advance the funds, he may demand that all or part of the  
19 property be sold as needed to discharge the debt.

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21  
22 Revision Comments 2010

23  
24 This article addresses the situation in which property subject to a usufruct  
25 is encumbered to secure a debt at the commencement of the usufruct and the  
26 usufructuary fails to advance the funds necessary for the discharge of the  
27 mortgage or other encumbrance. In such a situation, the naked owner may either  
28 1) advance the funds and demand that the usufructuary pay him interest on the  
29 capital expenditures, or 2) sell the property, in whole or in part, "as needed to  
30 discharge the debt". The provisions of this article apply to both an inter vivos  
31 usufruct and to a mortis causa usufruct.



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2 Article. 591. Continuation of usufruct after sale of property

3

4 If property subject to the usufruct is sold to pay an estate debt or a debt of  
5 the grantor, the usufruct attaches to any proceeds of the sale of the property that  
6 remain after payment of the debt.

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8 Revision Comments 2010

9

10 This article is intended to address the situation in which property subject to  
11 the usufruct is sold to pay an estate debt or a debt of the grantor of the usufruct  
12 and there are proceeds remaining after payment of the debt or debts involved.  
13 This article fills a gap that existed under prior law where such a situation was not  
14 addressed. It is not intended to change the law.

15

16

17 Article. 592. Multiple usufructuaries; contribution to payment of estate debts

18

19 If there is more than one usufructuary of the same property, each  
20 contributes to the payment of estate debts that are charged to the property in  
21 proportion to his enjoyment of the property. If one or more of the usufructuaries  
22 fails to advance his share, those of them who advance the funds shall have the  
23 right to recover the funds they advance from those who do not advance their  
24 shares.

25

26 Revision Comments 2010

27

28 (a) This article is new. It is intended to fill a gap that existed under prior  
29 law regarding contribution to the payment of debts charged to the property in the  
30 rare situation when there are multiple usufructuaries, and one of them fails to pay  
31 his share of the debt.

32

33 (b) The remedy of a usufructuary who pays his share, and who wants  
34 to avoid having the property seized and sold for non-payment of a debt for which

1 the property is liable because another usufructuary fails to pay his share, is to  
2 pay the share of the non-paying usufructuary, file suit against the usufructuary,  
3 obtain a judgment against the non-paying usufructuary, then seize the usufruct of  
4 the non-paying usufructuary and have it sold in order to “recover the funds he  
5 advanced.” Although that approach may be cumbersome, it serves a double  
6 purpose: it affords a remedy to usufructuaries to enable them to protect their  
7 interest and not lose the property, and in another sense it protects a non-paying  
8 usufructuary against possible collusion by making it clear that he must receive  
9 notice and be given an opportunity to pay the share he has not paid rather than  
10 have his share automatically forfeited. The article protects all of the  
11 usufructuaries, so that they do not lose their usufruct unfairly. The most likely  
12 situation in which to have multiple usufructuaries is the intestate usufruct of  
13 surviving parents over property inherited by them in usufruct when their child dies  
14 intestate and is survived by a sibling who inherits the naked ownership. La. Civil  
15 Code article 891. This article is not limited to the situation of joint usufructuaries  
16 where more than one person enjoys a usufruct of the same property at the same  
17 time. Article 592 covers both joint and successive usufructs. In the situation of  
18 successive usufructuaries where A has the usufruct of the entire property, and at  
19 the termination of A’s usufruct, B is the successive usufructuary, there are also  
20 “multiple” usufructuaries, but they are successive not joint. The article would  
21 apply in that situation if A failed to pay. B could protect his successive usufruct  
22 by paying A’s share and preventing a seizure and sale of the property by the  
23 creditor.

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25  
26 Article 593. Discharge of legacy of annuity

27  
28 Unless there is a governing testamentary disposition, the legacy of an  
29 annuity that is chargeable to property subject to a usufruct is payable first from  
30 the fruits and products of the property subject to the usufruct and then from the  
31 property itself.

32 Revision Comments 2010

33  
34 This article changes the law by providing that a legacy of an annuity  
35 chargeable to property that is subject to a usufruct is to be paid according to the  
36 order of payment set forth in the article: that is, first from the fruits and products  
37 of the property and then from the property itself. Under prior law, the article  
38 indicated who was to be the payor of the annuity—that is, either the “universal  
39 usufructuary” or the “usufructuary under universal title”. In this revision, the  
40 distinctions between universal usufructuaries and usufructuaries under universal

1 title under prior law have been eliminated; the categories themselves no longer  
2 exist.

3  
4  
5 Article 594. Court costs; expenses of litigation

6  
7 Court costs in actions concerning the property subject to the usufruct are taxed in  
8 accordance with the rules of the Code of Civil Procedure. Expenses of litigation other  
9 than court costs are apportioned between usufructuaries and naked owners in  
10 accordance with the following Articles.

11  
12 Revision Comments 2010

13  
14 This article reproduces the substance of Article 594. It is not intended to  
15 change the law.

16  
17  
18 Article 601. Removal of improvements

19  
20 The usufructuary may remove all improvements he has made, subject to  
21 the obligation of restoring the property to its former condition. He may not claim  
22 reimbursement from the owner for improvements that he does not remove or that  
23 cannot be removed.

24 Revision Comments 2010

25  
26 This article reproduces the substance of Article 601. It is not intended to  
27 change the law.

28  
29  
30 Article 603. Disposition of the naked ownership; alienation or encumbrance of  
31 the property

32  
33 The naked owner may dispose of the naked ownership, but he can not  
34 thereby affect the usufruct.

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Revision Comments 2010

This article is intended to remove a potential inconsistency that existed under prior law in situations where the usufructuary was given the right to dispose of consumable things subject to the usufruct. See Civil Code Article 568.

Under prior law, if a usufructuary had the power to dispose of a nonconsumable, this article potentially permitted two persons to dispose of the property: the naked owner (Article 603) and the usufructuary (Article 568). That situation could create serious title uncertainties, particularly if both the usufructuary and the naked owner attempted to sell the same immovable to different buyers. This revision of Article 603 is intended to resolve the problem by removing the language that allowed the naked owner to alienate or encumber the property itself subject to the usufruct. He may, of course, alienate or encumber his right of naked ownership, but not the thing itself.

Article 604. Servitudes

The naked owner may establish real rights on the property subject to the usufruct, provided that they may be exercised without impairing the usufructuary's rights.

Revision Comments 2010

This article clarifies the law and makes the provisions thereof more technically accurate. There is no intent to change the law.

Article 608. Dissolution of juridical person; thirty year limitation

A usufruct established in favor of a juridical person terminates if the juridical person is dissolved or liquidated, but not if the juridical person is converted, merged or consolidated into a successor juridical person. In any

1 event, a usufruct in favor of a juridical person shall terminate upon the lapse of  
2 thirty years from the date of the commencement of the usufruct. This Article shall  
3 not apply to a juridical person in its capacity as the trustee of a trust.

4  
5 Revision Comments 2010  
6

7 (a) This article retains the rule that a usufruct in favor of a juridical  
8 person terminates thirty years from the commencement thereof; but it clarifies the  
9 law by providing that a usufruct in favor of a juridical person does not terminate if  
10 the juridical person undergoes a structural transformation, such as a merger or a  
11 consolidation.  
12

13 (b) The last sentence explains that a trust is not itself a juridical person  
14 and therefore the Article does not apply to it. A trust is a "relationship." La. R.S.  
15 9:1731. Technically, however, title to property owned by the trust is placed in the  
16 name of the trustee, but in his representative capacity. The trustee may be a  
17 corporate or institutional trustee which is a juridical person, and it is intended this  
18 article not affect the trust in that event.  
19  
20

21 Article 613. Loss, extinction, or destruction of property  
22

23 The usufruct of nonconsumables terminates by the permanent and total  
24 loss, extinction, or destruction through accident, force majeure or decay of the  
25 property subject to the usufruct.  
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29 Revision Comments 2010  
30

31 This article changes the law in part by adding force majeure as one of the  
32 causes of permanent and total loss of a thing as a result of which a usufruct of  
33 nonconsumables terminates.  
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3 Article 615. Change of the form or conversion of property  
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5         When property subject to usufruct changes form without an act of the  
6 usufructuary, the usufruct does not terminate even though the property may no  
7 longer serve the use for which it was originally destined.

8         When property subject to usufruct is converted into money or other  
9 property without an act of the usufructuary, as in a case of expropriation of an  
10 immovable or liquidation of a corporation, the usufruct terminates as to the  
11 property converted and attaches to the money or other property received by the  
12 usufructuary.

13  
14 Revision Comments 2010  
15

16         (a) This article addresses the situation in which property subject to a  
17 usufruct undergoes change in form without an act of the usufructuary, or is  
18 converted into other property.  
19

20         (b) Paragraph one involves a situation in which the thing subject to the  
21 usufruct changes form without an act on the part of the usufructuary. The  
22 change in form may result in the thing no longer being capable of serving the use  
23 for which the usufruct was granted, as where the usufruct of a lot becomes  
24 flooded and turns into a pond. Under this revision, as under prior law, a mere  
25 change in the form of the property does not terminate the usufruct. As provided  
26 in comment "a" of the 1976 version: "Inundation may destroy the original  
27 destination of the land, but the usufructuary may apply the land to new uses". As  
28 stated by one authority: "There is no reason why the usufruct should terminate if  
29 the usufructuary may still derive some utility from the property." Yiannopoulos,  
30 *Personal Servitude*, 3 Louisiana Civil Law Treatise (4th ed. 2000) at 326.  
31

32         (c) The second paragraph covers not only a "conversion" of the  
33 property into money, as when there is a sale or an expropriation of an immovable  
34 or liquidation of a corporation, but when it is converted into other property, which  
35 may occur if there is an exchange or if there is a liquidation of the corporation  
36 and the usufructuary receives property that formerly belonged to the corporation

1 that is then distributed to the usufructuary. The rules for “changing form” without  
2 an act of the usufructuary provide that the usufruct simply continues on the  
3 property in its changed form, but the second paragraph provides that the usufruct  
4 terminates as to the property converted and attaches to the money or the “other”  
5 property that may be received by the usufructuary. Thus, there are different rules  
6 and different remedies for the two different situations.

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9 Article 616. Sale or exchange of the property; taxes

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11 When property subject to usufruct is sold or exchanged, whether in an  
12 action for partition or by agreement between the usufructuary and the naked  
13 owner or by a usufructuary who has the power to dispose of nonconsumable  
14 property, the usufruct terminates as to the nonconsumable property sold or  
15 exchanged, but as provided in Article 568.1, the usufruct attaches to the money  
16 or other property received by the usufructuary, unless the parties agree  
17 otherwise. Any tax or expense incurred as the result of the sale or exchange of  
18 property subject to usufruct shall be paid from the proceeds of the sale or  
19 exchange, and shall be deducted from the amount due by the usufructuary to the  
20 naked owner at the termination of the usufruct.

21  
22 Revision Comments 2010

23  
24 (a) This article combines the provisions of Articles 568 and 616, as  
25 revised in 1976, relative to certain effects of a sale of property subject to the  
26 usufruct. Under this article, when property subject to the usufruct is sold or  
27 exchanged, whether in an action for partition or by agreement between the  
28 usufructuary and the naked owner, or by a usufructuary with a power of  
29 disposition, the usufruct attaches to the money or other property received by the  
30 usufructuary as a result of the sale or exchange. This article changes the law in  
31 part, by making this rule applicable to exchange transactions. In addition, this  
32 article clarifies the law by providing that if property is acquired as a result of the  
33 exchange or sale of property subject to the usufruct, the usufruct attaches not

1 only to money received but also to any property acquired as a result of the sale  
2 or exchange.

3  
4 (b) Under prior law, when the usufructuary who had been expressly  
5 given the power to dispose of nonconsumables sold the property and a tax was  
6 owed as a result of the sale, Article 568 provided that such a tax was payable  
7 from the proceeds of the sale. This provision has been moved to Article 616 and  
8 expanded to include other expenses as well as taxes and to cover other  
9 situations in which property subject to a usufruct is sold or exchanged, whether in  
10 an action for partition or by agreement between the usufructuary and the naked  
11 owner. The new article also clarifies that the amount due by the usufructuary to  
12 the naked owner at the termination of the usufruct is reduced by the amount of  
13 tax paid and the expenses incurred. An example of expenses would be closing  
14 costs or broker's fees that may be incurred in the sale of the property. The new  
15 article recognizes that the usufructuary should be given credit for those taxes and  
16 expenses and should not be obligated to pay the naked owner for them, since  
17 they have reduced the net amount received by the usufructuary.

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19  
20 Article 618. Security for proceeds.

21  
22 In cases governed by Articles 614, 615, 616, and the first sentence of  
23 Article 617, the naked owner may demand, within one year from receipt of the  
24 proceeds by the usufructuary that the usufructuary give security for the proceeds.  
25 If such a demand is made, and the parties cannot agree, the nature of the  
26 security shall be determined by the court. This Article does not apply to  
27 corporeal movables referred to in the second sentence of Article 568, or to  
28 property disposed of by the usufructuary pursuant to the power to dispose of  
29 nonconsumables if the grantor of the usufruct has dispensed with the security.

30  
31 Revision Comments 2010

32  
33 This article changes the law in part by providing that in situations where  
34 there has been a loss or destruction of the property, a change in the form of, or a  
35 sale or exchange of property subject to the usufruct, and the usufruct now  
36 attaches to the sum of money or other property attributable to the property



1 originally subject to the usufruct, the naked owner may demand that the  
2 usufructuary give security for the proceeds. Under prior law, the naked owner's  
3 remedy was limited to requesting that the money received by the usufructuary be  
4 safely invested, subject to the rights of the usufructuary. Such a remedy was  
5 determined to be impractical and theoretically inconsistent with the concept that  
6 the usufruct was transformed from a usufruct of a nonconsumable to a usufruct  
7 of consumable property, as to which the usufructuary is considered to be the  
8 "owner" under Louisiana Civil Code article 538. It is believed that the new article  
9 provides a more practical and more appropriate remedy, namely requiring the  
10 usufructuary to furnish security.

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12  
13 Article 619. Changes made by the testator

14  
15 A usufruct by donation mortis causa is not considered revoked merely because  
16 the testator has made changes in the property after the date of his testament. The effect  
17 of the legacy is determined by application of the rules contained in the title: Of  
18 donations inter vivos and mortis causa.

19  
20 Revision Comments 2010

21  
22 This article substitutes the term "testament" for "will" in the first sentence.  
23 There is no change in the law.

24  
25  
26 Article 620. Sale of the property or of the usufruct

27  
28 Usufruct terminates by the enforcement of an encumbrance established  
29 upon the property prior to the creation of the usufruct to secure a debt. The  
30 usufructuary may have an action against the grantor of the usufruct or against  
31 the naked owner under the provisions established in Section 3 of this Chapter.

32 The judicial sale of the usufruct by creditors of the usufructuary  
33 deprives the usufructuary of his enjoyment of the property but does not terminate  
34 the usufruct.

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3 Revision Comments 2010

4 The elimination of Paragraph two of Article 620 is not intended to effect a  
5 change in the law. The subject is already covered in Article 603.

6

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8 Article 623. Abuse of the enjoyment; consequences

9

10 The usufruct may be terminated by the naked owner if the usufructuary  
11 commits waste, alienates things without authority, neglects to make ordinary  
12 repairs, or abuses his enjoyment in any other manner.

13

14 Revision Comments 2010

15 This article amends the title of Article 623 and makes a minor grammatical  
16 change in the text without changing the law.

17

18

19 Article 624. Security to prevent termination

20

21 In the cases covered by the preceding Article, the court may decree  
22 termination of the usufruct or decree that the property be delivered to the naked  
23 owner on the condition that he shall pay to the usufructuary a reasonable annuity  
24 until the end of the usufruct. The amount of the annuity shall be based on the  
25 value of the usufruct.

26 The usufructuary may prevent termination of the usufruct or delivery of the  
27 property to the naked owner by giving security to insure that he will take  
28 appropriate corrective measures within a period fixed by the court.

29

1 Revision Comments 2010

2 This article amends the title of Article 624 and makes a minor grammatical  
3 change in the text without changing the law.

4

5 Article 625. Intervention by creditors of the usufructuary

6 A creditor of the usufructuary may intervene and may prevent termination  
7 of the usufruct and delivery of the property to the naked owner by offering to  
8 repair the damages caused by the usufructuary and by giving security for the  
9 future.

10

11 Revision Comments 2010

12 This article reproduces the substance of Article 625. It is not intended to  
13 change the law.