



## Louisiana Civil Law

### Property

As relates to Real Estate, under Louisiana law, the term "Property" generally refers to any portion of immovable property, including servitudes, leases, rights-of-way, and other rights in or to immovable property.

In Louisiana, property means *things*. The term is also used in reference to the relationship that exists between people and property. Property, or things, can fall into several classifications that are not mutually exclusive.

Property is further categorized by Classification, Immovables vs. Movable, and its Legal Description.

### Property

"Property" can also refer to a person's *community* or *separate* property.

*Community Property* is all property which a couple acquires after the establishment of their community regime (marriage). Unless a married couple have entered into pre/post marriage contract, which specifies that certain property acquired during the community regime will be separate, all property that a couple acquires during the community will be deemed community property. Additionally, any income derived from separate property, during the community, will be deemed community, unless specifically reserved as one's separate property. Each spouse is deemed to own ½ of the property designated as community property.

*Separate Property* is all of the property which a person owns outside of the community, or which he acquires during the community subject to marriage agreement designating the property as separate. A person's separate property can also include inherited property, received during the community, when the property is left to the person in his individual capacity.

### Classification

In Louisiana, property is classified either as an **immovable** or a **movable**.

### Immovables

Under Article 462, of the Louisiana Civil Code, an "**Immovable**" is defined as a tract of land together with its component parts. The code defines *component parts* as: buildings, other constructions permanently attached to the ground, standing timber, and unharvested crops or ungathered fruits from trees, when they belong to the owner of the ground. Transfer of immovable property, between parties, requires an act executed in authentic form (notarized with two witnesses).

\*\*The Civil Code provides that *buildings* and *standing timber* are classified as *separate immovables*, when ownership is vested in any party **other than** the owner of the land upon which they sit.

Generally, a house and the land upon which it sits would be considered *immovable property*.

## **Movables**

Under Civil Code Article 475, all things that are not deemed as Immovables are considered *Movables*. In general, the term “movable” refers to a thing that normally move or can be moved from one place to another. In many instances, movables can be transferred by manual transmission or by an act executed between the parties.

One caveat, when discussing movables, relates to the classification of manufactured homes. In general, Louisiana law classifies manufactured homes as *movables*. However, a manufactured home placed upon a lot or tract of land is deemed an *immovable* when an authentic act or valid sale or mortgage is recorded in the conveyance record for the parish where the land is located. (see *RS 9:1149.4*)

Generally, the term *movables* refer to motor vehicles, boats, aircraft, etc.

## **Legal Descriptions**

The term “*legal description*” refers to the written description of property and certain other data that identifies the subject piece of property. The legal description, usually contained in the Act of Sale or Deed, will generally provide a location of the property by metes and bounds, reference to a government survey, or other recorded map. A legal description can also include information from a prior validly recorded Act or Deed. Being that an Act can be deemed invalid due to an erroneous or incomplete legal description of a piece of property, it is best to have a legal description which is as detailed as possible.

\*\*Parish Mortgage/Conveyance offices, in the parish where the subject property is located, will generally contain the best resources for obtaining a valid legal description.

## **Rights in Immovables**

### **Ownership**

The Louisiana Civil Code defines “*Ownership*” as a person’s direct, exclusive, and immediate authority over a thing. The owner of a thing may use, enjoy, and dispose of the thing within the limits and conditions provided by law.

In Louisiana, “ownership” of a thing is distinct from possession of a thing. The owner of a thing does not lose his right to the thing due to nonuse.

(except when adverse possessor asserts right under acquisitive prescription)

Ownership includes:

- **Usus** - the right to the use of land
- **Fructus** - the right to derive income from the land; rent, royalties, etc.
- **Abusus** - the ownership of the land; the right to sell or dispose of the property. If a person has only the right of abusus they are referred to as the “naked owner”

### **Servitudes**

In the State of Louisiana, *Servitudes* can be *personal*, in that the right inures to the benefit of a person; or *predial* in that the right inures to the benefit of the estate.

With regard to real estate in Louisiana, reference to *servitudes* will generally refer to a *predial servitude*. A “*predial servitude*” is a charge on a servient estate for the benefit of a dominant estate. In order for a *predial servitude* to be effective, the dominant and servient estates must belong to different owners.

\*\*An owner of two adjoining pieces of property (estates) can establish a servitude on one property (dominant estate) and sell the other (servient estate). When a new owner purchases the servient estate, the servitude will come into effect.

The word “Estate”, in reference to servitudes, refers to tracts of lands and buildings. The “dominant estate” is the holder of the servitude. The “servient estate” is the estate upon which a servitude is imposed. The owner of a servient estate is not required, due to the servitude, to do anything. The owner of the servient estate is only obligated to abstain from doing something on his property, or to permit the owner of the dominant estate to do something on his property.

A servitude is a right, which is inseparable from the dominant estate. When a new owner acquires the estate, he also acquires the servitude. A servitude cannot be alienated from the dominant estate, meaning that it cannot be leased or otherwise encumbered separate from the estate. Likewise, when a servient estate changes ownership, the new owner must abide by the servitude imposed on the property.

The most common type of servitude is a right of way, which allows passage through one estate to another. A servitude may also be imposed to prohibit building on a piece of property (servient estate), so as not to obstruct the view from the dominant estate owner’s property.

**Usufruct** (\*Applicable law/rules for this section refer to the usufruct for immovable property.)  
A *Usufruct* is a right of limited duration on the property of another.

A *usufruct* can be established by a juridical act (conventional usufruct) or in accordance with the law (legal usufruct). In general, *conventional usufruct* occurs the owner of a property, by act of donation during his lifetime, or in his will, grants a *usufruct* over his property. A *legal usufruct* generally refers to what is known as an 890 usufruct (article 890 of the LA Civil Code). An 890 usufruct will often apply when a deceased spouse dies without a will and is survived by descendants and a surviving spouse. The 890 usufruct grants the surviving spouse a usufruct over the deceased spouse’s ½ undivided interest in the couple’s community property. A usufruct granted under article 890 will terminate upon the death or remarriage of the surviving spouse. (However, if deceased spouse leaves a will granting the surviving spouse a usufruct over community/separate property, the usufruct is deemed for life, provided there are no contrary provisions.)

The person granting the usufruct over his property is referred to as the *grantor*.

The individual to whom the usufruct is granted, is referred to as the *usufructuary*.

The individual designated as the owner of the property is called the *naked owner*.

When established by a *grantor*, a *usufruct* can be for a specific term, or for the life of the *usufructuary*.

A *Usufructuary* has the right to possess the thing (property) subject to the *usufruct*, and derive from it use, profit, and advantage. The *usufructuary* is obligated to preserve the thing, use it as a prudent administrator, and deliver it to the *naked owner*, at the termination of the usufruct.

The *grantor* of a *usufruct* may designate one person, or several people, as *usufructuary* and/or *naked owner* of the property subject to a *usufruct*.

In general, absent any provisions to the contrary, a *usufructuary* may use the property subject to a *usufruct* in the same manner as an owner, except that they may not sell or encumber the property, to the detriment of the *naked owner*. A *usufructuary* is entitled to any revenue generated by the property subject to the *usufruct*. The *usufructuary* is also responsible for maintaining the property in the same state as when they received the *usufruct*. This includes payments for up upkeep, taxes, and insurance. The *naked owner* can seek compensation from the *usufructuary*, when his actions have resulted in a loss of value to the property.

Any changes/improvements to the property, by the *usufructuary*, may be made with the consent of the *naked owner*. If the *naked owner* refuses to consent or fails to respond upon receiving notice of proposed changes, the *usufructuary* may seek court approval to make desired changes/improvements. The *usufructuary* is responsible for any expense associated with such changes.

#### Usufruct Examples:

1. Paul is married with two adult children and a wife. During the marriage, Paul and his wife purchased a home and a farm. Paul later dies without a will and is survived by his wife and two adult children. In this scenario, Paul's wife will receive a usufruct over Paul's  $\frac{1}{2}$  undivided interest in the house and farm, subject to the naked ownership of Paul's two adult children. The usufruct will remain in place until Paul's wife either dies or remarries.
2. Same facts as in (1), but in this instance Paul leaves a will. In his will, Paul provides that his wife shall have a usufruct over all community property of which he dies possessed. In this scenario, Paul's wife would receive a usufruct over his  $\frac{1}{2}$  undivided interest in the farm and house for life.

#### Habitation

*Habitation* is the right of a person to reside in a home which belongs to another person.

The right of habitation is established, and extinguished, in the same manner as the right of usufruct.

The right of habitation is non-transferable and non-heritable. The right may not be leased or otherwise encumbered.

Habitation may only be established on houses.

In order to be effective against third parties, the right must be established by an authentic act and recorded in the Parish where the property is located.

The person having the right to inhabit must use the property for its intended purpose and return it in the condition it was received, except for normal wear and tear.

The right of habitation terminates upon the death of the holder, unless a shorter duration is specified.

#### Right of Use

*Right of Use* is a *personal servitude* (right of a person) to use a estate (land/building) for a specified purpose. The right of use does not allow holder to exercise full control or possession of the property burdened by the right.

Unlike a predial servitude, which is specific to the property, a *right of use*, is given in favor of a person or legal entity.

A *right of use* can be established for current, or future, use.

The *right of use* is transferable unless prohibited by law or contract. Unless otherwise specified, a right of use is heritable and does not extinguish upon the death of the holder.

A *right of use* can include such things as the right to fish, hunt, or gather fruit, from the property of another.

## **Building Restrictions**

*Building Restrictions* are conditions imposed by the owner of an immovable (land/building) related to general plans governing building standards, specified uses, and improvements. The restrictions must be feasible and of a type capable of being preserved.

*Building Restrictions* can only be created by an act executed by the owner of the immovable or by all the owners of immovables to be covered by the restrictions.

Most often, *building restrictions* are established by developers who plan to subdivide immovable property for residential and/or commercial development. The restrictions are subsequently placed in the sale documents executed by purchasers of subdivided property (ie: lots/commercial tracts). *Building Restrictions* can also be established when all of the owners of subdivided lots come together and agree to impose restrictions aimed at neighborhood planning.

*Building Restrictions* can impose a duty upon a landowner to undertake certain actions necessary for the maintenance of a general plan. However, such restrictions cannot impose a charge/fee occasioned by the lease or encumbrance of the property.

## **Ownership**

### **Co-ownership**

The Louisiana Civil Code provides that two or more people may own the same thing *in indivision*, with each having an undivided share. Ownership of the same thing, by two or more persons is defined as *ownership in indivision* (co-owners). Absent any provisions/law to the contrary, each co-owner is presumed to own an equal share of the thing. (This presumption can be rebutted by proof that one co-owner owns a larger share of the thing.)

Any revenue/income produced by the thing owned *in indivision* belongs to the owners in proportion to their ownership share.

An *owner in indivision* is liable to other owners for any damage he causes to the thing owned. An *owner in indivision* may use the thing which he co-owns for its intended purpose; however, he cannot prohibit other co-owners from such use as well.

A co-owner does not need the consent of other co-owners to undertake actions which are designed to preserve the thing subject to co-ownership.

### **Community Property**

*\*In Louisiana, property of a married couple will be classified as either **community** or **separate**.*

*Community Property* is classified as all property acquired by a couple during the marriage, when such property is acquired through the effort, skill, or industry of either spouse. In general, this includes property acquired with income/assets accumulated during the marriage. *Community Property* also includes winnings and income derived from assets acquired prior to the marriage. However, either spouse may reserve income from assets acquired before the marriage (separate property) by completing a declaration reserving such funds as separate.

Gifts and inheritances made during the marriage, to both spouses jointly are considered *community property*.

Each spouse owns a  $\frac{1}{2}$  undivided interest in the property of the *community*.

When property is acquired with *community* and *separate* funds, it will be classified as *community*, unless the amount of *community* funds used is inconsequential compared to the *separate* funds used.

### **Separate Property**

*Separate Property* of a spouse belongs to that spouse exclusively. In general, *separate property* includes property acquired prior to the marriage; property acquired during the marriage with *separate* assets, or with *separate* and *community* assets when the *community* assets used are inconsequential; and property acquired by donation or inheritance to either spouse individually.

A spouse may, by declaration made in the act of acquisition, declare that a thing acquired during the marriage is being acquired with *separate* funds and will be *separate property*. Such a declaration is deemed incontrovertible when the other spouse concurs, in the act, to the declaration.

### **Partnerships and Corporations**

A *Partnership* separate entity distinct from its partners. It is created by a contract between two or more people who agree to combine their efforts or resources, in pre-determined proportions, to collaborate for their common profit or benefit.

In general, each partner must make some contribution either financial or in their efforts.

Unless they agree otherwise, each *partner* shares equally in the commercial benefits and losses of the partnership.

### **Condominiums**

*Condominiums* are defined as a property regime under which portions of immovable property are subject to individual ownership and the remainder is owned equally by all owners.

Rules governing *condominiums* are laid out in the "Louisiana Condominium Act", which begins at 9:1121.101 of the Louisiana Revised Statutes.

The Condominium Act applies to property for which a condominium declaration has been executed and recorded.

Among other things, the Act provides definitions generally associated with *condominiums*, discusses taxation as relates to *condominiums*, and specifies certain procedures for the sale of *condominium* units.



## **Transfer of Ownership without the Aid of a Broker**

### **Donations inter vivos**

A *donation inter vivos* is a contract whereby one party, the **donor**, gratuitously (without benefit/advantage) and irrevocably divests himself of a thing in favor of another party, known as the **donee**, who accepts it.

A *donation inter vivos* must be accepted during the donee and donor's lifetime. The donation does not become effective until it is accepted by the donee.

An *inter vivos donation*, of immovable property, must be made by authentic act (notary-witnesses) (act of donation). The donee's acceptance of the donation can be contained in the act of donation, or in a subsequent separate writing.

### **Successions**

A *Succession* is the transmission of the estate of a deceased person to his successors (those who inherit). The successors have the right to take possession of the deceased person's property after complying with the applicable law.

*Successions* are governed by the law in effect at the time of death.

A deceased person's estate includes all property, rights, and obligations he possesses at the time of death, or those which have accrued after death.

\*In most instances, a decedent's estate is transmitted by ***Testate Succession*** or ***Intestate Succession***.

### **Testate**

A *Testate Succession* (donation mortis causa) occurs when an estate is transmitted in accordance with the deceased person's will, as expressed in a properly executed testament (will), prepared in accordance with the law.

The decedent's successors under a *Testate Succession* are referred to as the decedent's *legatees*.

Types of wills:

- Notarial will refers to a typed, signed, notarized, witnessed, and dated will.
- Olographic will refers to a handwritten by testator, dated, and signed will that is entirely in testator's handwriting

Forced heirs are children or their descendants (legatees). The amount of decedent's estate that is forced (**legitimate**) depends on the number of children or their descendants (legatees). If you have one child,  $\frac{1}{4}$  of the estate is forced. If you have 2 or more children,  $\frac{1}{2}$  of the estate is forced.

Subject to certain exceptions under the law, any property left by a decedent which is not referenced in his will, will devolve to his successors in accordance with the law governing *intestate successions*.

## Intestate

An *Intestate Succession* occurs when a decedent dies without a testament, or without a valid testament.

Transmission of the estate of a decedent who dies *intestate* occurs in accordance with the law governing *intestate successions*.

The decedent's successors, in an *intestate succession*, are referred to as the decedent's *heirs*.

Transmission of the state will occur in accordance with the law governing *intestate successions* which is in effect at the time of the decedent's death.

Among other things, the laws governing *intestate successions* define the order in which a decedent's heirs will succeed to his estate.

Order of Succession	
Community Property	Separate Property
1. To children or children's descendants, with usufruct to spouse	1. To children or children's descendants
2. To spouse, if there are no children or descendants of children	2. To brothers and sisters with usufruct to parents, if parents are alive
3. To brothers and sisters with usufruct to parents, if parents are alive	3. To nieces and nephews, or their descendants, with usufruct to parents, if parents are alive
4. To nieces and nephews, or their descendants, with usufruct to parents, if parents are alive	4. To parents if there are no brothers or sisters, nieces or nephews, or other descendants
5. To parents if there are no brothers or sisters, nieces or nephews, or other descendants	5. To spouse
6. To grandparents or other ascendants	6. To grandparents or other descendants
7. To nearest collateral relative	7. To nearest collateral relative
8. To state of Louisiana	8. To state of Louisiana

## Usufruct of the Surviving Spouse



When a decedent leaves behind a surviving spouse and descendants in the first degree (children, grandchildren, etc.), the *surviving spouse will be granted a usufruct over all community property* which has not been disposed of by the decedent's testament (will).

This type of *usufruct*, defined under Article 890 of the Civil Code, applies to property which devolves in accordance with law governing *intestate successions*.

The *usufruct* referenced under Article 890 terminates upon the death or remarriage of the surviving spouse.

The qualification for forced heirship:

- Must be under 24
- Physical or mental impairment - no age limit if not independent
- Children may represent deceased parent as forced heir (the children move up into position of the deceased parent)

Any portion of the estate which is not forced is known as the disposable portion.

## **Eminent Domain**

*Eminent Domain* is the taking of property by the state, its legal subdivisions, and certain corporations, LLC's or other legal entities.

The government has the right to confiscate property if it can demonstrate it is for a public purpose. Eminent domain provides for fair market compensation for all losses including actual damages and severance damages.

In Louisiana *eminent domain* is governed by the law of Expropriation covered in Title 19 of the Revised Statutes. The revised statutes provide guidelines which are to be followed with regard to the taking of property.

Eminent Domain is either:

- Expropriation – the authorized taking of property for use on highways, etc.; paid compensation
- Appropriation – the loss of use of portion of property for utility servitudes; no compensation

Quick taking allows for the government to seize property in emergencies and essentially work out the details later.

## **Possession**

*Possession* is the use and enjoyment of a thing in the manner of an owner.

A person acquires the right to possess a thing after he has exercised peaceful and uninterrupted control over the thing for a year. The possessor is considered the provisional owner of the thing until the rights of the true owner are established.

Ownership and *possession* are two distinct things under the law.

## **Acquisitive Prescription**

*Acquisitive Prescription* is a means of acquiring ownership of property, including servitudes.

A person who believes himself to be the owner of a property, and who uses the property in the manner of an owner, can acquire ownership by *acquisitive prescription* after possessing the property for ten years.

A person who possesses a property, which he knows is not his, can acquire ownership by *acquisitive prescription* of thirty years.

In order for *acquisitive prescription* to apply, possession must be apparent, obvious, and uninterrupted during the entirety of the possession.

A few examples of possession include residing on the property, using it for farming/agricultural purposes, or making use of a passage or right of way on the property.

## **Obligations and Contracts**

### **Types of Contracts**

A *Contract* is an agreement by two or more parties whereby an obligation is created, modified, or extinguished. A *contract* is formed by the consent of the parties established through an offer and acceptance.

An *onerous contract* is one in which each of the parties obtain an advantage in exchange for their obligation.

A *gratuitous contract* is one in which one party obligates himself to another without receiving a reciprocal obligation in return.

In order for a valid contract to exist, the parties must have the capacity to enter into a contract, the parties must consent to the contract, and there must be a lawful cause. Cause is the reason why a party obligates himself. A person can contract for any purpose that is legal, possible, and determined/determinable.

### **Novation**

*Novation* is the extinguishment of a contract by the substitution of another contract. There must be a clear indication that the new contract is meant to extinguish the old one, novation cannot be presumed.

### **Irrevocable Offers**

An offer that specifies a period of time for acceptance is *irrevocable* during the specified time period.

### **Revocable Offers**

When an offer is made without referencing a time period for acceptance, and when there is no intent to offer such delay, the offer is *revocable* prior to acceptance.

### **Expiration**

When an *irrevocable offer* expresses an intent to give a period of delay for acceptance but does not specify a time within which to accept, the offer is irrevocable for a reasonable time.

A *revocable offer* expires if not accepted within a reasonable time.

The reference to a “reasonable time” will generally correspond to such periods as are customary for the type of contract at issue.

An offer will expire if either the offeror or offeree dies before acceptance of the offer.

### **Acceptance of Offer**

*Acceptance of an irrevocable offer* is deemed accepted when received by the offeror.

*Acceptance of a revocable offer*, when transmitted by the form specified in the offer or by a reasonable manner when not specified, is deemed accepted when transmitted by the offeree.

Acceptance of offer is vitiated (voided) by error, fraud, or duress.

### **Revocation**

*Revocation of a revocable offer* is effective when received by the offeree prior to acceptance.

### **Counteroffers**

An offer which is accepted, subject to different terms as set forth by the offeree, is known as a *counteroffer*.

A counteroffer negates the original offer.

### **Cause**

*Cause* is the reason why a party obligates himself under a contract.

A party may obligate himself under a contract where he receives something in return, or under a contract under which he receives nothing in return.

A contract cannot exist without *cause*.

### **Nullity**

A contract is *null* when the requirements for its formation have not been.

In most instances, when a contract is null, the parties are restored to a position as if the contract never existed.

In instances where a contract is deemed *null*, but one of the parties has engaged in some act which benefits the other, the court may award damages. Additionally, a court may determine that the parties are allowed to cure the issue in a contract which makes it *null*.

### **Earnest Money**

In order for a sum given by a buyer to a seller in connection with a contract to sell to be deemed *Earnest Money*, both parties must stipulate that the sum is to be considered as such.

When the parties stipulate that a sum given is *earnest money*, either may withdraw from the contract. However, if the buyer withdraws, he forfeits the sum given. If the seller withdraws, he must return the sum given along with an equal amount.

There must be a clear indication that the sum given is to be treated as *earnest money*.

In a contract where the sum is deemed *earnest money*, liability of the buyer is limited to the forfeiture of the given and that of the seller is limited to return of the funds plus an equal amount.

\*In most other states *Deposit* and *Earnest Money* are synonymous, but in Louisiana they represent different things.

### **Designation of Deposit**

When the parties do not stipulate that a sum given by a buyer to a seller in connection with a contract to sell is to be deemed earnest money, it is regarded as a *deposit*.

### **Sales**

#### **Requirements**

*Sale* is a contract whereby a *person transfers ownership* of a *thing* to another for a *price* in money.

The *thing*, *price*, and *consent of the parties* are required for a valid sale.

#### **Transfer**

Ownership of a thing is *transferred* when the parties agree on the *thing* to be sold and the *price* for which it is to be sold.

Transfer occurs even if the thing has not been delivered, nor the price paid.

#### **Price**

The *price* must be fixed by the parties in a sum that is certain or determinable as agreed to by the parties.

The *price* must be proportionate to the value of the thing to be sold.

This means that a contract for sale, purporting to sell a house and land for a \$1, would not be a true sale. (could possibly be classified as a disguised donation)

Parties may agree that the *price* be fixed by a third party.

#### **Seller's Warranties**

A Seller is obligated to deliver the thing sold and provides a *warranty* to the Buyer of ownership and peaceful possession.

A seller warrants against any undeclared, non-apparent servitudes.

Further, the Seller provides a *warranty* that the thing sold is free from hidden defects and fit for its intended use (redhibitory vices).

The Purchaser has the right to sue under redhibition to avoid the sale entirely, or to be compensated for the cost to correct the vice.

The purchaser must prove that the defect pre-existed the sale, that the defect is substantial, was unknown, and was not apparent to him.

There are time limits for redhibition:

- If the seller did not know of the defect - within 4 years from the date of delivery, or within one year of the date of his discovery, whichever occurs first
- If the seller knew of the defect - within one year from the date of discovery of the defect

A sale without warranty is known as quitclaim.

### **Bond for Deed**

A *Bond for Deed* contract is a contract to sell property, in which the Buyer agrees to pay the purchase price in installments, and the Seller agrees to deliver title upon payment of the agreed upon price.

A *Bond for Deed* becomes effective against third parties upon recordation in the appropriate mortgage and conveyance office. (for immovable property Parish where property located)

When a property is encumbered by a mortgage or privilege the seller must first obtain a release from the mortgage/privilege holder, before entering into *bond for deed* contract.

Louisiana law considers the buyer under a *bond for deed* as the owner for purposes of the homestead exemption. The buyer under a *bond for deed* has the right to apply for the annual homestead exemption.

### **Privileges and Mortgages**

A *Mortgage* is a right created over property to secure the performance of an obligation. The *mortgage* allows the *mortgagee* (holder of the mortgage) the right to have a property seized and sold, when the *obligor* (person bound to perform under mortgage) fails to perform the obligation that the *mortgage* secures.

A *mortgage* also gives the *mortgagee* a preference to the proceeds from the sale of the property secured by a mortgage, ahead of other creditors.

A *mortgage* will transfer with the property that burdens to any new owner of the property.

There are (3) three types of *mortgages*:

1. A *Conventional Mortgage* is established by contract (traditional mortgage i.e. home purchase);
2. A *Legal Mortgage* is established by the laws of the state of Louisiana; and
3. A *Judicial Mortgage* is results from a recorded monetary judgment and is established to secure a judgment debt. Judgments will affect immovables they later acquire.

A *conventional mortgage* can only be established by a written contract and must be signed by the mortgagor (debtor under mortgage).

A *conventional mortgage* can only be established by a person with the power to alienate the property which will be subject to the mortgage (generally owner). A *conventional mortgage* will generally burden a specific piece of property.

A *legal mortgage* secures certain obligations specified under the law.

If not previously done, a mortgagor (person whose property is burdened by a mortgage) can make a written request to the mortgagee to cancel the mortgage in the mortgage records.

A *Privilege* is the right of a creditor, given the nature of his debt, which gives him a preference ahead of other creditors, even mortgage holders.

A *privilege* can exist on movable or immovable property, or on both at once.

While a *privilege* created by the nature of a debt, the holder must still take steps to enforce and secure the privilege.

A few types of debts which enjoy a *privilege* are those incurred for burial, legal service, contractor services, architect services, and those arising from the sale of property.

## **Priorities**

The priority for the payment of privileges are established by law. In general expenses related to funerals, judicial charges, expenses of last illness, and the wages of servants are provided a priority ranking for the payment of privileges.

## **Foreclosure**

Upon the failure of the obligor (debtor) to perform the obligation secured by the mortgage, the mortgagee (mortgage holder) may file suit against mortgagor (borrower). A trial may be held, and judgement issued which would cause the mortgaged property to be seized by the sheriff and sold as provided by law. The proceeds from the sale are to be applied toward the satisfaction of the obligation.

A deficiency judgment results from insufficient proceeds from the sale at foreclosure.

- If the sale takes place with an appraisal; 2/3 of that appraisal value required to get deficiency judgment.
- If the sale takes place without an appraisal, there is no deficiency judgment allowed.

## **Usury**

Usury is charging an interest rate higher than that which is allowed by law. This typically applies to owner financing situations and the penalty is forfeiture of the entire interest. Business, commercial, and agricultural loans and extensions of credits are exempt from usury limitations set by law.

Interest on real estate loans may not accrue prior to the proceeds being made available for distribution.

## **Property Taxes**

The Louisiana constitution governs all policy related to ad valorem (property) taxes. Property taxes are calculated based on the applicable millage rate in place at the time of assessment. Millage rates are expressed in a calculation as tenths of a penny. A mill is defined as 1/10 of 1 percent.



Ad valorem taxes apply to personal property and real property. Real property (also referred to as immovable property) includes land, buildings, other improvements to land, and mobile homes.

Assessors are required to send notice of assessment value to property owners if: 1. There is a statewide reassessment; 2. The assessment for a property increases by 15% or more from the previous year; or 3. The taxpayer has requested notice.

How are property tax calculated?

- Based on assessed value - all property taxes are based on a percentage of the actual value of the property
- Assessment rate:

Class	% of Fair Market Value Used to Calculate Taxes
1. Land	10%
2. Residential Improvements	10%
3. Electrical Co-ops	15%
4. Public Service Property	25%
5. All Other Property (Commercial)	15%

Taxes are collected based on millage.

- 1 mill = \$.001      10 mills = \$.01      1,000 mills = \$1.00

Homestead exemption was created in 1934 to encourage home ownership. It has increased steadily to present level of \$7,500. This means \$7,500 of assessed value of owner-occupied property is exempt from parish taxes.

**NOTE: Except for Orleans parish, the homestead exemption does not apply to municipal taxes**

Each Parish has one assessor and the taxes are generally collected in arrears except for Orleans Parish, which is in advance. This will make a difference when calculating taxes at closing.

If property tax is not paid, property will be seized and sold for taxes. There is a 3 year redemption period during which time the property can be redeemed for taxes owed. Property tax liens primes (supersedes) all other liens. They are the number one lien in all cases.

### **Leases**

A Lease is a contract where by one party, the *lessor* (usually the owner), binds himself to give another party, the *lessee*, the use and enjoyment of a thing in exchange for rent, which the *lessee* (tenant) binds himself to pay. A lease can be for a *fixed* or *indefinite term*. The term is *fixed* when the parties agree the lease will terminate at a designated date or upon the occurrence of a designated

event. In all other instances the lease will be deemed as having an *indefinite* term. The term of a lease may not exceed ninety-nine years (this includes any option in the lease which might extend term beyond ninety-nine years.)

### **Verbal and Written Leases**

A *Lease* may be entered into orally or in writing. However, the *lease* of immovable property is only effective against third parties if it has been reduced to writing and recorded in accordance with the law.

Leases of any length can be oral, but oral leases require the burden of proof

### **Reconduction**

A *lease* with a fixed term terminates upon the expiration of that term, without the necessity of notice, unless the lease is *reconducted* (extended).

Following the expiration of a residential lease with a fixed term, and provided the lessor/lessee does not tender a notice to vacate/terminate, or otherwise object to the continuation of the lease, a lease will be deemed reconducted if:

1. The original fixed term of the lease was longer than a week and the lessee remains in possession of the leased premises for at least one week after the original fixed term expired; or
2. The original fixed term was equal to or shorter than a week and the lessee remains in possession for one day following the termination of the original fixed term.

### **Eviction**

When a lessee fails to pay rent as it becomes due, the lessor may, in accordance with the law, dissolve the lease and regain possession of the leased thing.

A lessor may also seek to dissolve a lease, and request damages, when the lessee uses a thing for other than its intended purpose, is in violation of the terms of the lease, or in a manner that may cause damage to the thing.

(The same applies to use by third parties who are using the property with the consent of the lessee.)

### **Security Deposits**

A *security deposit* is defined as an advance of money, paid by the lessee/tenant to the lessor/landlord to secure performance of a written or oral lease or rental agreement. A deposit must be returned to the lessee within one month after the termination of the lease, except when all or a portion is utilized to remedy a default by the lessee or for unreasonable wear and tear to the premises. When the lessor intends to retain any portion of the deposit, he must forward to the lessee an itemized accounting of how the proceeds are to be used within one month of the termination of the lease.

However, the above does not apply in circumstances where the lessee abandons the premises without notice or prior to the termination of a lease with a fixed term.

If property is sold, the deposit must be given to the new purchaser to hold for the tenant.

***\*The information provided herein is for informational purposes. It should not be relied upon in place of competent legal counsel.***