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## Civil Code and Related Legislation: Security Devices

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## SECURITY DEVICES

*Joseph Dainow\**

VENDOR'S PRIVILEGE AND FIRST MORTGAGE OF HOMESTEAD,  
BUILDING AND LOAN, AND FEDERAL SAVINGS AND  
LOAN ASSOCIATIONS

Act 75 of 1964 has made a change in R.S. 6:766 concerning the duration of effectiveness of the original inscription of a homestead's vendor's privilege and mortgage. The new period is twenty-six years, as compared to the earlier provision of twenty years. When the general rule of Civil Code article 3369 was a ten-year period of effectiveness for a mortgage inscription, the building and loan association had a special advantage in the twenty-year rule. However, since the amendments of article 3369 adjusted the duration of the inscription's effectiveness to six years after the maturity of the indebtedness (where more than nine years),<sup>1</sup> the statutory twenty-year period was no longer an advantage and sometimes the contrary. Many of the associations' loans are for twenty years, so that the new statutory twenty-six year period is no more than the regular duration for such mortgage inscriptions.

The original advance made by a homestead, building and loan, or a federal savings and loan association is secured by a vendor's privilege and first mortgage on the debtor's property.<sup>2</sup> The same vendor's privilege and first mortgage also secured subsequent advances for the payment of taxes, insurance, assessments, and repairs.<sup>3</sup> Act 348 of 1964 has extended the scope of permissible subsequent advances within the protection of the same original security; such advances may now be "for any purpose," provided that the total indebtedness at any time does not exceed the amount of the original loan.<sup>4</sup>

Insofar as these additional advances are concerned, the new law provides that the vendor's privilege and mortgage does not prime other encumbrances which were recorded subsequent to the original recordation and prior to the making of these advances; however, this provision can hardly have much practical

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1. First incorporated by Act 247 of 1940.

2. LA. R.S. 6:766; 6:835 (1950).

3. *Id.* 6:767, 6:835.1.

4. *Id.* 6:767.1; 6:835.2.

significance because the new law also requires that before making such additional advances the association must procure a mortgage certificate that there are no other recorded encumbrances against the property.

#### CONVENTIONAL MORTGAGE OR VENDOR'S PRIVILEGE ON IMMOVABLE PROPERTY

Generally, rights of a civil nature are protected by remedies of a civil nature; thus, breach of duty or of contract will give rise to damages, or sometimes specific performance. Occasionally, criminal sanctions are also attached, to protect the civil right by serving as a deterrent against the temptation to commit wrongful acts.<sup>5</sup> As a matter of policy, this should be a rare imposition, and one would expect it to be limited to situations where it is necessary to protect against likely abuse which might be extensive.

Act 496 of 1964<sup>6</sup> adds a new criminal statute imposing penalties up to \$2,000 or one year imprisonment, or both, as a deterrent against the temptation of removing a building or structure from immovable property subject to a conventional mortgage or vendor's privilege. The act also covers any parts or items which are so attached or connected as to be covered by the mortgage or privilege, and it applies only when the wrongful act is done with intent to defraud and without consent of the creditor.

From the point of view of the creditor, it is always welcome to get more protection for the security device he already has, and even though it is not so uncommon to see a house being moved from one location to another, one cannot help wondering how serious and widespread was the evil for which the ordinary criminal laws were insufficient and which prompted this exceptional legislative protection.<sup>7</sup>

The statute says "any person," and presumably this comprehends the mortgagor or owner himself whose wrongful removal of such things would not be covered by the regular theft law but which would harm the creditor by depreciating the value of his security. However, it may still be questioned

5. See Chattel Mortgage Law, *id.* 9:5358-5361 (1950); Vehicle Certificate of Title Act, *id.* 32:710G, 710H, 710J, 710L.

6. *Id.* 14:219, by re-designation on authority of 24:253, although enacted as 14:217.

7. See also the discussion of this statute by Professor Bennett at p. 42 *infra*.

whether there is enough justification for imposing a sanction to protect one creditor's right while leaving to other creditors only the protection of their civil remedies.

#### CHATTEL MORTGAGES

Act 397 of 1964 amends R.S. 9:5353 and 9:5356(A) by increasing from fifty cents to one dollar the fee paid to recorders of mortgages for each recordation, reinscription, and cancellation of chattel mortgages.

Act 402 of 1964 amends R.S. 9:5359, which contains one of the criminal sanction deterrent provisions of the chattel mortgage law, imposing penalties for fraudulent disposal or removal of chattel mortgaged property. It would appear that problems with reference to cattle are becoming more serious, because the original single paragraph is divided into two so as to deal separately with cases of livestock. The striking change is that the penalty for such wrongful conduct involving chattel mortgaged livestock is increased from *not more* than \$500 or six months' imprisonment, or both, to a mandatory imprisonment of *not less* than one year when the mortgaged property is worth up to \$5,000, one year and six months when the mortgaged property is worth between \$5,000 and \$10,000, and two years when the property is worth over \$10,000. No maximum imprisonment is stated. This is a departure from the usual criminal penalty formula of providing for a maximum penalty which permits flexibility in sentencing through the imposition of lesser sentences in appropriate cases. The common penalty clause also provides for the alternatives of imprisonment or fine or both. In the statute here discussed, the mandatory imprisonment for the stated minimum periods is unusual and appears to be unduly harsh.

By way of omission, this act has deleted the provision which made it evidence of fraudulent intent when the mortgaged property was removed out of the state and any indebtedness due was not paid within thirty days.<sup>8</sup>

By way of an extending modification, the new enactment changes the earlier text by including removal "from the location designated in the act of mortgage" as well as from the parish where it was located at the time of the execution of the

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8. This provision had been inserted by La. Acts 1954, No. 391.

mortgage. This change is included in both new paragraphs (paragraph B for livestock; paragraph A for other property).

## PRESCRIPTION

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### LIBERATIVE PRESCRIPTION

For some reason, there appears to be a movement in the direction of defining and limiting liability in building construction. Act 183 of 1958, as amended by Act 84 of 1960,<sup>1</sup> provided that (1) a contractor would not be liable for destruction, deterioration or defects which were due to any fault or insufficiency of the plans or specifications made by somebody else, and (2) the contractor cannot waive this exculpation.

Now, Act 189 of 1964<sup>2</sup> provides a series of different "pre-emptive periods" for actions involving deficiencies in design, planning, inspection, supervision, or construction of improvements to immovable property, whether the action is brought by the owner or by any other person. Although the stipulated period of ten years is the same as that applicable under the Civil Code,<sup>3</sup> the statute spells out the kinds of actions covered (including property damage and personal injury) and fixes the starting point for the counting of time in various situations. The use of the phrase "pre-emptive periods" (instead of "liberative prescription") is probably intended to mean an absolute extinction of the cause of action by the calendar lapse of time, thereby excluding any possibilities of suspension, interruption, or renunciation which apply in ordinary prescriptions.

### ACQUISITIVE PRESCRIPTION

Act 408 of 1964 added a new section to the Revised Statutes<sup>4</sup> which provides that acquisitive prescription (Civil Code article 3458) shall not run against any levee district or against the Board of Commissioners of any levee district.

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1. LA. R.S. 9:2771 (1960).

2. LA. R.S. 9:2772 (Supp. 1964).

3. LA. CIVIL CODE art. 3544 (1870); *cf. id.* art. 3545.

4. LA. R.S. 38:295 (Supp. 1964), by redesignation under authority of *id.* 24:253 although enacted as *id.* 38:293.