

SENATE BILL NO. 9

BY SENATOR ALLAIN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact Civil Code Arts. 655 and 656, relative to servitudes; to provide  
3 relative to natural servitudes; to provide relative to natural drainage, obligations of  
4 owners, and dominant and servient estates; to provide certain terms and effects; and  
5 to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Arts. 655 and 656 are hereby amended and reenacted to read  
8 as follows:

9 Art. 655. Natural Drainage

10 An estate situated below **is the servient estate and** is bound to receive the  
11 surface waters that flow naturally from ~~an~~ **a dominant** estate situated above unless  
12 an act of man has created the flow.

13 Art. 656. Obligations of the owners

14 The owner of the servient estate **situated below** may not do anything to  
15 prevent the flow of the water. The owner of the dominant estate **situated above** may  
16 not do anything to render the servitude more burdensome.

17 Section 2. This Act shall become effective upon signature by the governor or, if not  
18 signed by the governor, upon expiration of the time for bills to become law without signature  
19 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
2 effective on the day following such approval.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

SENATE BILL NO. 236

BY SENATOR LAFLEUR

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 9:5217, R.S. 13:844, R.S. 44:40(A), (B), (C), and (E), 116(A) and (B), and 161, Civil Code Art. 3352(C), and Code of Civil Procedure Art. 258(A), and to enact Code of Civil Procedure Arts. 258(D) and 259, relative to clerks of court; to provide for fees for services rendered; to provide standards for documents to be recorded; to provide alternate means to maintain copies of recorded documents; to provide indexing standards; to require plans for recording electronic documents; to provide relative to redaction and contents of certain personal information in filings and recordings; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:5217 is hereby amended and reenacted to read as follows:

§5217. Recorder's fees for multiple indebtedness mortgages; form

~~A.~~ The uniform filing fee that a recorder in any parish of this state is authorized to charge for the filing and recordation of a multiple indebtedness mortgage executed in accordance with Civil Code Article 3298 is ~~twenty-five dollars, plus ten dollars for each subsequent page, and five dollars for each name after the first name that is required to be indexed~~ **as set forth in R.S. 13:844.**

1 Notwithstanding the provisions of R.S. 13:844, R.S. 44:234, or any similar provision  
 2 or any other law to the contrary, the provisions of this Section establish the sole and  
 3 exclusive method of determining the filing and recordation fee for a multiple  
 4 indebtedness mortgage executed in accordance with Civil Code Article 3298,  
 5 regardless of the length of such mortgage.

6 B. For purposes of establishing the recordation fee, every multiple  
 7 indebtedness mortgage filed for recordation shall be captioned as a "multiple  
 8 indebtedness mortgage" or "multiple obligations mortgage" on the first page, and  
 9 shall have on the first page a margin of two inches at the top and one inch at the  
 10 bottom and on each side, and all subsequent pages shall have a margin requirement  
 11 of one inch on all sides. In addition, the type size shall be not less than eight point.

12 C. For any document not in compliance with the requirements of Subsection  
 13 B there shall be an additional noncompliance fee of ten dollars per document.

14 Section 2. R.S. 13:844 is hereby amended and reenacted to read as follows:

15 §844. Fees of ex officio recorders

16 A. (1) Clerks of the district courts as ex officio recorders ~~may~~ **shall** charge the  
 17 following fees **for filing and recording documents**:

18 ~~(1) For filing and recording any document, twenty-five dollars per book for~~  
 19 ~~the first page and ten dollars for each subsequent page per book up to ten pages. All~~  
 20 ~~documents that exceed ten pages, twenty-five dollars for the first page and eight~~  
 21 ~~dollars for each subsequent page.~~

22 **(a) For one to five page documents, one hundred dollars.**

23 **(b) For six to twenty-five page documents, two hundred dollars.**

24 **(c) For twenty-six to fifty page documents, three hundred dollars.**

25 **(d) For documents in excess of fifty pages, three hundred dollars for first**  
 26 **fifty pages and five dollars for each subsequent page.**

27 **(e) For indexing of all documents filed for record for each name after the**  
 28 **tenth name that is required to be indexed, five dollars per name.**

29 **(f) The above set forth fees shall be inclusive of the following:**

30 **(i) Indexing of all documents filed for record for up to ten names.**

1                    (ii) One certified copy of the recorded document or e-certification of  
2                    document.

3                    (g) Notwithstanding any other provision of law to the contrary, there  
4                    shall be a fee of fifty dollars for the recordation of an act or affidavit to cancel  
5                    a single mortgage, lien, or privilege.

6                    (h) If a document is to be recorded and filed in both the mortgage and  
7                    conveyance records, the fees provided in this Section shall be assessed  
8                    separately for recording in the mortgage records and in the conveyance records.

9                    (i) Documents to be recorded may be either on eight-and-one-half-inch-  
10                    by-eleven-inch paper or on eight-and-one-half-inch-by-fourteen-inch paper and  
11                    the recording fees set forth in this Section shall be the same regardless of which  
12                    size paper is used. For any other size paper, there shall be an additional fee of  
13                    twenty dollars per page.

14                    ~~(2) For indexing of all documents filed for record for each name after the first~~  
15                    ~~name that is required to be indexed, five dollars per name.~~

16                    ~~(3) For notarizing acknowledgments of acts executed under private signature,~~  
17                    ~~with seal and certificate, five~~ **ten** dollars.

18                    ~~(4)~~ **(3)** For certificate of real estate mortgage and lien certificate with seal, for  
19                    each name in which search is made, and for one definable property only, twenty  
20                    dollars for the first name and ten dollars for each additional name. There shall be an  
21                    additional charge of one dollar per exception in the event that more than ten  
22                    exceptions are contained on a certificate.

23                    ~~(5)~~ **(4)** For canceling real estate mortgage, with original note, ten dollars.

24                    ~~(6)~~ **(5)** For making copies of all official documents, no more than two dollars  
25                    per page.

26                    ~~(7)~~ **(6)** For Except as provided in R.S. 13:844(A)(1)(f)(ii), for attesting any  
27                    record or copy thereof, ~~five~~ **ten** dollars. For a file-stamped conformed copy, five  
28                    dollars.

29                    ~~(8) For canceling of lien for paving or installation of sewerage system, ten~~  
30                    ~~dollars.~~

1           B. ~~(1)~~ The funds derived by the clerk of court in the parish of Calcasieu from  
 2 that portion of the fees collectable pursuant to this Subsection above the amount of  
 3 such fees collectable at the rates provided by R.S. 13:844 prior to the amendment  
 4 thereof at the 1981 Regular Session of the Legislature shall be expended exclusively  
 5 for the payment of salaries of deputy clerks of court in that parish. **As used in this**  
 6 **Section, a "document" is defined as those pages presented together for filing or**  
 7 **recording, inclusive of the act, together with exhibits, riders, or additional**  
 8 **documents attached thereto, including but not limited to powers of attorney,**  
 9 **property description exhibits, tax certificates and researches, mortgage**  
 10 **certificates, resolutions, certificates, and surveys.**

11           **(2) Every document filed for recordation shall be captioned as to type of**  
 12 **act on the first page, and shall have on the first page a margin of two inches at**  
 13 **the top and one inch at the bottom and sides. The type size shall not be less than**  
 14 **eight point.**

15           C. In addition to the above charges, the clerks of court as ex officio notaries  
 16 public may make a reasonable charge for drawing deeds, mortgages, chattel  
 17 mortgages, liens, or other similar instruments.

18           ~~D. (1) For purposes of establishing the filing and recording fee, every~~  
 19 ~~document filed for recordation shall be captioned as to type of act on the first page,~~  
 20 ~~and shall have on the first page a margin of two inches at the top, and one inch at the~~  
 21 ~~bottom and sides. The type size shall not be less than eight point.~~

22           ~~(2) For any document not in compliance with Paragraph (1) above, there shall~~  
 23 ~~be an additional ten-dollar noncompliance fee per document.~~

24           ~~E. In addition to the fees provided in Subsection A of this Section, the clerk~~  
 25 ~~of the Twenty-Fourth Judicial District for the parish of Jefferson may demand and~~  
 26 ~~receive additional fees in an amount not to exceed twenty-five percent of the fees~~  
 27 ~~specified in Subsection A of this Section. The funds so derived by the clerk shall be~~  
 28 ~~expended exclusively for the payment of salaries of deputy clerks of court in that~~  
 29 ~~parish.~~

30 Section 3. R.S. 44:40(A), (B), (C), and (E), 116 (A) and (B), and 161 are hereby

1 amended and reenacted to read as follows:

2 §40. Additional copies of records ~~by microphotographic process~~; purchase of  
3 equipment; funds available for payment; copies of suit records

4 A. The several clerks of court and ex officio recorders and registers of  
5 conveyances and recorders of mortgages, throughout the state, are hereby authorized  
6 at their option to make additional copies, by any means ~~of the microphotographic~~  
7 ~~process, of all original acts and/or records thereof, including criminal records~~  
8 **authorized by R.S. 44:116**, of every nature and kind in their custody by virtue of  
9 their various official capacities as such clerks of court and ex officio recorders and  
10 registers of conveyances and recorders of mortgages, filed or recorded in their  
11 offices prior to July 29, 1964, and subsequent thereto.

12 B. Such clerks of court and ex officio recorders and registers are hereby  
13 authorized to purchase the necessary ~~microphotographic~~ equipment ~~and equipment~~  
14 ~~used to retrieve from storage microfilm copies~~ **for photorecording, photocopying,**  
15 **microfilming, or electronic imaging**, to lease such equipment or to contract with  
16 competent independent contractors, or both, according to the discretion of ~~said~~ the  
17 clerks of court and ex officio recorders and registers, to cause the records described  
18 in this section Section to be copied and reproduced ~~by means of the~~  
19 ~~microphotographic process~~.

20 C. Each such clerk of court and ex officio recorder and register is hereby  
21 authorized to defray the cost of copying, reproducing, and retrieving the records  
22 described in this section, ~~including the cost of microphotographic and retrieval~~  
23 ~~equipment and services~~, Section out of any funds available in the clerk's salary fund.

24 \* \* \*

25 E. The Notwithstanding the provisions of Subsection A of this Section or  
26 any other provision of law to the contrary, prior to destroying the original  
27 criminal records and any other records of every nature and kind that are  
28 deemed permanent under a record retention and disposal schedule adopted by  
29 the secretary of state and the clerks of court in accordance with R.S. 44:410 and  
30 411, the destruction of which is authorized by R.S. 13:917, the several clerks of

1 court, including the clerks of the Criminal or Civil District Courts for the parish of  
 2 Orleans, shall make and retain in their custody, ~~by means of the microphotographic~~  
 3 ~~process, a copy of all original criminal and civil records of every nature and kind,~~  
 4 ~~which are deemed permanent under a record retention and disposal schedule adopted~~  
 5 ~~by the secretary of state and the clerks of court in accordance with R.S. 44:410 and~~  
 6 ~~411. The clerks of court may then destroy the original criminal records and any other~~  
 7 ~~records, the destruction of which is authorized by R.S. 13:917, which have been so~~  
 8 ~~copied and retained~~ **a copy of such records electronically on nonrewritable**  
 9 **magnetic, optical, or laser-type storage media, including but not limited to**  
 10 **CD-ROM. No cause of action for any claim shall exist against a clerk of court**  
 11 **for any damage or loss resulting from the destruction of an original record after**  
 12 **proper preservation of the record in accordance herewith.** However, all records  
 13 in suits affecting records relating to immovable property, or adoption, interdiction,  
 14 successions, trusts, or emancipation created prior to 1922 shall be retained in their  
 15 original form.

16 \* \* \*

17 §116. Photostatic, photographic, microfilm, or other photographic or electronic  
 18 copies of records; indexes of conveyance and mortgage records;  
 19 disposition; evidentiary status; preservation

20 A. In all cases where the clerks of court and recorders of the various parishes  
 21 throughout the state, Orleans Parish excepted, are required by law to make records  
 22 of filings, documents, pleadings, and all other written instruments, **except including**  
 23 indexes, and registers of the same, such records may be made by any method of  
 24 photorecording, photocopying, microfilming, or other photographic method of  
 25 reproduction or electronically on non-rewritable magnetic, optical, or ~~laser-type~~  
 26 **laser-type** storage media, including but not limited to CD-ROM. However, the film  
 27 stock used in making photographic or microphotographic copies and the processing  
 28 of the copies shall comply with the standards of the American National ~~Standard~~  
 29 **Standards** Institute for permanent record photographic microcopying film and the  
 30 electronic media used shall comply with the standards of the International Standards



1 Organization for electronic storage of records.

2 B. Whenever recordation by means of photorecording, photocopying,  
 3 microfilming, or other photographic method of reproduction is used or when  
 4 electronic recordation on non-rewritable magnetic, optical, or ~~laser-type~~ **laser-type**  
 5 storage media is used, any requirement expressed or implied in law for the above-  
 6 mentioned records, ~~other than~~ **including** indexes and registers of the same, to be  
 7 maintained in a book or bound volume shall be satisfied by the appropriate storage  
 8 unit of microfilm or other photographic method employed, or tape or disk; however,  
 9 ~~the originals of conveyances, probate, mortgage, and other permanent records~~  
 10 ~~required by existing law to be kept for all time shall continue to be maintained in a~~  
 11 ~~book or bound volume and shall remain subject to~~ **if a clerk of court elects to**  
 12 **record by means of microfilming or other photographic method of**  
 13 **reproduction, or electronically, he shall have copies of the films, tapes, or disks**  
 14 **available for inspection,** examination, and copying under the provisions of R.S.  
 15 44:31 et seq., and other applicable laws.

16 \* \* \*

17 §161. Double index; form and contents

18 Recorders shall keep indexes, both direct and inverse, to all acts filed for  
 19 record in their respective offices which indexes shall contain, in alphabetical order,  
 20 references to the names of the parties to the acts, to the file number assigned on  
 21 recordation to the day, month, and year in which they are recorded, and to the book  
 22 and page in which they are recorded. **In addition to these requirements, all**  
 23 **recorders shall adopt and adhere to any indexing standards that have been**  
 24 **promulgated by the Louisiana Clerks' Remote Access Authority, as provided**  
 25 **for in R.S. 13:754.**

26 Section 4. Civil Code Article 3352(C) is hereby amended and reenacted to read as  
 27 follows:

28 Art. 3352. Recorded acts; required information

29 \* \* \*

30 C. The recorder shall ~~only display~~ **display only** the last four digits of the

1 social security numbers or taxpayer identification numbers listed on instruments  
 2 that his office makes available for viewing on the Internet.

3 Section 5. Code of Civil Procedure Article 258(A) is hereby amended and reenacted  
 4 and Code of Civil Procedure Articles 258(D) and 259 are hereby enacted to read as follows:

5 Art. 258. Electronic filing and recording of written instruments

6 A. Notwithstanding any provision of law to the contrary, a clerk of court, as  
 7 ex officio recorder, the Orleans Parish register of conveyances, or its successor, or  
 8 the Orleans Parish recorder of mortgages or its successor, hereinafter referred to as  
 9 "recorder," is authorized ~~but not required~~ to adopt and implement a published plan  
 10 which shall include a written contract between the clerk of court, the Orleans Parish  
 11 register of conveyances, or its successor, or the Orleans Parish recorder of  
 12 mortgages, or its successor, and the filer, which complies with the Louisiana  
 13 Uniform Electronic Transactions Act, R.S. 9:2601 et seq., and which provides for the  
 14 acceptance of an electronic record of any recordable written instrument except  
 15 original maps, plats, property descriptions, or photographs as related to the work of  
 16 a professional surveyor engaged in the "Practice of Land Surveying" as defined in  
 17 R.S. 37:682 for filing and recording submitted by any person, department, political  
 18 subdivision, agency, branch, entity, or instrumentality of Louisiana or of the federal  
 19 government or of a state-chartered or federally chartered financial institution insured  
 20 by the Federal Deposit Insurance Corporation or the National Credit Union  
 21 Administration. The filer of such an electronic record shall certify to the recorder  
 22 that the written instrument from which the electronic record is taken conforms to all  
 23 applicable laws relating to the form and content of instruments which are submitted  
 24 in writing.

25 \* \* \*

26 **D. On or before January 1, 2022, each clerk of court, including the**  
 27 **Orleans Parish register of conveyances or its successor and the Orleans Parish**  
 28 **recorder of mortgages or its successor, shall adopt and implement a plan for**  
 29 **recording electronic documents in accordance with Paragraph A of this Article.**

30 **Art. 259. Liability of clerk of court**

1                    The clerk of court shall not be liable for any damages caused by any  
2                    third party to any information included in pleadings or documents filed of  
3                    record by the clerk of court.

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PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

**ACT No. 197**

2017 Regular Session

HOUSE BILL NO. 115

BY REPRESENTATIVE CROMER

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Civil Code Articles 2350, 2369.3, and 2375, relative to community property; to provide relative to a community enterprise; to provide for the effect of a judgment of separation of property upon reconciliation; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 2350, 2369.3, and 2375 are hereby amended and reenacted to read as follows:

Art. 2350. Alienation of movable assets of business:

The spouse who is the sole manager of a community enterprise has the exclusive right to alienate, encumber, or lease its movables unless the movables are issued in the name of the other spouse or the concurrence of the other spouse is required by law.

A community enterprise is a business that is not a juridical person.

Revision Comments - 2017

The definition of "community enterprise" provided herein is not new. It has been relocated from Article 2369.3 to its more appropriate placement in this Article. *See Lanza v. Lanza*, 898 So. 2d 280 (La. 2005). The change in terminology from "legal entity" to "juridical person" is intended to be consistent with language used throughout the Civil Code and does not change the law.

\* \* \*

1 Art. 2369.3. Duty to preserve; standard of care

2 A spouse has a duty to preserve and to manage prudently former community  
3 property under his control, ~~including a former community enterprise~~, in a manner  
4 consistent with the mode of use of that property immediately prior to termination of  
5 the community regime. He is answerable for any damage caused by his fault,  
6 default, or neglect.

7 ~~A community enterprise is a business that is not a legal entity.~~

8 Revision Comments - 2017

9 (a) The deletion of the reference to a community enterprise in the first  
10 paragraph does not change the law. That reference was both redundant and  
11 unnecessary. The duty to preserve applies to all community assets, regardless of their  
12 form.

13 (b) The 2017 revision moved the definition of a community enterprise to  
14 Article 2350.

15 \* \* \*

16 Art. 2375. Effect of judgment

17 A. Except as provided in Paragraph C of this Article, a judgment decreeing  
18 separation of property terminates the regime of community property retroactively to  
19 the day of the filing of the petition or motion therefor, without prejudice to rights  
20 validly acquired in the interim between filing of the petition or motion and rendition  
21 of judgment.

22 B. If a judgment has been rendered ~~on the ground that the spouses have lived~~  
23 ~~separate and apart either after the filing of a petition for divorce without having~~  
24 ~~reconciled or for six months~~, in accordance with Article 2374(C) or (D), a  
25 reconciliation reestablishes the regime of community property between the spouses  
26 retroactively to the day of its termination ~~the filing of the motion or petition therefor~~,  
27 unless prior to the reconciliation the spouses execute a matrimonial agreement to the  
28 contrary. This agreement need not be approved by the court and is effective toward  
29 third persons when filed for registry in the manner provided by Article 2332. The  
30 reestablishment of the community is effective toward third persons when a notice  
31 thereof is filed for registry in the same manner.

1 C. If a judgment is rendered on the ground that the spouses were living  
2 separate and apart without having reconciled for at least thirty days from the date of,  
3 or prior to, the filing of the petition for divorce, the judgment shall be effective  
4 retroactively to the date the petition for divorce was filed, without prejudice to rights  
5 validly acquired in the interim. ~~All subsequent pleadings or motions involving~~  
6 ~~matters incidental to the divorce shall be filed in the first filed suit.~~

7 Revision Comments - 2017

8 (a) The 2017 revision to this Article closed a gap that previously existed  
9 when a judgment of separation of property was awarded on the ground that the  
10 spouses had lived separate and apart for 30 days *before* the filing of a petition for  
11 divorce . Under those circumstances, the Article failed to provide for a retroactive  
12 reestablishment of the community property regime. Further, the date to which a  
13 reconciliation retroactively reestablished the community property regime in the case  
14 of judgments of separation of property issued on other grounds was also flawed.  
15 This revision clarifies the connection between reconciliation and the reestablishment  
16 of the community property regime in the wake of a judgment of separation of  
17 property.

18 (b) The 2017 revision deleted language referencing the effect of a  
19 reconciliation on matters incidental to the cause of action for divorce. Procedural  
20 matters, including consolidation of suits and cumulation of actions, are governed by  
21 the Code of Civil Procedure.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_