### Volume 1

## CHAPTER 1. DEFINITION OF REAL ESTATE

### I. DISTINCTION BETWEEN IMMOVABLE AND MOVABLE PROPERTY

§ 1:1	Overview
§ 1:2	Definition of immovable property
§ 1:3	—Prior law
§ 1:4	—Definition of buildings and other constructions
§ 1:5	—Incorporation into an immovable
§ 1:6	—Permanent attachment to an immovable
§ 1:7	——Ownership of attached property
§ 1:8	— Tests for immobilization by attachment
§ 1:9	——Societal expectations
§ 1:10	— —Examples of items that are movable and immovable
§ 1:11	Transfer or encumbrance of immovable includes component parts
§ 1:12	—Application of rule to buildings and improvements
§ 1:13	—Application of rule to attached movables
§ 1:14	—Ranking issues
§ 1:15	—Component parts after granting of mortgage
§ 1:16	Immovables by declaration
§ 1:17	—Preventing immobilization
8 1.18	Deimmobilization

### II. FIXTURES UNDER ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

§ 1:19	Overview
§ 1:20	Definition of fixtures
§ 1:21	Priority of security interests in fixtures
§ 1:22	—Purchase money security interest in fixtures
§ 1:23	—Nonpurchase money security interest in fixtures
§ 1:24	—Priority vis-a-vis construction mortgage
§ 1:25	Effect of fixture filing
§ 1:26	Manner of making fixture filings

§ 1:27 Choice of Law
§ 1:28 When perfection is not necessary
§ 1:29 Remedies
§ 1:30 Exclusions of certain movables from fixture filing
§ 1:31 —Consumer goods and manufactured homes
§ 1:32 —Ordinary building materials incorporated into improvements

### III. CORPOREAL AND INCORPOREAL PROPERTY

- § 1:33 In general
- § 1:34 Interests in entities that own real estate
- § 1:35 Beneficial interests in trusts
- § 1:36 Promissory note secured by real estate, rents and actions for recovery of money
- § 1:37 —Community property incorporeals

#### IV. MOBILE HOMES

- § 1:38 Factory-Built Home Property Act
- § 1:39 Immobilization of factory-built home
- § 1:40 Deimmobilization of factory-built home

#### V. FORMS

- § 1:41 Declaration of immobilization
- § 1:42 Declaration of Immobilization of Factory-Built Home
- § 1:43 UCC-11—Search for filings
- § 1:44 UCC-1 Financing statement containing a fixture filing

### CHAPTER 2. LAND DESCRIPTIONS AND SURVEYS

#### I. LAND DESCRIPTIONS

- § 2:1 Legal descriptions
- § 2:2 —Derivation of titles
- § 2:3 —Public lands

#### II. KINDS OF PROPERTY DESCRIPTIONS

- § 2:4 Overview
- § 2:5 Governmental surveys
- § 2:6 —The USPLS System or rectangular survey description
- § 2:7 —Meridians
- § 2:8 —Townships

§ 2:9 - "Sixteenth Section" Lands § 2:10 —Meander lines § 2:11 Metes and bounds § 2:12 —Closing the land § 2:13 Plats of subdivision § 2:14 —Sufficiency of description by square and lot § 2:15 —Legal requirements for subdivision plats § 2:16 —Planning commission approval § 2:17 —Dedication of streets in plat § 2:18 —Penalty for noncompliance § 2:19 —Consolidation of lots § 2:20 —Title to unsubdivided lot § 2:21 -Municipal numbers or addresses § 2:22 Buildings and improvements

#### III. DEFINING BOUNDARIES

- § 2:23 Calls
- § 2:24 —Priority of calls
- § 2:25 Official governmental survey as monument
- § 2:26 ——Adjoiners
- § 2:27 ——Description by name
- § 2:28 ——Intention of parties
- § 2:29 —Field notes
- § 2:30 —State land office
- § 2:31 —Survey and deed discrepancies
- § 2:32 ——Reasons for discrepancies
- § 2:33 ——Local practice
- § 2:34 ——Prior and current surveys
- § 2:35 ——Sales of contiguous lots
- $\S 2:36$  ——Sale of part of parcel
- § 2:37 —Reference to prior acquisition
- $\S~2:38~$  —Ambiguity construed against vendor
- § 2:39 —Boundary dispute
- § 2:40 —Rules concerning certain boundaries
- § 2:41 ——Boundary fronting on right of way
- § 2:42 ———Rule not retroactive
- § 2:43 ——Boundary on batture
- § 2:44 ——Boundary on water

### IV. SURVEYS

- § 2:45 In general
- § 2:46 Reasons for obtaining survey
- § 2:47 Furnishing information to surveyor

§ 2:48	Contents of survey
§ 2:49	—Important things to note on survey
§ 2:50	—Duties of surveyor
§ 2:51	Types of surveys
§ 2:52	—Plat
§ 2:53	—Perimeter survey
§ 2:54	—As-built survey
§ 2:55	——Recent survey
§ 2:56	Survey standards
§ 2:57	—ALTA/ACSM standards
§ 2:58	— — Classifications of ALTA surveys
§ 2:59	—ALTA/ACSM Survey Review Checklist
§ 2:60	— — Optional Table A Survey Requirements
§ 2:61	— —Contents of Table A requirements
§ 2:62	—Louisiana minimum survey standards
§ 2:63	—Lender's requirements
§ 2:64	Actions against surveyors and real estate developers;
	peremption
§ 2:65	Notice of availability of survey

### V. FORMS

§ 2:66	Sample	e metes and bounds legal description
§ 2:67	Vendor	's acquisition form
§ 2:68	Acknow	vledgment of encroachment in sale
§ 2:69		in purchase contract requiring ALTA/ACSM by and Table A Requirements
§ 2:70	Survey	requirements of lender
§ 2:71	Long-fo	orm lender's certification
§ 2:72	Notice	of Availability of Survey
Appendi	x 2A.	Glossary of Select Terms in Connection with Surveys
Appendi	x 2B.	Select Units of Linear and Square Measure
Appendi	x 2C.	Common Survey Symbols
Appendi	x 2D.	Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys
Appendi	x 2E.	Minimum Standards of Practice for Land Surveying in State of Louisiana

### CHAPTER 3. INTERESTS IN LAND

### I. REAL RIGHTS IN GENERAL

§ 3:1 Limitation on contractual freedom

§ 3:2	Definition of ownership and restraints on alienation
§ 3:3	Ownership of improvements and air space
§ 3:4	—Improvements
§ 3:5	——Ownership determined by consent of owner of land
§ 3:6	——Improvements made by spouses
II. S	ERVITUDES
§ 3:7	Dismembership of ownership
§ 3:8	—Usufruct and habitation
§ 3:9	—Predial servitudes
§ 3:10	——Natural servitudes
§ 3:11	— — Drainage
§ 3:12	———Servitude for running water
§ 3:13	—Legal servitudes
§ 3:14	——Civil Code Article 667: The sic utere doctrine
§ 3:15	——Article 667 and real estate transactions
§ 3:16	— —The law of nuisance
§ 3:17	———Practical application of Article 667 to use of
	property
§ 3:18	— —Riparian servitude
§ 3:19	——Legal servitude of passage for enclosed estates
§ 3:20	———Designation of location of passage and right to
	compensation
§ 3:21	———Voluntary enclosure of estate
§ 3:22	———Gratuitous right of passage
§ 3:23	——Servitude of encroaching building
§ 3:24	<ul><li>—Encroachments on public property</li></ul>
§ 3:25	——Party walls
§ 3:26	———Creation of party wall
§ 3:27	— — —Adjoining wall
§ 3:28	———Party wall and merchantability of title
§ 3:29	——Common fence
§ 3:30	Common alley
§ 3:31	Conventional predial servitudes
§ 3:32	—Establishment by title
§ 3:33	— — Reciprocal servitudes
§ 3:34	— —Interpretation of ambiguous documents
§ 3:35	— — Grant of right of way
§ 3:36	———Deed excepting right of way
§ 3:37	— —Verbal servitude
§ 3:38	——Doubt resolved in favor of servient estate
§ 3:39	—Establishment by destination of owner and
5 2.00	prescription
§ 3:40	——Destination of the owner

§ 3:41	——Prescription
§ 3:42	
§ 3:43	-
§ 3:44	Rights of use
§ 3:45	—Predial servitude and right of use distinguished
§ 3:46	— —Guidelines for interpretation
§ 3:47	——Conservation servitude and facade donation of servitude for educational, charitable or historical purposes
§ 3:48	Obligations of owner of servient estate
III.	RESTRICTIVE COVENANTS
§ 3:49	Building restrictions
§ 3:50	—Effect of building restrictions and privilege to secure assessments
§ 3:51	—Prescription of two years
§ 3:52	
§ 3:53	S S
§ 3:54	11
§ 3:55	by agreement
§ 3:56	Louisiana Planned Community Act
§ 3:57	
§ 3:58	—Duty to enforce
IV.	ANNUITY CHARGE
§ 3:59	Annuity contract and annuity charge
§ 3:60	Distinction between credit sale and annuity contract
§ 3:61	Recordation of the annuity charge
§ 3:62	Duration of the annuity contract and the annuity charge
§ 3:63	Duration of the annuity contract and the annuity charge
	COVENANTS IN FAVOR OF GOVERNMENTAL ENTITIES
§ 3:64	Enforceability
§ 3:65	Prescription
5 5.00	1 Tobolipuon
VI.	FORMS
§ 3:66	Act of sale with reservation of usufruct

§ 3:67

Agreement of habitation

§ 3:68	Clause in act of sale reserving right of passage
§ 3:69	Drainage servitude
§ 3:70	Servitude of passage
§ 3:71	Reciprocal servitude agreement
§ 3:72	Agreement establishing servitude of common access
§ 3:73	Servitude by destination of the owner
§ 3:74	Release of servitude
§ 3:75	Affidavit of nonuse
§ 3:76	Act of donation of perpetual real rights
§ 3:77	No acknowledgment clause in sale
§ 3:78	Building restrictions
§ 3:79	Building restrictions: Comprehensive form including
	architectural review committee and association
	charges
§ 3:80	Road Home flood insurance notification in act of sale

### **CHAPTER 4. CO-OWNERSHIP**

### I. CO-OWNERSHIP AS PROPERTY INTEREST

§ 4:1	General principles
§ 4:2	—No joint tenancy
§ 4:3	—Alienation, lease or encumbrance of co-owned property
§ 4:4	—Restrictions on alienation, lease or encumbrance of co-owned property
§ 4:5	——Community property limitations
§ 4:6	— — During community property regime
§ 4:7	— — — After termination of community property regime
§ 4:8	— Voluntary restrictions
§ 4:9	—Rights and responsibilities of co-owners
§ 4:10	— Right of reimbursement
§ 4:11	——Limitation on co-owner's rights
§ 4:12	——Right to grant servitudes and mineral rights

II. T	ERMINATION OF CO-OWNERSHIP
§ 4:13	Disadvantages of co-ownership
§ 4:14	Right of partition
§ 4:15	—Disputes concerning improvements and expenses
§ 4:16	—Minor and absentee owners
§ 4:17	—Stipulations against partition
§ 4:18	——By the donor or testator
§ 4:19	——By the co-owners
§ 4:20	——Community Property

§ 4:21	— — Use and management where partition unavailable
§ 4:22	
§ 4:23	— Failure to join co-owner
§ 4:24	——Partition before judgment of possession
§ 4:25	—Partition in kind or by licitation and Partition by Private Sale
§ 4:26	—Partition in kind or by licitation—Petition for Partition by Minority Interests
§ 4:27	——Partition in kind favored
§ 4:28	——Absentee co-owner
§ 4:29	——Partition prohibited when ownership
	indispensable to use of other property
§ 4:30	——Partition of community property
§ 4:31	——Partition of common elements only
§ 4:32	——Partition of usufruct and naked ownership
§ 4:33	———Perfect ownership of undivided interest
§ 4:34	——Rescission of partitions
§ 4:35	——Effect of partition on real rights
§ 4:36	•

### III. OTHER ISSUES

- § 4:37 Adjudication of minor's interest in co-owned property to parent
- § 4:38 Adverse possession
- § 4:39 Construction of deeds to co-owners
- § 4:40 Effect of improvements on co-ownership
- § 4:41 —Improvements on community property made by a spouse

### IV. FORMS

- § 4:42 Clause in purchase agreement making sale subject to consent of other co-owners
- $\S~4:43$  Agreement by co-owners not to alienate, encumber or lease property held in common
- § 4:44 Agreement by co-owners not to partition
- § 4:45 Partition of community property
- § 4:46 Partition agreement
- § 4:47 Confirmation of adjudication

### CHAPTER 5. ADVERSE POSSESSION

### I. IMPORTANCE OF ADVERSE POSSESSION

§ 5:1 Acquisitive prescription

§ 5:2	—Property that cannot be acquired by prescription
§ 5:3	——Property of the state
§ 5:4	— —Municipal corporations
§ 5:5	——Levee boards
§ 5:6	—Nature of possession required
§ 5:7	—Corporeal possession
§ 5:8	— —Effect of payment of taxes
§ 5:9	—Civil possession
§ 5:10	—Constructive possession
§ 5:11	—Tacking of possession
§ 5:12	——Requirement of privity of title

### II. TEN-AND THIRTY-YEAR PRESCRIPTIONS

§ 5:13	Overview
§ 5:14	Ten-year prescription
§ 5:15	—Good faith
§ 5:16	— —Quitclaim deed
§ 5:17	— Effect of title examination on good faith
§ 5:18	— Good faith at the inception of the prescriptive
	period
§ 5:19	— — Tacking
§ 5:20	—Just title
§ 5:21	—Requirements of just title
§ 5:22	— — Valid in form
§ 5:23	——Recordation required
§ 5:24	——Adequate description
§ 5:25	Requirements for 30-year prescription
§ 5:26	—Under title
§ 5:27	—Without title
§ 5:28	Interruption of acquisitive prescription
§ 5:29	Suspension of acquisition prescription
§ 5:30	Tax sales: Redemption of property by adverse possessor in good faith

### III. PROOF OF OWNERSHIP IN CONTESTED CASES

Inability to acquire property by acquisitive prescription: Political subdivisions

- $\S~5{:}32$  Burden of Proof as Dependent on Possession
- § 5:33 The common author rule

### IV. THE ACTION TO FIX BOUNDARY

§ 5:34 In general

§ 5:31

§ 5:35 Boundary prescription
 § 5:36 Practical application of boundary prescription
 § 5:37 Distinction between boundary prescription and general prescriptive articles
 § 5:38 —Common applications of boundary prescription
 § 5:39 —Privity of title required

### V. ACQUISITIVE PRESCRIPTION OF SERVITUDES

- § 5:40 Apparent servitudes
- § 5:41 —Just title
- § 5:42 —Nonretroactivity of servitude revisions

### VI. ACQUISITIVE PRESCRIPTION OF BLIGHTED PROPERTY

- § 5:43 Applicability
- § 5:44 Requisites
- § 5:45 Affidavit of possession
- § 5:46 Acknowledgment of no adverse possession by adjoining landowner

### CHAPTER 6. CAPACITY AND AUTHORITY IN REAL ESTATE TRANSACTIONS

### I. CRITICAL IMPORTANCE OF CAPACITY AND AUTHORITY

- § 6:1 In general
- § 6:2 General capacity of persons
- § 6:3 —Minors
- § 6:4 ——Emancipation
- § 6:5 Judicial authorization
- § 6:6 ——Prohibited contracts between minor and tutor
- § 6:7 ——Effect of representation of majority
- § 6:8 —Interdicts
- § 6:9 —Rescission by person lacking capacity

#### II. COMMUNITY PROPERTY RESTRICTIONS

- § 6:10 Consent requirements and restrictions on alienation, lease or encumbrance of interest in community property
- § 6:11 Consent requirements—Encumbrances arising by operation of law
- § 6:12 —Renunciation of right to concur

### TABLE OF CONTENTS

IADLE	OF CONTENTS
§ 6:13	—Ratification of prohibited act
§ 6:14	Separate property regime
§ 6:15	Spousal consent to pre-1980 transactions
§ 6:16	—Family home declaration
§ 6:17	—Donations
§ 6:18	——Law in effect at time of transaction controls
§ 6:19	Transfers between spouses
§ 6:20	Declarations as to marital status
§ 6:20 § 6:21	Effect of judicial separation and divorce on
8 0.21	community property regime
§ 6:22	—Effect of improvements on community and separate
e c.oo	real estate
§ 6:23	—Effect of false marital declaration
§ 6:24	Rebuttable presumption of community property
§ 6:25	—Suppression of double declaration rule
§ 6:26	—Effect of declaration of acquisition of separate
S C.07	property and effect of falsity of declaration
§ 6:27	Marital property-choice of law rules
III.	USUFRUCTUARIES
§ 6:28	Usufruct of real estate
§ 6.26 § 6:29	Effect of sale on usufruct
§ 6.29 § 6:30	Grant of authority to dispose of real estate
8 0.50	Grant of authority to dispose of real estate
IV.	SUCCESSIONS
§ 6:31	Right of successors to alienate without succession proceeding
§ 6:32	Thirty-year prescription for the recognition of a right of inheritance
§ 6:33	Effect of judgment of possession
§ 6:34	Real estate transaction involving succession under
3	administration
§ 6:35	—Independent administration of estates
§ 6:36	—Right of succession representative to execute
	purchase agreement and listing agreement where no independent administration
§ 6:37	—Sale of interest of surviving spouse in community
§ 6:38	
§ 6:39	—Actions to set aside succession sales
§ 6:40	Ancillary successions and small successions
, 0,10	
V. 1	RUSTS

§ 6:41 Trusts—Generally

§ 6:42	—Title to trust property
§ 6:43	—Who may be trustee
§ 6:44	—Capacity of trustee to alienate or encumber
§ 6:45	——Purchase or sale by trustee from or to itself or
	from or to relatives and affiliates
§ 6:46	—Real estate investment trusts
§ 6:47	—Recordation of trust instrument or extract of trust
§ 6:48	Foreign Trusts and revocable trusts
VI.	BANKRUPTCY PROCEEDINGS
§ 6:49	Bankruptcy proceedings—Generally
§ 6:50	—Bankruptcy estate
§ 6:51	—Post-petition transfer of property
§ 6:52	— Effect of transfer in violation of automatic stay
§ 6:53	—Transfer with court approval
§ 6:54	——Sale in ordinary course of business
§ 6:55	——Post-petition encumbrance of estate property
§ 6:56	— —Transfer pursuant to plan
§ 6:57	——Sale free and clear of liens
§ 6:58	— —Abandonment
§ 6:59	—Finality of bankruptcy court order
VII.	CORPORATIONS
§ 6:60	Corporations—Generally
§ 6:61	—Commencement of corporate existence
§ 6:62	—Effect of incorporation after acquisition of real estate
§ 6:63	—Foreign corporations
§ 6:64	—Dissolution and termination of corporations
§ 6:65	— Effect of revocation of articles of incorporation
VIII.	PARTNERSHIPS
§ 6:66	Partnerships—Generally
§ 6:67	—Present law
§ 6:68	—Law prior to 1981
§ 6:69	—Foreign partnership
§ 6:70	Registered limited liability partnerships
§ 6:71	Pre-1981 partnerships
§ 6:72	Effect of termination of partnership

### IX. UNINCORPORATED ASSOCIATIONS

§ 6:73 Title to real estate; Louisiana Unincorporated Association Act

### X. LIMITED LIABILITY COMPANIES

- § 6:74 Statutory authorization
- § 6:75 —Formation and Termination
- § 6:76 —Nature of membership interest
- § 6:77 —Foreign limited liability companies

### XI. MERGERS AND CONVERSIONS OF BUSINESS ENTITIES

- § 6:78 Generally
- § 6:79 Mergers
- § 6:80 Conversions

### XII. AUTHORITY OF AGENTS AND REPRESENTATIVES

- § 6:81 In general
- § 6:82 —Where agent also owns an interest in property
- § 6:83 Representation and mandate
- § 6:84 —Authority to alienate, acquire, encumber or lease
- § 6:85 —Procuration
- § 6:86 In general—Representation and mandate—Need for written authority
- § 6:87 Representation and mandate—Right to appoint substitute
- § 6:88 —Conflicts of interest
- § 6:89 ——Mandatary for two parties
- § 6:90 ——Contracting with himself
- § 6:91 —Liability of agent for undisclosed principal
- § 6:92 ——Change from prior law
- § 6:93 —Liability of principal to third person
- § 6:94 —Liability of third party to undisclosed principal
- § 6:95 —Termination of mandate
- § 6:96 Military powers of attorney
- § 6:97 Authority of corporate representatives
- § 6:98 —Nonprofit corporations
- § 6:99 —Disposition of substantially all assets
- § 6:100 Authority of representatives of unincorporated associations; Louisiana Unincorporated Association Act
- § 6:101 Authority of partners
- § 6:102 Authority of members and managers of limited liability companies
- § 6:103 —Authority of members
- § 6:104 —Operating agreement

§ 6:105	—Authority of managers
§ 6:106	—Right of spouse of member
§ 6:107	—Certificate of authority
§ 6:108	Proof of authority
§ 6:109	—Reliance on regularity of proceedings
§ 6:110	—Authority of attorney at law
§ 6:111	—Right of other party to question authority
§ 6:112	—Apparent authority and agency by estoppel
§ 6:113	Ratification
§ 6:114	Prescription of action to contest authority
§ 6:115	—Representatives of legal entities
§ 6:116	—Agents under power of attorney
XIII.	FORMS
§ 6:117	Intervention by spouse concurring in alienation or
8 0.117	encumbrance (where community property is in name of one spouse)
§ 6:118	Renunciation of right to concur in alienation, lease and encumbrance of community immovable property
§ 6:119	Appearance where spouse has waived right to concur in sale or alienation, encumbrance, and lease of community immovable property
§ 6:120	Spouse's intervention to concur in granting of mortgage pursuant to Civil Code Article 2347
§ 6:121	Transfer of community property to spouse in accordance with Article 2343 of the Louisiana Civil Code
§ 6:122	Transfer of separate property by spouse to community
§ 6:123	Declaration of acquisition of separate property
§ 6:124	Concurrence of spouse in declaration of acquisition of separate property
§ 6:125	Intervention and quitclaim in act of sale by spouse acknowledging separate nature of property
§ 6:126	Mandate by succession representative authorizing agent to alienate acquire, lease or encumber specifically described real estate on specific terms
§ 6:127	Court approval clause in purchase agreement
§ 6:128	Petition for private sale of immovable property
§ 6:129	Judgment on application for private sale
§ 6:130	Petition for authority to execute listing agreement
§ 6:131	Affidavit of small succession
§ 6:132	Legislatively suggested forms for creating custodial trust
§ 6:133	Power of attorney by trustee
8 6.134	

6:135	Extract of trust (testamentary trust)
6:136	Extract of trust (inter vivos trust)
6:137	Certificate of trust
6:138	Donation by settlors to revocable trust
6:139	Bankruptcy order authorizing sale free and clear of liens and encumbrances
8 6:140	Trustee's petition of disclaimer and abandonment and order
6:141	Transfer by liquidator of corporation to shareholder
6:142	Articles of organization and initial report (limited liability company)
§ 6:143	Sample articles of entity conversion from a domestic business corporation to a domestic limited liability company (Louisiana Secretary of State form)
6:144	Special power of attorney to sell, purchase or borrow
6:145	Power of attorney to sell real estate (alternative form)
6:146	Power of attorney to purchase and borrow
6:147	General procuration
6:148	Military power of attorney
6:149	Corporate resolution to sell real estate
6:150	Corporate resolution to sell real estate (Alternative form)
6:151	Corporate resolution to purchase real estate (Another form)
8 6:152	General corporate resolution authorizing sale, purchase or mortgage
6:153	Unanimous consent of board of directors
6:154	Secretary's certificate (with incumbency certificate)
6:155	Certified resolutions of members of nonprofit corporation authorizing sale of real estate
6:156	Unanimous consent of shareholders
§ 6:157	Statement of authority for unincorporated association
6:158	Certificate of resolution: Partnership
6:159	Certificate of members as to authority of limited liability company
8 6:160	Extract of minutes of meeting of members of limited liability company authorizing mortgage financing
6:161	Act of Transfer and Distribution
8 6:162	Certificate of certifying officer of limited liability company (specific transaction)
6:163	Certificate of certifying officer of limited liability company (general authority)
6:164	Act of ratification by principal

### CHAPTER 7. REQUIREMENTS OF FORM FOR REAL ESTATE TRANSACTIONS

### I. FORMS OF WRITTEN INSTRUMENTS

§ 7:1 § 7:2	Three forms of written instruments  —The authentic act
§ 7:3	— Recitals of authentic act
§ 7:4	— —Other requirements
§ 7:5	— — — Marital status
§ 7:6	——Names of the parties, permanent mailing
3 1.0	addresses of the parties and printing or typing full names of parties, witnesses under signatures and names of married women
§ 7:7	— — Requirements of Civil Code Article 3352 and La. Rev. Stat. 47:2328
§ 7:8	— ——Social security or employment identification number of the parties
§ 7:9	— — —Date of Act
§ 7:10	— —Witnesses
§ 7:11	—The act under private signature duly acknowledged
§ 7:12	— — Acknowledgment under La. Rev. Stat. § 13:3720
§ 7:13	— —Acknowledgment under Uniform
	Acknowledgments Act
§ 7:14	—Authorized forms of acknowledgments are exclusive and equally valid
§ 7:15	—Act under private signature
§ 7:16	Preferred status of authentic act
§ 7:17	—Certified copies
§ 7:18	—Acts of correction
§ 7:19	— —Act of correction under La. Rev. Stat. § 13:4104

### II. NOTARY PUBLIC IN LOUISIANA

- § 7:21 Notaries and officers qualified to take acknowledgments
- § 7:22 —De facto notary
- § 7:23 —Foreign and military acknowledgments
- § 7:24 —Notarial seal and notarial identification
- § 7:25 —Remote online notarization

§ 7:20 ——Notarial act of deposit

§ 7:26 —Peremption of claims against notaries public

### III. WRITING REQUIREMENTS FOR REAL ESTATE TRANSACTIONS

§ 7:27 Writing requirements for transfer of immovable property

- § 7:28 —Other agreements related to transfer of real estate
  § 7:29 —Parol evidence not admissible to prove ownership
  § 7:30 —Mineral rights
- § 7:31 —Equitable estoppel and waiver of writing requirement
- § 7:32 —Ancient documents rule
- § 7:33 —Erasures and interlineations
- § 7:34 Louisiana Uniform Electronic Transaction Act

### IV. PAROL EVIDENCE IN REAL ESTATE TRANSFERS

- § 7:35 General rule
- § 7:36 Exception to general rule—Actions between parties and third persons
- § 7:37 —Parol evidence admitted without objection
- § 7:38 —To Clarify Ambiguity
- § 7:39 —Reformation of instruments
- § 7:40 ——Limitations on right to reform instruments
- § 7:41 ——Property description
- § 7:42 ——Effect of parties' negligence
- § 7:43 —Vices of consent
- § 7:44 —Incapacity
- § 7:45 —Lack of and existence of consideration
- § 7:46 —Evidence of prior or contemporaneous agreement
- § 7:47 —Modifications of contracts
- § 7:48 —Cancellations of contracts
- § 7:49 —Lost instruments
- § 7:50 —Verbal sale admitted by the vendor
- § 7:51 —Contracts not subject to the writing requirement
- § 7:52 Consideration
- § 7:53 Instruments executed outside of Louisiana or governed by laws of another jurisdiction

#### V. FORMS

- § 7:54 Cash sale of real estate by authentic act
- § 7:55 Authentic act before two notaries public
- § 7:56 Appearance by agent under special power of attorney
- § 7:57 Appearance by agent under general procuration or general power of attorney
- § 7:58 Appearance by trustee
- § 7:59 Appearance by Succession Representative
- § 7:60 Appearance by Independent Administrator or Executor
- § 7:61 Appearance by vendor as debtor in possession under Chapter 11 of the Bankruptcy Code

§ 7:62	Appearance by corporation
§ 7:63	Appearance by partnership
§ 7:64	Appearance by limited liability company
§ 7:65	Acknowledgment by individual pursuant to Civil Code Article 1836
§ 7:66	Acknowledgment by agent of individual pursuant to Civil Code Article 1836
§ 7:67	Acknowledgment by corporate representative pursuant to Civil Code Article 1836
§ 7:68	Acknowledgement by partner for partnership pursuant to Civil Code Article 1836
§ 7:69	Acknowledgment by manager of limited liability company pursuant to Civil Code Article 1836
§ 7:70	Acknowledgment under La. Rev. Stat. § 13:3720
§ 7:71	Acknowledgments under Uniform Acknowledgments Act, La. Rev. Stat. § 35:511
§ 7:72	Certificate of resolution by notary public
§ 7:73	Notarial act of correction
§ 7:74	Notarial act of correction by notary who prepared act responsible for error but who did not notarize the act
§ 7:75	Act of deposit and correction
§ 7:76	Clause relating to counterparts, facsimile documents, signatures and e-sign
§ 7:77	Acknowledgment of sales price
Append	ix 7A. Appointment and Qualifications of Notaries (La. Rev. Stat. § 35:191, through August 1, 2019)
Append	ix 7B. Remote Online Notarization Act (La. Rev. Stat. §§ 35:621 et seq., effective February 1, 2022)

### CHAPTER 8. PUBLIC RECORDS DOCTRINE

### I. IMPORTANCE OF PUBLIC RECORDS DOCTRINE

- § 8:1 Protection of third persons from unrecorded interests
  § 8:2 —Public policy considerations
- § 8:3 —Effect of actual knowledge of unrecorded instrument
- § 8:4 —Public records doctrine and writing requirements
- § 8:5 Protection from secret claims and equities
- § 8:6 —Notice of Lis Pendens
- § 8:7 —Correction of error in recorded document

### II. WHAT CONSTITUTES NOTICE

§ 8:8 Constructive notice of the public records

§ 8:9	—Insufficient reference to constitute notice
§ 8:10	—Marital status recited in deed
§ 8:11	-Reference to unrecorded instruments in recorded
	instruments
§ 8:12	—Erroneous property descriptions
§ 8:13	—Erroneous names
§ 8:14	— —Reasonable variations
§ 8:15	— Names and mortgage certificates

### III. LIMITATIONS ON PUBLIC RECORDS DOCTRINE

§ 8:16	Negative nature of the public records doctrine
§ 8:17	Exceptions to the public records doctrine
§ 8:18	—Persons not entitled to assert nonrecordation
§ 8:19	——Effectiveness as between the parties
§ 8:20	— — —Witnesses
§ 8:21	— — Notary public
§ 8:22	— —Universal successors
§ 8:23	——Spouses in community
§ 8:24	——Party by separate instrument
§ 8:25	— —Tort victims
§ 8:26	——Persons in bad faith or who did not give value and effect of 2005 legislation
§ 8:27	—Interests arising by operation of law
§ 8:28	——Inheritance rights
§ 8:29	——Community property interests
§ 8:30	——Adverse possession
§ 8:31	— —Legal servitudes
§ 8:32	——Purpose of the exception for interests arising by operation of law
§ 8:33	——Effect of prescription
§ 8:34	— —When interest no longer arises by operation of law
§ 8:35	— — Failure to record judgment recognizing interest
§ 8:36	— — Notice of lis pendens
§ 8:37	—Unrecorded interest assumed or acknowledged by third persons
§ 8:38	——Effect of mere knowledge of unrecorded interest
§ 8:39	— Effect of assumption language in real estate transaction
§ 8:40	—Fraudulent cancellation of mortgages and other encumbrances
§ 8:41	—Creditors' rights based on insolvency
§ 8:42	—Effect of unrecorded sale on creditors

§ 8:43	—Matters of capacity and authority, tacit acceptance, occurrence of condition, exercise of options, etc., termination of rights, and similar matters
§ 8:44	—Patents and divestiture from the sovereign
IV. I	RECORDING THE INSTRUMENT
§ 8:45	Method of recording; paper and electronic filing
§ 8:46	Method of recording—Effect of filing in wrong records
§ 8:47	—When recordation is effective
§ 8:48	—Clerks of court and mortgage and conveyance records
§ 8:49	—Uniform statewide recording fees and procedures; Effect of failure to pay recordation fees
§ 8:50	—Mortgage and conveyance indices
§ 8:51	—Suit indices
§ 8:52	Recordable instruments and required information
§ 8:53	Recordable instruments—Certified copies of recorded documents
§ 8:54	<ul> <li>Multiple counterparts where instrument affects property in several parishes</li> </ul>
§ 8:55	—False public records
§ 8:56	—Demand for cancellation and establishing authenticity
<b>V.</b> S	IMULATIONS AND COUNTERLETTERS
§ 8:57	Simulation
§ 8:58	—Absolute simulation
§ 8:59	—Relative simulation
§ 8:60	—Sale and leaseback
§ 8:61	Counterletter
§ 8:62	—Enforceability of counterletter
§ 8:63	—Counterletters and the public records doctrine
§ 8:64	—Effect of counterletter
§ 8:65	Proof of simulation by parol evidence and 2012 legislation
VI. I	FORMS
§ 8:66	Demand for acknowledgment that rights in immovable

are extinguished, and acknowledgment

Counterletter: Donation disguised as sale

Counterletter: Agent for account of principal

Transfer, conveyance and relinquishment pursuant to

§ 8:67

§ 8:68

§ 8:69

counterletter

### CHAPTER 9. PURCHASE AGREEMENTS

### I. AGREEMENTS PREPARATORY TO THE SALE

§ 9:1	Contract to sell distinguished from sale
§ 9:2	Contract to sell—Contract to sell defined
§ 9:3	—Formation of the contract
§ 9:4	— —Louisiana Real Estate Commission Forms
§ 9:5	— — Residential Property Disclosure
§ 9:6	— —Form of acceptance
§ 9:7	— Evidence of verbal acceptance
§ 9:8	——Acceptance of written offer by unequivocal act of
	offeree
§ 9:9	——Requirement of written contractual language
§ 9:10	— —Ownership of the property not required for valid contract to sell
§ 9:11	—Offer, acceptance, expiration, and revocation of offers
§ 9:12	——Irrevocable offers
§ 9:13	——Revocable offers
§ 9:14	— Oral revocation of offer and of acceptance
§ 9:15	—Counteroffers
§ 9:16	—Letters of intent and backup offers
§ 9:17	Recording the Purchase Agreement
§ 9:18	Options
§ 9:19	—Obligation of grantor of option
§ 9:20	—Similarities of option to irrevocable offer
§ 9:21	—Effect of exercise of option
§ 9:22	—Length of option
§ 9:23	——Consideration for options
§ 9:24	Right of first refusal
§ 9:25	—Jurisprudence before 1995
§ 9:26	—Civil Code revision
§ 9:27	—Vested rights of holder of right of first refusal
§ 9:28	—Time limitation for grant of right of first refusal
§ 9:29	—Time of acceptance for right of first refusal
§ 9:30	—Form of acceptance
§ 9:31	Assignability and recordation of contracts to sell, options and rights of first refusal
§ 9:32	—Rights of assignee of option against assignor if title is defective
§ 9:33	—Restrictions against assignment

### II. PURCHASE AGREEMENT PROVISIONS

§ 9:34 Interpretation of real estate contracts

§ 9:35	—Use of parol evidence to explain ambiguity
§ 9:36	—Interpretation against seller
§ 9:37	—Handwritten or typewritten insertions
§ 9:38	Price for the sale
§ 9:39	—Seriousness of consideration
§ 9:40	Time for passing the act of sale
§ 9:41	—Guidelines for setting the closing date
§ 9:42	—Automatic extension clause for curing title defects
§ 9:43	—Effect of failure to fix closing date
§ 9:44	—Sale "on or prior to" a certain date
§ 9:45	—Effect of holiday on closing date
§ 9:46	—Storm contingency
§ 9:47	Deposits and earnest money
§ 9:48	—Form of deposit
§ 9:49	—Effect of failure to make deposit
§ 9:50	—Deposit and specific performance
§ 9:51	——Right to specific performance where deposit was
3 0.01	given under prior jurisprudence
§ 9:52	—Right to specific performance when deposit is
0	given under present Article 2624
§ 9:53	Suspensive and resolutory conditions in the purchase
	agreement and the buyer's option to terminate during
	the due diligence and inspection period
§ 9:54	Suspensive conditions in the purchase agreement—
	Sale subject to financing
§ 9:55	——Effect of purchaser's inability to secure loan
§ 9:56	——Requirements of good faith effort by purchaser to
	secure loan or fulfill other suspensive condition
§ 9:57	———Evidence of good faith effort
§ 9:58	———Effect of showing that condition could probably
	not be fulfilled
§ 9:59	———Loan by seller if purchaser cannot secure loan
§ 9:60	——Waiver of financing condition
III.	SELLER'S OBLIGATION TO CONVEY THE
111.	PROPERTY
	Seller's duty to deliver merchantable title
§ 9:62	—Definition of merchantable title
§ 9:63	——Distinction between merchantable and insurable
	title
§ 9:64	
§ 9:65	
§ 9:66	
§ 9:67	— — Violation of zoning or building restrictions

§ 9:68 — —Legal servitudes § 9:69 — — Monetary encumbrances § 9:70 — Effect of clause that title is subject to approval of purchaser's attorney — Continuing duty to deliver merchantable title § 9:71 § 9:72 ——Sales of multiple properties — Negotiation of provisions relating to title § 9:73 objections § 9:74 Duty to deliver the property promised § 9:75 —Sale by measure —Sale for a lump price § 9:76 —Sale per aversionem § 9:77 — Prior viewing test vs. contract language § 9:78 — Effect of purchaser's error in per aversionem sale § 9:79 § 9:80 —Effect of clause "as per title" § 9:81 -Prescription of action for increase and diminution of the price § 9:82 Risk of loss § 9:83 Delivery of possession § 9:84 -Effect of failure to deliver possession at act of sale § 9:85 —Deed in escrow -Conveyance: Transfer of accessories and mineral § 9:86 rights; the subsequent purchaser rule § 9:87 -Conveyance: Transfer of accessories and mineral rights—Reservation of mineral rights

#### IV. REMEDIES

§ 9:88	Prerequisites: Tender of performance and putting in default
§ 9:89	—Tender of performance by purchaser
§ 9:90	—Tender of performance by seller
§ 9:91	—Effect of active breach on putting in default
§ 9:92	—Tender of performance by purchaser
§ 9:93	—Tender of performance by seller
§ 9:94	—Effect of clause requiring tender of title
§ 9:95	Rescission of contract for error or fraud
§ 9:96	—Error as to zoning or building restrictions
§ 9:97	—Error as to other qualities of the property
§ 9:98	Rescission of agreement based on defects in the property discovered before the closing
§ 9:99	Rescission of agreement based on inspection, due diligence and contingency clauses
§ 9:100	Remedies for breach of purchase agreement
§ 9:101	—Damages, attorney's fees and costs
§ 9:102	— — Where liquidated damages provided

§ 9:103	— — —Unequal penalties
§ 9:104	— —Where no liquidated damages provided
§ 9:105	——Breach of contract by seller
§ 9:106	——Breach of contract by purchaser
§ 9:107	— — Effect of resale of property on seller's right to
	recover damages
§ 9:108	——Effect of bad faith
§ 9:109	<ul> <li>—Liability for attorney's fees and costs</li> </ul>
§ 9:110	—Damages for failure to deliver merchantable title
§ 9:111	——If seller's failure is breach of agreement
§ 9:112	——If seller's failure renders agreement null and
	void
§ 9:113	——If purchaser waives the title defects
§ 9:114	—Specific performance and prescription for the action
§ 9:115	Survival of purchase agreement provisions after act
	of sale
V. FO	DRMS
§ 9:116	Agreement to purchase or sell (basic form)
§ 9:117	Purchase agreement (alternative form)
§ 9:118	Agreement for purchase and sale (for sale of income-
0.0110	producing property)
§ 9:119	Purchase agreement: Sale alternative (for sale of leasehold interest)
8 0.100	•
§ 9:120	Amendment to agreement to purchase
§ 9:121	Cancellation of agreement to purchase
§ 9:122	Act of cancellation of purchase agreement (alternative form)
§ 9:123	Residential agreement to purchase and sell—
	Louisiana Real Estate Commission approved form
§ 9:124	Buyer's Options Flowchart at end of the Due
0.0105	Diligence and Inspection Period
§ 9:125	Informational statement for Louisiana property
	disclosure and property disclosure document for residential real estate disclosure—Louisiana Real
	Estate Commission approved form
§ 9:126	Property condition response—Louisiana Real Estate
Ş J.120	Commission approved form
§ 9:127	Home warranty disclosure—Louisiana Real Estate
, 0.12.	Commission approved form
§ 9:128	Counteroffer
§ 9:129	Letter of intent
§ 9:130	Confidentiality agreement in connection with
	proposal to acquire real estate
8 0.121	

9:132	Memorandum of purchase agreement
9:133	Request for cancellation of memorandum of purchase agreement
9:134	Option
9:135	Option agreement with broker as escrow agent and containing extended option period
9:136	Seller's right of first refusal
§ 9:137	Waiver of [option] [right of first refusal] to purchase property
9:138	Assignment of purchase agreement
§ 9:139	Purchase agreement: Clause requiring immediately available funds for payment of purchase price
§ 9:140	Storm contingency clause in purchase agreement.
§ 9:141	Nonnegotiable real estate deposit note (payable to broker)
\$ 9:142	Nonnegotiable real estate deposit note (payable to sellers)
9:143	Escrow and indemnity agreement (when third party is escrow agent)
9:144	Purchase agreement: Open predication clause
§ 9:145	Louisiana Real Estate Commission suggested form of contingency addendum predicated on sale of purchaser's residence
9:146	Prequalification letter from prospective lender
9:147	Purchase agreement: Clause requiring insurable title
9:148	Sale: Acknowledgment of encroachments
9:149	Comprehensive clause for title examination, objections to title and waivers in option or purchase agreement
9:150	Clause in sales agreement for sale by measure
9:151	Clause for purchase agreement regarding casualty loss
9:152	Occupancy agreement addendum
9:153	Agreement to hold act of sale in escrow
9:154	Property transfer escrow agreement
9:155	Sale: Assignment and subrogation to purchaser of rights pertaining to real estate
9:156	Sale: Clause including movables in sale of realty
9:157	Sale: Assignment to purchaser of past-due rent
9:158	Sale: Reservation of mineral rights with waiver of surface rights
9:159	Affidavit of nonproduction
9:160	Purchase agreement extension
9:161	Proces verbal of default
9:162	Purchase agreement: Zoning condition clause

§ 9:163	Purchase agreement: Supplemental agreement relating to termite, fungus and other wooddestroying insect damage
§ 9:164	Purchase agreement: Supplemental agreement relating to roof damage
§ 9:165	Purchase agreement: Right to inspect premises for intended use
§ 9:166	Purchase agreement: Addendum for inspections prior to sale with waiver of redhibitory defects
§ 9:167	Inspection clause
§ 9:168	Clause in purchase agreement for contingency period
§ 9:169	Final inspection agreement
§ 9:170	Final inspection release
§ 9:171	Purchase agreement: Clause in purchase agreement providing for purchaser's recovery of title examination and other expenses in event title not merchantable
§ 9:172	Clause in purchase agreement limiting time to file suit for specific performance

# CHAPTER 10. SELLER'S AND PURCHASER'S REMEDIES AFTER THE SALE

### I. SELLER'S DISSOLUTION REMEDIES

§ 10:1	Alternative remedies to dissolve or sue for purchase price
§ 10:2	-Effect of action to dissolve sale
§ 10:3	——Restoration to status quo ante
§ 10:4	—Security device not required
§ 10:5	—Right to dissolve is implied
§ 10:6	——Prescription of action to dissolve
§ 10:7	<ul> <li>—Effect on subsequent alienations and encumbrances</li> </ul>
§ 10:8	Right to dissolve and the public records doctrine
§ 10:9	——Assumption of mortgage
§ 10:10	——Filing of suit to dissolve
§ 10:11	——Automatic dissolution clause in sale
§ 10:12	— —Waiver of implied right to rescind
§ 10:13	—Right to dissolve as distinguished from conditional sale
§ 10:14	Dissolution for causes other than nonpayment of purchase price

§ 10:23

### II. SELLER'S RIGHT TO RESCIND SALE FOR LESION

§ 10:15 Lesion beyond moiety § 10:16 —Action cannot be waived § 10:17 —Questions of intent —Burden of proof § 10:18 § 10:19 —Time for determining fair market value § 10:20 ——Option contract § 10:21 —Time to bring action for lesion § 10:22 —Effect of sale to third party

### III. SELLER'S RIGHT OF REDEMPTION

—Effect of encumbrance by third party

§ 10:24 Right of redemption
§ 10:25 —Limitation on duration
§ 10:26 —Purpose of redemption
§ 10:27 —Effect of redemption
§ 10:28 —Effect on subsequent purchasers
§ 10:29 —Right of redemption not a new sale
§ 10:30 —When redemption may be considered as a contract of security

### IV. PURCHASER'S REMEDIES FOR BREACH OF WARRANTY

§ 10:31 Implied warranties § 10:32 —Warranty against eviction § 10:33 — — Undisclosed encumbrances — —When rescission is allowed § 10:34 § 10:35 ———Distinction between warranty against eviction and duty to deliver merchantable title § 10:36 ———Effect of payment of price --- Rights and charges at time of sale § 10:37 — — Multiple vendors § 10:38 --- Modification or exclusion of warranty against § 10:39 eviction § 10:40 ———Effect of exclusion of warranty § 10:41 — — Effect of knowledge of danger of eviction ———Effect of sale made without recourse § 10:42 § 10:43 — Liability of seller for personal acts § 10:44 ———Estoppel by warranty § 10:45 — General warranty as distinguished from limited warranty § 10:46 — —Quitclaim deed

### LOUISIANA REAL ESTATE TRANSACTIONS

§ 10:47	— — No specific exclusion of warranty required
	for a quitclaim
§ 10:48	———Distinction between sale without warranty
0.10.10	and quitclaim deed
§ 10:49	— —After-acquired title
§ 10:50	——Call in warranty
§ 10:51	——Subrogation to vendor's rights in warranty
§ 10:52	——Damages for breach of warranty against
0.10.50	eviction
§ 10:53	— ——Improvements
§ 10:54	———Effect of subsequent fluctuations in value
§ 10:55	——Remedies against third parties for negligence
§ 10:56	——Partial eviction
§ 10:57	———Corrective action by seller
§ 10:58	———Reimbursement for having acquired a better
8 10.50	title  Effect of title exemination on warments
§ 10:59	<ul><li>— Effect of title examination on warranty</li><li>— Eviction resulting from apparent servitudes</li></ul>
§ 10:60	9 11
§ 10:61	— — — When a nonapparent servitude is declared
§ 10:62	——Prescription of the action for breach of warranty
§ 10:63	—Warranty against hidden defects and of fitness for
8 10.00	intended use: Generally
§ 10:64	—Warranty against hidden defects: Action in
, 10.01	redhibition
§ 10:65	—Warranty against hidden defects—Applicability to
5	real estate and manufactured homes
§ 10:66	— — Redhibitory defect defined
§ 10:67	——Action to reduce purchase price
§ 10:68	——Buyer's option to seek rescission or reduction in
5	price
§ 10:69	—Rule of caveat emptor does not prevail in
	Louisiana
§ 10:70	— —Transactions to which redhibition applies
§ 10:71	——Preexisting defects
§ 10:72	———Evidentiary presumption
§ 10:73	— — Burden of proof
§ 10:74	— —Various kinds of redhibitory defects
§ 10:75	———Defects involving improvements
§ 10:76	— — Building code requirements
§ 10:77	———Statutory exclusion from redhibitory defect:
5	Psychologically impacted property
§ 10:78	———Defects in land
§ 10:79	———Hazardous waste as redhibitory defect
§ 10:80	— — Objective test is applied

### TABLE OF CONTENTS

§	10:81	——Redhibition distinguished from other rescission
2	10.00	remedies
8	10:82	— — Redhibitory defect distinguished from restrictions on use
2	10:83	——Apparent vs. hidden defects
	10.83	— — — — — Defects discoverable through simple
8	10.04	inspection
8	10:85	— — Defective roofs and termite damage
	10:86	————Defective roofs
-	10:87	— — — Termite damage
_	10:88	— — — Termite damage — — — Termite certificate
_	10:89	— — Mold Disclosure
_	10:90	——Knowledge of purchaser's broker not imputable
2	10.50	to purchaser
8	10:91	——Measure of recovery in event of rescission
	10:92	———Seller in good faith
	10:93	——————————————————————————————————————
_	10:94	———Liability of seller as builder or developer and
2	10.01	the theory of presumed or imputed knowledge
8	10:95	——Measure of recovery of action in quanti minoris
_	10:96	——Action for negligent misrepresentation against
9	10.00	third parties
8	10:97	— — Liability of pest control operator
-	10:98	———Defense against action for negligent
Ð		representation
§	10:99	——Prescriptive period for redhibition action
-	10:100	——Subrogation to rights of prior vendors
-	10:101	——Notice of existence of defect
8	10:102	— Expansion, modification and exclusion of
-		implied warranty
§	10:103	———Effect of "as is" clause
§	10:104	———Waiver of implied warranty that the thing
		sold is reasonably fit for its ordinary use
§	10:105	— — Waiver of warranty from redhibitory defects
		distinguished from waiver of warranty of title
§	10:106	———Effect of seller's knowledge of defect on
		waiver of warranty
§	10:107	———Effect of the property disclosure document
§	10:108	——New Home Warranty Act
V	. FOI	RMS
-		
-	10:109	Waiver of implied resolutory condition in sale
§	10:110	Waiver of implied resolutory conditions in partition of community property
§	10:111	

§ 10:112	Blanket declaration of encumbrances
§ 10:113	Stipulation of no warranty of title in sale
§ 10:114	Stipulation in sale of no liability for return of the purchase price
§ 10:115	Clause in act of sale creating a special or limited warranty of title
§ 10:116	Quitclaim deed
§ 10:117	Intervention in sale in order to quitclaim
§ 10:118	As is clause waiving all warranties except title
§ 10:119	Redhibitory rights waiver: Residential transaction
§ 10:120	Waiver of warranty and redhibition rights
6 10 101	addendum—Louisiana real estate—Approved Form
§ 10:121	Waiver of warranty clause in sale
§ 10:122	New Home Warranty Act as exclusive warranty in sale
§ 10:123	Louisiana residential agreement to buy or sell: New Construction Addendum

Appendix 10A. New Home Warranty Act

# CHAPTER 11. OTHER REAL ESTATE TRANSFERS

### I. DATION EN PAIEMENT

§ 11:1	Dation en paiement
§ 11:2	—Deed in lieu
§ 11:3	—Necessity of fixed price
§ 11:4	—Necessity of delivery
§ 11:5	—Mutuality of consent
§ 11:6	—Dation en paiement before maturity of debt
§ 11:7	Encumbrances on the property transferred
§ 11:8	—Importance of prompt recordation
§ 11:9	—Intention of parties
§ 11:10	Prejudice to other creditors
§ 11:11	The partial dation
§ 11:12	—The partial dation and the Louisiana Deficiency
	Judgment Act
§ 11:13	——Sale provoked by debtor
§ 11:14	—Effect of 1986 amendments to LDJA
§ 11:15	——Commercial transactions
§ 11:16	——Consumer transactions
§ 11:17	——Stipulation as to appraisal in foreclosure
§ 11:18	—Chapter 9 security interest

### II. EXCHANGE

§ 11:19 Exchange

§ 11:20	—Exchange for property and cash
§ 11:21	—Effect of contract of exchange
§ 11:22	—Eviction from property acquired in exchange
§ 11:23	—Rescission on account of lesion
§ 11:24	—Application of general rules of sale
§ 11:25	Tax-free exchanges under 26 U.S.C.A. § 1031
§ 11:26	—Requirements for a 26 U.S.C.A. § 1031 exchange
§ 11:27	— Receipt of money or other nonqualifying property
§ 11:28	— — Deferred exchanges and qualified intermediaries
§ 11:29	—Exchange of real estate for limited liability or partnership interest or for stock in corporation

### III. DONATIONS INTER VIVOS

§ 11:30	Donation Inter Vivos
§ 11:31	—Acceptance by donee
§ 11:32	-Recordation of donations and of acts of acceptance
§ 11:33	——Acceptance by alienation or encumbrance
§ 11:34	—Requirements of form
§ 11:35	—Donations inter vivos made in contemplation of
	married by third persons and interspousal donations
	inter vivos
§ 11:36	—Stipulation of right of return
§ 11:37	—Effect of Conditions Imposed on Donee
§ 11:38	—Reservation by donor of usufruct
§ 11:39	—Donation omnium bonorum
§ 11:40	Donations by and to Corporations and Other Legal Entities

### IV. BOND FOR DEED

§ 11:41	Bond for deed and conditional sale
§ 11:42	Definition of bond for deed
§ 11:43	Cancellation of bond for deed
§ 11:44	Encumbered property
§ 11:45	-Prohibition against promissory note for purchase
	price
§ 11:46	—Escrow requirements
§ 11:47	—Distribution of payments
§ 11:48	-Effect of failure to designate escrow agent
§ 11:49	Transfer of title upon completion of payments
§ 11:50	Denial of homestead exemption
§ 11:51	Interpretation of ambiguous sale agreements
§ 11:52	Prohibited forfeiture clauses
§ 11:53	Due on sale clause

#### V. BOUNDARY AGREEMENT

- § 11:54 Effect of boundary agreement
- § 11:55 Effect of acquiescence in fence or markers

### VI. FORMS

- § 11:56 Dation en paiement by mortgager to mortgagee
- § 11:57 Partial dation en paiement and act of cancellation where obligation is based on commercial transaction
- § 11:58 Required clauses of partial dation en paiement where obligation is based on consumer transaction
- § 11:59 Act of exchange of property
- § 11:60 Clause recognizing tax-free exchange
- § 11:61 Clause in purchase agreement authorizing tax-free exchange
- § 11:62 Like-kind exchange agreement and related forms for like-kind exchange of property under 26 U.S.C.A. § 1031 for exchanges involving "qualified intermediaries" pursuant to Treasury Regulation Section 1.1031(k)-1(g)(4)
- § 11:63 Contribution of real estate to a limited liability company
- § 11:64 Act of donation, with separate acceptance
- § 11:65 Act of donation to trust, with acceptance in act
- § 11:66 Act of donation by and to a legal entity
- § 11:67 Bond for deed contract
- § 11:68 Mutual cancellation of contract for sale/bond for deed
- § 11:69 Cancellation of bond for deed
- § 11:70 Act establishing boundary and recognition of party wall

### CHAPTER 12. REAL ESTATE BROKERS AND SALESPERSONS

### I. FUNCTIONS OF REAL ESTATE BROKERS

- § 12:1 Generally
- § 12:2 Authority of brokers
- § 12:3 —Written authorization by owner required for sale or purchase
- § 12:4 ——Mandate to broker
- § 12:5 —Liability of broker as agent for undisclosed principal

### II. LICENSING STATUTE AND REGULATIONS

§ 12:6 Louisiana Real Estate License Law

§ 12:7	—Public policy
§ 12:8	—Louisiana Real Estate Commission
§ 12:9	—Licensing requirements
§ 12:10	——Definitions
§ 12:11	— — Broker or real estate broker
§ 12:12	— — —Individual real estate broker
§ 12:13	———Sponsoring broker
§ 12:14	— — —Associate broker
§ 12:15	— — Real estate salesperson
§ 12:16	———Real estate activity
§ 12:17	———Real estate
§ 12:18	——Employment of salespersons by broker
§ 12:19	<ul> <li>—Single act constitutes violation of law</li> </ul>
§ 12:20	——Designated qualifying broker
§ 12:21	— — Unlicensed persons cannot recover brokerage
	charges
§ 12:22	———Employment of salesperson by broker
§ 12:23	—Exemptions from the licensing requirements
§ 12:24	—Causes for censure, suspension or revocation of license

### III. LISTING AGREEMENTS

§ 12:25	Listing agreement
§ 12:26	—Oral listing agreement
§ 12:27	—Term of listing agreement
§ 12:28	Agreement is required; no recovery on quantum meruit
§ 12:29	—No recovery of expenses in absence of agreement
§ 12:30	<ul> <li>—Salesperson cannot recover unless brokerage agreement exists</li> </ul>
§ 12:31	Broker as third party beneficiary
§ 12:32	Liability of subsequent owners for leasing commission
§ 12:33	—Effect of commission clause in lease
§ 12:34	Amount and sharing of compensation
§ 12:35	—Net listing agreement
§ 12:36	—Multiple listing agreement
§ 12:37	—Proration rule
§ 12:38	—Nonresident brokers
§ 12:39	Entitlement to commission
§ 12:40	—Listing agreement signed by co-owner
§ 12:41	—Liability for commission when vendor not at fault or when broker failed to obtain a buyer
§ 12:42	——Impediment arising after purchase agreement
§ 12:43	—Purchaser's inability to obtain financing

§ 12:44	-Effect of clause that commission is earned at act of
	sale
§ 12:45	—No right to lien
§ 12:46	—Broker's right to lien for commission on commercial real estate
§ 12:47	—Recording of real estate service agreements and lien to secure commission for residential property declared unlawful
§ 12:48	—Denial of commission
0	
§ 12:49	Types of listing agreements
§ 12:50	—Nonexclusive listing agreements and single party
	listing agreements
§ 12:51	—Exclusive agency to sell
§ 12:52	—Exclusive right to sell
§ 12:53	The broker as procuring cause of sale
§ 12:54	Extension period
§ 12:55	-Rights of broker during extension period
§ 12:56	——Effect of new listing agreement during extension
	period
§ 12:57	—Rights of broker after extension period

### IV. BROKER'S DUTIES

- § 12:58 Broker's fiduciary duty
  § 12:59 Duty not to profit at principal's expense
  § 12:60 Duty to communicate offers
  § 12:61 Duty to exercise skill
  § 12:62 Duty to disclose interest in property
  § 12:63 Duty to convey accurate information
- § 12:64 Liability to third parties
- $\$  12:65 —Negligent misrepresentation
- $\S 12:66$  —Duty regarding deposits
- § 12:67 ——Escrow accounts
- § 12:68 —Withdrawal of funds from escrow
- $\$  12:69 ——Procedure where dispute arises with regard to deposit
- $\$  12:70 ——Broker's liability where deposit not in escrow
- $\$  12:71 ——Extent of recovery for improperly used escrow funds
- § 12:72 ——Closing procedure

### V. AGENCY RELATIONS IN REAL ESTATE TRANSACTIONS

- § 12:73 Agency relations
- § 12:74 —Designated agent

§ 12:105

_	TIBLE OF C	SONTENTS
Ş	12:75	—Clients and customers
Ş	12:76	— — Ministerial acts
	12:77	— —Dual agency
§	12:78	——Subagency
8	12:79	— —Liability standards
	12:80	——Disclosure
8	12:81	——Disclosure as to Sex Offender Database
	12:82	—Buyer's agent
§	12:83	Interference with brokerage relationship
§	12:84	Termination of Duty at Closing
<b>\</b>	71. FC	ORMS
8	12:85	Listing release
	12:86	Extension of listing agreement
	12:87	Brokerage clause in lease
	12:88	Brokerage clause in lease (alternative form)
	12:89	Statement of commission distribution
	12:90	Commission clause making commission due only
		upon sale
_	12:91	Notice of broker's privilege
§	12:92	Clause in purchase agreement concerning liability for brokerage commission (where neither party has engaged a broker)
§	12:93	Clause in purchase agreement concerning liability for brokerage commission (where seller has engaged a broker)
8	12:94	Nonexclusive agreement with broker
	12:95	Clause creating exclusive agency agreement
	12:96	Exclusive right to sell
	12:97	Clause creating exclusive right to sell
	12:98	Exclusive right of sale or exclusive agency listing:
o	12.00	Exempted prospects
§	12:99	Cancellation of purchase agreement and release of deposit
§	12:100	Release of escrowed money—Louisiana Real Estate Commission approved form
Ş	12:101	Broker's escrow disbursement request
	12:102	Petition for concursus
	12:103	Form for complaint with Louisiana Real Estate Commission against real estate broker—Louisiana Real Estate Commission approved form
§	12:104	"Disclosure and consent to dual agent designated agency" prescribed by the Louisiana Real Estate Commission

Real estate agency disclosure prescribed by the Louisiana Real Estate Commission

- § 12:106 Buyer/broker agreement
- § 12:107 Disclosure as to sex offender database
- Appendix 12A. Louisiana Real Estate License Law
- Appendix 12B. Louisiana Real Estate Commission Rules and Regulations
- Appendix 12C. Agency Relations in Real Estate Transactions (La. Rev. Stat. §§ 9:3891 to 9:3899)

### CHAPTER 13. GENERAL PRINCIPLES OF MORTGAGE AND VENDOR'S PRIVILEGE

### I. GENERAL PRINCIPLES OF MORTGAGE LAW

- § 13:1 Function and advantages of mortgage
- § 13:2 Revision of the law on mortgage
- § 13:3 Mortgages defined
- § 13:4 —Kinds of mortgages
- § 13:5 ——Conventional mortgage
- § 13:6 ——Legal mortgage
- § 13:7 Judicial mortgage
- § 13:8 ——General and special mortgages
- § 13:9 —Mortgage does not divest title or possession
- § 13:10 —Equitable liens on mortgages disallowed
- § 13:11 —Accessory obligations
- § 13:12 Property susceptible to mortgage
- § 13:13 —Predial servitudes
- § 13:14 —Usufruct and right of use
- § 13:15 —Leases
- § 13:16 —Movable property
- § 13:17 —Securing debt by movable and immovable collateral

#### II. CONVENTIONAL MORTGAGES

- § 13:18 Conventional mortgages
- § 13:19 —Interpretation of conventional mortgages
- § 13:20 —What law governs
- § 13:21 —Mortgage or sale
- § 13:22 —Requirements of form for a valid conventional mortgage
- § 13:23 ——Requirement of writing
- § 13:24 — Authentic act or private signature
- § 13:25 ———Signature of mortgagor
- § 13:26 ——Limit of liability
- § 13:27 ———Specific debt vs. line of credit

§ 13:28	———Additional sums advanced for the protection
	of the mortgagee
§ 13:29	——Description of mortgaged property
§ 13:30	Identification of parties
§ 13:31	—Granting language
§ 13:32	—Identification of debt secured
§ 13:33	<ul> <li>— Mortgage to secure performance of an act</li> </ul>
§ 13:34	— —To paraph or not to paraph
§ 13:35	——Combined note and mortgage
§ 13:36	<ul> <li>— Mortgage securing several obligations</li> </ul>
§ 13:37	—Agreement to mortgage or lend
§ 13:38	—Future property and conventional mortgage
§ 13:39	—Improvements and mineral rights subject to
	mortgage
§ 13:40	—Where conventional mortgages are recorded

### III. JUDICIAL AND LEGAL MORTGAGES

§ 13:41	Judicial mortgages
§ 13:42	—How created and effect of recordation
§ 13:43	-How created-Requirement of money judgment
§ 13:44	—Effectiveness of judicial mortgages
§ 13:45	<ul> <li>— Judgments against deceased persons</li> </ul>
§ 13:46	<ul> <li>— Judgments against heirs</li> </ul>
§ 13:47	— —Awards of arbitrators
§ 13:48	—Where judgments are recorded
§ 13:49	—Judgments of other jurisdictions
§ 13:50	—Judgments in favor of the United States
§ 13:51	—Judgments of other jurisdictions—Judgments of
	other state courts
§ 13:52	—Effect of appeal
§ 13:53	—After-acquired property
§ 13:54	—Judicial mortgages and community property
§ 13:55	Legal mortgages

#### IV. VENDOR'S PRIVILEGE

§ 13:56	Function of vendor's privilege
§ 13:57	Assumption of debt as vendor's privilege
§ 13:58	Conditional obligations in act of sale
§ 13:59	Where vendor's privilege is recorded
§ 13:60	Vendor's privilege and special mortgage
§ 13:61	Savings and loan vendor's privilege

#### V. FORMS

§ 13:62 Installment note secured by mortgage

- § 13:63 Act of mortgage (traditional form)
   § 13:64 Acknowledged mortgage
   § 13:65 Purchase agreement: Clause for owner financing
   § 13:66 Purchase agreement: Owner financing addendum
   § 13:67 Addendum providing for assumption of first mortgage and second mortgage to seller
- § 13:68 Act of credit sale

### CHAPTER 14. CLASSES OF CONVENTIONAL MORTGAGES AND COMMON CLAUSES

#### I. CLASSES OF CONVENTIONAL MORTGAGE

§ 14:1	Overview
§ 14:2	—The ordinary mortgage
§ 14:3	——Recitals of ordinary mortgage
§ 14:4	—The mortgage to secure future advances
§ 14:5	—The collateral mortgage
§ 14:6	——"Issuance" of the collateral mortgage note
§ 14:7	— —The pledge of the collateral mortgage note: Requirements
§ 14:8	——Proof of intent to secure future advances by pledge
§ 14:9	— — — Desirability of written pledge or security agreement
§ 14:10	— —Reissuance of a collateral mortgage note: Pre- Chapter 9 law
§ 14:11	— — Transfer of the principal obligation v. reissuance
§ 14:12	— — Right of transferee of hand note with respect to future advances
§ 14:13	——Collateral mortgages and the public records
§ 14:14	——Applicability of Chapter 9 of the Louisiana commercial laws to pledges of real estate mortgage notes
§ 14:15	———Securitized financing
§ 14:16	——Requirement of giving value
§ 14:17	——Statutory codification of pledge of collateral mortgage note as a UCC security interest
§ 14:18	——Prescription of collateral mortgage note
§ 14:19	—Multiple indebtedness mortgage under Civil Code Article 3298
§ 14:20	— — Drafting of multiple indebtedness mortgage
§ 14:21	— —Article 3298, or multiple indebtedness, mortgage as substitute for collateral mortgage

 $\$  14:22 ——The Article 3298 Mortgage vs. The Collateral Mortgage

# II. CUSTOMARY SECURITY CLAUSES IN MORTGAGES

§ 14:23	Louisiana security clauses
§ 14:24	—Confession of judgment
§ 14:25	— —Pact de non alienando
§ 14:26	—Due-on-sale clause
§ 14:27	— —Federal preemption of state due-on-sale laws
§ 14:28	
§ 14:29	— —Federal limitations on exercise of due-on-sale
	clause
§ 14:30	-Mortgage including pledge of mortgagor's rights to
	insurance
§ 14:31	—Waiver of appraisement
§ 14:32	—Clause appointing mortgagee as keeper
§ 14:33	—Waiver of homestead exemption
§ 14:34	—Insurance
§ 14:35	
§ 14:36	— — Mortgagee's right to recover insurance proceeds
•	after judicial sale without appraisal
§ 14:37	—Attorney's fees
§ 14:38	-Request for notice of seizure and other requests for
Ü	notice
§ 14:39	—Other clauses

#### III. FINANCING AND INTEREST PROVISIONS

§ 14:40	Interest
§ 14:41	—Simple or precomputed interest
§ 14:42	Alternative mortgage financing; adjustable rate, wrap-around, graduated payment and reverse mortgages
§ 14:43	—Adjustable rate mortgage loans
§ 14:44	-Wrap-around mortgage
§ 14:45	—Graduated payment mortgage and reverse
	mortgage
§ 14:46	Interest and usury
§ 14:47	—Limitation on rate of mortgage interest
§ 14:48	—Loans for commercial or business purposes
§ 14:49	—Interest after declaration of default
§ 14:50	—Owner financed loans
§ 14:51	—Transactions regulated by federal law
§ 14:52	—Consumer loans subject to the Louisiana consumer credit law

§ 14:53 —Interest on interest
§ 14:54 —Wrap-around and graduated payment mortgages
§ 14:55 —Items not considered interest
§ 14:56 Disbursement of loan proceeds and accrual of interest
§ 14:57 Prepayment

# IV. NONRECOURSE LOAN AND IN REM MORTGAGES

- § 14:58 In rem mortgages and personal liability
- § 14:59 —Negotiating nonrecourse provisions
- § 14:60 —Mortgage given to secure obligations of another
- § 14:61 ——Personal liability on collateral mortgage note

# V. ASSUMPTION, ASSIGNMENT AND AMENDMENT OF MORTGAGES

- § 14:62 Assumption of mortgage
- § 14:63 Transfer subject to mortgage; third possessor
- § 14:64 Transfer and assignment of mortgage and mortgage notes
- § 14:65 Effect of assignment
- § 14:66 Transfer of part of obligation secured by mortgage
- § 14:67 Amendment and replacement of mortgage and mortgage notes

#### VI. FORMS

- § 14:68 Promissory note (secured by construction mortgage)
- § 14:69 Construction mortgage
- § 14:70 Loan agreement (for construction loan)
- § 14:71 Assignment of borrower's interest in permits, contract document and developer's rights
- § 14:72 Guaranty of loan (construction mortgage loan)
- § 14:73 Collateral mortgage
- § 14:74 Collateral mortgage note
- § 14:75 Act of pledge of mortgage note and security agreement
- § 14:76 Collateral pledge agreement (alternative form)
- § 14:77 Hand note
- § 14:78 Clauses in collateral pledge agreement limiting pledge to actual debt
- § 14:79 Clause for collateral pledge agreement securing future advances made by the transferee from the original mortgagee
- § 14:80 Pledge of collateral mortgage note to secure debt of third party

#### TABLE OF CONTENTS

§	14:81	Multiple indebtedness mortgage under Civil Code Article 3298
§	14:82	Master note contemplating future advances for use with multiple indebtedness, mortgage
§	14:83	Special Louisiana provisions for out-of-state mortgage
§	14:84	Guaranty of note and mortgage
§	14:85	Confession of judgment clause in mortgage: Model clause
_	14:86	Due-on-sale or encumbrance clause
_	14:87	Waiver of procedural delays and appraisement
§	14:88	Clause appointing mortgagee as keeper in event of default in credit sale and/or mortgage
_	14:89	Waiver of homestead exemption
_	14:90	Negotiated insurance clause in mortgage
§	14:91	Request for notice of seizure
§	14:92	Mortgagor's statement as to debt secured
§	14:93	Default in first mortgage clause in second mortgage
§	14:94	Clause in second mortgage authorizing payment of first mortgage
§	14:95	Acceleration clause in mortgage note
§	14:96	Provision for written notice of default of mortgage
§	14:97	Provision of mortgage protecting mortgagee from environmental hazards and damages
§	14:98	Provision for escrow of taxes and insurance
§	14:99	Amortization provisions for promissory note
§	14:100	Adjustable rate note
§	14:101	Wrap-around clauses in mortgage note
§	14:102	Wrap-around clauses (Act of credit sale and wrap-around mortgage)
§	14:103	Growing equity mortgage note
§	14:104	Clause in note presenting usury implications
§	14:105	"In rem" clause in note and mortgage
§	14:106	"In rem" clause in note and mortgage (alternative form with carve-outs)
§	14:107	Act of sale and assumption
§	14:108	Act of sale and assumption (alternative form)
§	14:109	Clause in sale and assumption transferring escrow account and insurance policies
§	14:110	Notarial endorsement and assignment of mortgage note
§	14:111	Notarial endorsement and assignment of mortgage note (alternative form)
§	14:112	Assignment of hand note secured by pledge of collateral mortgage note

§ 14:113 Assignment of note and mortgage in default
 § 14:114 Assignment of secured obligations and multiple indebtedness mortgage
 § 14:115 Act of amendment of mortgage
 § 14:116 Clause in mortgage authorizing renewal or refinancing note
 § 14:117 Recognitive act confirming mortgage where original note is lost

# CHAPTER 15. RANKING AND CANCELLATION OF MORTGAGES, LIENS AND PRIVILEGES

# I. RANKING OF MORTGAGES, PRIVILEGES AND LIENS

§	15:1	Effect of unrecorded mortgage or vendor's privilege and unrecorded amendment or release
§	15:2	Mortgage priority
8	15:3	—Vendor's privilege vs. mortgage
§	15:4	— — Vendor's privilege vs. mortgage against seller
§	15:5	— — Purpose of special priority of vendor's privilege
§	15:6	——Importance of timely filing
§	15:7	— —The savings and loan association vendor's
		privilege vs. the mortgage
§	15:8	—Successive credit sales
§	15:9	—Vendor's privilege vs. mortgage—Inclusion of date
		of birth of parties in privilege
§	15:10	— — The unpaid seller vs. the lender
§	15:11	—Ad valorem property taxes, improvement
		assessments, and judgments and liens for public
		health, housing and environmental violations
§	15:12	—State political subdivision, and municipal tax
		assessments, judgments, liens and privileges
_	15:13	—Federal tax liens
§	15:14	——Mortgages to secure future advances, multiple
		indebtedness mortgages and collateral mortgages vs.
•		federal tax liens
Š	15:15	——Priority of federal tax lien vs. judicial mortgage
		recorded before tax debtor acquires property and vs.
ç	15.16	Louisana vendor's privilege
	15:16	——Refiling of federal tax lien
_	15:17	The federal estate and gift tax liens
v	15:18	State inheritance taxes and state gift tax lien
8	15:19	Privileges under private works act

§ 15:20	—Privilege of general contractor and when effective
§ 15:21	—Other construction privileges
§ 15:22	—When other construction privileges become effective
§ 15:23	—Mortgages vs. Construction Privileges
§ 15:24	— —No-work affidavit
§ 15:25	—Time for filing statement of claim or privilege
§ 15:26	—Extinguishment of construction privileges and
	requests for cancellation
§ 15:27	—Duration of effect of notice of contract
§ 15:28	<ul> <li>—Contract recorded more than five years</li> </ul>
§ 15:29	——Contract recorded less than five years
§ 15:30	Right of third person to contest enforceability of vendor's privilege or collateral mortgage

## II. CANCELLATION OF ENCUMBRANCES

§ 15:31	General rule
§ 15:32	Cancellation of mortgage or privilege—Paraphed obligation
§ 15:33	Cancellation by proper evidence of extinguishment— Lost note affidavit
§ 15:34	—Remedy against creditor for cancellation of encumbrance
§ 15:35	—Cancellation of mortgage inscription by affidavit under La. Rev. Stat. § 9:5167.1
§ 15:36	—Cancellation by written direction of mortgagee of nonparaphed obilgations and by licensed financial institutions
§ 15:37	—Uniform cancellation affidavit
§ 15:38	—Reinscription of mortgages, privileges, and judgments
§ 15:39	— —General rule
§ 15:40	— — Duration of inscription if described obligation matures nine years or more from the date of the document
§ 15:41	——Amendment to mortgage or privilege
§ 15:42	——Reinscription of judgment
§ 15:43	— — Judgments rendered by federal courts
§ 15:44	——Duration of inscription of mortgage given by
	tutor, curator and succession representative and child support judgments
§ 15:45	——Child support judgments
§ 15:46	——Method of reinscription
§ 15:47	——Effect of timely reinscription
§ 15:48	— — Effect of untimely reinscription
§ 15:49	— No Duty of Mortgagee to Reinscribe

		associations—Repealed in 2015
§	15:51	— FIRREA and reinscription requirements
§	15:52	— — Direction to cancel encumbrance after effect of
		registry ceases
§	15:53	———Effectiveness of inscription vs. enforceability
		of obligation
_	15:54	Prescription and revival of judgments
	15:55	Prescription of legal mortgages
	15:56	Cancellation by order of court or judicial sale
§	15:57	Effect of mortgage inscription cancelled without consent of mortgagee
§	15:58	Cancellation by court order of judgments discharged in bankruptcy
§	15:59	—Partial cancellation of judgment as to property acquired after bankruptcy
§	15:60	Cancellation of notice of lis pendens
§	15:61	Partial releases
§	15:62	"Affidavits of distinction," "affidavits of identity" and affidavits to null and void inscriptions from mortgage certificates
8	15:63	Prohibition against cancellations of mortgages in
2	10.00	certain sales
Ş	15:64	Subordination of mortgages and privileges
	15:65	—No subordination without agreement
_	15:66	—Substituting bond for tutor's legal mortgage or special legal mortgage or subordination
	TT T	IODMC
I.	II. F	ORMS
§	15:67	Notice of contract
§	15:68	Bond for private work
§	15:69	Co-obligee clause
§	15:70	Affidavit of lien and privilege by contractor under recorded contract
§	15:71	Affidavit by registered land surveyor (no-work affidavit)
§	15:72	Affidavit of lien
§	15:73	Release of lien bond
§	15:74	Affidavit depositing cash bond to cancel lien
	15:75	Waiver of lien and privilege
_	15:76	Builder's Acknowledgment of Payment, Waiver of Lien and Indemnity
§	15:77	Affidavit to cancel building contract lien by prescription

Acceptance of recorded building contract

 $\$  15:50 ——Special reinscription rule for savings and loan

§ 15:78

#### TABLE OF CONTENTS

§	15:79	Acceptance of unrecorded building contract
§	15:80	Notice of termination of work
§	15:81	Cancellation of building contract with concurrence of contractor
§	15:82	Cancellation of building contract without concurrence of contractor
§	15:83	Cancellation of mortgage with original note
	15:84	Full release of mortgage pursuant to La. Rev. Stat. Ann. 9:5170(2)
§	15:85	Lost note affidavit in accordance with La. Rev. Stat. Ann. § 9:5168
§	15:86	Affidavit of lost note and authorization to cancel mortgage by title insurer pursuant to La. Rev. Stat. Ann. $\S 9.5167(B)$
§	15:87	Affidavit of notary public to cancel mortgage or vendor's privilege pursuant to La. Rev. Stat. § 9:5167(A)
§	15:88	Request to cancel mortgage and related inscriptions
§	15:89	Letter to mortgagee and affidavit to cancel mortgage pursuant to La. Rev. Stat. § 9:5167.1
§	15:90	Request for cancellation
§	15:91	Release by obligee of record (no paraphed obligation) Pursuant to La. Rev. Stat. Ann. § 9:5169
§	15:92	Cancellation of mortgage by licensed financial institution under La. Rev. Stat. Ann. Pursuant to § 9:5172
§	15:93	Affidavit to cancel multiple indebtedness mortgage
§	15:94	Affidavit to cancel judgment inscription
§	15:95	Uniform cancellation affidavit
§	15:96	Notice of reinscription
§	15:97	Affidavit to cancel encumbrance by prescription
§	15:98	Affidavit for partial cancellation of judgment after bankruptcy discharge in accordance with La. Rev. Stat. Ann. § 9:5175(B)
§	15:99	Notice of lis pendens
§	15:100	Cancellation of notice of lis pendens
§	15:101	Partial release of mortgage
§	15:102	Partial release clause in mortgage
§	15:103	Partial cancellation and release of judgment
§	15:104	Affidavit to partially cancel multiple indebtedness mortgage
§	15:105	Affidavit of distinction and affidavit of identity
	15:106	Affidavit from licensed Louisiana attorney to delete inscription from mortgage certificate
§	15:107	Request for partial cancellation of mortgage or

	LOUISIANA IVEAL ESTATE TRAN
§ 15:108	privilege and partial release by licensed financial institution pursuant to R.S. 9:5172 Application for certificate of non-attachment of
	property from federal tax lien
§ 15:109	Act of subordination of mortgage
§ 15:110	Act of partial subordination of mortgage
§ 15:111	Petition to substitute bond for legal mortgage
	PTER 16. MORTGAGE ECLOSURES
I. JU	DICIAL FORECLOSURE IN LOUISIANA
§ 16:1	Overview
§ 16:2	Ordinary and executory process
§ 16:3	Ordinary process
§ 16:4	Executory process
§ 16:5	Requirement of judicial sale
§ 16:6	Notice requirements and proper parties; notice to tenants and occupants
§ 16:7	Legal bid
§ 16:8	Jurisdiction of the court ordering sale
§ 16:9	Actions to annul judicial sales
§ 16:10	—Prescription
§ 16:11	—Bar to action to annul
II. TI	TLE ACQUIRED IN JUDICIAL SALE
§ 16:12	Warranty in judicial sales
§ 16:13	Cancellation of encumbrances: State law
§ 16:14	—Effect of ratification of canceled encumbrance
§ 16:15	—Reading of certificates
§ 16:16	—Ranking of liens
§ 16:17	—Rights of superior lienholders
§ 16:18	—Notice to inferior lienholders: Federal due process
_	considerations
§ 16:19	—Request notice statute
§ 16:20	— Notice to present owner
§ 16:21	— Effect of failure to give Mennonite notice
§ 16:22	———Constitutionality of La. Rev. Stat. § 13:3886.1
§ 16:23	— — Remedies available if inferior creditor not
	given notice of foreclosure proceeding
§ 16:24	—Effect of sale or encumbrance after recordation of

notice of seizure § 16:25 Divestment of federal tax liens

§ 16:26	—Sale pursuant to judicial proceedings
§ 16:27	—Other sales
§ 16:28	Federal foreclosure actions
§ 16:29	Foreclosure actions—The right to redeem
§ 16:30	— —Federal tax lien
§ 16:31	— —Federal lien other than federal tax lien
§ 16:32	—Lessee's right to notification of foreclosure action
§ 16:33	—Ad valorem taxes
§ 16:34	The adjudication
§ 16:35	Effect of bankruptcy before and after adjudication
§ 16:36	—Bankruptcy considerations: The Durrett rule

### III. DEFICIENCY JUDGMENT

§ 16:37	Effect of appraisal
§ 16:38	Effect of lack of authentic evidence
§ 16:39	Notice issues
§ 16:40	Sale procedure
§ 16:41	Effect of sale without appraisal on other security
§ 16:42	Notice of seizure—Recordation, cancellation and
	prescription

### IV. FORMS

§ 16:43	Petition for executory process: Residential mortgage payable in monthly installments
§ 16:44	Petition for executory process: Collateral mortgage note securing adjustable hand note
§ 16:45	Certificate of clerk certifying copies for executory process
§ 16:46	Adjustable rate affidavit for executory process
§ 16:47	Act of correction: Sheriff's deed
§ 16:48	Mennonite notice to inferior secured creditor
§ 16:49	Affidavit to cancel an inferior encumbrance
§ 16:50	Notice of sale to Internal Revenue Service
§ 16:51	Instructions for preparing a notice of nonjudicial sale of property to IRS
§ 16:52	Foreclosure checklist

## Volume 2

## **CHAPTER 17. TAX SALES**

### I. TAX SALES

§ 17:1 Tax sales

#### LOUISIANA REAL ESTATE TRANSACTIONS

§ 17:2	Redemptions
§ 17:3	—Adjudication to the taxing authority
§ 17:4	How redemption is made
§ 17:5	Amount necessary to redeem
§ 17:6	No showing of irregularity required to redeem
§ 17:7	Effect of redemption
§ 17:8	Post-sale notice prior to and after 2009
§ 17:9	Annulment of tax sales
§ 17:10	—Effect of tax debtor's physical possession
§ 17:11	—Distinction between action to redeem and action to annul
§ 17:12	Requirement of notice and due process
§ 17:13	—Effect of undelivered or unclaimed notice
§ 17:14	—Effect of proper notice given but not received by tax debtor
§ 17:15	—To whom notice must be sent
§ 17:16	—Notice to record owner
§ 17:17	——Co-owners
§ 17:18	——Deceased record owners
§ 17:19	— —Legal representative
§ 17:20	—Effect of failure to give notice of tax delinquency
§ 17:21	Effect of failure to sell only part of assessed property
§ 17:22	Effect of improper advertisement
§ 17:23	Suit to quiet tax titles
§ 17:24	—Monition proceeding
§ 17:25	Effect of tax sales on mortgages
§ 17:26	—Notice to mortgagee of tax sale
§ 17:27	—FDIC consent may be required
§ 17:28	Subrogation and tax sales
§ 17:29	Tax sales by municipalities
§ 17:30	Adjudication to political subdivisions
§ 17:31	—Post-adjudication sales by parishes and municipalities—Procedure for post-adjudication sale of unredeemed immovable property
§ 17:32	——Blighted or abandoned properties
§ 17:33	—Assessments after adjudication
§ 17:34	—Ownership of adjudicated property
§ 17:35	Comprehensive revision of law of tax sales effective January 1, 2009
§ 17:36	Post-sale notice as satisfying constitutional requirements under the 2009 revision
§ 17:37	The action to annul a tax sale under the 2009 revision
§ 17:38	Successive tax sales

- § 17:39 Cancellation of pre-existing encumbrances under prior law and present law
- § 17:40 Cancellation of statutory impositions not included in the price of the tax sale

#### II. FORMS

- § 17:41 Request for redemption—State of Louisiana
- § 17:42 Petition to quiet tax title
- § 17:43 Notice of right to redeem tax sale

#### CHAPTER 18. LEASES

#### I. OVERVIEW OF LEASE LAW

- § 18:1 Definition and law governing
- § 18:2 Nature of lease
- § 18:3 Effect of sale of leased premises
- § 18:4 Requirements for valid lease
- § 18:5 —Agreement as to object leased
- § 18:6 —Rent
- § 18:7 —Consent
- § 18:8 Duration of lease
- § 18:9 —Expiration and tacit reconduction of leases
- § 18:10 ——Termination of month-to-month lease not an abuse of right
- § 18:11 —Renewal or extension clauses
- § 18:12 Cancellation of leases
- § 18:13 Registry of leases
- § 18:14 —Registry of exercise of option to extend or renew the term
- § 18:15 —Sale of leased premises subject to unrecorded leases
- § 18:16 Form of leases
- § 18:17 Construction of lease

#### II. OBLIGATIONS OF LESSOR AND LESSEE

- § 18:18 Title of lessor
- § 18:19 Implied rights and obligations
- § 18:20 —Implied obligations of lessor
- § 18:21 ——Peaceful possession
- § 18:22 ——Duty to maintain property and make repairs
- § 18:23 ——Lessor's warranty against defects in leased premises
- § 18:24 ——Lessee's assumption of liability for condition of premises

§ 18:25 — — Distinction between liability for damages caused by defects and liability for repairing defects § 18:26 — — Effect of lessor's intentional or gross fault § 18:27 — Implied obligations of lessee

#### III. KINDS OF LEASES

- § 18:28 Overview
- § 18:29 Residential leases
- § 18:30 Commercial leases
- § 18:31 —Gross commercial lease
- § 18:32 —Net commercial lease
- § 18:33 Ground leases
- § 18:34 Shopping center leases

#### IV. COMMON LEASE CLAUSES

- § 18:35 Overview
- § 18:36 Rent
- § 18:37 —Categories of rental provisions
- § 18:38 ——Flat rental
- § 18:39 ——Step-up rental
- § 18:40 ——Escalation rental and cost-of-living adjustments
- § 18:41 ——Expense pass-through clauses; the "gross" vs. the "net" lease
- § 18:42 —Tax pass-through and tax escalation clauses
- § 18:43 —The base year vs. the stop amount; ceilings and caps
- § 18:44 —Inclusions and exclusions; other provisions
- § 18:45 —Cost-of-living adjustments vs. operating expenses escalations
- § 18:46 Use of premises
- § 18:47 Repairs, maintenance, utilities and services
- § 18:48 Alterations
- § 18:49 —Improvements, additions and trade fixtures and the revisions effective January 1, 2005
- § 18:50 —Building, other construction or planting before the revisions
- § 18:51 —Attachments made by lessee to building of lessor before the revisions
- § 18:52 —Contractual provisions negating Civil Code rules
- § 18:53 —Right of lessee under unrecorded lease to improvements
- § 18:54 —Trade fixtures
- § 18:55 ——Private Works Act privilege on improvements made by lessee

#### TABLE OF CONTENTS

IAB	LE OF	CONTENTS
§ 18	8:56	—Lessor's and lessee's construction obligations
_	8:57	Assignment and subletting
_	8:58	—Distinction between assignment and sublease
	8:59	—Right to assign, sublease or encumber the lease in absence of contrary provision
§ 18	8:60	—Clauses restricting assignment and subletting
§ 18	8:61	—Waiver of consent requirement
§ 18	8:62	—Effect of breach of clause restricting assignment or sublease
§ 18	8:63	Subordination, attornment, and nondisturbance agreements
§ 18	8:64	Exculpation clause
§ 18	8:65	Destruction or partial destruction of premises and condemnation
_	8:66	Insurance
	8:67	Environmental clauses
	8:68	Option to purchase and right of first refusal
§ 18	8:69	Consent provisions
V.	RI	EMEDIES FOR DEFAULT
	8:70	Remedies for default
§ 18	8:71	—Judicial control of lease dissolution
§ 18	8:72	—Prohibition against self-help
_	8:73	—Summary eviction procedure
_	8:74	—Accelerated rental
_	8:75	—Election of remedies
_	8:76	—Liquidated damages or rentals after eviction
_	8:77	Lessor's privilege
	8:78	—Enforcement of lessor's privilege
	8:79	—Priority of Chapter 9 security interest over lessor's privilege
	8:80	—Lessor's privilege in bankruptcy
_	8:81	Sale of the lessee's right of occupancy
	8:82	Bankruptcy and insolvency clauses
	8:83	Attorney's fees and liquidated damages
_	8:84	Guaranty of lease
§ 18	8:85	Security deposit
VI	. L	EASES AS COLLATERAL
§ 18	8:86	Collateral assignment or pledge of leases and rents
§ 18	8:87	—Registry of assignment: Law before January 1, 2015
§ 18	8:88	—Registry of assignment after January 1, 2015
-	8:89	—Right of assignor or pledgor to rents before default

-	18:90 18:91	—Effect of bankruptcy upon assignment or pledge —Transitional rules
-	18:92	—Cancellation of assignment of leases and rents
-	18:93	Leasehold mortgage
-	18:94	—Form of leasehold mortgage
	18:95	The leasehold mortgage; drafting considerations
~	18:96	-Effect of mortgagor's acquisition of ownership upon
Ş	18:97	leasehold mortgage —Mortgage of lease vs. mortgage of leasehold estate
V	II. F	ORMS
ş	18:98	Estoppel statements: Clause requiring lessee to
e	10.00	furnish
	18:99	Holding over clause in lease
_	18:100	Holding over clause in lease (alternative form with increased rent)
	18:101	Notice to vacate (month-to-month lease)
	18:102	Option to extend or renew lease
§	18:103	Clause providing for automatic year to year extension of lease
	18:104	Renewal of lease agreement
§	18:105	Clause in lease protecting tenant's right to renew lease
§	18:106	Clause in lease fixing renewal rent at prevailing market rate
§	18:107	Cancellation of lease
§	18:108	Termination and cancellation of lease (alternative form)
§	18:109	Memorandum of lease
ş	18:110	Exercise of option to extend term of lease
§	18:111	Assignment of tenant leases and assumption agreement
§	18:112	Agreement concerning leases, rents and security deposits
8	18:113	Amendment to lease
-	18:114	Option to lease
-	18:115	Clause in lease that lease will not be construed for
		or against either party
	18:116	Assumption by lessee of responsibility for condition of leased premises
_	18:117	Residential lease
	18:118	Apartment lease
§	18:119	Gross commercial lease
§	18:120	Commercial net lease (multi-tenant with operating expense pass-through provisions)

#### TABLE OF CONTENTS

§ 18:121	Commercial net lease
§ 18:122	Triple net lease
§ 18:123	Ground lease
§ 18:124	Shopping center lease
§ 18:125	Lease for Freestanding Building/Single Tenant- Triple Net Lease
§ 18:126	Tenant's corporate resolution authorizing execution of lease
§ 18:127	Percentage rent clause in lease
§ 18:128	Definition of imposition clause in lease
§ 18:129	Clause with respect to real estate taxes in lease
§ 18:130	Operating expense tax stop clause
§ 18:131	Ceiling on operating expense escalation
§ 18:132	Operating expense escalation clause in lease
§ 18:133	Rent adjustment for inflation clause in lease
§ 18:134	Memorandum of lease acknowledging lessee's ownership of improvements
§ 18:135	Clause in lease concerning tenant's trade fixtures
§ 18:136	Work letter plans agreed upon/finish allowance
§ 18:137	Acceptance of premises memorandum
§ 18:138	Assignment of lease
§ 18:139	Sublease—Commercial
§ 18:140	—Alternative form for sublease of part of leased premises
§ 18:141	•
	Nondisturbance and attornment agreement (prime lessor to sublessee)
§ 18:142	Agreement providing that sublessee may pay or perform sublessor's obligations to prime lessor
§ 18:143	Assignment or subletting: Clause restricting
§ 18:144	Assignment or subletting: Additional consideration to lessor
§ 18:145	Assignment or subletting: Clause permitting assignment or subletting to related entity
§ 18:146	Nondisturbance and attornment agreement (three-party)
§ 18:147	Nondisturbance and attornment agreement (mortgagee to lessee)
§ 18:148	Clause in lease subordinating lease to future mortgage (containing nondisturbance subclause)
§ 18:149	Clause in lease subordinating lease to future mortgage (without nondisturbance subclause)
§ 18:150	Exculpation clause
§ 18:151	Landlord insurance clause in lease
§ 18:152	Tenant insurance clause in lease
§ 18:153	Waiver of subrogation clause in lease

§	18:154	Environmental clause in lease
§	18:155	Option to purchase in lease
§	18:156	Lessee's right of first refusal to purchase leased premises
§	18:157	Lessee's right of first refusal to lease additional space
§	18:158	Clause prohibiting unreasonable withholding of lessor's consent
§	18:159	Reasonable consent: Clause requiring (alternative form)
§	18:160	Notice to vacate (for breach of lease)
§	18:161	Act of subordination of lessor's privilege to Chapter 9 security interest
§	18:162	Security agreement in lease
§	18:163	Guaranty of lease
§	18:164	Pledge and collateral assignment of leases and rents
§	18:165	Notice of lease assignment
§	18:166	Release of assignment of leases and rents
§	18:167	Leasehold mortgage clauses
§	18:168	Consent to leasehold mortgage and waiver of lessor's lien
§	18:169	Leasehold mortgage, security agreement and pledge of leases and rents
§	18:170	Clause in lease granting tenant right to grant leasehold mortgage

# CHAPTER 19. CONDOMINIUMS AND TIMESHARES

### I. CONDOMINIUMS

§ 19:1	The Louisiana Condominium Act; overview
§ 19:2	—Certain defined terms
§ 19:3	—Establishment of a condominium regime
§ 19:4	——Amendment of declaration
§ 19:5	—Administration of condominiums
§ 19:6	—Membership of unit owners' association
§ 19:7	—Powers of unit owners' association
§ 19:8	—Upkeep of the condominium and insurance
§ 19:9	—By-laws
§ 19:10	—Association's privilege for unpaid assessments
§ 19:11	—Protection of condominium purchasers
§ 19:12	<ul> <li>—Initial sale of unit by declarant</li> </ul>
§ 19:13	——Resale by unit owner
§ 19:14	— —When public offering statement not required

§ 19:15	—Remedies for breach of condominium declaration
	and by-laws
§ 19:16	Applicability of building restrictions and zoning
	ordinances
§ 19:17	Separate taxation of unit
§ 19:18	Availability of homestead exemption

#### II. TIMESHARING

§ 19:19	The Louisiana Timesharing Act
§ 19:20	—Timeshare declaration
§ 19:21	—Timeshare association
§ 19:22	—Lease timeshare interest and ownership timeshare
	interest
§ 19:23	—Timeshare plans
§ 19:24	—Protection of timeshare interest purchasers
§ 19:25	<ul> <li>— Initial sale of timeshare by developer</li> </ul>
§ 19:26	——Resale by purchaser of timeshare interest
§ 19:27	—Privilege for assessments for timeshare expenses
§ 19:28	—Tax assessments

# III. CONVEYANCE OF CONDOMINIUM UNITS AND TIMESHARE INTERESTS

§ 19:29	Generally
§ 19:30	Right of first refusal
§ 19:31	Requirements for sale of condominium unit or timeshare interest
§ 19:32	Prohibition against partition
§ 19:33	Mortgage of condominium unit

### IV. FORMS

§ 19:34	Condominium declaration
§ 19:35	Condominium association articles of incorporation— Exhibit D to the condominium declaration
§ 19:36	Condominium by-laws—Exhibit E to the condominium declaration
§ 19:37	Rules and regulations—Exhibit F to the condominium declaration
§ 19:38	Schedule of percentage obligation for common expenses—Exhibit G to the condominium declaration
§ 19:39	Schedule of percentage interest in common elements—Exhibit H to the condominium declaration
§ 19:40	Affidavit for privilege on condominium

#### LOUISIANA REAL ESTATE TRANSACTIONS

§ 19:41	Condominium paid assessment and right of first refusal letter
§ 19:42	Condominium public offering statement
§ 19:43	Purchase agreement: Condominium (declarant to initial purchaser)
§ 19:44	Modification of mortgage
§ 19:45	Subordination of mortgage to condominium declaration
§ 19:46	Reservation of unit agreement
§ 19:47	Condominium agreement to purchase or sell: Resale
§ 19:48	Condominium resale document requirements
§ 19:49	Condominium addendum to Louisiana agreement to buy or sell (Louisiana Real Estate Commission Form)
§ 19:50	Sale of timeshare unit (resale)
§ 19:51	Property description—Condominium unit
§ 19:52	FNMA/FSLIC condominium rider to uniform mortgage instrument
Appendix	19A. Louisiana Condominium Act
Appendix	19B. Louisiana Timesharing Act

# CHAPTER 20. LAND USE AND ENVIRONMENTAL CONCERNS

# I. ZONING, LAND USE, AND HISTORIC PRESERVATION RESTRICTIONS

§ 20:1	Purpose of zoning
§ 20:2	Authority to enact zoning regulations
§ 20:3	—Action by governing body to supersede zoning ordinance
§ 20:4	Interpretation of zoning laws
§ 20:5	—Standard of review
§ 20:6	Time to seek review
§ 20:7	Rezoning
§ 20:8	Spot zoning and piecemeal zoning
§ 20:9	Use classifications and permits
§ 20:10	Variances
§ 20:11	Nonconforming use
§ 20:12	Enforcement of zoning ordinances
§ 20:13	Effect of erroneously issued building permit
§ 20:14	Relationship of zoning laws and building restrictions
§ 20:15	Subdivision regulations
§ 20:16	Prescription to enforce zoning violations

§ 20:17	Americans with Disabilities Act
§ 20:18	National Flood Insurance Act
§ 20:19	Historic preservation restrictions
§ 20:20	Restoration Tax Abatement Program
§ 20:21	Federal and Louisiana historic preservation tax
	credits

### II. ENVIRONMENTAL CONSIDERATIONS

§ 20:22	Generally
§ 20:23	The Clean Water Act and wetlands
§ 20:24	CERCLA and RCRA
§ 20:25	—Innocent landowner defense
§ 20:26	—Liability of lenders
§ 20:27	— —Liability under federal law
§ 20:28	<ul> <li>— Liability under Louisiana law for secured creditors</li> </ul>
§ 20:29	—Contractual transfer and release of CERCLA liability
§ 20:30	Environmental due diligence
§ 20:31	—Phase I environmental assessment
§ 20:32	—Phase II environmental assessment
§ 20:33	Liens imposed as a result of environmental laws
§ 20:34	—Louisiana environmental lien
§ 20:35	<ul> <li>—Louisiana environmental liens and title insurance</li> </ul>
8 20.36	—Federal environmental lien

### III. EXPROPRIATION AND DEDICATION

$\S 20:37$	Expropriation
§ 20:38	—Riparian property
§ 20:39	—Batture
§ 20:40	—Servitude for public necessity
§ 20:41	Return of expropriated residential property
§ 20:42	Dedication
§ 20:43	—Distinction between dedication and donation
§ 20:44	-Effect of dedication on prior recorded interest
§ 20:45	Forms of dedication
§ 20:46	—Statutory dedication
§ 20:47	—Formal nonstatutory dedication
§ 20:48	—Implied dedication
§ 20:49	—Tacit dedication
§ 20:50	Revocation of dedication
§ 20:51	Dedication of cemetery property

#### IV. FORMS

§ 20:52	Resubdivision ordinance
§ 20:53	Certificate of compliance with building codes and the ADA
§ 20:54	Clause in lease imposing ADA compliance duty on tenant
§ 20:55	Notice to borrower of property in special flood area
§ 20:56	Advance notification to Louisiana Office of Business and Industry: Restoration tax abatement
§ 20:57	Purchase agreement: Environmental warranty clause
§ 20:58	Purchase agreement: Environmental liability release
§ 20:59	Act of dedication
§ 20:60	Revocation of dedication

# CHAPTER 21. TITLE EXAMINATION AND TITLE INSURANCE

# I. ROLE OF ATTORNEY IN REAL ESTATE TRANSACTIONS

§ 21:1 Certifying opinion as to title of real estate
§ 21:2 Role of nonattorneys
§ 21:3 Liability to client for malpractice
§ 21:4 Peremption for legal malpractice actions involving real estate transactions and peremption for claim against title insurance agents
§ 21:5 Measure of damages for malpractice
§ 21:6 Liability to nonclients

#### II. TITLE EXAMINATION

§ 21:7	Scope of title search
§ 21:8	Abstract of title and certificates
§ 21:9	Special problems of title examination
§ 21:10	—Judgment of possession
§ 21:11	—Forced heirship
§ 21:12	——Prior law
§ 21:13	——Current law
§ 21:14	——Nonretroactivity of changes in forced heirship classifications
§ 21:15	— —Effect of consenting to judgment of possession since Lauga
§ 21:16	— —Interpretation of wills executed before January
	1, 1996 where the decedent died thereafter
§ 21:17	——Exceptions to actions for reduction

§ 21:18	—Illegitimate children
§ 21:19	—Community property partitions
§ 21:20	—Conveyancing by FDIC to third parties
$\S 21:21$	The title opinion
§ 21:22	Louisiana Uniform Title Standards
III. T	TITLE INSURANCE
§ 21:23	Generally; Overview of the 2006 Owner and Loan Policy and the 2021 Revisions
§ 21:24	Obligations of title insurer
§ 21:25	Advantages of title insurance over title opinion and desirability of owner's title insurance
§ 21:26	Filed-rate premiums and disclosure of premiums under TRID
$\S 21:27$	Title insurance not a guaranty
§ 21:28	Relationship to Insurance Code
§ 21:29	Louisiana Title Insurance Act
§ 21:30	Title agency licensing; "Brick and Mortar" title insurance agency requirements effective January 1, 2021, as revised by Act 264 of 2022
§ 21:31	Sharing of title insurance commissions
§ 21:32	Assignability of title insurance
§ 21:33	Title insurance commitment or binder and exceptions, standard and special
§ 21:34	Insuring provisions
$\S 21:35$	Exclusions from coverage
§ 21:36	Enhanced owner's and lender's coverage for residential policies
\$21:37	Endorsements
§ 21:38	—ALTA endorsements
§ 21:39	— —Form 1-06—Street assessments
\$21:40	— —Form 2-06—Truth in lending
\$21:41	— —Form 3-06—Zoning
§ 21:42	— —Form 3.1-06—Zoning—Completed structure
§ 21:43	—ALTA Endorsements—Form 3.2-06—Zoning— Land under development
§ 21:44	—ALTA endorsements—Form 4-06—Condominium
$\S 21:45$	— —Form 4.1-06—Condominium
§ 21:46	— —Form 5-06—Planned unit development
$\S 21:47$	— —Form 5.1-06—Planned unit development
§ 21:48	— Form 6-06—Variable rate mortgage
§ 21:49	— Form 6.2-06—Variable rate mortgage—
	Negative amortization
\$ 21.50	— Form 7-06—Manufactured housing

§ 21:51	— —Form 7.1-06—Manufactured housing-
	conversion; loan
§ 21:52	— —Form 7.2-06—Manufactured housing-
8 04 50	conversion; owner's
§ 21:53	— Forms 8.1-06 and 8.2-06—Environmental
001 54	protection lien
§ 21:54	——Series 9 Forms—Restrictions, encroachments,
	minerals, covenants conditions and restrictions and private rights
§ 21:55	— —Form 10-06—Assignment
§ 21:56	— Form 10.1-06—Assignment and date down
§ 21:57	— Form 11-06—Mortgage modification
§ 21:57 § 21:58	—ALTA Endorsements—Form 11.2-02-06—Mortgage
§ 21.00	Modification with additional amount of insurance
	endorsement
§ 21:59	—ALTA endorsements—Forms 12-06 and 12.01-06—
§ 21.00	Aggregation endorsements
§ 21:60	—ALTA Endorsements—Forms 13-06 and 13.1-06
3 21.00	Leasehold Endorsements
§ 21:61	— Forms 14-06, 14.1-06, 14.2-06 and 14.3-06
3 21.01	future advance endorsements
§ 21:62	— Forms 15-06, 15.1-06 and 15.2-06 non-
3 = 1.0=	imputation endorsements
§ 21:63	— Form 16-06 mezzanine financing
§ 21:64	— Forms 17-06 and Form 17-06.2—Access and
3	entry and indirect access and entry
§ 21:65	— Forms 18-06 and Form 18-06.2 single tax
_	parcel and multiple tax parcel
§ 21:66	— Forms 19-06 and Form 19-06.2 contiguity—
	Multiple parcels and contiguity-single parcel
§ 21:67	— —Form 20-06—First loss-multiple parcel
	transactions
§ 21:68	——Forms 22-06 and 22.1-06—Location and
	location and map
§ 21:69	—ALTA endorsements—ALTA recorded document
	guarantee
§ 21:70	—ALTA Endorsements—Form 23-06—Co-insurance-
	Single Policy
§ 21:71	— —Form 24-06—Doing business
$\S 21:72$	——Form 25-06—Same as survey
$\S 21:73$	— Form 25.1-06—Same as portion of survey
$\S 21:74$	— —Form 26-06—Subdivision
§ 21:75	— —Form 27-06—Usury
§ 21:76	— —Form 28-06—Easement—Damage or forced
	removal
$\S 21:77$	— —Form 28.1-06—Encroachments-Boundaries and
	Easement Endorsement

§ 21:78	— —Form 28.2-06—Encroachments-Boundaries and Easement—Described Improvements Endorsement
§ 21:79	— —Form 29-06—Interest Rate Swap-Direct Obligation Endorsement
§ 21:80	— —Form 29.1-06—Interest Rate Swap-Additional Interest
§ 21:81	— —Form 29.2-06—Interest Rate Swap-Direct Obligation—Defined Amount
§ 21:82	— —Form 29.3-06—Interest Rate Swap-Additional Interest—Defined Amount
§ 21:83	— —Form 30-06—One-to-Four Family Shared Appreciation Mortgage Endorsement
§ 21:84	— —Form 30.1-06—Commercial Participation Interest Endorsement
§ 21:85	— —Form 31-06—Severable Improvements Endorsement
§ 21:86	— —Form 32-06—Construction Loan-Loss of Priority Endorsement
§ 21:87	— —Form 32.1-06—Construction Loan—Loss of Priority—Direct Payment Endorsement
§ 21:88	— —Form 32.2-06—Construction Loan—Loss of Priority—Insured's Direct Payment Endorsement
§ 21:89	— —Form 33-06—Disbursement Endorsement
§ 21:90	— —Form 34-06—Identified Risk Coverage
	Endorsement and Form 34.1 Exception and
	Identified Risk Coverage
§ 21:91	— —Form 35-06—Minerals and Other Subsurface Substances—Buildings Endorsement
§ 21:92	— —Form 35.1-06—Minerals and Other Subsurface Substances—Improvements Endorsement
§ 21:93	— —Form 35.2-06—Minerals and Other Subsurface Substances—Described Improvements Endorsement
§ 21:94	— —Form 35.3-06—Minerals and Other Subsurface Substances—Land Under Development Endorsement
§ 21:95	— —Form 37-06—Assignment of Rents or Leases Endorsement
§ 21:96	— —Form 38-06—Assignment of Rents or Leases Endorsement
§ 21:97	— —Form 41-06—Water—Buildings Endorsement
§ 21:98	— Form 41.1-06—Water—Improvements
	Endorsement
§ 21:99	— —Form 41.2-06—Water—Described
	Improvements Endorsement
§ 21:100	— Form 42-06—Water—Commercial Lender
	Group Endorsement

§ 21:101	— Form 43-06—Anti-Taint Endorsement
§ 21:102	— —Form 44-06—Insured Mortgage Recording
	Endorsement
§ 21:103	— —Form 45-06—Parri Passu Mortgage
	Endorsement
§ 21:104	———Option Endorsement
$\S 21:105$	—Other endorsements
§ 21:106	—Other Endorsements—LATISSO Form 100—
	Collateral Mortgage Endorsement
§ 21:107	—ALTA Endorsements—Other Endorsements—
	LATISSO Form 101—Multiple Indebtedness
	Mortgage Endorsement
§ 21:108	—Other Endorsements—LATISSO Form 102—
	Increased Coverage Endorsement
§ 21:109	——LATISSO Form 103—Foundation Endorsement
§ 21:110	— —LATISSO Form 104—Co-Insurance—Single
	Policy (joint and several) Endorsement
§ 21:111	——LATISSO Form 105—Special Measure of
_	Loss—Loan Policy Endorsement
§ 21:112	——LATISSO Form 106—Special Measure of
_	Loss—Owner's Policy Endorsement
§ 21:113	——General or Blank Endorsement
§ 21:114	Duty to obtain title insurance
§ 21:115	Closing protection letter and pro forma title
0.01.110	insurance policy
§ 21:116	Examining attorney's opinion pursuant to section
	512.17(b)(vi) of the Louisiana Title Insurance Act
§ 21:117	Identification of examining attorney and title
	producer in residential transactions
IV. FO	RMS
§ 21:118	Certification of title in accordance with La. Rev. Stat. § 37:212
§ 21:119	Notice of non-representation
§ 21:120	Abstracts: Chain sheet
§ 21:121	Abstracts: Conveyance and mortgage search
§ 21:122	Abstracts: Detail sheet
§ 21:123	Abstracts: Take-off sheet
§ 21:124	Abstracts: Succession take-off sheet
§ 21:125	Abstracts: Corporate take-off sheet
§ 21:126	Abstracts: Tax sale take-off sheet
§ 21:127	Abstracts: Foreclosure take-off sheet
§ 21:128	Abstractor's tax research
§ 21:129	Affidavit of death and heirship
§ 21:130	Vesting title language in judgment allocating
	community property in partition

§ 21:131	Mandatory grantor/assignor language to be used in documentation conveying former RTC real estate related (REO and mortgages) assets from FDIC to third parties
§ 21:132	Form of title opinion
§ 21:133	ALTA owner's policy-2021
§ 21:134	ALTA loan policy-2021
§ 21:135	Notice of availability of owner's title insurance
§ 21:136	Louisiana real estate closing transaction form
§ 21:137	ALTA commitment for title insurance 6-17-06 revised (08-01-16)
§ 21:138	Seller's owner's affidavit and indemnity
§ 21:139	Indemnity to insure "gap" between effective date of title commitment and recordation
§ 21:140	ALTA expanded coverage homeowners' policy (12-2-13)
§ 21:141	ALTA expanded coverage residential loan policy (12-2-13)
§ 21:142	ALTA closing protection letter
§ 21:143	Examining attorney's title opinion pursuant to section 512(b)(vi) of the Louisiana Title Insurance Act
§ 21:144	Identifying information required by Section 513.1 of the Louisiana Title Insurance Act
Appendix	21A. Louisiana Title Insurance Act(Title 22, Louisiana Revised Statutes)
Appendix	21B. Factsheet: TRID Title Insurance Disclosures, June 9, 2020 (Consumer Financial Protection Bureau)

# CHAPTER 22. CLOSING THE REAL ESTATE TRANSACTION

### I. BEFORE THE CLOSING

§ 22:1	Starting point: The purchase agreement
§ 22:2	Setting the closing: Date and place
§ 22:3	—Notifying the parties
§ 22:4	Function and role of the closing attorney in the real
	estate transaction
§ 22:5	—Preparation of closing documents
§ 22:6	—Authentication of documents
§ 22:7	—Custodian of sales proceeds
§ 22:8	Kinds of closings
§ 22:9	Pre-closing matters and the closing checklist

#### LOUISIANA REAL ESTATE TRANSACTIONS

\$ 22:10 \$ 22:11 \$ 22:12 \$ 22:13 \$ 22:14 \$ 22:15 \$ 22:16 \$ 22:17	Title information Certificates Survey Estoppel information and payoff figures Approvals and consents Inspections Rent rolls, service contracts and management agreements Powers of attorney
II. TH	IE CLOSING
§ 22:18 § 22:19 § 22:20	Preparation of the closing statement Charges and credits Expenses chargeable to seller and purchaser and determining recording charges; uniform recording charges
§ 22:21 § 22:22 § 22:23	Loan closing statement Prorations Cash to close
§ 22:24 § 22:25 § 22:26	Preparation of the balance sheet The "gap" and the title update At the closing
§ 22:27 § 22:28	The closing memorandum Other disclosures
III. A	FTER THE CLOSING
§ 22:29	Post-closing matters
§ 22:30	Internal Revenue Service reporting
§ 22:31	—Real estate reporting person
§ 22:32	——Person responsible for closing transaction
§ 22:33	— — — If uniform settlement statement used
§ 22:34	———If other closing statement used
§ 22:35	———If no closing statement or multiple closing
§ 22:36	statements — — —Designation agreement
§ 22:37	— — — — — — — — — — — — — — — — — — —
§ 22:38	— — Transferor's broker
§ 22:39	— — Transferee's broker
§ 22:39 § 22:40	—Information return
§ 22:40 § 22:41	— — When and where to file
§ 22:42	——Required information
§ 22:42 § 22:43	— — Multiple transferors
§ 22:43 § 22:44	— — Multiple transferors  — — Multiple asset transactions
§ 22:44 § 22:45	— — Exempt transactions
2 77.40	——Hacilipi il alisaciiolis

#### TABLE OF CONTENTS

§ 22:46	——Exempt transferors
§ 22:47	——Requesting TINs
§ 22:48	——Statement to transferor
§ 22:49	Recording the instruments, notifying the tax assessor and requirements applicable to Orleans Parish notaries public
§ 22:50	Making disbursements
§ 22:51	Final title update and notifying other parties
§ 22:52	The homestead exemption and the special assessment level

### IV. FORMS

s (commercial transaction) tion of act clause in sale amination clause in sale te before two notaries public te before two notaries public tesidential) tommercial) ting production of certificates towledging that certificates are
emination clause in sale the before two notaries public the be
e before two notaries public le before two notaries public le before two notaries public lesidential) lommercial) ling production of certificates lowledging that certificates are
e before two notaries public esidential) ommercial) ing production of certificates owledging that certificates are
e before two notaries public esidential) ommercial) ing production of certificates owledging that certificates are
ommercial) ing production of certificates owledging that certificates are
ing production of certificates owledging that certificates are
owledging that certificates are
of a
cy of survey
ing survey
by lessee to mortgagee
by lessor under mortgaged lease
by lessee to purchaser
statement
owledging cancellation of sales proceeds
sumption of service contracts
e name, trademarks, licenses, es and guaranties
nagement agreement between er for real estate
to sellers
to purchasers
nent for borrower
fer tax remittance form for
es in sale

#### LOUISIANA REAL ESTATE TRANSACTIONS

§ 22:80	Real estate tax proration agreement
§ 22:81	Tax information sheet
§ 22:82	Agreement concerning past due rent
§ 22:83	Dry Closing Letter
§ 22:84	Agreement to Hold Closing Documents in Escrow (Dry Closing)
§ 22:85	Affidavit and indemnity in lieu of lien bond
§ 22:86	Agreement to hold portion of sale proceeds in escrow
§ 22:87	Gift letter
§ 22:88	Name affidavit
§ 22:89	Closing memorandum
§ 22:90	Disclosure and certification
§ 22:91	Form 1099-S (Proceeds from Real Estate Transactions)
§ 22:92	IRS Form 8508: Request for Waiver from Filing Information Returns on Magnetic Media
§ 22:93	Request for allocation of gross proceeds among transferors
§ 22:94	Certification for no information reporting in the sale or exchange of a principal residence
§ 22:95	Form W-9
§ 22:96	Addendum to HUD-1 settlement statement (Substitute Form 1099 seller's statement)
§ 22:97	Act of cash sale designating person responsible for receiving tax notices
§ 22:98	Clause designating name and address person responsible for property taxes and assessments and address for mailing of notices
§ 22:99	Letter transmitting payoff to mortgagee
§ 22:100	Transmittal of act of sale/mortgage to purchaser
§ 22:101	Notice of sale to tenants
Appendix	22A. Customary Allocation of Expenses of Sale Between Seller and Purchaser
Appendix	22B. City of New Orleans Ordinances Establishing Documentary Transfer Tax as Published in the Code of City of New Orleans
Appendix	22C. Treasury Regulation § 1.6045-4
Appendix	22D. Article 7, § 20 of the Louisiana Constitution (the homestead exemption from taxation)

# CHAPTER 23. FEDERAL AND STATE REGULATION OF REAL ESTATE TRANSACTIONS

# I. REAL ESTATE SETTLEMENT PROCEDURES ACT

§ 23:1	Generally
§ 23:2	Purpose of RESPA
§ 23:3	Coverage of RESPA
§ 23:4	Exemptions from RESPA
§ 23:5	Disclosure requirements of RESPA
§ 23:6	—Disclosures at time of application
§ 23:7	——Special information booklet
§ 23:8	——Good faith estimate
§ 23:9	<ul> <li>— Mortgage servicing disclosure statement</li> </ul>
§ 23:10	— — Time for disclosure
§ 23:11	—Disclosures before settlement (closing) occurs
§ 23:12	<ul> <li>—Affiliated business arrangement disclosure</li> </ul>
§ 23:13	—Disclosures at settlement
§ 23:14	— —HUD-1 or HUD-1A settlement statement
§ 23:15	——Initial escrow account statement
§ 23:16	—Disclosures after settlement
§ 23:17	——Annual escrow statement
§ 23:18	——Servicing transfer statement
§ 23:19	RESPA's consumer protections and prohibited
	practices
§ 23:20	—Section 8: Kickbacks, fee-splitting, unearned fees
§ 23:21	——Multiple services
§ 23:22	———Core title agent services
§ 23:23	—Section 9: Seller required title insurance
§ 23:24	—Section 10: Limits on escrow accounts
$\S 23:25$	RESPA enforcement
§ 23:26	—Civil lawsuits
§ 23:27	—Loan servicing complaints
§ 23:28	—Other enforcement actions
§ 23:29	—Filing a RESPA complaint
§ 23:30	Analysis of the HUD-1 and HUD-1A settlement
	statement
§ 23:31	—Itemization of charges
§ 23:32	—One-day advance inspection of settlement
	statement and delivery
§ 23:33	—Permissible changes
§ 23:34	No fee for preparation

§ 23:35 § 23:36	Addendum in FHA-insured loan transaction Louisiana provisions
II. TF	RUTH IN LENDING ACT
§ 23:37	Overview
§ 23:38	Coverage and exemptions
§ 23:39	Disclosures required
§ 23:40	—Time for making disclosure
§ 23:41	Determination of finance charge in real property transactions
§ 23:42	Itemization of amount financed
§ 23:43	Right of rescission
§ 23:44	—Method of exercising right to rescind
§ 23:45	—Effect of rescission
§ 23:46	Louisiana provisions
III. O	THER REGULATORY STATUTES
§ 23:47	Private mortgage insurance
§ 23:48	The Secure and Fair Enforcement for Mortgage Licensing Act ("SAFE Act") and the Louisiana Mortgage Lending Act
§ 23:49	Louisiana residential mortgage lending act—
5	Licensure requirement
§ 23:50	—Interest and other charges for residential mortgage loans
§ 23:51	—Residential mortgage brokers
§ 23:52	Dodd-Frank Wall Street Reform and Consumer Protection Act
§ 23:53	Home Mortgage Disclosure Act of 1975
§ 23:54	Gramm-Leach Bliley Act
§ 23:55	Equal Credit Opportunity Act
§ 23:56	Fair housing
§ 23:57	Interstate Land Sales Full Disclosure Act
§ 23:58	—Disclosure requirements
§ 23:59	—Right of revocation
§ 23:60	—Prohibition of misleading sales practices
§ 23:61	Unfair trade practice regulation
§ 23:62	Securities laws
§ 23:63	Patriot Act
§ 23:64	Lead-based paint disclosure requirements
§ 23:65	Prohibition of acquisition of real estate by foreign adversaries

IV. CHOICE OF ENTITY AND TAX MATTERS

## § 23:66 Overview

§ 23:67 —Choice of entity § 23:68 -Tax matters § 23:69 —Realization of gain or loss § 23:70 ——Sales and exchanges § 23:71 ——Reacquisition § 23:72 — —Conveyance of property to satisfy debt § 23:73 — —Donations § 23:74 ——Change in form of title § 23:75 —Calculation of gain or loss § 23:76 — Cash and property received § 23:77 — —Liabilities discharged § 23:78 ——Costs and expenses § 23:79 ——Adjusted basis -Nonrecognition and exclusion § 23:80 § 23:81 — — Nonrecognition; like-kind exchanges § 23:82 — —Partial non-recognition § 23:83 ——Involuntary conversions § 23:84 ——Exclusion of recognized gain from gross income § 23:85 —Deductible loss § 23:86 —How recognized gains and losses are characterized § 23:87 —Timing of gain § 23:88 —Sales by nonresidents § 23:89 — —Withholding § 23:90 ——Exempted transactions § 23:91 — — Nonforeign affidavit § 23:92 — — — Nonrecognition provision — — — Nonpublicly traded domestic corporation § 23:93 affidavit § 23:94 ———Qualifying statement § 23:95 ———Small residences --Traded stock § 23:96 — —Limitation on withholding § 23:97 § 23:98 — —Liability of agents ——Definition of agent § 23:99

# V. TILA-RESPA INTEGRATED DISCLOSURE RULE (TRID)

§ 23:100 Overview

#### VI. FORMS

§ 23:101 Qualified written request § 23:102 HUD-1 settlement statement (November, 2008 RESPA Rule)

#### LOUISIANA REAL ESTATE TRANSACTIONS

§ 23:103	HUD-1A settlement statement (November, 2008 RESPA Rule)
§ 23:104	Good faith estimate (November, 2008 RESPA Rule)
§ 23:105	Instructions for completing HUD-1 and HUD-1A settlement statements
§ 23:106	Addendum to HUD–1 settlement statement in FHA-insured loan transaction
§ 23:107	Truth in lending disclosure statement
§ 23:108	Form for three-day right of rescission: Notice of right to cancel
§ 23:109	Privacy policy notice
§ 23:110	Sample contract contingency language for the presence of lead-based paint
§ 23:111	Disclosure of information on lead-based paint and/or lead-based paint hazards (lessor)
§ 23:112	Disclosure of information on lead-based paint and/or lead-based paint hazards (seller)
§ 23:113	Affidavit that Purchaser is not a foreign adversary
§ 23:114	Patriot Act representations
§ 23:115	Nonforeign affidavit (Seller is not a disregarded entity)
§ 23:116	Non-Foreign Affidavit (Seller Is A Disregarded Entity)
Appendix 5	23A. Regulation X
Appendix 5	23B. HUD Mortgagee Letter 91-9
Appendix	23C. TILA-RESPA Integrated Disclosure Rule Small Entity Compliance Guide, Consumer Financial Protection Bureau, May 2018
Appendix 5	23D. TILA-RESPA Integrated Disclosure FAQS
Table of I	Laws and Rules
Table of (	Cases

Index