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A PRÉCIS

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McGlinchey Stafford PLLC

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Dedication

To my wife and best friend, Ayan, with whose support all things are possible.
# Table of Contents

## Chapter 1  AN OVERVIEW OF LOUISIANA SECURITY DEVICES . 1

1.1(a) Louisiana Personal Rights and Real Rights Have Different Meanings Than in Common Law ........................................ 1

1.1(b) Louisiana Contracts Normally Impose Personal Rights; Secured Claims are the Exception, Not the Rule .................. 1

1.1(c) Louisiana “Lawful Causes of Preference” ..................... 2

1.1(d) An Overview of the Types of Louisiana Security Devices ...... 2

1.1(e) Consensual and Non-Consensual Louisiana Security Devices ... 3


1.1(g) General Security Devices and Special Security Devices ....... 3

1.1(h) A Selective and Non-Exclusive Listing of Louisiana Security Devices .. 3

## Chapter 2  AN OVERVIEW OF SURETYSHIP .................. 5

2.1(a) The Civil Code Suretyship Provisions .......................... 5

2.1(b) Definition of a Surety ........................................... 5

2.1(c) The Parties Involved in a Suretyship Relationship .............. 6

2.1(d) Analyzing a Louisiana Suretyship Contract ..................... 8

2.1(e) The Formation of a Contract of Suretyship ..................... 9

2.1(f) A Contract of Suretyship Must be Express and in Writing .... 9

2.1(g) Only the Suretyship Contract Must be in Writing ............. 9

2.1(h) The Express Language That is Sufficient to Create a Contract of Suretyship ........................................... 10

2.1(i) No Consideration is Needed for a Suretyship Contract ....... 11

2.1(j) Suretyship Requires No Formal Acceptance ................. 11

2.1(k) A Contract of Suretyship Does Not Require Witnesses or an Authentic Act ............................................ 12

2.2. CHARACTERIZING A SURETYSHIP AS COMMERCIAL, LEGAL OR ORDINARY ............................................ 12

2.2(a) The Commercial Suretyship .................................... 12

2.2(b) The Legal Suretyship ............................................ 14

2.2(c) The Ordinary Suretyship ....................................... 14

2.3. WHAT OBLIGATIONS A SURETYSHIP MAY SECURE .......... 15

2.4. SURETYSHIP MAY BE LIMITED IN SCOPE AND TIME ........ 16

## Chapter 3  SURETYSHIP: THE RELATIONSHIP BETWEEN THE CREDITOR AND THE SURETY ............... 17

3.1. A SURETY IS LIABLE 100% TO THE CREDITOR: THERE IS NO DIVISION OR DISCUSSION ...................................... 17

3.2. A SURETY MAY ASSERT ALL OF THE DEBTOR’S DEFENSES AGAINST THE CREDITOR EXCEPT LACK OF CAPACITY ........ 17

3.3. A SURETY’S RIGHTS CONCERNING A CREDITOR WHEN THE CREDITOR CALLS UPON THE SURETY TO PAY THE DEBT ....... 18
Table of Contents

3.4. "CONTINUING GUARANTEES" ........................................ 19
3.5. "SOLIDARY SURETIES" AND C.C. ART. 3037 ..................... 19
   3.5(a) The History of “Solidary Sureties” .......................... 19
   3.5(b) C.C. art. 3037 Resolves All Disputes Concerning “Solidary Sureties”  . 22

Chapter 4 SURETYSHIP: THE RELATIONSHIP BETWEEN THE DEBTOR AND THE SURETY ..................... 25

4.1. THE FORMATION OF THE SURETY/DEBTOR RELATIONSHIP .... 25
4.2. AN OVERVIEW OF THE SURETY’S RIGHTS CONCERNING THE DEBTOR .............................................. 25
4.3. THE SURETY’S RIGHT OF SUBROGATION AGAINST THE DEBTOR ......................................................... 26
   4.3(a) A Surety’s Subrogation Rights Constitute Legal Subrogation ...... 26
   4.3(b) A Surety’s Subrogation Rights May Be Contractually Limited ...... 26
   4.3(c) The Limit on a Surety’s Subrogation Rights and the Potential for a Surety to Seek Attorney’s Fees and Interest from the Debtor .......... 27
4.4. THE SURETY’S RIGHT OF REIMBURSEMENT AGAINST THE DEBTOR ......................................................... 28
   4.4(a) The Right of Reimbursement ..................................... 28
   4.4(b) Why a Surety Needs Reimbursement in Addition to Subrogation ...... 28
4.5. THE SURETY’S RIGHT TO REQUIRE SECURITY FROM THE DEBTOR ......................................................... 29
   4.5(a) The Right of Security is Triggered in Four Separate Situations ...... 29
   4.5(b) The Surety’s Rights If the Creditor Does Not Provide the Security .... 31

Chapter 5 SURETYSHIP: THE RELATIONSHIP AMONG SURETIES ............................................. 33

5.1. AN OVERVIEW OF THE SURETY/SURETY RELATIONSHIP ...... 33
5.2. CALCULATING THE SURETY’S VIRILE SHARE ..................... 34
5.3. REALLOCATION OF A SURETY’S VIRILE SHARE IN THE EVENT OF INSOLVENCY ........................ 35
5.4. LIMITATIONS ON A SURETY’S RIGHT OF CONTRIBUTION ...... 35
   5.4(a) A Surety’s Contribution Rights are Limited to Amounts Paid in Excess of that Surety’s Virile Share .................. 35
      5.4(a)1. Example #1 .............................................. 36
      5.4(a)2. Example #2 .............................................. 36
      5.4(a)3. Example #3 .............................................. 36
Table of Contents

Chapter 6  SURETYSHIP: EFFECTS ON SURETIES OF A MODIFICATION OF THE PRINCIPAL OBLIGATION ................................. 39

  6.1(a) C.C. art. 3062’s Effects on Ordinary Sureties ......................... 40
  6.1(b) C.C. art. 3062’s Effects on Commercial Sureties When the Principal Obligation is for the Payment of Money ......................... 41
  6.1(c) Example #1 ............................................. 41
  6.1(d) Example #2 ............................................. 41
  6.1(e) Example #3 ............................................. 42
  6.1(f) Example #4 ............................................. 42
  6.1(g) Example #5 ............................................. 42

Chapter 7  SURETYSHIP: RELEASE OF ONE SURETY WHEN THERE ARE MULTIPLE SURETIES ............... 45

7.1. THERE ARE MULTIPLE CIVIL CODE ARTICLES THAT MUST BE CONSIDERED IN CALCULATING THE EFFECTS OF RELEASE OF ONE SURETY WHEN THERE ARE MULTIPLE SURETIES .............................................. 45
  7.2. EXAMPLES OF THE EFFECTS ON A CREDITOR AFTER THE CREDITOR’S RELEASE OF ONE OF MANY SURETIES ......................... 45
      7.2(a) Example #1 ............................................. 46
      7.2(b) Example #2 ............................................. 47
      7.2(c) Example #3 ............................................. 47

Chapter 8  SURETYSHIP: EXTINCTION OR TERMINATION OF THE SURETYSHIP CONTRACT ................... 49

8.1. SURETYSHIP IS A CONTRACT; THE GENERAL RULES ON TERMINATION OF CONTRACTS APPLY ............................................ 49
  8.2. EXTINCTION OF THE PRINCIPAL OBLIGATION EXTINGUISHES THE CONTRACT OF SURETYSHIP ......................................... 49
  8.3. THE EFFECTS OF PRESCRIPTION AND INTERRUPTION OF PRESCRIPTION ON SURETYSHIP ............................................. 49
  8.4. TERMINATION OF SURETYSHIP ...................................... 50
      8.4(a) Notice of Termination ....................................... 50
      8.4(b) Effects of Termination ....................................... 51
      8.4(b1) Example #1 ............................................. 51
      8.4(b2) Example #2 ............................................. 51
      8.4(b3) Example #3 ............................................. 52
      8.4(c) Death of a Surety ............................................. 52
# Table of Contents

## Chapter 9  LEGAL SURETYSHIP ........................... 53

9.1. LEGAL SURETYSHIP: DEFINITION ............................. 53
9.2. REQUIREMENTS OF A LEGAL SURETYSHIP ................. 53
9.2(a) Qualifications of a Legal Surety ............................. 53
9.2(b) Contents of a Legal Suretyship Agreement ..................... 54
9.3. TESTING WHETHER THE LEGAL SURETYSHIP MEETS THE LEGAL REQUIREMENTS ....................................... 54
9.3(a) Testing Whether a Legal Suretyship Meets the Validity Requirements . . 55
9.3(b) Testing Whether a Legal Suretyship Meets the Sufficiency Requirements ............................... 55
9.3(c) Testing Whether a Legal Suretyship Meets the Solvency Requirements . 55
9.4. THE “THREE STRIKES AND YOU’RE OUT” RULE FOR LEGAL SURETYSHIPS ......................................... 56
9.5. WHAT HAPPENS WHILE THE LEGAL SURETYSHIP IS BEING TESTED ............................................... 56
9.6. CASH INSTEAD OF A LEGAL SURETYSHIP .................. 57
9.7. NECESSITY OF A JUDGMENT INVOLVING THE LEGAL SURETY .............................................. 58
9.8. THE ABILITY OF A LEGAL SURETY TO OBTAIN A RELEASE DURING THE EXISTENCE OF THE PRINCIPAL OBLIGATION .............................................. 59

## Chapter 10  PLEDGE ...................................... 61

10.1. AN OVERVIEW OF PLEDGE ....................................... 61
10.2. PLEDGE WAS AN ACCESSORY OBLIGATION .................. 61
10.3. PLEDGE WAS A REAL RIGHT ..................................... 64
10.4. A PLEDGE USUALLY REQUIRED DELIVERY TO THE CREDITOR OR THE CREDITOR’S AGENT .......................... 64
10.5. PLEDGE AND INTERRUPTION OF PRESCRIPTION ............. 64
10.5(a) Louisiana Supreme Court Jurisprudence on the “Constant Acknowledgement” Rule ............................. 65
10.5(a)1. Example #1 of “Constant Acknowledgement” Rule Involving Dead Cats ................................................ 65
10.5(a)2. Example #2 of the “Constant Acknowledgement” Rule ................................................ 66
10.6. A PLEDGE MAY (BUT DOES NOT ALWAYS) SECURE A FLUCTUATING LINE OF CREDIT: C.C. ART. 3158 .............. 67
10.6(a) Intent at the Time of the Pledge Determines What the Pledge Secures under C.C. art. 3158(C) ..................... 68
10.6(b) Advances and Loans Secured by a Pledge May Have Retroactive Rank ................................................... 69
10.7. ANTICHRESIS .......................................... 70
10.7(a) The Historical Background of Antichresis ..................... 70

xiv
Table of Contents

10.7(b) Antichresis is Not Utilized Today in Commercial Transactions .... 71
10.8. PLEDGE AND ASSIGNMENT OF RENTS ............................ 71

Chapter 11 AN OVERVIEW OF MORTGAGE .............................. 73
11.1. A MORTGAGE IS AN ACCESSORY, NON-POSSESSORY, INDIVISIBLE REAL RIGHT ................................ 73
11.1(a) A Creditor’s Rights Under a Mortgage is an Indivisible Real Right .... 73
11.1(b) A Debtor Cannot Compel the Order of Sale of Mortgaged Property .... 74
11.2. A MORTGAGE IS LIMITED TO CERTAIN TYPES OF PROPERTY .. 75
11.3. THE CIVIL CODE RECOGNIZES ONLY THREE TYPES OF MORTGAGE ........................................... 75
11.4. A MORTGAGE MUST BE FILED FOR REGISTRY IN THE PUBLIC RECORDS TO AFFECT THIRD PARTIES ................. 76

Chapter 12 AN OVERVIEW OF CONVENTIONAL MORTGAGES . . 77
12.1. CONVENTIONAL MORTGAGES ARE CREATED BY A WRITTEN CONTRACT ............................................. 77
12.2. THE THREE MINIMUM REQUIREMENTS OF THE CONTENTS OF A CONVENTIONAL MORTGAGE ..................... 77
12.3. A CONVENTIONAL MORTGAGE MUST CONTAIN A PROPERTY DESCRIPTION ........................................... 77
12.4. A CONVENTIONAL MORTGAGE MUST CONTAIN A DESCRIPTION OF THE DEBT THE MORTGAGE SECURES .............. 78
12.4(a) An Overview of Acceptable Forms of the Description of the Debt Secured by a Conventional Mortgage ......................... 78
12.4(b) Illustrations of Obligations Secured by a Mortgage .................... 79
12.4(c) No Necessity of a Note Being Paraphed Ne Varietur For Identification With the Act of Mortgage ......................... 80
12.4(d) Special Rules on Description of a Past Debt Secured by a Conventional Mortgage as Opposed to a Future Obligation Secured by a Conventional Mortgage ........................................... 81
12.4(e) If a Mortgage Secures an Act or a Non-Monetary Obligation, It Still Must State a Dollar Amount ..................... 82
12.5. A CONVENTIONAL MORTGAGE MUST BE SIGNED BY THE MORGAGOR ............................................. 83
12.6. THE MORTGAGEE’S ACCEPTANCE IS PRESUMED; THE MORTGAGEE NEED NOT SIGN THE MORTGAGE ................. 83
12.7. WHO MAY BE A MORTGAGOR: THE POWER TO MORTGAGE .... 84
12.8. A CONVENTIONAL MORTGAGE OF FUTURE PROPERTY IS PERMITTED ............................................. 84
12.8(a) Example #1 ...................................................... 84
12.8(b) Example #2 ...................................................... 85

xv
Table of Contents

12.8(c) Example #3 ........................................... 85
12.9. A MORTGAGE MAY SECURE THE OBLIGATIONS OF ANY PERSON OR ENTITY, EVEN THE OBLIGATIONS OF ONE WHO IS NOT THE MORTGAGOR .......................................... 85
12.9(a) Example #1 ........................................... 86
12.9(b) Example #2 ........................................... 86
12.9(c) Example #3 ........................................... 87
12.10. WHAT DEFENSES A MORTGAGOR MAY RAISE ..................... 88
12.10(a) Example #1 ........................................... 88
12.10(b) Example #2 ........................................... 88
12.10(c) Example #3 ........................................... 89
12.11. “IN REM” OR NON-RECIPE MORTGAGES ........................ 89
12.12. NO NOVATION IF A SUBSEQUENT OWNER OF THE PROPERTY ASSUMES THE MORTGAGE AND THE ORIGINAL MORTGAGOR IS RELEASED ............................................ 90

Chapter 13 THE THREE KINDS OF CONVENTIONAL MORTGAGES: ORDINARY MORTGAGES, COLLATERAL MORTGAGES, AND FUTURE ADVANCE MORTGAGES .............. 91

13.1. THE THREE KINDS OF CONVENTIONAL MORTGAGES .......... 91
13.2. THE “ORDINARY MORTGAGE” .................................... 91
13.3. THE “FUTURE ADVANCE MORTGAGE” ............................ 91
13.3(a) The Pre-1991 Future Advance Mortgage ......................... 92
13.3(a1). An Example of the Pre-C.C. art. 3298 “Future Advance Mortgage” . . . . . 92
13.3(a2). The “Barrel of Money” Way of Analyzing the Pre C.C. art. 3298 Future Advance Mortgage .................................... 93
13.3(b) The C.C. art. 3298 “Future Advance Mortgage,” Sometimes Called a “Multiple-Obligation Mortgage” ............................ 94
13.3(b1). C.C. art. 3298(A): A Mortgage May Secure Future Obligations ....... 94
13.3(b2). C.C. art. 3298(B). Retroactive Effect of Advances Under a Future Advance Mortgage .................................... 94
13.3(b3). C.C. art. 3298(C): No Need For a Note For a Future Advance Mortgage .................................... 95
13.3(b4). C.C. art. 3298(D) and (E): Termination of a Future Advance Mortgage; Contracting for Reasonable Notice of Termination; and When Payment of a Loan Down to Zero May Not Terminate a Fluctuating-Balance Future Advance Mortgage .................................... 96
13.3(c) What Third Parties Can and Cannot Ascertain About a Future Advance Mortgage .................................... 97
13.4. THE COLLATERAL MORTGAGE IN GENERAL .................. 98
13.4(a) Overview of the Collateral Mortgage .............................. 98
13.4(b) An Introduction to the Structure of a Collateral Mortgage Prior to 1990
Table of Contents

Using A Third Party Pledgor ............................................ 101

13.4(c) An Introduction to the Structure of a Collateral Mortgage Prior to
1990 with the Debtor as Pledgor ....................................... 105

13.4(d) Prior to 1990, a Collateral Mortgage Ranked From the Earliest
Concurrence of Pledge of the Collateral Mortgage Note and Filing for
Registry of the Collateral Mortgage ................................. 105

13.4(d)1. Example #1 .................................................. 106

13.4(d)2. Example #2 .................................................. 106

13.4(d)3. Example #3 .................................................. 107

13.5. PRESCRIPTION NEVER RUNS ON THE PRINCIPAL OBLIGATION
SECURED BY THE PLEDGE OF A COLLATERAL MORTGAGE
NOTE ............................................................................. 107

13.6. ALTHOUGH PRESCRIPTION NEVER RUNS ON THE PRINCIPAL
OBLIGATION SECURED BY THE PLEDGE A COLLATERAL
MORTGAGE NOTE, THE COLLATERAL MORTGAGE NOTE ITSELF
CAN PRESCRIBE ...................................................... 108

13.7. THE STRUCTURE OF A COLLATERAL MORTGAGE TODAY .......... 110

13.7(a) R.S. 9:5550: Collateral Mortgage Definitions .................. 111

13.7(b) R.S. 9:5551(A): When a Collateral Mortgage Becomes Effective as to Third
Parties .............................................................. 111

13.7(c) R.S. 9:5551(B): A Collateral Mortgage Package Properly
Perfected Remains Effective Even if the Principal Obligation is Paid Down
to Zero ......................................................................... 112

13.7(d) R.S. 9:5551(C): A Collateral Mortgage Package Can Be Reused Once the
Principal Obligation is Paid Off or Cancelled ...................... 113

13.7(d)1. Example ......................................................... 115

13.8. WHY THE COLLATERAL MORTGAGE NOTE SHOULD BE DUE ON
DEMAND ............................................................................. 116

13.9. WHY THE COLLATERAL MORTGAGE NOTE SHOULD BE BEARER
PAPER ........................................................................... 117

13.10. WHY THE COLLATERAL MORTGAGE NOTE SHOULD BE
PARAPHEDE NE VARIETUR FOR IDENTIFICATION WITH THE ACT OF
COLLATERAL MORTGAGE .................................................. 117

13.11. WHAT SHOULD BE THE PRINCIPAL AMOUNT OF THE
COLLATERAL MORTGAGE NOTE? ........................................ 118

13.11(a) The Face Amount of the Collateral Mortgage Note (Level II) is Typically
Set at 150% of the Principal Obligation (Level I) .................. 118

13.11(b) The Collateral Mortgage Note Typically Bears Interest at a Fixed (Not
Fluctuating) Rate ........................................................ 119

13.11(c) A Collateral Mortgage Package Secures the Creditor to the Lesser of (a) the
Principal and Interest Due on the Principal Obligation, or (b) the Principal
and Interest Due on the Collateral Mortgage Note ................ 120
Table of Contents

13.11(c)1. Example #1 ......................................... 121
13.11(c)2. Example #2 ......................................... 121
13.11(c)3. Example #3 ......................................... 121

13.12. WHY DETERMINING WHAT PRINCIPAL OBLIGATION(S) A COLLATERAL MORTGAGE SECURES CANNOT BE ASCERTAINED BY LOOKING AT THE FACE OF THE COLLATERAL MORTGAGE .......................................... 122

13.13. WHY DETERMINING WHO HOLDS A COLLATERAL MORTGAGE NOTE CANNOT BE ASCERTAINED BY LOOKING AT THE FACE OF THE COLLATERAL MORTGAGE .......................... 123

13.14. A COLLATERAL MORTGAGE NOTE IS AN IN REM INSTRUMENT ......................................... 124

13.15. TRANSFERRING THE RANK OF A MORTGAGE FROM ONE CREDITOR TO ANOTHER ....................................... 125

13.15(a) Transferring the Rank of a Mortgage that Does Not Secure a Fluctuating Line of Credit ......................................... 125

13.15(b) Transferring the Rank of a Mortgage that Does Secure a Fluctuating Line of Credit ......................................... 126

Chapter 14 CONVENTIONAL MORTGAGES: USUFRUCTS AND LEASES ..................................... 129

14.1. THE TERMINATION OF A USUFRUCT OR LEASE EXTINGUISHES A MORTGAGE ENCUMBERING THE USUFRUCT OR LEASE ...... 129

14.2. MORTGAGES ON USUFRUCTS ........................... 129

14.3. MORTGAGES ON LEASES ............................... 130

Chapter 15 SPECIAL PROVISIONS IN CONVENTIONAL MORTGAGES ............................................. 131

15.1. KEEPER PROVISIONS IN A MORTGAGE ....................... 131

15.2. COLLATERAL ASSIGNMENT OF RENTS IN A MORTGAGE ..... 132

15.3. COLLATERAL ASSIGNMENT OF INSURANCE PROCEEDS IN A MORTGAGE .......................................... 132

15.4. ASSIGNMENT OF CERTAIN UCC9 ENFORCEMENT RIGHTS ........................................... 132

15.5. SECURITY FOR FUNDS ADVANCED TO PROTECT THE PROPERTY ........................................... 133

15.6. ADDITIONS AND ACCESSIONS .................................. 133

15.7. SPECIAL RULES CONCERNING AMENDMENTS OF NOTES SECURED BY MORTGAGES .......................................... 133

15.8. SPECIAL EXEMPTIONS FROM USURY PROVISIONS .......................... 134

15.9. SPECIAL RULES FOR CERTAIN RESIDENTIAL MORTGAGES ...... 134
Table of Contents

Chapter 16 THE LEGAL MORTGAGE ............................. 137

16.1. DEFINITION OF A LEGAL MORTGAGE ..................... 137
16.2. LEGAL MORTGAGES ARE GENERAL MORTGAGES ........... 137
16.3. HOW A LEGAL MORTGAGE IS CREATED ................... 138
16.4. DISCUSSION APPLIES TO LEGAL MORTGAGES .............. 138

Chapter 17 THE JUDICIAL MORTGAGE .......................... 139

17.1. DEFINITION OF A JUDICIAL MORTGAGE ................... 139
17.2. JUDICIAL MORTGAGES ARE GENERAL MORTGAGES ........ 139
17.3. HOW A JUDICIAL MORTGAGE IS CREATED ................... 139
17.4. DISCUSSION APPLIES TO JUDICIAL MORTGAGES ......... 141
17.5. THE EFFECT OF A JUDGMENT AGAINST A DECEASED PERSON .............................................. 141
17.6. THE EFFECT OF A JUDICIAL MORTGAGE AGAINST THE STATE OR A GOVERNMENTAL ENTITY ............... 141

Chapter 18 MORTGAGES DISGUISED AS SALES AND BOND-FOR-DEED CONTRACTS ...................... 143

18.1. MORTGAGES “DISGUISED” AS SALES .......................... 143
18.2. BOND-FOR-DEED CONTRACTS .............................. 144
18.2(a) The Advantages of Bond-for-Deed Contracts ............. 144
18.2(b) The Disadvantages of Bond-for-Deed Contracts ........... 145
18.2(c) The Statutory Requirements of Bond-for-Deed Contracts . 146
18.2(d) Due On Sale Clauses and Bond-for-Deed Contracts ....... 146

Chapter 19 THE RULES OF REGISTRY AS THEY RELATE TO MORTGAGES AND CERTAIN PRIVILEGES ON IMMOVABLES .......................... 149

19.1. REGISTRY IS PARISH SPECIFIC .............................. 149
19.2. REGISTRY IS NOT NEEDED TO AFFECT THE PARTIES TO A DOCUMENT ............................................. 149
19.3. REGISTRY IS NEEDED TO AFFECT THIRD PARTIES ........ 149
19.3(a) Third Parties May Ignore Certain Matters That are Not Contained in the Public Records ........................................... 150
19.3(b) The Public Records Are Not Proof of the Validity of What is Recorded .............................................. 150
19.3(c) There Is No Need to Record Certain Items ............... 151
19.4. WHO IS A THIRD PARTY TO A DOCUMENT ................ 151
19.5. ASSUMPTION OF MORTGAGES; WHAT ARE THE OBLIGATIONS OF ONE WHO ASSUMES A MORTGAGE AND WHAT ARE THE PUBLIC RECORDS IMPLICATIONS .......................... 152
Table of Contents

19.6. THE MORTGAGE RECORDS AND THE CONVEYANCE RECORDS ARE COPIES OF THE ORIGINAL DOCUMENTS; THE ORIGINAL DOCUMENTS ARE NOT CONTAINED IN THE MORTGAGE OR CONVEYANCE RECORDS .................................................. 152

19.7. THE DEVELOPING AREA OF FILING VS. REGISTRY OF CONVEYANCES AND MORTGAGES CONCERNING THE EFFECT ON THIRD PARTIES ........................................ 154

19.7(a) An Overview of the Issue ........................................ 154

19.7(b) The Historical Background ....................................... 154

19.7(c) Judicial Mortgages Must be Recorded, Not Just Filed, and Questions Raised by a 2010 Supreme Court Decision Concerning This Issue .... 155

19.8. THE RECORDER HAS THE POWER TO REFUSE TO RECORD CERTAIN DOCUMENTS .................................................. 156

19.9. SPECIAL CIVIL CODE RULES PERTAINING TO THE MORTGAGE RECORDS ........................................................................ 157

Chapter 20 THE EFFECT AND RANKING OF CONVENTIONAL, LEGAL, AND JUDICIAL MORTGAGES ............. 159

20.1. THERE ARE DIFFERENT RULES THAT APPLY IN DETERMINING WHEN MORTGAGES BEGIN TO AFFECT THIRD PARTIES AND WHEN MORTGAGES CEASE AFFECTING THIRD PARTIES ...... 159

20.2. HOW LONG ARE THIRD PARTIES AFFECTED BY A RECORDED CONVENTIONAL MORTGAGE? .............................................. 159

20.2(a) The General Rules: The 10-Year Rule and the 6-Year-After-Maturity Rule .................................................. 160

20.2(a)1. Example #1 .......................................................... 161

20.2(a)2. Example #2 .......................................................... 161

20.2(a)3. Example #3 .......................................................... 162

20.3. A MORTGAGE MAY BE CANCELLED EITHER BEFORE OR AFTER THE EFFECTS OF RECORDATION HAVE CEASED .......... 163

20.3(a) Cancelling a Mortgage Before the Effects of Recordation Have Ceased .......................................................... 163

20.3(b) Canceling a Mortgage After the Effects of Recordation Have Ceased .......................................................... 163

20.4. HOW LONG THIRD PARTIES ARE AFFECTED BY A RECORDED JUDICIAL MORTGAGE .................................................. 164

20.5. HOW LONG THIRD PARTIES ARE AFFECTED BY A RECORDED LEGAL MORTGAGE .................................................. 164

20.6. SPECIAL RULES WHEN A MORTGAGE SECURES A FEDERAL OBLIGATION .................................................. 164

20.7. THE EFFECT ON THIRD PARTIES OF AMENDING THE PRINCIPAL OBLIGATION SECURED BY THE MORTGAGE .................................................. 164

20.7(a) Example #1 .......................................................... 165

20.7(b) Example #2 .......................................................... 166
Table of Contents

20.8. REINSCRIPTION, IN GENERAL ........................................... 166
  20.8(a) The Civil Code’s Reinscription Formalities Must be Followed .... 166
  20.8(b) Reinscription of Conventional Mortgages .......................... 167
  20.8(c) Reinscription of Judicial Mortgages ............................... 167
  20.8(d) Reinscription of Legal Mortgages May Not Be Possible .......... 168
  20.8(e) When a Reinscription is not Timely Filed ....................... 168
  20.8(f) Examples Concerning Reinscription of Mortgages ............... 169
    20.8(f)1. Example #1 ........................................... 169
    20.8(f)2. Example #2 ........................................... 169
    20.8(f)3. Example #3 ........................................... 170

Chapter 21 THE RIGHTS OF THIRD PARTY POSSESSORS .......................... 171

  21.1. THIRD PARTY POSSESSORS: AN OVERVIEW .......................... 171
  21.2. THE DEFINITION OF A THIRD PARTY POSSESSOR .................... 171
  21.3. LIABILITY OF A THIRD PARTY POSSESSOR .......................... 172
  21.4. THE FOUR MAIN RIGHTS OF A THIRD PARTY POSSESSOR ............. 172
  21.5. A THIRD PARTY POSSESSOR’S WARRANTY RIGHTS ..................... 172
    21.5(a) The Seller’s Warranty of Title and Warranty Against Eviction . 172
    21.5(b) Sales “Subject to a Mortgage” and the Seller’s Warranty ....... 173
    21.5(c) Cash Sales and the Seller’s Warranty ........................ 173
    21.5(d) Sales with Assumption and the Seller’s Warranty .............. 173
    21.5(e) Quit Claim Deeds and the Seller’s Warranty ................... 173
  21.6. THE THIRD PARTY POSSESSOR’S RIGHT OF PAYMENT ................. 173
  21.7. THE THIRD PARTY POSSESSOR’S RIGHT TO ARREST THE SEIZURE AND SALE .................................................. 174
  21.8. THE THIRD PARTY POSSESSOR’S RIGHT TO CLAIM ENHANCED VALUE .................................................. 175
  21.9. THE LIMITS OF A THIRD PARTY POSSESSOR’S CLAIMS TO ENHANCED VALUE .................................................. 175
  21.10. THE PROCEDURE BY WHICH A THIRD PARTY POSSESSOR CLAIMS ENHANCED VALUE ............................................... 175
  21.11. HOW THE PROCEEDS OF A SHERIFF’S SALE ARE DISTRIBUTED WHEN A THIRD PARTY POSSESSOR PROPERLY CLAIMS ENHANCED VALUE .................................................. 176
    21.11(a) Example #1 ........................................... 177
    21.11(b) Example #2 ........................................... 177
    21.11(c) Example #3 ........................................... 178
    21.11(d) Example #4 ........................................... 179
    21.11(e) Example #5 ........................................... 179
# Table of Contents

Chapter 22  THE RESOLUTORY CONDITION, RIGHTS OF FIRST REFUSAL, AND RIGHTS OF REDEMPTION ........ 181

22.1. AN OVERVIEW OF THE RESOLUTORY CONDITION, RIGHTS OF FIRST REFUSAL, AND RIGHTS OF REDEMPTION .......... 181

22.2. THE RESOLUTORY CONDITION .................................................. 182

22.2(a) Definition of a Resolutory Condition ............................ 182

22.2(b) The Effect of a Resolutory Condition on Third Parties .... 182

22.2(c) Extensions of Time and Resolutory Conditions .............. 183

22.2(d) The Prescriptive Period on the Resolutory Condition .... 183

22.2(d)1. Resolutory Condition, Example 1 ............................. 184

22.2(d)1. Resolutory Condition, Example 2 ............................. 184

22.2(e) Effect of Exercising a Resolutory Condition ............... 185

22.2(e)1. Resolutory Condition, Example 3 ............................. 185

22.3. THE RIGHT OF FIRST REFUSAL .............................................. 185

22.3(a) Definition of a Right of First Refusal ......................... 185

22.3(b) The Effect of a Right of First Refusal ......................... 186

22.3(c) The Prescriptive Period on the Right of First Refusal .... 186

22.4. THE RIGHT OF REDEMPTION ................................................. 187

22.4(a) Definition of a Right of Redemption ......................... 187

22.4(b) The Effect of a Right of Redemption on the Buyer and Third Parties .......... 187

22.4(c) The Peremptive Period on the Right of Redemption ........ 188

Chapter 23  TITLE EXAMINATION .............................................. 189

23.1. AN OVERVIEW OF TITLE EXAMINATIONS, TITLE OPINIONS, AND TITLE INSURANCE .......................... 189

23.1(a) Title Opinions are Seldom Used Today ....................... 190

23.1(b) Title Insurance ......................................................... 190

23.2. TITLE EXAMINATIONS BEGIN WITH AN ABSTRACT OF TITLE ................................................................. 191

23.3. AN OVERVIEW OF ABSTRACTS OF TITLE ......................... 191

23.3(a) How Far Back Should You Search? ............................. 192

23.3(b) Vendee Index ................................................................. 192

23.3(c) Vendor Index ................................................................. 193

23.3(d) Mortgagor Index .......................................................... 193

23.3(e) UCC Index ................................................................. 194

23.3(f) Obtaining and Performing an Initial Review of Documents Concerning Maps or Plats .................. 194

23.3(g) Obtaining and Performing an Initial Review of Documents Concerning Other Information .................. 195

23.3(h) Assembling All the Documents that You Found and Creating the Abstract of Title .......................... 195

xxii
Table of Contents

23.4. THE TITLE EXAMINATION PROCESS .......................... 195

Chapter 24 EXAMPLES OF DIFFERENCES BETWEEN TITLE EXAMINATION ISSUES AND LITIGATION ISSUES INVOLVING THE RANKING OF MORTGAGES AND PRIVILEGES ................................................................. 197

24.1. AN OVERVIEW OF THE DIFFERENCES BETWEEN TITLE EXAMINATION ISSUES AND LITIGATION ISSUES ............................... 197
24.2. A TITLE EXAMINER MUST “ASSUME THE WORST” WHEN EXAMINING TITLE ................................................................. 197
24.3. A CREDITOR BEARS THE BURDEN OF PROOF IN LITIGATION . 198

Chapter 25 THE HOMESTEAD EXEMPTION ............................ 201

25.1. THERE ARE TWO TYPES OF “HOMESTEAD EXEMPTIONS” ...... 201
25.2. WAIVING THE FORECLOSURE HOMESTEAD EXEMPTION ....... 201
25.3. EXCEPTIONS FROM THE STATUTORY FORECLOSURE HOMESTEAD EXEMPTION ................................................................. 202
25.4. BOND FOR DEED CONTRACTS AND THE HOMESTEAD EXEMPTION ................................................................. 202

Chapter 26 THE RELATIONSHIP BETWEEN LENDING AND INSURANCE ................................................................. 203

26.1. WHY CREDITOR-DRAFTED DOCUMENTS INCLUDE CLAUSES ABOUT INSURANCE ................................................................. 203
26.2. THE DIFFERENCES BETWEEN “SIMPLE” AND “STANDARD” LOSS PAYEE CLAUSES ................................................................. 203
26.3. HOW A CREDITOR OBTAINS A SECURITY INTEREST IN CASUALTY INSURANCE ON IMMOVABLE PROPERTY ........................ 204
26.4. HOW A CREDITOR OBTAINS A SECURITY INTEREST IN LIFE INSURANCE PROCEEDS ................................................................. 204

Chapter 27 DEFAULT CLAUSES .................................................. 207

27.1. AN OVERVIEW OF DEFAULT CLAUSES: MONETARY v. NON-MONETARY DEFAULTS ................................................................. 207
27.2. TYPICAL NON-MONETARY DEFAULT CLAUSES .................... 208

Chapter 28 CIVIL CODE PRIVILEGES: AN OVERVIEW ............ 209

28.1. WHAT IS A “PRIVILEGE” .................................................... 209
28.2. HOW ARE PRIVILEGES CREATED? .................................... 209
28.3. SPECIAL AND GENERAL PRIVILEGES ON MOVABLES AND IMMOVABLES: AN OVERVIEW ................................................................. 210
Table of Contents

28.4. HOW MANY LOUISIANA PRIVILEGES EXIST? ................ 210
28.5. WHY WERE PRIVILEGES CREATED? ....................... 211

Chapter 29  
THE CIVIL CODE’S “GENERAL PRIVILEGES” .... 213

29.1. AN OVERVIEW OF THE CIVIL CODE’S GENERAL PRIVILEGES .. 213
29.2. THE FUNERAL PRIVILEGE ............................................. 214
29.3. THE LAW CHARGE AND JUDICIAL EXPENSE PRIVILEGE .... 214
29.4. THE LAST SICKNESS PRIVILEGE ................................. 215
29.5. THE SERVANTS’ WAGE PRIVILEGE .............................. 216
29.6. THE SUPPLIERS OF PROVISIONS PRIVILEGE .................. 217
29.7. THE CLERKS AND SECRETARIES PRIVILEGE ................. 217
29.8. THE PRIVILEGE OF THE SURVIVING SPOUSE ............... 217

Chapter 30  
AN OVERVIEW OF THE SPECIAL PRIVILEGES IN THE CIVIL CODE PERTAINING TO MOVABLES .... 219

30.1. A LISTING OF THE SPECIAL PRIVILEGES ON MOVABLES COVERED BY THE CIVIL CODE ................ 219
30.2. THE IMPORTANCE (OR UNIMPORTANCE) OF THE CIVIL CODE’S SPECIAL PRIVILEGES ............ 219

Chapter 31  
THE PRIVILEGE ON MOVABLES OF VENDORS, LESSORS, AND REPAIRMEN .......... 221

31.1. THE VENDOR’S PRIVILEGE ON MOVABLES ...................... 221
31.2. THE PRIVILEGE THAT THE LESSOR OF IMMOVABLES HAS ON MOVABLES .......................... 221
31.3. THE REPAIRMEN’S PRIVILEGE ON MOVABLES ............... 222

Chapter 32  
THE RANKING OF PRIVILEGES ON MOVABLES  .... 225

32.1. RANKING TWO PRIVILEGES UNDER THE CIVIL CODE ...... 225
32.2. AN EXAMPLE OF A “VICIOUS” CIRCLE INVOLVING THE RANKING THE VENDOR’S PRIVILEGE, THE LESSOR’S PRIVILEGE, THE REPAIRMEN’S PRIVILEGE, AND A UCC9 SECURITY INTEREST ................. 226

Chapter 33  
THE VENDOR’S PRIVILEGE ON IMMOVABLES .... 229

33.1. DISTINCTIONS BETWEEN THE VENDOR’S PRIVILEGE ON MOVABLES AND THE VENDOR’S PRIVILEGE ON IMMOVABLES ................................................................. 229
33.2. THE REQUIREMENTS FOR THE VENDOR’S PRIVILEGE ON IMMOVABLES TO AFFECT THIRD PARTIES .... 229
33.3. RANKING THE VENDOR’S PRIVILEGE ON IMMOVABLES .... 230
Table of Contents

33.3(a) Example 1: Retroactive Rank of Vendor’s Privilege on Immovable Property Under the Old Conveyance Record/Mortgage Record Distinction .......................... 230
33.3(b) Example 2: Retroactive Rank of A Vendor’s Privilege Today .................. 231
33.3(c) Example 3: Retroactive Rank of a Vendor’s Privilege v. a Preexisting Judicial Mortgage Against the Buyer ......................... 232

Chapter 34 EXTINCTION OF PRIVILEGES ............... 233
34.1. THE FOUR METHODS OF EXTINGUISHING A PRIVILEGE .......... 233
34.2. EXTINCTION OF A PRIVILEGE BY EXTINCTION OF THE THING SUBJECT TO THE PRIVILEGE .......................... 233
34.3. EXTINCTION OF A PRIVILEGE BY THE CREDITOR ACQUIRING THE THING SUBJECT TO THE PRIVILEGE ..................... 233
34.4. EXTINCTION OF A PRIVILEGE BY EXTINCTION OF THE DEBT WHICH GAVE RISE TO THE PRIVILEGE .......................... 234
34.5. EXTINCTION OF A PRIVILEGE BY PRESCRIPTION ............... 234

Chapter 35 EXEMPTIONS FROM SEIZURE: R.S. 13:1881 AND THE HOMESTEAD EXEMPTION ........... 235
35.1. THE PURPOSE OF EXEMPTIONS FROM SEIZURE OF ASSETS, MOVABLE PROPERTY, AND IMMOVABLE PROPERTY .................. 235
35.2. THE EXEMPTIONS FROM SEIZURE OF MOVABLES AND CERTAIN OTHER ASSETS: R.S. 13:3881 .......................... 235

Chapter 36 MATERIALMEN’S LIENS AND PRIVILEGES AFFECTING IMMOVABLES ............. 237
36.1. AN OVERVIEW OF MATERIALMEN’S LIENS AND PRIVILEGES ........ 237
36.2. THE HISTORICAL BACKGROUND ON MATERIALMEN’S LIEN PRIVILEGES ....................................................... 238

Chapter 37 THE LOUISIANA PRIVATE WORKS ACT ........... 239
37.1. SCOPE AND STRUCTURE OF THE LOUISIANA PRIVATE WORKS ACT ................................................................. 239
37.1(a) Critical Definitions and Concepts in the Louisiana Private Works Act .......................... 240
37.1(b) PWA Definition of “Owner” ........................................ 240
37.1(c) PWA Definition of “Work” ........................................ 241
37.1(d) PWA Definitions of “General Contractor” and “Contractor” .......... 241
37.1(e) Examples of How the Definitions of “Work” and “Contract” Can Interact ................. 242
37.1(f) Example 1 ..................................................... 242

xxv
## Table of Contents

37.1(g) Example 2 ........................................... 242  
37.1(h) PWA Definition of “Subcontractor” .......................... 242  
  37.1(h)1. Example 1 ......................................... 243  
  37.1(h)1. Example 2 ......................................... 243  

37.2. AN OWNER’S LIABILITY UNDER THE LOUISIANA PRIVATE WORKS ACT .......................................... 243  
  37.2(a) Example 1 ........................................... 244  
  37.2(b) Example 2 ........................................... 244  

37.2(c) The General Contractor’s Liability Under the Private Works Act ................................. 244  

37.3. HOW AN OWNER MAY AVOID PERSONAL LIABILITY TO THOSE WITH WHOM THE OWNER DOES NOT HAVE PRIVITY OF CONTRACT ........................................... 244  
  37.3(a) Where Are PWA Filings Made? ............................ 245  
  37.3(b) How All Lien Claimants Other Than the General Contractor Assert and Preserve Their Privileges ................................. 245  

37.4. NOTICE OF SUBSTANTIAL COMPLETION AND NOTICE OF TERMINATION ................................. 246  

37.5. THE 30-DAY LIEN PERIOD ........................................ 246  

37.6. THE 60-DAY LIEN PERIOD ........................................ 246  

37.7. THE 70-DAY LIEN PERIOD ........................................ 247  

37.8. SPECIAL RULES FOR THE LESSEES AND SELLERS OF MOVABLES TO A CONTRACTOR OR SUBCONTRACTOR ........................................... 247  
  37.8(a) How a General Contractor Preserves Its Privilege ...................... 247  
  37.8(b) How Lien Claimants Without Privity of Contract Preserve Their Claims Against the General Contractor ................................. 247  
  37.8(c) How All Lien Claimants Enforce Their PWA Liens and Prevent Their Liens from Being Extinguished ................................. 248  
  37.8(d) The Amount of the PWA Bond and The Liability of a PWA Surety . . . 248  

37.9. THE LIABILITY OF THE PWA SURETY: PAYMENT AND PERFORMANCE BONDS ................................. 248  

37.10. THE LIABILITY OF A PWA SURETY TO LIEN CLAIMANTS UNDER THE PAYMENT BOND 60-DAY LIEN PERIOD ................................. 249  
  37.10(a) The Concursus Proceeding ................................ 250  
  37.10(b) The “After-The-Fact” 125% Bond ............................. 250  
  37.10(c) Example 1 ........................................... 250  
  37.10(d) Example 2 ........................................... 251  
  37.10(e) Bonded Jobs Cost More Than Un-Bonded Jobs ... 252  

37.11. THE PWA CAN TRANSFORM THE RIGHTS OF CREDITORS ........................................... 252  
  37.11(a) Example 1 ........................................... 252  
  37.11(b) Example 2 ........................................... 253  

37.12 THE RANKING OF PRIVATE WORKS ACT PRIVILEGES ........................................... 254  
  37.12(a) PWA Privileges Affect Third Parties From the Earliest of Notice of

xxvi
Table of Contents

Contrary or R.S. 9:4820 “Work” ............................ 254
37.12(b) The Six “Classes” of Ranking Under the Private Works Act .......................... 254
37.12(c) PWA Privileges Rank by Both Nature and Date ........................................ 255
37.12(d) A “No Work” Affidavit Can Alter the Class a Mortgage Holder Would Otherwise Receive Under R.S. 9:4821 of the Private Works Act .................. 256
37.12(e) Examples of Ranking Under the PWA ......................................................... 256
37.12(e)1. Example 1 ......................................... 256
37.12(e)2. Example 2 ......................................... 257
37.12(e)3. Example 3 ......................................... 258

Chapter 38 FORECLOSURES IN LOUISIANA .................. 261

38.1(a) The Interrelationship Between Foreclosure Rules and Mortgages ........................ 261
38.1(b) The Differences Between Ordinary Process Foreclosure and Executory Process Foreclosure ................................................................. 261
38.1(c) Requirements for Use of Executory Proceedings ........................................... 262
38.1(d) The Confession of Judgment ........................................................................ 263
38.1(e) Things that are in Authentic Form, Things that are Deemed to be in Authentic Form, and Things that Need Not be in Authentic Form .................. 263

Chapter 39 THE RELATIONSHIP OF FEDERAL DUE PROCESS AND CERTAIN OTHER FEDERAL LAWS TO LOUISIANA FORECLOSURES .................. 265

39.1(a) Louisiana Foreclosures and Due Process Issues ........................................... 265
39.1(b) Other Federal Laws that Impact Louisiana Foreclosures ............................ 265

Chapter 40 THE LOUISIANA DEFICIENCY JUDGMENT ACT AND DEFICIENCY JUDGMENTS UNDER UCC9 ................. 267

40.1(a) Deficiency Judgments — An Overview ..................................................... 267
40.1(b) Preserving a Deficiency Judgment After a Judicial Foreclosure on Immovable Property and Non-UCC9 Assets ........................................ 267
40.1(c) Exceptions to the Deficiency Judgment Act ............................................. 268
40.1(d) Preserving a Deficiency Judgment Under UCC9 ...................................... 269

Chapter 41 THE LOUISIANA VERSION OF UCC9 ................. 271

41.1(a) The Louisiana Version of UCC9 and of this Chapter’s Coverage of UCC9 .............. 271
Table of Contents

41.1(b) Items and Collateral That are Outside the Scope of Louisiana’s UCC9 .............................................. 271
41.1(c) The Security Agreement, the Financing Statement, and the “UCC 1” Form ............................................... 272
41.1(d) Where to File a Financing Statement In Louisiana and Where to Check the UCC9 Indices ................................. 273
41.1(e) UCC9 Security Interests and Collateral Mortgages ............... 273
41.1(f) Traps for the Unwary in Louisiana’s Version of UCC9 ............ 274
41.1(g) Fixture Filing Issues .................................... 274
41.1(h) Security Interests in Accounts Receivable ..................... 274
41.1(i) Security Interests in Life Insurance Policies .................... 275

Appendix

KEY CASES AND OTHER RESOURCES ..................... 277

Index .................................................. I-1
Index of Definitions and Abbreviations

AUTHOR’S NOTE: These definitions are intended to be abbreviated and incomplete; they are given as a way to easily find a more complete definition and description in the body of this work.

“Abstract of Title” is a compilation of documents obtained by a review of the public records as part of a title examination. See 23.2.

“Authentic Act” means a document signed in the presence of a notary public and two witnesses. C.C. art. 1833.

“C.C.” means the Louisiana Civil Code. Instead of citations in this book being “LSA-C.C. art. X” all citations are given as “C.C. art. X”

“C.C.P.” means the Louisiana Code of Civil Procedure. Instead of citations in this book being “LSA-C.C.P. art. X” all citations are given as “C.C.P. art. X”

“C.Cr.P.” means the Louisiana Code of Criminal Procedure. Instead of citations in this book being “LSA-C.Cr.P. art. X” all citations are given as “C.Cr.P. art. X”

“Collateral Mortgage” means a mortgage which secures a collateral mortgage note, which in turn is pledged to secure an obligation. See 13.4(a).

“Collateral Mortgage Note” means a note, secured by a mortgage, pledged to secure an obligation. See 13.4(a).

“Concursus Proceeding” is the Louisiana term for what federal law calls “interpleader” — a court battle over funds where multiple parties claim a right to the funds. C.C.P. art. 4651.

“Declinatory Exceptions” are Louisiana procedural objections that raise matters such as lack of subject matter jurisdiction, venue, and personal jurisdiction. C.C.P. art. 925. These objections can be waived if not timely raised. C.C.P. art. 928.

“Dilatory Exceptions” are Louisiana procedural objections that slow the process of a lawsuit, such as prematurity and vagueness. C.C.P. art. 926. These objections can be waived if not timely raised. C.C.P. art. 928.

“Executory Process” means Louisiana’s expedited foreclosure procedure. See Section 38.1(b).

“Fluctuating Line-of-Credit Loan” means a loan that operates like a credit card. The debtor may borrow money, pay it back, and borrow more, as long as the maximum outstanding at any time does not exceed the maximum limit set by creditor. See Sections 10.6(a) and 13.3(b).

“Future Advance Mortgage” means a mortgage that may secure funds to be lent in the future. See Section 13.3

“Hand Note” means evidence of advances in a collateral mortgage package. See Section 13.4(a).

“In Rem Mortgage” means a mortgage for which the debtor has no individual personal liability. See Section 12.11.

xxix
"Lien" is the common law term for the civilian concept of a “privilege.” See Section 28.
“Lien Claimant” means those entitled to a material’s lien, and in this book it specifically is used to refer to those who are entitled to claim a Private Works Act privilege. See Section 37.1.
“Marshalling of Assets” means ordering the seizure and sale of assets in a way that maximizes the return for all creditors who have a security interest in those assets. See Section 11.1(a).
“Material Defect” means a defect in the title to immovable property which indicates that litigation may be necessary to resolve that defect. See Section 23.1.
“Materialmen’s Lien” means a right claimed by workers and others who improve immovable property. See Chapter 37.
“Multiple Indebtedness Mortgage” is not defined in Louisiana statutes, but it is used by lawyers to refer to a mortgage granted under C.C. art. 3298 to secure more than one debt, to secure future advances, or to secure a fluctuating line-of-credit loan.
“Notice of Lis Pendens” means notice of a pending lawsuit involving immovable property. See Section 20.8(c), below.
“Paraph” refers to a stamp that a notary puts on a note to tie it to a mortgage. See Section 12.4(c).
“Prescription” is the Louisiana term for the statute of limitations.
“Privilege” is a statutory right given to a creditor which gives the creditor a right to seize and sell property. At the sheriff’s sale, the creditor obtains a claim to the proceeds of the sale; that claim is superior to the rights of unsecured creditors. See Section 28.
“PWA” means the Louisiana Private Works Act, R.S. 9:4801 et seq; see Chapter 37.
“Quit Claim Deed” means a sale made without any warranty. See Section 21.5(e).
“R.S.” means the Louisiana Revised Statutes. Instead of citations in this book being “LSA-R.S. X:X” all citations are given as “R.S. X:X”
“Security Device” means the lawful causes of preference available to Louisiana creditors to secure loans. See Sections 1.1(c) and 1.1(d).
“Third Parties” is the term used in this Précis to refer to what the Civil Code denotes as “third persons.” See Section 19.4, below.
“Third Party Possessor,” as used in this book, refers to “third possessors” as defined in C.C. art. 3315 et seq and as discussed in Section 21, below.
“Title Examination” is the process of collecting all pertinent documents relating to a tract of immovable property. See Section 23.1.
“Title Insurance” is an insurance policy issued by a company which agrees to pay up to the policy value if the title to immovable property has a material defect. See Section 23.1.
“Title Opinion” is the process of reviewing the papers and documents obtained in a title examination to ascertain the status of title to immovable property and to evaluate whether the title contains a material defect. See Section 23.1.
“Writ of Fieri Facias (writ of fi.fa.)” is the Louisiana mechanism by which a judgment creditor seizes property of a judgment debtor. C.C.P. arts. 2291 et seq.
NOTES ON EDITORIAL
CONVENTIONS USED IN THIS
BOOK

Direct quotations from Louisiana statutes, Civil Code articles, and Code of Civil Procedure articles have been italicized.

References to the Louisiana Civil Code are set forth as C.C. art ________.

References to the Louisiana Code of Civil Procedure are set forth as C.C.P. art ________.

References to the Louisiana Revised Statutes are set forth as R.S. ________.

Almost no cases have been cited by name in the text. At the end of this book there is an index, section by section, giving the citation of key cases.