

The Swamp Is Not So Scary: Demystifying Louisiana Law

**CLLA Southern Region
Conference**

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About the Firm

- Founded in 1937, Jones Walker is a full-service law firm with over 340 attorneys across 16 offices throughout the United States.
- Jones Walker is known for its deep roots in Louisiana and its expertise in a wide range of practices, including corporate, litigation, real estate, energy, and public finance.
- The firm serves a diverse client base, including multinational corporations, government entities, and small businesses, offering tailored solutions for complex legal challenges.



Overview

Demystifying Louisiana Terminology

Executory Process in Louisiana

The Creditor's "Toolbox"

- Louisiana's Prohibition on Self-Help
- Garnishment
- Charging Orders in Louisiana
- The Writ of Distringas

Louisiana and the UCC

Apples to Apples? Demystifying Louisiana Terminology

<u>Louisiana Term</u>	<u>Common Law Equivalent</u>
Immovable Property	Real Property
Movable Property	Personal Property
Servitude	Easement
Usufruct	Most equivalent to a life-estate, but broader in concept
Parish	County
Jurisprudence Constante	Stare Decisis
Warranty Against Redhibitory Defects	Warranty Against Latent Defects
Lesion Beyond Moiety	The right to rescind the sale of an immovable when the price is less than one half of the fair market value of the immovable.
Dation en paiement	Giving in Payment
Prescription	Statute of Limitations
Reconventional Demand	Counterclaim

Executory Process in Louisiana

- Executory process in Louisiana is an accelerated, summary procedure authorized under the Louisiana Code of Civil Procedure. It allows the holder of a mortgage or privilege, evidenced by an authentic act importing a confession of judgment, to effect an *ex parte* seizure and sale of the subject property without previous citation, contradictory hearing, or judgment.
- This process is designed to be simple, expeditious, and inexpensive, enabling creditors to seize and sell property upon which they have a mortgage or privilege.
- Executory process is considered a harsh remedy, requiring strict compliance with the letter of the law. Each step must be carried out precisely as outlined in the Louisiana Code of Civil Procedure and applicable jurisprudence.
- The Louisiana Code of Civil Procedure outlines specific requirements and protections to ensure due process for the debtor. The procedure is *in rem*, meaning it is directed against the property itself rather than the person, and no personal judgment is rendered against the debtor.

Initiating Executory Process



To initiate an executory process, the creditor must provide authentic evidence of the debt, the act of mortgage or privilege importing a confession of judgment, and any other necessary instruments to prove the right to use executory process. The trial judge must be convinced that these requirements are met before issuing an order for executory process.



The process begins with the filing of a petition for executory process. The petition must be supported by certain self-proving documents that are accurate and explicit in nature. Following amendments in 1989, not every document submitted in support of the petition needs to be in authentic form. Once the court grants the order, the property is seized and sold, with the proceeds credited against the indebtedness secured by the property. Unlike some other states, Louisiana does not allow for non-judicial foreclosure.

Debtor's Rights & Executory Process

- Debtors have protections under this process. They can arrest the seizure and sale of their property by filing an injunction if the debt is extinguished, the debt is legally unenforceable, or the procedural requirements for executory process have not been followed.
- This petition for injunction must be filed in the court where the executory proceeding is pending. Additionally, the law provides for certain delays in the process to benefit the debtor, although these delays have normally been waived by the debtor in the act establishing the security interest.



Judicial Mortgages in Louisiana

- In Louisiana, a judicial mortgage is a legal mechanism that allows a creditor to secure a judgment against a debtor by placing a lien on the debtor's immovable property.
- This general mortgage can be enforced against all property that the debtor currently owns or may acquire in the future.
- The validity and enforceability of a judicial is contingent upon proper recordation, which ensures that the mortgage is effective against third parties.



Judicial Mortgages in Louisiana: Formalities

- The jurisprudence in Louisiana has long established that recorded mortgages, whether judicial or conventional, maintain their priority based on the order of their recordation. This principle ensures that earlier recorded mortgages take precedence over those recorded later. Additionally, a judicial mortgage results from a bona fide judgment, even if rendered upon the confession of the defendant.
- Public policy and statutory provisions support the requirement of recording mortgages to avoid chaos and ensure clarity in property rights. This system of recordation has been in place since the early 19th century, emphasizing the importance of transparency and order in the enforcement of judicial mortgages.
- Judicial mortgages are ranked in accordance with their date of filing and will prime any later filed conventional or judicial mortgage.

Executing Judicial Mortgages in Louisiana

- In Louisiana, judicial mortgages are not foreclosed but must instead be executed upon by seizure and sale of subject proper under a writ of *fierī facias*.
- This writ must be petitioned for from a court of competent jurisdiction after all appeal delays have run on the judgement. The writ will direct the sheriff of the parish in which the property is located to affect a seizure of the property and sell it at a scheduled public auction.



Judgment Debtor Exams

- In Louisiana, judgment debtor examinations are governed by specific provisions in the Louisiana Code of Civil Procedure and related statutes. These examinations allow judgment creditors to investigate the assets and property of judgment debtors to facilitate the execution of judgments. The process includes the ability to examine third parties and obtain relevant financial documents, subject to certain limitations and protections for non-parties.
- Examinations are typically held in an anteroom at the courthouse. However, if necessary, the examining party can request that the examination be conducted in open court before the judge.
- The Louisiana judgment debtor examination process and procedure is similar to the judgment debtor processes and procedures in place in other jurisdictions.



Louisiana's Prohibition on Self-Help

- Except in very limited exceptional circumstances, Louisiana law does not permit self-help. Under ordinary circumstances, all seizures of property must be accomplished through judicial process. The limited exceptions are as follows:
 - La. Rev. Stat. ann. §6:966 permits the repossession of automobiles without notice or judicial process if the statute is complied with.
 - The Louisiana Supreme Court has carved out a narrow self-help exception for landlords where their tenants have unjustifiably abandoned the premises prior to the termination of the lease.
 - La. Rev. Stat. ann. §9:3330 also provides an exception to the prohibition on self-help for leased movables under certain limited circumstances.

Garnishment



Louisiana garnishment law is governed by the La. Code Civ. Proc. arts. 2411 through 2417, along with specific statutes such as La. Rev. Stat. ann. §13:3921, *et seq.*, which address garnishment of a debtor's wages.



The general principle underlying these provisions is that a creditor acquires no greater right against the garnishee than the debtor would have had. This means that the creditor can only claim what the debtor is entitled to from the garnishee.



Garnishments are initiated by petition the court for a writ of *fieri facias*, and for citation and service on the garnishee of garnishment interrogatories. The garnishee will be directed to turn over all monies of the judgment debtor to the parish sheriff who will then, after taking his fee, pay these funds over to the judgment creditor.

Charging Orders in Louisiana

In Louisiana, a charging order is a legal mechanism used to enforce a judgment against a debtor's interest in a partnership or limited liability company.

This order allows a creditor to receive distributions or payments that would otherwise be due to the debtor from the partnership or LLC. The charging order does not grant the creditor ownership or management rights in the entity; it merely entitles the creditor to the debtor's share of distributions until the judgment is satisfied. This legal tool is designed to balance the interests of creditors in collecting debts while protecting the operational integrity and management of the partnership or LLC.

The most significant issue with the use of charging orders in Louisiana is that they do not provide the creditor with the right to inspect the LLC's books, limiting their effectiveness as a collection tool.

This contrasts with other states which provide a greater level of authority to judgment debtors.

The Writ of Distringas

The writ of distringas in Louisiana is a legal remedy used to enforce judgments for specific performance. Authorized by La. Code Civ. Proc. art. 2501, *et seq.*, this writ is applicable when a judgment requires a party to perform or abstain from a particular action, and the party fails to comply with the judgment upon demand by the sheriff. The sheriff's certificate of the party's refusal or neglect allows the party in whose favor the judgment was rendered to obtain an order to distrain all the property, movable or immovable, of the defaulting party until the judgment is fully satisfied.

The writ of distringas is distinct from other enforcement mechanisms such as contempt of court. It excludes the power of the court to punish for contempt. Instead, it focuses on seizing the property of the non-compliant party to compel compliance with the judgment. The sheriff retains the seized property subject to court orders, and the writ can be revoked if the defendant proves compliance with the judgment and satisfies any related damages.

The writ of distringas is considered an extraordinary remedy, only to be applied in exceptional cases as defined by law and jurisprudence. It is not a common remedy and is subject to close limitations to ensure it is used appropriately. In some cases, the court may deny the writ if it finds that other remedies, like a money judgment, are more appropriate.

While formerly utilized in other jurisdictions, Louisiana appears to be the last state utilizing this writ to enforce orders for specific performance.

Louisiana and the UCC

Louisiana has adopted the Uniform Commercial Code (UCC), but not completely.

Louisiana has not enacted Articles 2 (Sales) and 2A (Leases).

Sales and leases under Louisiana law are still governed by the applicable articles of the Louisiana Civil Code.

Thank You!

Questions?

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