

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

August 28-29, 2015

Friday, August 28, 2015

Persons Present:

Abramson, Neil C.	Lavergne, Luke
Adams, Marguerite (Peggy) L.	Levy, H. Mark
Bergstedt, Thomas	Little, F. A., Jr.
Braun, Jessica	Lonegrass, Melissa T.
Breard, L. Kent	Lovett, John
Brister, Dorrell J.	Maloney, Marilyn
Burris, William J.	Mengis, Joseph W.
Carriere, Jeanne Louise	Morris, Glenn G.
Carroll, Andrea	Nathan, Max, Jr.
Crawford, William E.	Norman, Rick J.
Crigler, James C.	Odinet, Christopher
Cromwell, L. David	Pohorelsky, Peter
Cunningham, Mark A.	Popovich, Claire
Curry, Robert L., III	Reed, Angelique
Davidson, James J., III	Richard, Herschel, Jr.
Davrados, Nick	Richardson, Sally
Dawkins, Robert G.	Riviere, Christopher H.
Di Giulio, John E.	Robert, Deidre D.
Dimos, Jimmy N.	Scalise, Ron
Douguet, Andre	Simien, Eulis, Jr.
Domingue, Billy J.	Sole, Emmett C.
Foote, Elizabeth E.	Storms, Tyler
Forrester, William R., Jr.	Stuckey, James A.
Freel, Angelique	Talley, Susan G.
Frilot, Caroline	Thibaut, Martha
Garrett, J. David	Thibeaux, Robert P.
Gasaway, Grace B.	Title, Peter S.
Gregorie, Isaac M. "Mack"	Tooley-Knoblett, Dian
Hamilton, Leo C.	Tucker, Zeldia
Hargrove, Joseph L., Jr.	Veith, Rebekka
Hayes, Thomas M., III	Vetter, Keith
Haymon, Cordell H.	Villarrubia, M. Janice
Hebert, Christopher B.	Weems, Charles S., III
Hester, Mary C.	White, H. Aubrey, III
Holdridge, Guy	Wilder-Doomes, Erin
Jewell, John Wayne	Woodruff-White, Lisa
Knighten, Arlene D.	Yiannopoulos, A. N.
Kostelka, Robert "Bob" W.	Ziober, John David
Landry, Nancy	

On Friday, August 28, 2015 a meeting of the Council of the Louisiana State Law Institute at the Hotel Monteleone in New Orleans, Louisiana was called to order by the President, James C. Crigler, Jr. at 10:00 a.m.

The President began the meeting by having all present state their name and their hometown. He then informed the Council that Mr. L. David Cromwell, the Reporter of the Security Devices Committee, would be presenting materials from the Security Devices Committee. Mr. Crigler then yielded the floor to Mr. Cromwell.

Security Devices

Mr. Cromwell began his presentation by introducing a report to the Legislature that the Security Devices Committee had written in response to HCR No. 93 of 2012 entitled, "Louisiana State Law Institute, Security Devices Committee, Report to the Louisiana Legislature in Response to HCR No. 93 of 2012 Regular Session, 'Repossession of Collateral by Sureties'". The report detailed the Committee's studied response to the question whether sureties should be allowed to repossess collateral. After a brief explanation of the report, a motion was made to adopt the report as presented. The motion was seconded and after a few questions from the Council, the report was unanimously approved.

Thereafter, Mr. Cromwell began the body of his presentation by asking the members to turn their attention to the document that was made available prior to the meeting and was entitled, "Louisiana State Law Institute, Security Devices Committee, Revision of the Private Works Act, R.S. 9:4801 et seq., Avant-Projet No. 2, Prepared for Consideration by the Council, August 28, 2015". He began his presentation by giving a brief history of the Private Works Act ("Act"). Once he had completed his brief overview, Mr. Cromwell alerted the Council to the fact that they had already approved proposed revisions to R.S. 9:4809, 4811, and 4822.

He then moved on to the Sections that the Committee had approved but now required the approval of the Council. The first Section that he introduced was R.S. 9:4801. After a brief introduction, Mr. Cromwell asked that the "and" found on line 16 of page 4 be removed. The Council approved this edit. A member then moved for the adoption of the entire Section. This motion was seconded. After the Reporter answered some questions, the motion to adopt was revived. The Council asked Mr. Cromwell more questions, and he decided that he would like to include a comment to the Section making it clear that if a person does not comply with the penalty provisions of the Act, he would not lose his claim and/or privilege. The Reporter also agreed to have the Security Devices Committee reconsider the proposed language found on line 3 of page 4 of the main document. Again, the motion to adopt the Section was renewed and seconded. Thus, R.S. 9:4801 was approved—with the proviso that the Committee review the language of the first paragraph—to read as follows:

§ 4801. Improvement of immovable by owner; privileges securing
the improvement

~~The~~ Subject to their compliance with the provisions of this Part, the
following persons have a privilege on an immovable to secure the
following obligations of the owner arising out of a work on the
immovable:

(1) Contractors, for the price of their work.

(2) Laborers or employees of the owner, for the price of work
performed at the site of the immovable.

(3) Sellers, for the price of movables sold to the owner that become component parts of the immovable, or are consumed at the site of the immovable, or are consumed in machinery or equipment used at the site of the immovable.

(4) Lessors, for the rent of movables used at the site of the immovable and leased to the owner by written contract.

(5) Registered or certified surveyors or engineers, ~~or licensed architects, or their professional subconsultants,~~ employed by the owner, licensed architects employed by the owner, and the professional subconsultants of each of them, for the price of professional services rendered in connection with a work that is undertaken by the owner. ~~A "professional subconsultant" means a registered or certified surveyor or engineer or licensed architect employed by the prime professional, as described in this Paragraph. In order for the privilege of the professional subconsultant to arise, the subconsultant must give notice to the owner within thirty days after the date that the subconsultant enters into a written contract of employment. The notice shall include the name and address of the subconsultant, the name and address of his employer, and the general nature of the work to be performed by the subconsultant.~~

The Reporter then introduced the next Section, R.S. 9:4802. He stated that he would like to remove the word "or," as found on line 16 of page 6. The Council accepted this change. Mr. Cromwell then explained the Committee's reason for recommending the striking of Subsection G. Following this explanation a member of the Council moved that the Section be adopted as presented in the document. This motion was seconded. A question was then asked and quickly answered by the Reporter. Thereafter, the Council unanimously agreed that R.S. 9:4802 should read as follows:

§ 4802. Improvement of immovable by contractor; claims against the owner and contractor; privileges securing the improvement

A. ~~The~~ Subject to their compliance with the provisions of this Part, the following persons have a claim against the owner and a claim against the contractor to secure payment of the following obligations arising out of the performance of work under the contract:

(1) Subcontractors, for the price of their work.

(2) Laborers or employees of the contractor or a subcontractor, for the price of work performed at the site of the immovable.

(3) Sellers, for the price of movables sold to the contractor or a subcontractor that become component parts of the immovable, or are consumed at the site of the immovable, or are consumed in machinery or equipment used at the site of the immovable.

(4) Lessors, for the rent of movables used at the site of the immovable and leased to the contractor or a subcontractor by written contract.

(5) ~~Prime consultant registered~~ Registered or certified surveyors or engineers, ~~or licensed architects, or their professional subconsultants,~~ employed by the contractor or a subcontractor, licensed architects employed by the contractor or a subcontractor, and the professional subconsultants of each of them, for the price of professional services rendered in connection with a work that is undertaken by the contractor or subcontractor.

~~(a) A "professional subconsultant" means a registered or certified surveyor or engineer, or licensed architect employed by the prime consultant.~~

~~(b) For the privilege under this Subsection to arise, a prime consultant or professional subconsultant shall give written notice to the owner within thirty working days after the date that the prime consultant or professional subconsultant is employed. The notice shall include the name and address of the prime consultant or professional subconsultant, the name and address of his employer, and the general nature of the work to be performed by the prime consultant or professional subconsultant.~~

B. The claims against the owner under this Section shall be secured by a privilege on the immovable on which the work is performed.

C. The owner is relieved of the claims against him under this Section and the privileges securing them when the claims arise from the performance of a contract by a general contractor for whom a bond is given and maintained as required by R.S. 9:4812 and when notice of the contract with the bond attached is properly and timely filed as required by R.S. 9:4811.

D. Claims against the owner and the contractor granted by this Part are in addition to other contractual or legal rights the claimants may have for the payment of amounts owed them.

E. A claimant may assert his claim against either the contractor, his surety, or the owner without the joinder of the others. The claim shall not be subject to a plea of discussion or division.

F. A contractor shall indemnify the owner for claims against the owner arising from the work to be performed under the contract. A subcontractor shall indemnify the owner, the contractor, and any subcontractor from or through whom his rights are derived, for amounts paid by them for claims under this part arising from work performed by the subcontractor. A contractor who pays the claims of other claimants arising from work performed under the contractor's contract is legally subrogated to their contractual rights but may not assert by subrogation their claims against the owner arising under this Section or the privileges securing them. A subcontractor who pays the claims of other claimants arising from work performed on behalf of the subcontractor is legally subrogated to their contractual rights but may not assert by subrogation their claims against the owner or contractor arising under this Section or the privileges securing them.

~~G. (1) For the privilege under this Section or R.S. 9:4801(4) to arise, the lessor of the movables shall deliver notice to the owner and to the contractor not more than ten days after the movables are first placed at the site of the immovable for use in a work. The notice shall contain the name and mailing address of the lessor and lessee and a description sufficient to identify the movable property placed at the site of the immovable for use in a work. The notice shall state the term of rental and terms of payment and shall be signed by the lessor and lessee.~~

~~(2) For the privilege under this Section or R.S. 9:4801(3) to arise, the seller of movables shall deliver a notice of nonpayment to the owner at least ten days before filing a statement of his claim and privilege. The notice shall be served by registered or certified mail, return receipt requested, and shall contain the name and address of the seller of movables, a general description of the materials provided, a description sufficient to identify the immovable property against which a lien may be claimed, and a written statement of the seller's lien rights for the total amount owed, plus interest and recordation fees. The requirements of this Paragraph (G)(2) shall apply to a seller of movables sold for use or consumption in work on an immovable for residential purposes.~~

~~(3) In addition to the other provisions of this Section, if the seller of movables has not been paid by the subcontractor and has not sent notice of nonpayment to the general contractor and the owner, then the seller shall lose his right to file a privilege or lien on the immovable property. The return receipt indicating that certified mail was properly addressed to the last known address of the general contractor and the owner and deposited in the U.S. mail on or before seventy-five days from the last day of the month in which the material was delivered, regardless of whether the certified mail was actually delivered, refused, or unclaimed satisfies the notice provision hereof or no later than the statutory lien period, whichever comes first. The provisions of this Paragraph shall apply only to disputes arising out of recorded contracts.~~

Next, Mr. Cromwell introduced R.S. 9:4803, and told them that no change was suggested by the Committee. He then proceeded to R.S. 9:4806. After it was introduced, a member moved that the Section be adopted. This motion was seconded. Thereafter, some members of the Council posed some questions to the Reporter that he answered. Revised Statute 9:4806 was unanimously approved to read as follows:

§ 4806. Owner defined; interest affected

A. An owner, co-owner, naked owner, ~~owner~~ usufructuary, other holder of a ~~predial or personal~~ servitude, possessor, lessee, or other person ~~owning or~~ having the right to the use or enjoyment of enjoy an immovable or having an interest therein shall be deemed to be an owner under this Part.

B. The claims against an owner granted by R.S. 9:4802 are limited to the owner or owners who have contracted with the contractor ~~or~~ and to the any owner or owners who have agreed in writing to the price and work of the contract made by another owner and ~~of a lessee, wherein such owner or owners have specifically agreed in writing to be liable for any claims granted by the provisions of R.S. 9:4802. If more than one owner has contracted~~ or expressly agreed in writing to be liable, each shall be solidarily liable for the claims.

C. ~~The~~ A privilege granted by R.S. 9:4801 ~~and or~~ 4802 affects only the interest in or on the immovable enjoyed by the owner whose obligation is secured by the privilege. If that owner is a lessee or holder of a servitude or otherwise derives his interest in or on the immovable from another person, the privilege is inferior and subject to all rights of, and obligations owed to, that person.

D. The ~~privilege~~ privileges granted by this Part upon a lessee's rights in the lease or buildings and structures shall be inferior and subject to all of the rights of, or obligations owed to, the lessor, ~~including the right of the lessor to resolve~~ dissolve the lease for nonperformance of ~~its~~ the lessee's obligations, and to execute upon the lessee's rights and sell them in satisfaction of the obligations free of the ~~privilege~~ privileges under this Part. If a sale of the lease is made in execution of the claims of the lessor, the ~~privilege attaches~~ privileges under this Part attach to that portion of the sale proceeds remaining after satisfaction of the claims of the lessor.

As there were no suggested changes to R.S. 9:4807, the Reporter merely introduced it before passing on to R.S. 9:4808. Mr. Cromwell introduced the Section and a member of the Council moved for adoption of the Section. The motion was seconded. There were no questions addressed to the Reporter. The Section, R.S. 9:4808 was unanimously approved to read as follows:

§ 4808. Work defined

A. A work is a single continuous project for the improvement, construction, erection, reconstruction, modification, repair, demolition, or other physical change of an immovable located in this state or its component parts.

B. If written notice of a contract with a proper bond attached is properly filed within the time required by R.S. 9:4811, the work to be performed under the contract shall be deemed to be a work separate and distinct from other portions of the project undertaken by the owner. The contractor, whose notice of contract is so filed, shall be deemed a general contractor.

C. The clearing, leveling, grading, test piling, cutting or removal of trees and debris, placing of fill dirt, leveling of the land surface, demolition of existing structures, or performance of other work on land for or by an owner ~~or the owner's contractor~~, in preparation for the construction or erection of a building or other construction thereon to be substantially or entirely built or erected by a contractor, shall be deemed a separate work to the extent the preparatory work is not a part of the contractor's work ~~for the erection of the building or other construction~~. The privileges granted by this Part for the work described in this Subsection shall have no effect as to third persons acquiring rights in, to, or on the immovable before the statement of claim or privilege is filed.

D. This Part does not apply to:

(1) The drilling of any well or wells in search of oil, gas, or water, or other activities in connection with such a well or wells for which a privilege is granted by R.S. 9:4861 et seq.

(2) The construction or other work on the permanent bed and structures of a railroad for which a privilege is granted by R.S. 9:4901.

(3) Public works performed by the state or any state board or agency or political subdivision of the state.

After this action, the Reporter asked the Council to return its attention to R.S. 9:4809. He alerted the Council to two changes that the Committee has proposed subsequent to the Council's approval of the Section during the last Council presentation. Mr. Cromwell explained that the Committee recommended the addition of the word "that," as seen on line 11 of page 14 of the document, and "as to," found on line 13 of page 14. The Council moved that the Section be adopted as modified. This motion was seconded and adopted without any opposition. Revised Statute 9:4809 was approved to read as follows:

§ 4809. Miscellaneous definitions

For purposes of this Part:

() A business day is any day except for Saturdays, Sundays and other days on which the office of the clerk of court is closed in accordance with R.S. 1:55(E) in the parish of location of the immovable upon which work is to be or has been performed.

() A complete property description of an immovable is any description that, if contained in a mortgage of the immovable properly filed for registry, would be sufficient for the mortgage to be effective as to third persons.

() A professional subconsultant is a registered or certified surveyor or engineer, or a licensed architect, who is employed by another registered or certified surveyor or engineer or licensed architect.

() A qualified inspector is a registered or certified engineer or surveyor, a licensed architect, a building inspector employed by the municipality or parish in which an immovable being inspected is located, or a building inspector employed by a lending institution chartered under federal or state law.

The Reporter of the Security Devices Committee then reminded the Council that they had previously approved the proposed revisions to the next Section in the materials, R.S. 9:4811. As such, he asked the members of the

Council to turn their attention to R.S. 9:4812. He concisely introduced the Section. A member of the Council moved that it be adopted as presented in the materials. This motion was seconded. No questions were posited, and R.S. 9:4812 was approved to read as follows:

§ 4812. Bond required; terms and conditions

A. To be entitled to the benefits of the provisions of R.S. 9:4802(C), every owner shall require a general contractor to furnish and maintain a bond of a solvent, legal surety for the work to be performed under the contract. The bond shall be attached to the notice of the contract when it is filed. If the price of the work stipulated or reasonably estimated in the general contractor's contract exceeds one hundred thousand dollars, the bond shall be issued by a surety company licensed to do business in this state.

B. The amount of the bond shall not be less than the following ~~amounts or percentages of the price of the work stipulated~~ stated or estimated in the notice of contract:

~~(1) If the price is not more than ten thousand dollars the amount of the bond shall be one hundred percent of the price.~~

~~(2) If the price is more than ten thousand dollars but not more than one hundred thousand dollars the amount of the bond shall be fifty percent of the price, but not less than ten thousand dollars.~~

~~(3) If the price is more than one hundred thousand dollars but not more than one million dollars the amount of the bond shall be thirty-three and one-third percent of the price, but not less than fifty thousand dollars.~~

~~(4) If the price is more than one million dollars the amount of the bond shall be twenty-five percent of the price, but not less than three hundred thirty-three thousand three hundred thirty-three dollars.~~

C. The condition of the bond shall be that the surety guarantees:

(1) To the owner and to all persons having a claim against the contractor, or to whom the contractor is conventionally liable for work done under the contract, the payment of their claims or of all amounts owed them arising out of the work performed under the contract to which it is attached or for which it is given.

(2) To the owner, the complete and timely performance of the

contract unless such guarantee is expressly excluded by the terms of the bond.

D. The bond of a legal surety attached to and filed with the notice of contract of a general contractor shall be deemed to conform to the requirements of this part notwithstanding any provision of the bond to the contrary, but the surety shall not be bound for a sum in excess of the total amount expressed in the bond.

E. The bond given in compliance with this Part shall be deemed to include the following conditions:

(1) Extensions of time for the performance of the work shall not extinguish the obligation of the surety ~~but the surety who has not consented to the extensions has the right of indemnification under the original terms of the contract as provided by Article 3057 of the Civil Code.~~

(2) No other amendment to the contract, or change or modification to the work, or impairment of the surety's rights of subrogation made without the surety's consent shall extinguish the obligations of the surety, but if to the extent that the surety is materially prejudiced by the change or action ~~is materially prejudicial to the surety~~, the surety shall be relieved of liability to the owner, and shall be indemnified by the owner, for any loss or damage suffered by the surety.

(3) A payment by the owner to the contractor before the time required by the contract shall not extinguish the obligation of the surety, but the surety shall be relieved of liability to the owner, and shall be indemnified by the owner for any loss or damage suffered by the surety.

Mr. Cromwell then introduced R.S. 9:4813. A member of the Council moved that the Section be adopted. This motion was seconded. In response, the Reporter interjected that he will add an official comment to the Section that will make it clear that R.S. 9:4813 only applies to the general contractor's surety. Following this statement, R.S. 4813 was unanimously approved to read as follows:

§ 4813. Liability of the surety

A. The surety is liable without benefit of discussion or division.

B. If the total amount owed to persons to whom the surety is liable exceeds the total amount of the bond, the surety's liability shall be

discharged in the following order:

(1) First, and pro rata, to persons who preserve their claims in the manner required by R.S. 9:4822.

(2) Second, and in the order in which they present their obligations to the surety, to persons who do not preserve their claims as required by R.S. 9:4822 but to whom the contractor is otherwise liable.

(3) Third, to the owner.

C. The liability of the surety is not extinguished by a deficiency in the amount of the bond, the failure to attach the bond to the notice of contract, or the failure to file the notice as required by R.S. 9:4811.

D. An action shall not be brought against a surety, other than by the owner, before the expiration of the time specified by R.S. 9:4822 for claimants to file statements of their claims, unless a statement of the claim in the form required by R.S. 9:4822(G) is delivered to the surety at least thirty days prior to the institution of the action.

E. The surety's liability, except as to the owner, is extinguished as to all persons who fail to institute an action asserting their claims or rights against the owner, the contractor, or the surety within one year after the expiration of the time specified in R.S. 9:4822 for claimants to file their statement of claim or privilege.

F. A surety who pays a person to whom the surety is liable is legally subrogated to the person's contractual rights but may not assert by subrogation the person's claims or privileges arising under this Part.

Revised Statute 9:4820 was the penultimate Section presented by the Reporter. He gave a concise introduction to the Section, and then he stated that he will add an official comment to the Section explaining exceptions to the Statute. The Council approved this course of action and moved that the Section be adopted as presented. This motion was seconded and approved without opposition. Thus, R.S. 9:4820 was approved to read as follows:

§ 4820. Privileges; effective date

A. The Except as otherwise provided in this Part, the privileges granted by this Part arise and are effective as to third persons when:

(1) Notice of the contract is filed as required by R.S. 9:4811; or

(2) The work is begun by placing materials at the site of the immovable to be used in the work or conducting other work at the site of the immovable the effect of which is visible from a simple inspection and reasonably indicates that the work has begun. For these purposes, services rendered by a surveyor, architect, or engineer, or the driving of test piling, cutting or removal of trees and debris, placing of fill dirt, demolition of existing structures, and clearing, grading, or leveling of the land surface shall not be considered, nor shall the placing of materials having an aggregate price of less than one hundred dollars on the immovable be considered. For these purposes, the site of the immovable is defined as the area within the boundaries of the property.

B. If the work is for the addition, modification, or repair of an existing building or other construction, that part of the work performed before a third person's rights become effective shall, for the purposes of R.S. 9:4821, be considered a distinct work from the work performed after such rights become effective if the cost of the work done, in labor and materials, is less than one hundred dollars during the thirty-day period immediately preceding the time such third person's rights become effective as to third persons.

C. A person acquiring or intending to acquire a mortgage, privilege, or other right, in or on an immovable may conclusively rely upon an affidavit made by a ~~registered or certified engineer or surveyor, licensed architect, or building inspector employed by the city or parish or by a lending institution chartered under federal or state law, to the effect that states~~ he inspected the immovable at a specified time and work had not then been commenced nor materials placed at its site, provided the affidavit is filed within four business days after the execution of the affidavit, and the mortgage, privilege, or other document creating the right is filed before or within four business days of the filing of the affidavit. The correctness of the facts recited in the affidavit may not be controverted to affect the priority of the rights of the person to whom or for whom it is given, unless actual fraud by such person is ~~proven~~ proved. A person who gives a false or fraudulent affidavit shall be responsible for any loss or damage suffered by any person whose rights are adversely affected.

D. A person acquiring or intending to acquire a mortgage, privilege,

or other right under Subsection C of this Section shall have priority in accordance with R.S. 9:4821, regardless of whether work has begun or materials were delivered to the job site after the effective date and time of the affidavit, but prior to the recordation of the mortgage, privilege, or other right, provided that the document creating the right was filed before or within four business days of the filing of the affidavit.

E. If, following cancellation of a notice of contract in accordance with R.S. 9:4832(C), another notice of contract is filed, the date of the later filing shall be the date of filing of notice of contract for purposes of this Section.

The final Section that Mr. Cromwell presented to the Council was R.S. 9:4822. After reminding the Council that they had previously approved it during the Security Device Committee's last presentation, he returned the floor to the President of the Council, Mr. Crigler, at 11:54 a.m. At that time the President broke the meeting for lunch.

LUNCH

President James C. Crigler, Jr. called the Friday session back in at 1:35 PM on August 28, 2015 at the Monteleone Hotel in New Orleans, LA. During this afternoon's session, The Reporter, Mr. Max Nathan, Jr., represented the Successions and Donations Committee and presented materials regarding SCR 105 of the 2014 Regular Session, donations of usufructs and naked ownership, concurrence of an interdict, and detailed descriptive lists.

Successions & Donations

1. Mr. Nathan informed the Council that in 2014, the Legislature asked the Law Institute to study and make recommendations regarding Code of Civil Procedure Article 3121 and the requirement that security be posted by an attorney appointed by the court to administer a vacant succession. Mr. Nathan reported to the Council that after careful research, the Successions and Donations Committee wishes to report to the Legislature that this requirement does not cause a significant issue in current practice and in the rare case that it does, the court may use Code of Civil Procedure Article 3151 to reduce the amount of security required. After a motion and a second, the Council adopted the proposed Final Report to the Legislature.
2. Mr. Nathan next began discussing provisions which the Council had previously approved and which were brought before the Legislature as HB 1114 of the 2014 Regular Session. Several amendments in that bill drew opposition and the measure failed to pass. The Reporter is seeking the Council's approve to again recommend a few of these changes to the Legislature. The first change is to Civil Code Article 1522. The Committee is recommending a cosmetic change in light of a previous revision which mistranslated the French text. With little discussion, the Council approved.
3. The next proposed change is to Code of Civil Procedure Article 3396.9 regarding concurrence in an independent administration. Present law exempts tutors from formal proceedings when concurring in the independent administration of a succession. However, present law is silent regarding

interdicts. The Successions and Donations Committee is proposing the same lack of formality when a curator concurs in the independent administration of a succession for an interdict. The Council debated whether a special rule is needed when the curator is also the independent administrator. A motion to require the undercurator to concur when the curator is also the independent administrator failed to pass. Thereafter, the Committee's proposal was adopted.

4. The last proposal presented was the revision of Code of Civil Procedure Article 3396.18 regarding inventory and descriptive lists in the independent administration of successions. Mr. Nathan cited privacy concerns and the repeal of the state's inheritance tax as the impetus for this proposal. The Council's first concern was where the detailed descriptive list or inventory will be filed if it is created. The Council suggested that perhaps the notary should maintain the document. Mr. Nathan noted that Texas uses an affidavit system and each party to the proceeding is given a copy of the information, but it is not distributed publically.

5. The Council voted to add the word "sworn" before the words "detailed descriptive list" in the proposal.

6. The next issue revolved around the freedom of the press to access this information and the Louisiana Supreme Court's decision in the Copeland case. The argument is that if the document is filed, it is public and the press can obtain a copy, even if the court orders that it be sealed. The Council noted that filing is expensive and perhaps a better solution would be for the attorney to maintain the document without a requirement that it be filed. Members argued that these documents may be later in time for an accounting or other purposes; and therefore need to be maintained. Mr. Nathan agrees that the proposal must balance the privacy issues with the heirs need for information.

7. It was suggested that in Subsection C of the proposal, the committee separate the language for creditors and successors. Creditors may only obtain relevant information, but a successor may obtain the entire document. However, this amendment failed to pass.

8. The next motion before the Council was to require the court to seal the document if it is filed. Sealing would be automatic and not require a separate court order. This motion was approved and it was agreed that the Code of Civil Procedure Committee would assist in the drafting of appropriate language. However, after more discussion, the Council reconsidered the vote by which this motion passed and a substitute motion was offered to require the filing and the sealing of the document. Again, the Council struggled with the fact that sealing may not offer enough protection and should the law simply require that the documents be given to the parties. After more discussion, this motion failed.

9. At this point, the Reporter withdrew the proposal from consideration and agreed to bring it back to the committee for redrafting. However, several committee members wanted more guidance from the Council. Therefore, the Council passed a motion to help guide the committee in this endeavor. The motion stated that the sworn detailed descriptive list does not have to be filed, but it has to be furnished to the appropriate interested parties. The Council understood that some people would automatically receive the list while others would have to seek court permission.

CONCLUSION

The Council adjourned this meeting at 3:16 PM.

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

August 28-29, 2015

Saturday, August 29, 2015

Persons Present:

Bergstedt, Thomas	Landry, Ron J.
Breard, L. Kent	Lavergne, Luke
Burris, William J.	Levy, H. Mark
Carroll, Andrea	Little, F. A., Jr.
Crawford, William E.	Lonegrass, Melissa T.
Crigler, James C., Jr.	Mengis, Joseph W.
Cromwell, L. David	Morris, Ebony
Curry, Robert L., III	Norman, Rick J.
Davidson, James J., III	Odinet, Christopher
Dawkins, Robert G.	Popovich, Claire
Di Giulio, John E.	Richard, Herschel, Jr.
Dimos, Jimmy N.	Richard, Michael Jeb
Domingue, Billy J.	Riviere, Christopher H.
Foote, Elizabeth E.	Robert, Deidre D.
Freel, Angelique	Schonekas, McClain
Garrett, J. David	Simien, Eulis, Jr.
Gasaway, Grace B.	Sole, Emmett C.
Gregorie, Isaac M. "Mack"	Storms, Tyler
Hamilton, Leo C.	Talley, Susan G.
Hayes, Thomas M., III	Tooley-Knoblett, Dian
Haymon, Cordell H.	Tucker, Zelda
Hebert, Christopher B.	Veith, Rebekka
Hester, Mary C.	Vetter, Keith
Hogan, Lila T.	Villarrubia, M. Janice
Holdridge, Guy	White, H. Aubrey, III
Jewell, John Wayne	Woodruff-White, Lisa
Knighten, Arlene D.	Ziober, John David
Kostelka, Robert "Bob" W.	

On Saturday, August 29, 2015 the President of the Louisiana State Law Institute, James C. Crigler, Jr., called the meeting of the Council to order at 9:00 a.m. The meeting was held at the Hotel Monteleone in New Orleans, Louisiana.

The President began the meeting by introducing the Reporter of the Child Support Committee, Hon. Lisa Woodruff-White. Mr. Crigler then yielded the floor to Judge Woodruff-White.

Child Support

The Reporter, Hon. Lisa Woodruff-White, took the podium and began her presentation of the Child Support Committee materials at 9:00 a.m. She announced to the Council that she would be presenting two documents. The first was a report drafted by the Committee and was entitled, "Report to the Legislature in Response to HCR No. 156 of the 2012 Regular Session, Relative to Implementing Visitation Orders in Conjunction with Support Orders." The other document was entitled, "Proposed R.S. 13:3494, Child support; notice required in child support actions".

The Reporter introduced the Committee's report by giving the legal background of child support in Louisiana. She also stated that the Committee was happy with R.S. 9:315.25 and did not want to modify it. She then turned to the document entitled, "Louisiana State Law Institute, Child Support Committee, Report to the Louisiana Legislature in Response to HCR No. 156 of the 2012 Regular Session Relative to Implementing Visitation Orders in Conjunction with Support Orders, August 29, 2015, New Orleans, Louisiana". Judge Woodruff-White also informed the Council that she would add language to the report detailing how the Committee had considered the issue of deciding custody and visitation without the consent of all parties. The Council agreed to this course of action.

Judge Woodruff-White then asked the Council to consider the other document that was distributed in advance of the meeting, entitled, "Louisiana State Law Institute, Child Support Committee, Proposed R.S. 13:3494, Child support; notice required in child support actions, Prepared for the Meeting of the Council, August 29, 2015, New Orleans, Louisiana". She explained how the notice was intended to function and how it would be implemented by clerks of court. A motion was made to adopt R.S. 13:3494 as presented. This motion was seconded. Before this motion could be voted on, another member of the Council moved that the report be adopted. This motion was also seconded. Before either of these motions was voted on, a member of the Council asked the Reporter whether the Committee should modify R.S. 9:315.25 so that it would be clear that the notice is not mandatory, but, rather, directory in nature. The Reporter agreed to this suggestion. A member then moved that R.S. 13:3494 be recommitted to the Child Support Committee with instructions on how it should proceed. This motion was seconded, but failed to pass. Following this failed motion, another member of the Council moved to approve the report with the changes that Judge Woodruff-White had agreed to make during her presentation. A member of the Council asked whether the language of the notice could be made more colloquial so as to be readily understandable to a layman. The Reporter agreed to re-examine the language of the notice and attempt to simplify it. At this the Council unanimously approved the report and the notice as Judge Woodruff-White had agreed to modify them.

Security Devices

At 9:48 a.m. Mr. Cromwell, the Reporter of the Security Devices Committee, began the remainder of his presentation to the August 2015 Council by introducing the individual Sections of R.S. 9:4831. He first introduced Subsection A. A member of the Council moved that the Section be adopted as presented in the materials. This motion was seconded and met with unanimous approval. Thus, R.S. 9:4831(A) was approved to read as follows:

§ 4831. Filing; place of filing; contents

A. The filing of a notice of contract, notice of termination, statement of a claim or privilege, affidavit, or notice of pendency of action required or permitted to be filed under the provisions of this Part is accomplished when it is filed for registry with the recorder of mortgages of the parish ~~in which~~ of location of the immovable upon which work is to be or has been performed. The recorder of mortgages shall inscribe all such acts in the mortgage records.

Next, the Reporter briefly stated that the Security Devices Committee recommended that current Subsection B be struck. A motion was made to strike 9:4831(B), and this motion was seconded and passed without any objection. The reporter then asked the Council to consider the new language that the Committee proposed be used for Subsection B. After he introduced the proposed language, a member of the Council moved that the language be adopted as presented for Subsection B. This motion was seconded. A few questions were asked and any confusion was quickly resolved by the Reporter. Thereafter, R.S. 9:4831(B) was unanimously approved to read as follows:

§ 4831. Filing; place of filing; contents

[***]

~~B. For purposes of this Part, the recorder of mortgages includes the office of the clerk of court and ex officio recorder of mortgages.~~
-Each notice of contract, notice of termination of work, affidavit filed in accordance with R.S. 9:4820(C) or 9:4832(C), and other filing by an owner under this Part shall contain a complete property description of the immovable upon which the work is to be or has been performed. Each other filing under this Part shall contain either a complete property description of the immovable or another reasonable identification of the immovable. A statement of the name of the owner and the street address or mailing address of the immovable without more shall not be sufficient to meet the requirements of this Subsection.

Mr. Cromwell then asked the Council to consider Subsections C and D in tandem. He began by introducing Subsection C; however, a question by a member of the Council engendered much discussion. As a result, Mr. Cromwell agreed to consider adding language to R.S. 9:4831 that would make it clear that not having the *exact* name of the owner—as would be the case in a clerical error—would not be a fatal error so long as the necessary parties are put on notice. The Reporter of the Security Devices Committee voluntarily removed the two Subsections from further consideration by the Council promising that the Committee would review the Subsections in light of the Council's comments and resubmit them to the Council at a later date. The Council agreed to this course of action.

After he introduced R.S. 9:4832, the Reporter asked the Council to consider, in particular, Subsection C. They did so and a member moved that the Section be adopted as approved. This motion was seconded. Following one question and the Reporter's answer to it, the Council approved that R.S. 9:4832 should read as follows:

§ 4832. Cancellation of notice of contract

A. The recorder of mortgages shall cancel from his records a notice of contract upon written request of any person made more than thirty days after the filing of a notice of termination of work performed under the contract if:

(1) A statement of claim or privilege with respect to the work was not filed within the thirty day period; and

(2) The request contains or has attached to it the written concurrence of the contractor or a written receipt from the contractor acknowledging payment in full of all amounts due under the contract.

B. If the request for cancellation of a notice of contract does not contain or is not accompanied by the written concurrence or receipt of the contractor, but a statement of claim or privilege was not filed within the thirty day period, the recorder of mortgages shall cancel the notice of contract as to all claims and privileges except that of the contractor. The recorder of mortgages shall completely cancel the notice of contract from his records upon written request of any person if:

(1) The request is made more than sixty days after the filing of the notice of termination and the contractor did not file a statement of his claim or privilege within that time; or

(2) The request contains or is accompanied by the written concurrence of or a written receipt from the contractor acknowledging payment in full of all amounts due under the contract.

C. If a release of notice of contract signed by the owner and contractor is filed before the contractor begins work, as the beginning of work is defined by R.S. 9:4820, and the affidavit required by this Subsection is filed timely, the notice of contract will have no effect. The recorder of mortgages shall immediately cancel the notice of contract upon the filing of the release and an affidavit made by a qualified inspector, filed within four business days after the filing of the release, to the effect that he inspected the immovable at a specified time subsequent to the filing of the release and that work had not been commenced and no materials placed at the site.

As the final order of business, Mr. Cromwell introduced R.S. 9:4834 to the Council. Shortly thereafter a member moved that the modifications to the Section be adopted as recommended by the Committee. This motion was seconded. Thus, it was unanimously approved that R.S. 9:4834 should read as follows:

§ 4834. Notice of contract; cessation of effect, reinscription

The effect of filing a notice of contract ceases five years after it is filed, unless a written request for notice of its reinscription,

in the manner provided for the reinscription of mortgages, is properly and timely ~~made~~filed by an interested person ~~to~~with the recorder of mortgages in whose office the notice of contract is filed. A ~~request for~~ notice of reinscription may not be ~~made~~filed after the effect of the filing of the notice of the contract has ceased. The effect of reinscription shall cease five years after the ~~request for~~ notice of reinscription is filed unless a subsequent notice of reinscription is filed within that time.

Following this action the President, Mr. Crigler, called the meeting to a close. The meeting of the Council was adjourned at 10:36 a.m.

 1-19-16
Jessica Braun Date

 1/19/2016
Claire Popovich Date