

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

November 18-19, 2016

Friday, November 18, 2016

Persons Present:

Bergstedt, Thomas	Levy, H. Mark
Braun, Jessica	Little, F. A., Jr.
Breard, L. Kent	Lovett, John
Castille, Preston J., Jr.	Mcintyre, Edwin R., Jr.
Crawford, William E.	Medlin, Kay C.
Cromwell, L. David	Mengis, Joseph W.
Davidson, James J., III	Morris, Glenn G.
Davrados, Nick	Norman, Rick J.
Dawkins, Robert G.	Odinet, Christopher
Dimos, Jimmy N.	Philips, Harry "Skip", Jr.
Doguet, Andre	Richard, Herschel, Jr.
Domingue, Billy J.	Richardson, Sally
Ellison, David M., Jr.	Riviere, Christopher H.
Garofalo, Raymond E., Jr.	Roussel, Randy
Garrett, J. David	Sole, Emmett C.
Gelpi, Jeffrey	Talley, Susan G.
Gregorie, Isaac M. "Mack"	Thibeaux, Robert P.
Griffin, Piper D.	Title, Peter S.
Hayes, Thomas M., III	Varnado, Sandi S.
Hebert, Christopher B.	Weems, Charles S., III
Hester, Mary C.	Wilson, Evelyn
Hogan, Lila T.	Yiannopoulos, A. N.
Jewell, John Wayne	Ziober, John David
Knighten, Arlene D.	
Kostelka, Robert "Bob" W.	

President John David Ziober opened the Friday session of the November 2016 Council meeting at the Monteleone Hotel in New Orleans, LA at 10:00 AM. During today's session, Professor Christopher K. Odinet represented the Common Interest Ownership Regimes Committee and presented the Planned Community Act: Creation, Amendment, and Termination of the Community.

Common Interest Ownership Regimes

1. The Reporter began by reviewing with the Council the directive in Senate Concurrent Resolution No. 104 of the 2014 Regular Session of the Legislature which asked the Law Institute to study and make recommendations regarding state laws governing common interest ownership regimes, including but not limited to homeowners associations, condominium developments, townhomes, and real estate cooperatives. He reminded the Council that at the August meeting they approved Sections 2.1 and 2.2.
2. The Reporter directed the Council to page 21 of the materials to begin the discussion of Section 2.3 regarding the allocation of liabilities, surpluses, and voting rights. The Council discussed the prohibition of using cumulative voting, the fact that liability does not always equate to dollars, and the value in retaining uniform language. Section 2.3 was approved without amendment.

3. The Reporter explained proposed 2.4 and the exercise of development rights.

This is a deviation from the uniform act and will be a change in our law. The Condo Act provides a seven year period and the uniform act has no limit. The Committee struck a balance and is proposing rolling seven year periods. The Council requested the Committee consider requiring the declarant to give notice before exercising these rights and defining the term "record" as filed for registry. The Reporter agreed to make a new Subsection C to clarify when the rolling period begins and whether it may be interrupted. Subsection D provides different rules for common areas and lots. The Council discussed combining the rules, but ultimately determined to leave as presented. Finally, Subsection E was laboriously discussed and recommitted to address concerns involving the withdrawal of immovable property. The Reporter explained that the uniform law requires approval by eighty percent of owners, but the Committee is proposing a majority rule. It was suggested that lenders and developers need flexibility and consumers need protection.

4. Moving to proposed 2.5, the Reporter clarified that limited common areas are only used and enjoyed by certain individuals. The Council again voiced concerns about the term "record" when the intent is to have the reallocation indexed and they recommend including the owner's names in the document. The Reporter redrafted the language and the following was adopted:

2.5 Limited common areas

A. The declaration shall specify to which lot each limited common area is allocated. An allocation may not be altered without the consent of all of the lot owners whose lots are affected.

B. Except as otherwise provided in the declaration, a limited common area may be reallocated upon the request of all of the lot owners between or among whose lots the reallocation is made. When such request is made an amendment to the declaration containing the names of the requesting lot owners shall be executed by an authorized officer or agent of the association. The amendment shall be recorded in the names of the requesting lot owners and the association. Any expenses incurred by the association in accordance with this Section shall be borne by the requesting lot owners.

5. Before recessing for lunch, Director Bill Crawford read the obituary for member Richard Finley "Dick" Knight (copy attached) and the Council adopted a motion to make it part of the minutes and notify the family of this action.

6. In Section 2.6, the Reporter offered a change to Subsection A(4) to closely track the definition of a leasehold planned community. The general discussion of this Subsection included concerns in relation to substantial compliance, the use of non-civilian terms, the necessary reference to R.S. 33:5051, and the added value of maintaining uniform language. The Council adopted the following:

2.6 Plats

A. Plats are a part of the declaration, and are required for all planned communities pursuant to 2.2(A)(5). Each plat shall be clear and legible, and shall show the following:

(1) The name and a survey of the entire planned community, including the designation of all lots, commons areas, and limited common areas.

(2) The extent of any encroachments by or upon any portion of the planned community.

(3) A depiction of all servitudes benefiting or burdening any portion of the planned community, to the extent platable.

(4) In the case of a leasehold planned community, a legal description of all immovable property subject to a lease, the expiration or termination of which will terminate the planned community or reduce its size.

(5) The distance between non-contiguous parcels of immovable property comprising the planned community.

(6) A general schematic map of any immovable property that may be added to the planned community pursuant to a development right.

(7) All other matters required by R.S. 33:5051.

7. The Reporter did not seek Council approval of 2.6(B) at this time, so the discussion turned to 2.6(C), (D), and (E). With little discussion, the following were adopted:

C. Upon exercising any development right to add immovable property to the planned community, the declarant shall record a plat of the additional movable property that conforms to the requirements of Subsection A of this Section.

D. Unless otherwise provided in the declaration or on the plat, ownership of the common areas and limited common areas shall be conveyed by operation of law to the association when both the declaration has been filed for registry and incorporation of the association has occurred.

E. A plat required by this Section shall be made by a licensed land surveyor of this state.

8. Proposed 2.7(A) was explained and the Reporter agreed to make parallel changes regarding the language applicable to indexing and the Council launched into a debate about requiring a writing. They reasoned that the relocation of a boundary does not convey ownership and other law will be applicable and provide guidance relative to an actual conveyance. However, in Subsection 2.7(B), the association owns the common area that is relocated and a transfer of title is needed. Should this be self-operative? The Reporter agreed to present this question to the committee and provide a comment for clarification. Therefore, this Subsection was recommitted and 2.7(C) was adopted without discussion.

9. After a short recess, the Reporter presented Sections 2.8, 2.9, and 2.10 and they were adopted with little discussion. They will read as follows:

2.8 Subdivision of lots

A. Except as otherwise provided in the declaration or other provisions of law, a lot may be subdivided into two or more lots upon the request of a lot owner. Upon such request, an amendment containing the name of the lot owner shall be executed by an authorized officer or agent of the association. The amendment to the declaration shall be recorded and indexed in the name of the requesting lot owner and the association.

B. The amendment to the declaration shall include the plat subdividing that lot, assign an identifying letter, name, or number to each lot created, and reallocate to the new lots the common expense liabilities, common surpluses, and voting rights in the association formerly allocated to the subdivided lot in any reasonable manner prescribed by the owner of the subdivided lot, unless the declaration requires a basis for reallocation.

C. Any expenses incurred by the association in accordance with this Section shall be borne by the requesting lot owner.

2.9 Use for sales purposes

Subject to the provisions of the declaration, a declarant may maintain sales offices, management offices, and models on lots that he owns, and he may erect signs advertising the planned community on the common areas. This Section is subject to other provisions of law and local ordinances.

2.10 Servitude and use rights

A. Subject to the declaration, a declarant has a personal servitude of use on and through the common areas as may be reasonably necessary for the purpose of discharging obligations or exercising special declarant rights, whether arising under this Part or reserved in the declaration.

B. Subject to the declaration and rules, the lot owners have a right to use the common areas that are not limited common areas for the purposes for which they were intended.

10. The last Section presented today was 2.11 relative to amendments to the declaration. Subsection A provides the general threshold of sixty-seven percent. Subsections B and C require a higher threshold of eighty percent to create a special declarant right or limit permitted uses as a consumer protection measure. Subsection E is new to the uniform law and is based on Connecticut law. Lenders are protected by this provision.

During the discussion of Subsection 2.11(G), the Reporter agreed to add the index rule to previously approved Section 2.1. The Council found several issues with Subsection H and recommitted it for the Committee to consider the underlying policy of having a preemptive period, the running of the period, the effect of fraud, procedures for title examiners, and possibly limiting it to procedural issues only.

The meeting of the Council was adjourned.

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

November 18-19, 2016

Saturday, November 19, 2016

Persons Present:

Adams, E. Pete
Bergstedt, Thomas
Braun, Jessica
Breard, L. Kent
Castille, Preston J., Jr.
Crawford, William E.
Cromwell, L. David
Davidson, James J., III
Dawkins, Robert G.
Dimos, Jimmy N.
Doguet, Andre
Domingue, Billy J.
Garrett, J. David
Gregorie, Isaac M. "Mack"
Hayes, Thomas M., III
Hester, Mary C.
Hogan, Lila T.

Knighten, Arlene D.
Kostelka, Robert "Bob" W.
Levy, H. Mark
Little, F. A., Jr.
Mcintyre, Edwin R., Jr.
Medlin, Kay C.
Mengis, Joseph W.
Norman, Rick J.
Richard, Herschel, Jr.
Richardson, Sally
Scalise, Ronald J., Jr.
Smith, Gary L., Jr.
Sole, Emmett C.
Tate, George J.
Ziober, John David

President John David Ziober opened the Saturday session of the November 2016 Council meeting at 9:00 AM on November 19, 2016 at the Monteleone Hotel in New Orleans, LA. During this session, Professor Ronald J. Scalise represented the Successions and Donations Committee and presented materials regarding legislative reports and inventory and detailed descriptive lists in the independent administration of successions.

Successions and Donations

1. Professor Scalise started his presentation with the history of Senate Concurrent Resolution No. 63 of the 2016 Regular Session. The Resolution asked the Law Institute to study and make recommendations regarding the feasibility of whether revisions to present law are necessary in light of other states' laws that expressly authorize a testator to refer, in his testament, to a written statement or list in order to dispose of certain items of corporeal movable property. The Uniform Probate Code allows for an incorporation by reference, but it has been problematic. The Committee believes that our present olographic will requirements already allow for easy additions to testaments and recommends against introducing this common law doctrine and its issues in this state. With little discussion, this report was adopted.

2. Professor Scalise next presented the report on House Concurrent Resolution No. 131 of the 2012 Regular Session. This Resolution asked the Institute to study the testamentary disposition of the right to bring a survival action pursuant to Civil Code Article 2315.1. He reminded the Council of the complex nature of this subject matter and the fact that the Council approved a Subcommittee of the Successions Committee for added expertise in this area. Present law provides that the right of a decedent to sue in tort for his injury falls outside of the succession and to an enumerated list of persons. The Subcommittee of tort

experts and the Successions Committee recommend no changes to present law. The Committees reasoned that we have other assets which fall outside of the succession, C.C. Art. 2315.1 models C.C. Art. 2315.2 and is beneficial for settlement purposes, and under the present scheme, it is not accessible to creditors. Without further discussion, the Council approved the report to the Legislature.

3. The final material presented by Professor Scalise is the Committee's recommendation regarding the filing and sealing of a detailed descriptive list in independent administrations. At the last presentation of this material in January, the Council voted to require the filing of the detailed descriptive list and have it sealed only upon request. The Council was immediately concerned about the order of the proposed Article. Many felt that the sealing language should appear before the distribution language. There were also concerns with the withholding of information if this is not a public document and the timing of a request to seal. The Council discussed at length the problems which may arise once an independent administrator is discharged and many years later the law requires him to furnish information he may no longer possess.

4. Hearing this displeasure, Professor Scalise offered a redraft:

A. Before the succession can be closed and the independent administrator discharged, there must be filed an inventory or sworn detailed descriptive list of assets and liabilities of the estate verified by the independent administrator.

B. The detailed descriptive list shall be sealed upon the request of a succession representative, heir, legatee, or creditor of the estate.

C. If the detailed descriptive list is sealed, a copy of it shall be provided to the decedent's universal successors and surviving spouse. The court may order the independent administrator to furnish relevant information regarding assets and liabilities of the estate to a particular legatee or a creditor of the estate.

5. Again, the Council was concerned with discharged administrators, the meaning of "relevant", whether access should be broadened to include any interested party, and the fact that the court should not be an attorney's filing cabinet. The Council also debated allowing a successor of a legatee to seek the release of this information. The Council was reminded that attorneys in the practice will begin advising clients if the law changes and many of these concerns may be eliminated. Finally, the question was called and the following was adopted:


A. Before the succession can be closed and the independent administrator discharged, there must be filed an inventory or sworn detailed descriptive list of assets and liabilities of the estate verified by the independent administrator.

~~B. A successor shall not be placed in possession of property without the filing of an inventory or sworn descriptive list of assets and liabilities. The successor may be placed in possession by a final or partial judgment of possession.~~ The detailed descriptive list shall be sealed upon the request of an independent administrator, an heir, or a legatee.

C. If the detailed descriptive list is sealed, a copy shall be provided to the decedent's universal successors and surviving spouse. Upon motion of any successor, surviving spouse, or creditor of the estate, the court may furnish relevant information contained in the detailed descriptive list regarding assets and liabilities of the estate.

6. The Council next questioned the proposed Revision Comment in the materials. However, it was explained that these are Reporter's Notes and they will not appear in the bill, therefore Council approval is not required.

7. The meeting adjourned.



Jessica Braun

4-5-17

Date