

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

November 17-18, 2017

Friday, November 17, 2017

Persons Present:

Adams, Marguerite (Peggy)
Amond, Kristen D.
Amy, Jeanne L.
Bergstedt, Thomas
Braun, Jessica
Breard, L. Kent
Castle, Marilyn
Crawford, William E.
Crigler, James C., Jr.
Cromwell, L. David
Davidson, James J., III
Dawkins, Robert G.
Dimos, Jimmy N.
Gregorie, Isaac M. "Mack"
Hamilton, Leo C.
Hayes, Thomas M., III
Hogan, Lila T.
Jewell, John Wayne
Johnson, Pamela Taylor
Kostelka, Robert "Bob" W.
Lavergne, Luke

Lawrence, Quintillis Kenyetta
Little, F. A., Jr.
McIntyre, Edwin R., Jr.
Mengis, Joseph W.
Morris, Glenn G.
Norman, Rick J.
Philips, Harry "Skip", Jr.
Pohorelsky, Peter
Richard, Herschel, Jr.
Richardson, Sally
Riviere, Christopher H.
Robertson, Alex T.
Sole, Emmett C.
Spaht, Katherine
Talley, Susan G.
Tate, George J.
Thibeaux, Robert P.
Vetter, Keith
Waller, Mallory
White, H. Aubrey, III
Ziober, John David

President David Ziober called the November 2017 Council meeting to order at 10:00 a.m. on Friday, November 17, 2017. After asking the Council members to briefly introduce themselves, the President presented a proposed amendment to the Law Institute's By-Laws concerning the creation of the position of Assistant Director as an administrative officer of the Law Institute, which was unanimously adopted as reflected in the attached resolution dated November 20, 2017. The President then called on Mr. L. David Cromwell, Reporter of the Security Devices Committee, to present proposed revisions to the Private Works Act.

Security Devices Committee

Mr. Cromwell began his presentation by informing the Council that the Security Devices Committee was nearing the end of its comprehensive revision of the Private Works Act and that the materials to be considered today included only those provisions from Avant-Projet No. 4 that had been approved by the Committee but had not yet been presented to the Council. He then directed the Council's attention to proposed R.S. 9:4804, on page 6 of the materials, and explained that although this provision was entirely new, it has its source in a variety of provisions that can be found on pages 7 and 8. The Reporter explained that R.S. 9:4804 was drafted to satisfy the concerns of general contractors regarding their lack of knowledge that Private Works Act claimants, including lessors, subsubcontractors, and suppliers, are not being paid for their performance on the jobsite. He noted that under the 1981 Act, lessors were required to provide notice to the contractor, and this notice requirement was later expanded to apply to suppliers and to surveyors, engineers, architects, and each of their subconsultants. Mr. Cromwell further explained that the penalty under existing law for failing to provide such notice is that each of these claimants will

lose their rights under the Private Works Act. He also noted that the imposition of this penalty creates traps for the unwary because these notice requirements are presently scattered throughout the Private Works Act. As a result, Mr. Cromwell reminded the Council that he had previously reported that the Committee was undertaking the task of including all of these notice requirements in a single provision.

With that introduction, the Reporter explained that Subsection A is existing law and applies to surveyors, engineers, architects, and their subconsultants, each of whom is required to provide notice to the owner unless the claimant is directly engaged by the owner. It was then moved and seconded to adopt Subsection A as presented, at which time one Council member questioned whether the 30-day period on line 7 of page 6 was the same under current law. The Reporter answered in the affirmative, and the Council member then questioned whether this time period consistently applied with respect to all Private Works Act claimants. After explaining that not all claimants are required to provide notice to the owner or contractor, the Reporter answered in the negative, explaining that under Subsection B, lessors are subject to a 20-day period, which the Committee extended from 10 days under existing law. Further discussion ensued, during which the Reporter and other Council members explained that the time periods included in this provision were the product of extensive policy debate and compromise at the Committee level by representatives of contractors and of each type of Private Works Act claimant.

Another Council member then questioned why "entitled" was used in R.S. 9:4804, on lines 4 and 13 of page 6, but "granted" was used in R.S. 9:4805, on line 5 of page 9. After considering whether to replace "granted" with "entitled" in the latter provision, the Council ultimately decided not to change this language. A member of both the Council and the Committee then questioned the necessity of the reference to R.S. 9:4801(5), on line 4 of page 6, in light of his understanding that R.S. 9:4801 applies to those claimants who are in privity of contract with the owner, whereas R.S. 9:4802 applies to those claimants who are not in privity of contract with the owner. The Reporter responded by explaining that this interpretation had indeed been correct under the 1981 Act as originally enacted but that it was no longer entirely accurate because prime consultants, who are not in privity of contract with the owner, are nevertheless granted a privilege under R.S. 9:4801. As a result, the Council agreed that the reference to R.S. 9:4801(5) should remain in Subsection A. The President then questioned the meaning of "being engaged" on line 7 of page 6, and the Reporter reminded the Council that it had previously decided to use the term "engaged" as opposed to "employed." The President provided the example of a consultant who verbally agrees to perform work on a jobsite and later executes a written contract to that effect, and he questioned whether the 30-day time period would run from the verbal agreement or from the execution of the written contract. Mr. Cromwell responded that this issue is one that would likely need to be determined by the courts but that he believed there was a provision of law stating that when the parties contemplate a written contract, any applicable time periods run from the execution of the contract rather than the previous verbal agreement.

Another Council member then suggested that, rather than repeating "registered or certified surveyors and engineers and licensed architects" throughout the Act, perhaps these claimants could simply be defined in R.S. 9:4810 as "prime consultants," much like "professional subconsultants" are defined on line 19 of page 13. The Reporter agreed to draft such a definition and present it to the Committee for consideration. Other Council members then questioned whether consultants who were not registered, certified, or licensed would nevertheless have a claim and privilege under the Private Works Act, and the Reporter responded in the negative, citing a Second Circuit decision holding that a contractor who was not licensed was not entitled to a privilege under the Private Works Act regardless of how well he performed the work at issue. Another Council member agreed with this result, explaining that from a public policy perspective, we should encourage professionals to follow applicable registration, certification, and licensure requirements. At this time, a vote was

taken on the motion to adopt R.S. 9:4804(A) as presented, and the motion passed with no objection.

Mr. Cromwell then explained that Subsection B of R.S. 9:4804, beginning on line 13 of page 6 of the materials, sets forth the notice required to be provided by lessors who are not leasing directly to the owner – a requirement that exists under current law, which is reproduced on line 26 of page 7. He also explained that the policy reason behind requiring lessors to provide notice under both this provision and existing law is that determining which equipment on a jobsite is leased as opposed to owned is very difficult, if not impossible, for the owner and contractor to do without some sort of notice as to the existence of the lease. The Reporter then noted that the Committee had extended the 10-day time period under existing law to 20 days after lessor representatives explained that practically speaking, 10 days is so short a timeline that lessors are proceeding as though they do not have lien rights in Louisiana because the notice requirements are too onerous.

With respect to Paragraph (B)(1) specifically, Mr. Cromwell explained that lessors are required to provide notice of the existence of a lease to the contractor and also to the owner if a notice of contract has been timely filed. He also explained that the notice is required to contain information sufficient for the contractor and owner to identify the parties and the equipment subject to the lease. The Reporter then explained that rather than imposing a mandatory 10-day time period within which notice must be provided like existing law, Paragraph (B)(1) provides that if the lessor does not provide notice within 20 days of the placement of the leased equipment on the jobsite, the lessor will lose his claim and privilege with respect to any rents that accrued prior to the date on which notice was given. At this time, it was moved and seconded to adopt Paragraph (B)(1) as presented, and a Council member questioned whether the notices required by this provision were allowed to be given electronically. The Reporter then explained that the Committee was still considering a number of provisions that would provide for the mechanics of giving notice under the Private Works Act, and that one of those provisions dealt specifically with electronic notice. A member of both the Committee and the Council then questioned whether the notice must be given to the contractor who entered into the lease with the lessor, and the Reporter explained that the last sentence of the provision, on lines 20 and 21 of page 6, specifies that no notice is required to be given to a person who is a party to the lease. A vote was then taken on the motion to adopt R.S. 9:4804(B)(1) as presented, and the motion passed with no objection.

Mr. Cromwell next explained that Paragraph (B)(2) of R.S. 9:4804, beginning on line 23 of page 6 of the materials, requires a lessor to respond within 15 days of a request made by the owner or contractor with a description sufficient to identify leased equipment that has been placed and is still located on the jobsite. He also explained that if the lessor fails to provide a timely and accurate response to such a request, the lessor will lose his claim and privilege to the extent of any damages suffered by the owner or contractor as a result of the lessor's failure to respond. Mr. Cromwell noted that such damages could include, for example, the amount of money that the owner or contractor would have withheld to pay the lessor had the owner or contractor known that the leased equipment was on the jobsite. After one Council member suggested replacing "movable property that has" with "movables that have" on line 25 of page 6, it was moved and seconded to adopt R.S. 9:4804(B)(2) as amended, and the motion passed with no objection.

The Reporter then asked Council members to turn to Subsection C of R.S. 9:4804, beginning on line 33 of page 6 of the materials, and explained that this provision was the most controversial at the Committee level. Mr. Cromwell explained that existing R.S. 9:4802(G)(3), which is reproduced on line 5 of page 8, requires an unpaid supplier to send notice of nonpayment to the general contractor and owner within 75 days of the last day of each month in which materials were delivered to the jobsite. If the supplier fails to do so, the supplier "shall lose his right to file a privilege or lien" but not his right to file the claim itself,

which the Reporter explained certainly could not have been the intent of the 1981 drafters. As a result, the Committee decided to include the substance of existing R.S. 9:4802(G)(3) in Paragraph (C)(1) of proposed R.S. 9:4804 but to provide clarity with respect to these notice requirements. For example, the Reporter explained that Paragraph (C)(1) requires the supplier to provide the owner and contractor with notice of nonpayment within 75 days of the last day of the month in which movables were delivered, meaning that if materials were delivered to the jobsite on January 2nd, the supplier must provide notice of nonpayment within 75 days of January 31st, or he will lose his right to file a claim and privilege for the price of the movables. Mr. Cromwell then explained that under Paragraph (C)(2), a supplier is only required to provide one 75-day notice of nonpayment to the owner and contractor, because after one such notice is given, the owner and contractor have been made aware that the supplier is delivering materials to the jobsite and should bear the burden of requesting statements of amounts owed under proposed R.S. 9:4805.

At this time, it was moved and seconded to adopt R.S. 9:4801(C)(1) as presented. One Council member questioned why the Committee chose 75 days as the time period applicable to suppliers, and the Reporter responded that not only is this the time period under existing law, but when the Committee discussed shortening this time period to 45 days, supplier representatives objected due to concerns with respect to billing and invoicing procedures. Additionally, Committee members were also persuaded by the fact that although this time period is 75 days, an owner and contractor can at any time request statements of any amounts owed to suppliers under proposed R.S. 9:4805. Other Council members noted that Paragraph (C)(1) does not require the notice of nonpayment to state the time and place of delivery of materials, nor does it include any sort of form notice for suppliers to use. One Council member then questioned what would happen in the event that a notice of contract was not timely filed as is required on line 33 of page 6, and the Reporter explained that the owner and contractor would not be entitled to receive a 75-day notice from suppliers but could nevertheless request from them statements of amounts owed under proposed R.S. 9:4805. He also explained that the Committee engaged in extensive debate over whether to expand this provision to apply with respect to all owners and contractors, not just those who had timely filed notice of contract, but that the Committee ultimately determined that it would be too difficult for suppliers to identify owners in the absence of a filed notice of contract providing this information.

Another Council member questioned whether owners can ever pay twice under the Private Works Act, and, if so, whether there are protections in favor of owners in place. The Reporter responded that this is the very risk of the Act but that if the owner files a notice of contract and supplies a proper bond before work begins, the owner will be protected unless the surety becomes insolvent. Other Council members questioned the applicability of this issue in the context of residential works, to which a member of both the Committee and the Council responded that when the Committee discussed this issue, members noted that they had only ever seen one residential bond filed because doing so is cost prohibitive. The Reporter then explained that there is another Act within the Private Works Act – the Residential Truth in Construction Act, R.S. 9:4851 et seq. – which requires the contractor in a residential setting to provide the owner with notice as to the lien rights of every contractor, subcontractor, consultant, supplier, and others who perform work on the property but provides for no loss of lien in the event that notice to the owner is not properly given. The Reporter then suggested that perhaps the Committee should review the provisions of the Residential Truth in Construction Act for purposes of ensuring that no additional revisions should be made.

At this time, a vote was taken on the motion to adopt R.S. 9:4804(C)(1) as presented, and the motion passed with no objection. It was also moved and seconded to adopt Paragraph (C)(2) as presented, and that motion also passed with no objection. R.S. 9:4804 as adopted by the Council reads as follows:

§4804. Notices required of certain claimants

A. To be entitled to a claim arising under R.S. 9:4801(5) or a claim under R.S. 9:4802(A)(5) and the privilege securing the claim, registered or certified surveyors and engineers, licensed architects, and their professional subconsultants, shall deliver written notice to the owner within thirty days after the date of being engaged in connection with the work. The notice shall include the name and address of the claimant, the name and address of the person who engaged the claimant, and the general nature of the work to be performed by the claimant. No notice is required under this Subsection by a person who is directly engaged by the owner.

B.(1) To be entitled to a claim arising under R.S. 9:4802(A)(4) and the privilege securing the claim, the lessor of movables shall deliver to the contractor, and also to the owner if notice of contract has been timely filed, a notice that the lessor has leased or intends to lease movables to a contractor or subcontractor for use in the work. The notice shall include the name and address of the lessor, the name and address of the lessee, and a general description of the movables. If the notice is delivered more than twenty days after movables leased by the lessor are first placed at the site of the immovable, the claim and privilege of the lessor shall be limited to rents accruing after the notice is given. No notice is required to be delivered under this Paragraph to a person who is a party to the lease.

(2) Within fifteen days after receipt of a request from the owner or contractor, the lessor having a claim and privilege under R.S. 9:4802(A)(4) shall provide the person making the request with a description sufficient to identify all movables that have been placed at the site of the immovable for use in the work. The lessor's response need not identify movables which are no longer located at the site and for which no amounts are owed to the lessor. A lessor's failure to give a timely and accurate response to a request made under this Paragraph shall extinguish the lessor's claim and privilege under R.S. 9:4802(A)(4) to the extent of any damages suffered by the person making the request as a result of the failure or inaccuracy.

C.(1) If notice of contract has been timely filed, the seller of a movable sold to a subcontractor shall deliver to the owner and contractor notice of nonpayment of the price of the movable no later than seventy-five days after the last day of the calendar month in which the movable was delivered to the subcontractor. The notice shall include the name and address of the seller, the name and address of the subcontractor, a description of the movable, and a statement of the unpaid balance of the price owed to the seller for the movable. Except as otherwise provided in Paragraph (2) of this Subsection, a seller who does not deliver to both the owner and contractor notice of nonpayment of the price of a movable when required to do so under this Subsection shall not be entitled to a claim or privilege under this Part for the price of the movable.

(2) A seller who sells movables to a subcontractor shall not be required to deliver a notice under Paragraph (1) of this Subsection on more than one occasion with respect to amounts owed or to be owed by that subcontractor in connection with a work. After one such notice has been given to an owner and contractor, no further notices under this Subsection shall be required with respect to any movables sold at any time by the seller to that subcontractor in connection with the work, regardless of whether or when the amounts claimed in the notice are paid.

Mr. Cromwell then asked Council members to turn to R.S. 9:4803, on page 4 of the materials, and informed them that with the exception of a few technical changes, the Council had previously approved this provision. He explained that in addition to the citation changes on lines 13, 14, and 34 of page 4, an introductory phrase was added in Subsection B, on line 33 of the same page, to signal that the claims or privileges granted to lessors might be limited by the provisions of R.S. 9:4804. A motion was made and seconded to adopt the proposed changes to R.S. 9:4803(A) and (B) as presented, and the motion passed with no objection. The adopted proposals read as follows:

§4803. Amounts secured by claims and privileges

A. The privileges granted by R.S. 9:4801 and the claims granted by R.S. 9:4802 secure payment of:

(1) The principal amounts of the obligations described in R.S. 9:4801 and ~~R.S. 9:4802(A)~~, interest due thereon, and fees paid for filing the statement required by R.S. 9:4822.

* * *

B. Subject to the additional limitation of amount contained in R.S. 9:4804(B), the ~~The~~ claim or privilege granted the lessor of a movable by R.S. 9:4801(4) or ~~R.S. 9:4802(A)(4)~~ is limited to and secures only that part of the ~~rentals~~ rents accruing during the time the movable is located at the site of the immovable for use in a work. A movable shall be deemed not located at the site of the immovable for use in a work after:

* * *

At this time, one Council member reminded the Reporter of a previous question concerning the Louisiana Wage Payment Act and the language of R.S. 9:4803(A)(3). Mr. Cromwell responded by informing the Council member that he had presented the question to the Committee, which ultimately determined that no revisions to Paragraph (A)(3) should be made. He then asked the Council to consider proposed R.S. 9:4805, on page 9 of the materials. The Reporter explained that Subsection A of this provision allows the owner and contractor to request a statement of amounts owed from a lessor or supplier, who must then respond within 15 days of the request with any amounts that are owed to him as of a date no earlier than 45 days prior to the response. Subsection A also requires the request to contain a warning that if the claimant fails to timely respond, he will lose his claim and privilege to the extent of any damages suffered by the owner or contractor as a result of his failure to respond. Mr. Cromwell next explained that Subsection B provides that the time period within which the claimant must respond does not begin to run until the date the claimant actually receives the request, as opposed to the date the owner or contractor sent the request, and that Subsection C limits the frequency with which a claimant must respond to such requests from an owner or contractor to once every 60 days. The Reporter also explained that Subsection D defines when an amount is considered to be owed, and he noted that the Committee had engaged in extensive discussion concerning the fact that when a supplier delivers materials to the jobsite, that supplier is considered to have performed even if he has not yet billed or invoiced for the materials that were delivered, which is consistent with the approaches taken by both the Uniform Commercial Code and the Civil Code articles on pledge. Finally, the Reporter explained that Subsection E provides that a claimant may respond to a request by an owner or contractor for statements of amounts owed despite any contractual provision restricting communications between these parties.

A motion was then made and seconded to adopt proposed R.S. 9:4805. One Council member suggested providing a definition of "actual receipt" as used in Subsection B, on line 18 of page 9, to eliminate any argument by the claimant

that he did not receive a request under this provision. The Reporter responded by expressing that in his view, this would be an issue of proof that would be best decided by a court, but he agreed to consult his Committee with respect to whether a definition of "actual receipt" should be included in the Private Works Act. Another Council member questioned whether a surety should be permitted to send requests for statements of amounts owed, and the Reporter responded that the surety would likely do so in the name of the contractor and that any damages suffered by the surety resulting from a lack of response would be one and the same as those suffered by the contractor. Another Council member then questioned whether "truthful" on line 30 of page 9 was a necessary qualifier, and after discussion by members of both the Council and the Committee, the Reporter agreed to replace "truthful" with "accurate." Another Council member then suggested adding "or accurate" after "timely" at the end of line 9 of the same page, and the Reporter accepted that change. The Council member also expressed concern with respect to the potential difficulty lessors may have in complying with the requirements of Subsection D, but the Reporter responded that this provision requires only minimal information concerning the accrual of rents.

At this time, the Council returned to its discussion of the language appearing on line 30 of page 9 of the materials, with one Council member expressing concern that a de minimis inaccuracy in the claimant's response to a request under this Section could result in the violation of a contractual provision prohibiting communications between the claimant and the owner and contractor. As a result, the Council member instead suggested stating that a good faith effort by the claimant to provide information will be protected notwithstanding any contractual provision to the contrary, but the Reporter expressed that he was hesitant to incorporate a good faith standard here because that could be interpreted as an affirmative requirement rather than as a protection in favor of claimants. Another Council member then suggested adding "reasonably" before "accurate," but the Reporter responded that he would rather remove the qualifier altogether than introduce vagueness and uncertainty as to what qualifies as "reasonably accurate" information.

Further discussion among Council members then ensued, and one Council member now moved to remove "accurate" from line 30 of page 9. Another Council member opposed this motion, at which time a member of both the Council and the Committee suggested replacing "accurate information concerning" with "a statement of all" to mirror the language used in Subsection A. After further discussion concerning whether "all" should be included before "amounts" in line 30, the Reporter explained that this language could be misinterpreted as requiring a claimant who communicates with an owner or contractor to include all of the available information. Another Council member then suggested including an explanation that Subsection E is intended to be permissive with respect to communications between claimants and the owner and contractor, and the Reporter agreed to draft such a Comment. A motion was then made and seconded to amend Subsection E, on line 30 of page 9, to replace "accurate information concerning" with "a statement of," and the motion passed with no objection. Another Council member suggested adding "receipt of" between "after" and "the" on line 22 of the same page, and the Reporter accepted this change. It was then moved and seconded to adopt R.S. 9:4805 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

§4805. Requests for statement of amounts owed

A. Within fifteen days after receipt of a written request from an owner or contractor, a person who is granted a claim and privilege under R.S. 9:4802(A)(3) or (4) but who has no direct contractual relationship with that owner or contractor shall provide to that owner or contractor a statement of all amounts owed to the person as of a date no earlier than forty-five days before the date of the response. The request shall contain a reasonable identification

of the work and shall state that a failure to provide a timely or accurate response may result in a loss of all or part of the person's claim and privilege. The person's failure to provide a timely and accurate response to a request made under this Subsection shall extinguish the person's claim and privilege under R.S. 9:4802(A)(3) or (4) to the extent of any damages suffered by the owner or contractor as a result of the failure or inaccuracy.

B. Notwithstanding R.S. 9:4843, the period within which a person is required to respond to a request made under Subsection A of this Section shall not commence to run until the person's actual receipt of the request.

C. A person who provides a timely response to a request made under Subsection A of this Section shall not be required to respond to another request made by an owner or contractor within sixty days after receipt of the former request.

D. For purposes of this Section, an amount is considered to be owed to a person when his right to payment of the amount has been earned by his performance, regardless of whether he has rendered an invoice or billing for the amount.

E. Notwithstanding any agreement to the contrary, a person who receives a request under this Section may provide to the owner and contractor in response to the request a statement of amounts owed to the person.

Next, Mr. Cromwell asked the Council to turn to proposed R.S. 9:4810(3), on page 13 of the materials. He explained that this provision involves the concept of Louisiana property law that constructions other than buildings that are permanently attached to the ground are component parts and are therefore immovable when they are owned by the owner of the ground, but movable when they are not. As a result, he explained that in the case of an electrical plant where the electrical company's first tower was located on its own property also owned by the electrical company, the first tower – an other construction permanently attached – would be classified as immovable because it is owned by the owner of the ground. However, once outside the property line, the electrical company simply holds servitudes with respect to the land on which its other towers are located. Thus, even though these towers are identical to the first tower, because the electrical company is not also the owner of the ground on which they are located, these towers would be classified as movables rather than immovables. Further, because the Private Works Act only applies to immovables, any privilege that arose with respect to work performed on these towers would be limited to the incorporeal right – the servitude – and would not apply to the towers themselves. Additionally, if work was performed only on the towers themselves, such as if they were being painted, no privilege under the Private Works Act would arise at all.

The Reporter then explained that the Committee considered these issues as well as the fact that line 27 of page 11 presupposes the attachment of Private Works Act privileges to both buildings "and structures" and ultimately concluded that for purposes of the Act, constructions other than buildings permanently attached to the ground should be treated as immovables regardless of whether they are owned by the owner of the ground. Additionally, the Committee concluded that the best way to accomplish this objective was to define "immovable" to include things classified by law as immovable as well as constructions that would be classified by law as immovable if they were owned by the owner of the ground. Mr. Cromwell also explained that this approach essentially substitutes one legal fiction under Louisiana property law for another but limits its application solely to the Private Works Act. One Council member questioned whether the term "movable" was ever used in the Act for purposes of specifying the property to which claims and privileges attach, expressing concern

that if this were the case, constructions other than buildings could be classified as both movable and immovable. However, the Reporter explained that the Act refers only to immovables when describing the property to which claims and privileges attach and further noted that the term "movable" is only used when referring to the seller or lessor of movables. At this time, it was moved and seconded to adopt R.S. 9:4810(3) as presented, and the motion passed with no objection. The adopted proposal reads as follows:

§4810. Miscellaneous definitions

For purposes of this Part:

* * *

(3) An "immovable" is a thing that is classified by law as immovable, as well as any construction that is permanently attached to the ground and that would be classified by law as immovable if it belonged to the landowner.

* * *

The Reporter then asked the Council to consider the proposed changes to R.S. 9:4806, on page 11 of the materials. He explained that in addition to the citation change on line 36, "structures" had been changed to "other constructions" on line 27 for purposes of consistency with the definition of "immovable." A motion was made and seconded to adopt the proposed changes to Subsections D and E of R.S. 9:4806, and the motion passed with no objection. The adopted proposals read as follows:

§4806. Owner defined; interest affected

* * *

D. ~~The privilege~~ privileges granted by this Part upon a lessee's rights in the lease or buildings and ~~structures~~ other constructions 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 ~~to~~ 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.

E. The inclusion in a statement of claim and privilege of the name of an owner who is not responsible for the claim under Subsection B of this Section shall not give rise to liability on the part of that owner or create a privilege upon that owner's interest in the immovable.

Next, Mr. Cromwell asked Council members to turn to proposed R.S. 9:4821(D), on page 16 of the materials. He explained that because privileges under the Private Works Act will now arise with respect to constructions other than buildings, which will be classified as immovables under the Act but are still movables under other areas of law, a conflict could potentially be created between these privileges and security interests under Chapter 9 of the Uniform Commercial Code. As a result, the Reporter explained that the Private Works Act needs to contain a provision that ranks its privileges with respect to the UCC's security interests and that this is the purpose of Subsection D, beginning on line 30 of page 16. He also explained that this provision was drafted based on a similar provision contained in the Louisiana Oil Well Lien Act and provides that a Private Works Act privilege will be superior to all conflicting Chapter 9 security

interests other than those that were perfected or filed before the privilege became effective against third persons. It was then moved and seconded to adopt proposed R.S. 9:4821(D) as presented, and the motion passed with no objection. The adopted proposal reads as follows:

§4821. Ranking of privileges arising under this Part

* * *

D. A privilege under this Part encumbering a construction that is permanently attached to the ground and belongs to a person other than the landowner is superior to all conflicting security interests created under Chapter 9 of the Uniform Commercial Code other than those that were perfected before the privilege becomes effective against third persons or that are perfected by a financing statement filed before the privilege becomes effective against third persons, if there is no period thereafter when there is neither filing nor perfection.

The Council then considered the proposed changes to R.S. 9:4822(D), on page 18 of the materials. Mr. Cromwell first explained that, with respect to the proposed addition of Subparagraph (3)(d), one of the Committee's special advisors noted that the bases for filing a notice of termination of work do not include termination for the convenience of the parties when the owner and contractor mutually agree to go their separate ways. In such a case, if the owner wants to continue work with a new contractor, and the old contractor is not in default under Subparagraph (3)(c), the work is neither substantially completed under Subparagraph (3)(a) nor is it abandoned under Subparagraph (3)(b). Nevertheless, the Committee concluded that such a notice of termination should be allowed and therefore proposed the addition of Subparagraph (3)(d). With respect to the proposed change in Subparagraph (3)(c), Mr. Cromwell explained that the default of one of several prime contractors should not serve as the basis for the filing of a notice of termination of the entire work, particularly since the notice of termination would then trigger the time period within which all claimants must file their statements of claim and privilege, even those who would have no way of knowing that the prime contractor under whom they were not working was in default. He also noted that when the Law Institute was studying the Private Works Act prior to its enactment in 1981, this provision was originally drafted to require the default of "the general contractor," but this language was later changed to "a contractor" with no explanation. Finally, with respect to the proposed language in Paragraph (4), the Reporter explained that this provision should be clarified to provide that the notice of termination is conclusive only for purposes of this Part, reasoning that the default of a contractor should not be established conclusively outside of the Private Works Act, such as in litigation between the owner and contractor. At this time, a motion was made and seconded to adopt the proposed changes to R.S. 9:4822(D) as presented, and the motion passed with no objection. The adopted proposal reads as follows:

§4822. Preservation of claims and privileges

* * *

~~E.~~ D. A notice of termination of the work:

* * *

(3) Shall certify that:

(a) The work has been substantially completed; or

(b) The work has been abandoned by the owner; or

(c) ~~A contractor~~ The general contractor is in default under the terms of the contract; or

(d) The contract with the general contractor has terminated.

(4) Shall be conclusive for purposes of this Part of the matters certified if it is made in good faith by the owner, his representative, or his successor.

* * *

Next, the Reporter directed the Council's attention to R.S. 9:4831, on page 20 of the materials, and explained that other than the citation changes in Subsections B and C, the Council had already adopted this provision. It was moved and seconded to adopt these changes as presented, and the motion passed with no objection. Mr. Cromwell also asked the Council to consider the proposed changes to R.S. 9:4833, on pages 21 and 22 of the materials. He explained that in addition to the citation changes in Subsections C and E, "consequence" was being changed to "result" in Subsection B for purposes of consistency with R.S. 9:4804 and 4805. It was moved and seconded to adopt these changes as presented, and this motion also passed with no objection. The adopted proposals read as follows:

§4831. Filing; place of filing; contents

* * *

B. Each notice of contract, notice of termination of work, affidavit filed in accordance with R.S. 9:4820(C) or 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 street address or mailing address of the immovable without more shall not be sufficient to meet the requirements of this Subsection.

C. If the work is evidenced by a notice of contract that contains a complete property description of the immovable, reference in any subsequent filing to the notice of contract, together with its registry number or other appropriate recordation information, shall be sufficient to meet the requirements of Subsection B of this Section. If the work is evidenced by a notice of contract that contains either a complete property description of the immovable or another reasonable identification of the immovable, reference to the notice of contract, together with its registry number or other appropriate recordation information, shall be deemed a reasonable identification of the immovable in a statement of claim or privilege filed under this Part.

* * *

§4833. Request to cancel the inscription of claims and privileges; cancellation; notice of pendency of action

* * *

B. One who, without reasonable cause, fails to deliver a written request for cancellation in proper form to cancel the claim or privilege as required by Subsection A of this Section shall be liable for damages suffered by the owner or person requesting the authorization as a ~~consequence~~ result of the failure and for

reasonable attorney fees incurred in causing the statement to be cancelled.

C. A person who has properly requested a written request for cancellation shall have an action pursuant to R.S. 44:114 against the person required to deliver the written request to obtain a judgment declaring the claim or the privilege extinguished and directing the recorder of mortgages to cancel the statement of claim or privilege if the person required to give the written request fails or refuses to do so within the time required by Subsection A of this Section. If the written request for cancellation was requested under Paragraph (A)(2) of this Section, the judgment shall declare the statement of claim or privilege to be extinguished, and shall direct its cancellation, only insofar as it affects the owner who is entitled to cancellation and his interest in the immovable. The plaintiff may also seek recovery of the damages and attorney fees to which he may be entitled under this Section.

* * *

E. The effect of ~~filing for~~ recordation of a statement of claim or privilege and the privilege preserved by it shall cease as to third persons unless a notice of pendency of action in accordance with ~~Article 3752 of the Code of Civil Procedure~~ Article 3752, identifying the suit required to be filed by R.S. 9:4823 is filed within one year after the date of filing the statement of claim or privilege. In addition to the requirements of ~~Article 3752 of the Code of Civil Procedure~~ Article 3752, the notice of pendency of action shall contain ~~a reference to the notice of contract, if one is filed, or a reference to the recorded statement of claim or privilege if a notice of contract is not filed.~~ If the effect of recordation of a statement of claim or privilege has ceased for lack of a timely filing of a notice of pendency of action, the recorder of mortgages upon receipt of a written signed application shall cancel the recordation of the statement of claim or privilege.

The Council then considered the proposed changes to R.S. 9:4835(C), on page 23 of the materials. The Reporter explained that the only substantive changes being made in this provision were to clarify that the owner for Private Works Act purposes may not be the owner of the immovable and to remove the language concerning the mechanics of providing notice, since other provisions of the Act will address those issues in a more general manner. A motion was then made and seconded to adopt the changes to Subsection C as presented, and the motion passed with no objection. The adopted proposal reads as follows:

§4835. Filing of bond or other security; cancellation of statement of claim or privilege or notice of pendency of action

* * *

C. Any party person who files a bond or other security to guarantee payment of an obligation secured by a privilege in accordance with the provisions of ~~R.S. 9:4835(A)~~ Subsection A of this Section shall give notice of the filing to the owner ~~of the immovable~~, the holder of the lien privilege, and the contractor ~~of the improvements to the immovable by certified mail to the address of the immovable or to the lienholder's address in the case of notice to the lienholder.~~

Finally, the Reporter asked Council members to turn to R.S. 9:4841, on pages 24 and 25 of the materials. He explained that in addition to the citation changes in Subsections C and D, the changes to Subsection E was being proposed in light of the Council's previous approval, and the legislature's ultimate

enactment, of proposals concerning terminology used when referring to default procedure. Specifically, Mr. Cromwell explained that the terms "judgment of default" and "judgment by default" were replaced with the term "preliminary default" throughout the Code of Civil Procedure and related provisions of the Revised Statutes. He also explained that in conjunction with these changes in terminology, a proposal was presented to the Council with respect to this provision of the Private Works Act, at which time he requested that the issue be recommitted for consideration by the Security Devices Committee. The Reporter then explained that the phrase "judgment of default" should not appear in this provision because default procedure does not apply in concursus proceedings. Rather, the surety knows that at least some claimants are owed a certain amount of money, so the surety deposits the money with the court, and once all claimants have answered or the delay for answering has expired, the surety can withdraw any amounts that exceed 125% of the claimants' claims without the taking of any sort of default at all. The Reporter also explained that the Comments to the 1981 Private Works Act state that the term "judgment of default" is used for purposes of consistency with the Code of Civil Procedure but noted that the 1981 drafters must have overlooked the fact that default procedure does not apply with respect to concursus proceedings. It was then moved and seconded to adopt the proposed changes to R.S. 9:4841(C), (D), and (E) as presented, and the motion passed with no objection. The adopted proposals read as follows:

§4841. Enforcement of claims and privileges; concursus

* * *

C. The owner may by rule order the other parties to the action to show cause why a judgment should not be entered discharging and cancelling their claims and privileges or discharging the owner from further responsibility to them. The rule shall be tried and appealed separately from the main cause of action and shall be limited to a consideration of the following matters:

* * *

(3) Whether a notice of the contract and a bond for the work were properly and timely filed as required by R.S. 9:4811 and ~~R.S. 9:4812~~.

(4) Whether the bond complies with the requirements of this Part.

D. If the court determines that the owner has properly deposited all sums owed by him to the contractor; that the owner has complied with this Part by properly and timely filing notice of a contract and bond as required by R.S. 9:4811 and ~~R.S. 9:4812~~; that the bond complies with the requirements of this Part, or if it finds that any of the claims or privileges have not been preserved, it shall render a judgment on the rule directing the claims or privileges to be cancelled by the recorder and declaring the owner discharged from further liability for such claims or limiting the claims and privileges to the amounts as may be owed by the owner or otherwise granting such relief to the owner as may be proper.

E. (1) The surety who convokes a concursus proceeding shall deposit into the registry of the court an amount equal to the lesser of:

(4) (a) The full amount of the bond; or

(2) (b) One hundred and twenty-five percent of the total amount claimed by persons who have filed a timely statement of claim or privilege for work arising out of the contract for which the bond is given.

(2) After answer by or judgment of default against all claimants have answered, or, if any claimant has failed to answer, after expiration of the delay for answering fixed by the court in an order issued under Code of Civil Procedure Article 4657, the surety, upon motion and order may withdraw from the registry of the court any sums so deposited to the extent they exceed one hundred twenty-five percent of the aggregate amount of the claims then asserted against the contractor and surety by such claimants.

* * *

At this time, Mr. Cromwell concluded his presentation. The President then announced that the Council would recess for lunch and that there would be a meeting of the Membership and Nominating Committee during this time.

LUNCH

Marriage-Persons Committee

President John David Ziober introduced Professor Emeritus Katherine S. Spaht, the Chair of the Marriage-Persons Committee, to present Comments and substantive material related to the complete revision of tutorship.

Professor Spaht discussed the Exposé des Motifs to reorient the Council with this revision and reminded the Council that at the September meeting they recommitted several issues to the Committee.

The first issue concerned a hypothetical where the parents are divorced, but no custody award has been made. The Council questioned who would be responsible for the child. The Committee drafted a new sentence in proposed Civil Code Article 248 to provide that in this event, both parents will be natural co-tutors. The Council asked the Chair to move the sentence so that it is the second sentence of the paragraph and the article was approved.

The second issue from the September Council concerned the question of whether a tutor of the property who fails to maintain the property upon which someone is injured may also be personally responsible. The Chair consulted with the Committee and Professor Bill Corbett who could not think of a single scenario in which a tutor of the property would be personally liable to a third person for failure to properly manage the minor's property. Examples were given, and it was reasoned that although the tutor may be sued as the representative of the minor, he cannot be sued personally unless he has control over the behavior of the minor. It was also reasoned that if the tutor fails to properly maintain the minor's property and a third party is injured, the tutor is liable to the minor, not the third person. The Council also discussed the relation between this article and Civil Code Articles 2315 and 2318 which address fault and tort liability.

Next, the Chair asked the Council to approve a policy decision made by the Committee regarding court jurisdiction. The Council previously approved moving jurisdiction over tutorship to family courts, but what if a tort settlement is involved? The Committee voted to have the district court retain jurisdiction over the approval of tort settlements in favor of a minor when they are part of tutorship proceedings. The Council discussed the existing protections in the law regarding

threshold value and required investment of settlement proceeds and approved the policy decision of the Committee.

The final remaining issue was the notion of split tutorship in Article 266. The Chair explained that the Committee simply amended the language of the first paragraph to clarify the notion of split tutorship, and the Council approved without discussion.

Moving to new issues, the Chair explained to the Council the Committee's attempt to create an order of priority in the order of call to the tutorship in Article 247 due to concerns regarding the instance of a tutor being appointed prior to a designated tutor coming forward and being confirmed. The Committee had wondered how a designated tutor could seek confirmation when an appointed tutor already exists, so they drafted a presumption in favor of the higher-ranking person in the order of call to the tutorship that could be overcome by a best interest of the child, preponderance of the evidence, burden of proof. The Committee also drafted Article 258 to provide flexibility to the otherwise absolute rule of Article 247. The Council expressed several concerns through the discussion of these proposals. First, the Council voted to have the Committee add language to Article 247 to make it clear that the listing is indeed an order of priority. Second, it was decided that the hierarchy should be a presumption and not an absolute right. Finally, regarding the burden of proof, the Council debated having different burdens for the different types of tutors and finally voted to require clear and convincing proof to override the presumption in favor of both a natural or designated tutor.

There continued to be concerns over how tutorship will meld with custody and tort liability. The Council reviewed numerous hypotheticals with the Chair and she decided to bring these issues to the Committee for further review.

With the business before it complete, the Council adjourned.

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

November 17-18, 2017

Saturday, November 18, 2017

Persons Present:

Adams, Marguerite (Peggy)
Bergstedt, Thomas
Breard, L. Kent
Crawford, William E.
Dawkins, Robert G.
Dimos, Jimmy N.
Gregorie, Isaac M. "Mack"
Hayes, Thomas M., III
Hogan, Lila T.
Jewell, John Wayne
Kostelka, Robert "Bob" W.
Lawrence, Quintillis Kenyatta
Mcintyre, Edwin R., Jr.
Mengis, Joseph W.

Norman, Rick J.
Odinot, Christopher
Richard, Herschel, Jr.
Rials, Megan Joy
Sole, Emmett C.
Talley, Susan G.
Tate, George J.
Thibeaux, Robert P.
Waller, Mallory
White, H. Aubrey, III
Wilson, Evelyn L.
Ziober, John David

President David Ziober called the Saturday session of the November 2017 Council meeting to order at 9:00 a. m on Saturday, November 18, 2017 and called on Professor Christopher K. Odinet, Reporter of the Common Interest Ownership Regimes Committee, to present materials in response to Senate Concurrent Resolution No. 13 of the 2016 Regular Session.

Common Interest Ownership Regimes Committee

Professor Odinet began his presentation by informing the Council that Senate Concurrent Resolution No. 13 of the 2016 Regular Session requests the Law Institute to study the feasibility of authorizing a private right of action to enforce zoning restrictions and to also study whether present penalties for zoning violations should be revised. The Reporter explained that Article VI, Section 17 of the Louisiana Constitution authorizes local governments to enact land use and zoning regulations subject to uniform procedures established by law. He further explained that the Revised Statutes contain several provisions concerning the enactment of zoning regulations, often for the purpose of promoting health, safety, and the general welfare. The Reporter also noted that in addition to these constitutional and statutory provisions, the authority to enact zoning laws is also entrenched in Louisiana case law.

Professor Odinet then explained that zoning regulations often involve the ability of a local government to designate an area for a particular use, although these regulations can also focus on aesthetics or form and can include requirements concerning setbacks and site plans. The Reporter noted that the Revised Statutes provide with respect to the enforcement of land use and zoning restrictions, and that typically, a private party who wishes to enforce an existing restriction must first complain to the local government. However, if the local government refuses to enforce a land use or zoning restriction, the private party cannot enforce the restriction himself but must instead seek a writ of mandamus, which is an extraordinary remedy that is not frequently used. Professor Odinet then explained that this is not necessarily the case in all other states, and he noted that at least ten provide for the private enforcement of zoning regulations.

He also noted that all ten of these states require that the aggrieved plaintiff be able to demonstrate some sort of actual and specific harm in order to bring an action to enforce a zoning regulation. The Reporter also explained that there are features that are unique to each of these states, including New York's statute, which applies only to towns and requires at least three taxpayers to first make a demand on the local government before joining together to file suit. He also noted that Illinois and Pennsylvania allow tenants to bring private actions to enforce zoning restrictions but that Illinois also imposes a geographic limitation.

The Reporter continued by explaining that with respect to providing for the private enforcement of land use and zoning regulations, Louisiana could draw from each of these ten states' statutory schemes, but there is not a lot of practical information as to how these statutes are being interpreted by the courts. As an example, Professor Odinet explained that he had spoken to local government attorneys in some of these states and that most of these attorneys were unaware of the existence of these statutes. He also noted that in the few cases that did involve the private enforcement of zoning restrictions, the success rates of private individuals were extremely low but that one Oregon case served as an exception to this trend. In that case, a homeowner built a deck but left a space between the deck and the house so that the deck would be detached from the house and would therefore not be subject to the applicable setback restriction. After complaining to the local government, which determined that the deck was an accessory structure that was exempt from the setback restriction, the homeowner's neighbor sued, and the Oregon court held that the deck was built in violation of the restriction.

Professor Odinet then explained that the local government in this case expressed concern over the fact that courts would now be second-guessing every decision it made with respect to zoning restrictions, but the court responded that in questionable or close cases requiring expertise, it would defer to the decision of the local government; for clear violations, however, the court reserved the right to overturn the decision. At this time, one Council member questioned whether any of the ten states' statutes provided for an award of attorney fees to the prevailing party in a case such as this, and the Reporter responded in the negative. The Reporter also noted that the standards being applied by courts in these cases are extremely high and that most courts will not overturn the decision of the local government absent an egregious violation or some showing of official lassitude or nonfeasance with respect to the enforcement of zoning restrictions.

Professor Odinet then explained that absent a private right of action for the enforcement of land use and zoning regulations in Louisiana, the question becomes whether mandamus and nuisance law serve as adequate substitutes. He explained to the Council that under Louisiana law, a mandamus action can be brought not only with respect to ministerial decisions, but also with respect to decisions that are an arbitrary and capricious abuse of discretion. However, the Reporter reiterated that writs of mandamus are seen as extraordinary remedies and, as such, if the local government can show that its decision concerning a zoning restriction bears some relationship to health, safety, or the general welfare, courts are typically unwilling to overturn the decision. As a result, the Reporter noted that writs of mandamus are likely even more restrictive than other states' statutory schemes as to the enforcement of zoning or land use restrictions. Turning to nuisance law, Professor Odinet explained that two classifications exist: public nuisances, which involve interference with the rights of the public; and private nuisances, which involve interference with an individual's rights in land and are most appropriate for purposes of comparison with zoning restrictions. He then explained that whereas nuisance law is confined to instances where the pertinent activities are harmful in some way, zoning law concerns regulating use for the general public welfare rather than solely for reasons of health and safety.

Professor Odinet next informed the Council that in one of the most famous nuisance cases in Louisiana, the *Copeland* case, and in others like it, courts have held that in order to succeed in a claim under nuisance law, there must be unreasonable noise, dangerous conditions, or some other sort of serious effect on the plaintiff's physical or mental health. In other words, the requirements of obtaining a remedy through both mandamus and nuisance law are very narrowly prescribed such that neither serves as an adequate substitute for providing a private right of action to enforce zoning and land use restrictions in Louisiana. The Reporter then explained that members of the Common Interest Ownership Regimes Committee were sympathetic to this issue, particularly in light of the political implications that often arise when complaining to local governments about violations of these restrictions. As a result, the Committee ultimately determined that a policy vote should be sought from the Council as to whether a private right of action for the enforcement of zoning and land use restrictions should be created.


At this time, a motion was made and seconded to draft a provision providing for the private enforcement of zoning and land use restrictions. One Council member questioned whether violations of such restrictions were really a problem in Louisiana, and the Reporter responded by explaining that it seems so anecdotally but that it is hard to know for sure in light of the lack of cases and other empirical data. Council members then discussed whether it is telling that only ten states provide for the private enforcement of zoning restrictions, as well as how long it had been since these statutes were enacted. Another Council member noted that Senate Concurrent Resolution No. 13 provides specifically with respect to private associations as opposed to private individuals, and the Reporter responded by explaining that the resolution was drafted based on concerns that arose with respect to a homeowner's association specifically but that a private association is just as much a "person" as an individual. Nevertheless, he informed the member that Louisiana could certainly require the plaintiff to be a homeowner's association or, like New York, could require at least three plaintiffs to join together before filing suit to enforce a zoning restriction.

One Council member then expressed that in her view, the issue of providing for the private enforcement of zoning restrictions is worth considering due to concerns that seeking a writ of mandamus can be difficult in light of the heightened standards and the political implications that often arise when deciding whether to enforce a particular zoning restriction. She also noted that although she would be in favor of some sort of collectivism requirement like New York imposes, she would not be in favor of limiting the availability of a private right of action solely to homeowner's associations. The Reporter agreed with respect to the collectivism requirement and also explained that other requirements, such as geographical restrictions and allegations of actual and specific harm, could also be included in Louisiana's statute. The Reporter then suggested that perhaps a provision requiring the losing party to pay the prevailing party's attorney fees should be included in the statute, but Council members responded by expressing concerns with respect to economic inequality and suggesting that perhaps some sort of bad faith standard should also be imposed. The Reporter then agreed to discuss these issues with the Committee as well as with the Louisiana Municipal Association.

Another Council member then questioned whether a statute providing for the private enforcement of zoning and land use restrictions would violate constitutional delegations of power, and Professor Odinet agreed to research this issue if the Council voted in favor of drafting such a provision. However, he also noted that these sorts of statutes already exist in ten other states that likely have constitutional provisions that are very similar to Louisiana's. The Council also discussed that building restrictions would not be within the scope of this project and that the defendants in a private enforcement action would be the neighbors that are violating the land use or zoning restriction rather than the local government. One Council member then questioned what the remedy would be if the plaintiff were successful in a private enforcement action, and the Reporter

responded that temporary restraining orders and injunctions would be issued against the person violating the zoning or land use restriction. Another Council member expressed concern over second-guessing the decisions of local governments, and Professor Odinet responded by reiterating that courts would defer to the decisions of local governments in close or questionable cases requiring expertise but not in cases of clear violations. He also suggested that perhaps these standards should be incorporated as Comments to any statutory provision that is drafted. The Council member then questioned whether mandamus procedure should be expanded, but the Reporter expressed that he would be hesitant to do so since this procedure applies outside of the context of zoning restrictions to a wide variety of other matters. Council members also discussed that district courts, as opposed to city courts, should have jurisdiction over private actions to enforce zoning and land use restrictions.

After additional discussion concerning the fact that a statute creating a private right of action for the enforcement of zoning and land use restrictions would be self-limiting and could also serve as a deterrence against violations, the motion to draft a statute providing for the private enforcement of these restrictions in Louisiana passed over two objections. Professor Odinet then concluded his presentation, and the November 2017 Council meeting was adjourned.

 5-4-18
Jessica Braun Date

 5/4/2018
Mallory Waller Date

**RESOLUTION OF THE COUNCIL OF THE
LOUISIANA STATE LAW INSTITUTE ("LSLI")**

BE IT KNOWN that at a regular meeting of the Council of the LSLI held on November 17, 2017, in New Orleans, Louisiana, a quorum of the members of the Council being present, the Council considered proposed amendments to the LSLI By-Laws.

BE IT FURTHER KNOWN, that in accordance with Section XII of the By-Laws, written notice of the proposed amendments to the By-Laws concerning the creation of the position of Assistant Director as an administrative officer of the LSLI, together with a copy of the proposed amendments, were provided to the Council via email on October 16, 2017. The written notice also provided that such proposed amendments to the By-Laws would be voted upon by the Council at its regular meeting on November 17, 2017.

On motion made and seconded, the below described amendments to the LSLI By-Laws were presented for discussion and consideration by the Council.

The motion was voted upon by the members of the Council present and passed unanimously.

IT IS RESOLVED THAT, in accordance with Section XII of the LSLI By-Laws, this Resolution is made part of the official records of the LSLI and the following amendments to the LSLI By-Laws are adopted:

* * *

"Section VI. A. The administrative officers of the Institute are a Chairperson, a President, four (4) Vice-Presidents, a Secretary, an Assistant Secretary, a Treasurer, an Assistant Treasurer, the Director of the Institute and an Assistant Director of the Institute.

* * *

Section VII. B. The Assistant Director shall serve as the Director of the Institute in the event of the Director's unavailability, resignation, illness, incapacity or death, and shall exercise all responsibilities of the Director in such event."

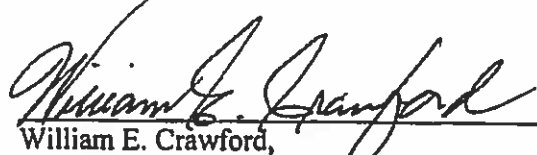
* * *

In all other respects, the By-Laws of the LSLI shall remain unchanged.

CERTIFICATE

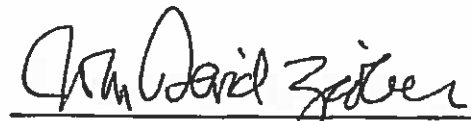
I, William E. Crawford, Director of the Louisiana State Law Institute, certify that the above and foregoing Resolution is a true and correct copy of the Resolution adopted at a regular meeting of the Council of the Louisiana State Law Institute held on November 17, 2017; that a quorum was present; and that the Resolution was adopted unanimously by a vote of the members of the Council present.

Baton Rouge, Louisiana, this 20th day of November, 2017.



William E. Crawford,
Director, Louisiana State Law Institute

ATTEST:



John David Ziober, President
Louisiana State Law Institute