

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

May 7, 2021

Friday, May 7, 2021

Persons Present:

Adams, Marguerite (Peggy) L.
Bartholomew, Trey K.
Belleau, Ashley L.
Braun, Jessica
Breard, L. Kent
Cassagne, Rachal C.
Castle, Marilyn
Chehardy, Susan M.
Comeaux, Jeanne C.
Coreil, Jeffrey
Crigler, James C., Jr.
Crigler, John D.
Cromwell, L. David
Curry, Kevin C.
Davrados, Nikolaos A.
Dawkins, Robert G.
Freel, Angelique D.
Garrett J. David
Gauthier, Emily M.
Gregorie, Isaac M. "Mack"
Griffin, Piper, D.
Hamilton, Leo C.
Hayes, Thomas M., III
Haymon, Cordell, H.
Hebert, Christopher B.
Hogan, Lila T.
Holdridge, Guy
Janke, Benjamin West
Johnson, Pamela Taylor
Kunkel, Nick
Lampert, Loren M.
LeDuff, Taylor M.

Lee, Amy Allums
Little, F.A., Jr.
Lovett, John A.
Maloney, Marilyn C.
Manning, C. Wendell
Medlin, Kay C.
Mire, Alaina R.
Nedzel, Nadia E.
Norman, Rick J.
North, Donald W.
Ottinger, Pat
Papillion, Darrel James
Phillips, Harry "Skip", Jr.
Price, Donald W.
Ramsey, Regina
Robert, Deidre Deculus
Roussel, Randy
Saloom, Douglas J.
Simien, Eulis, Jr.
Sole, Emmett C.
Stuckey, James A.
Surprenant, Monica T.
Title, Peter S.
Taranto, Todd Charles
Tucker, Zelda W.
Vance, Shawn D.
Ventulan, Josef Philip M.
Veron, J. Michael
Waller, Mallory
White, H. Aubrey, III
Woodruff-White, Lisa
Ziober, John David

President Rick J. Norman called the Zoom meeting of the Council to order at 9:00 a.m. on Friday, May 7, 2021. After a few administrative announcements, the President called on Mr. Emmett C. Sole, Chairman of the Membership and Nominating Committee, to begin his presentation.

Membership and Nominating Committee

Mr. Sole began by explaining that he would be presenting a supplemental report on behalf of the Membership and Nominating Committee. He noted that one of the Council's practicing attorneys – Ms. Mary Hester – had retired from the practice of law and moved out of state, and that as was the Committee's practice, another practicing attorney had been nominated to fill this position for the remainder of its term, which would expire on December 31, 2021.

A motion was then made and seconded to adopt the Committee's nomination of Mr. Patrick S. Ottinger, Reporter of the Law Institute's Mineral Law and Risk Fee Act Committees, as a practicing attorney member of the Council, and the motion passed with no objection. Before concluding his presentation, Mr. Sole also announced that Vice Chancellor Regina Ramsey of the Southern University Law Center had been selected to

serve as the proxy for Chancellor John Pierre. A copy of the Membership and Nominating Committee's supplemental report is attached.

Legislative Update

The President then called on the Director, Judge Guy Holdridge, and the Coordinator of Research, Ms. Mallory Waller, to provide an update concerning the Law Institute's proposed legislation for the 2021 Session. Ms. Waller began by informing the Council that most of the Law Institute's bills had passed the House and were currently pending before the Senate. She noted that the Law Institute's In Forma Pauperis, Civil Procedure Technology, Civil Procedure Continuous Revision, and Children's Code Continuous Revision bills had not been amended. She and Judge Holdridge then explained that the Law Institute's Recusal bill had recently passed the House floor but that an amendment was added requiring the judge to make a mandatory disclosure to all parties if the judge is related to a member of an attorney's law firm within the second degree. With respect to the Prescription bill, Ms. Waller explained that the proposed repeal of Civil Code Article 3502 dealing with prescription of inheritance rights had been removed from the bill due to opposition from the Land Title Association, but that this issue would continue to be studied.

Moving to the Law Institute's Domestic Abuse bill, Ms. Waller explained that the NRA had recently expressed concerns with respect to the possibility that the bill negatively impacts Second Amendment rights, and that the Reporter and other members of both the Committee and the Council were working to resolve this issue prior to the bill's next hearing. Ms. Waller and Judge Holdridge then explained that the Preliminary Default bill had been amended on the House floor to require a seven-day notice to be provided to the defendant in all cases before a default judgment may be rendered, rather than only if the defendant made an appearance of record or if the defendant's attorney contacted the plaintiff or his attorney in writing concerning the case.

Next, Ms. Waller explained that the Law Institute's Bad Faith Insurance Statutes bill had been withdrawn from the files of the House due to opposition, and that the Co-Chairs of the Torts and Insurance Committee were presently determining whether to reconvene the Committee or to submit the Committee's recommendations in the form of a report. She also noted that the Risk Fee Act bill did not appear to be moving through the process due to opposition, but that a resolution had been filed to create a "Risk Charge Commission" that included some of the stakeholders with whom the Committee worked, as well as representatives of other organizations. Finally, Ms. Waller and Judge Holdridge noted that the Law Institute's Postconviction Relief bill had been filed but that the stakeholders had reached an agreement and were using another instrument to enact their compromise. At this time, Mr. Loren Lampert from the Louisiana District Attorneys Association provided more information about the bill – Senate Bill No. 186 – and noted that several of the Law Institute's recommendations were included in the compromise that was ultimately reached.

Judge Holdridge then noted that the Council may need to consider revised Comments to address the amendments that had been made so far as well as an additional concern from the Louisiana Bankers Association with respect to the prescription *sua sponte* issue in the Civil Procedure Continuous Revision bill. He also asked Council members to reach out to him or to Ms. Waller with any concerns they may have. The legislative update was then concluded, and the President called on Mr. Randy Roussel, Reporter of the Common Interest Ownership Regimes Committee, to begin his presentation of materials.

Common Interest Ownership Regimes Committee

The Reporter began by reminding the Council that today, he would be seeking approval of the remaining material in Subparts A, B, and C that had either been recommitted or had not yet been approved. Directing the Council to Subsection 1.2(22) of the materials, the Reporter noted that after the March Council meeting, the definition of "nonresidential use" had been redrafted to better reflect how the property is being used instead of focusing on the ownership of the property. Without discussion, the Council approved the following:

1.2. Definitions

In this Part, the following terms have the following meanings:

* * *

(22) "Nonresidential use" means any commercial, office, retail, or similar type of use, including the use of a residential building containing more than four separate housing units located on a single lot or on multiple lots.

Mr. Roussel then noted that Section 1.2(34), defining "unrelated purchaser," had previously caused the Council to question the different standards of twenty percent for affiliates and ten percent for family members. Upon further reflection, the Reporter drafted a new proposal to retain a consistent twenty percent rule, and he reminded the Council where the term is used in the materials. Without discussion, the Council approved the following:

1.2. Definitions

In this Part, the following terms have the following meanings:

* * *

(34) "Unrelated purchaser" means a person who purchases a lot and who is any of the following:

(a) Not the declarant or an affiliate of the declarant.

(b) Not an immediate family member of the declarant, or in the case of an entity declarant, is not an immediate family member or a person that owns twenty percent or more of the declarant.

(c) An individual, trust, or other entity that directly or indirectly owns less than twenty percent of the declarant.

The Reporter moved to Section 2.4 and explained that this provision needs to be more consistent with Section 2.2 and mirror the requirements for an amendment to the original declaration. Without objection, the Council approved the following:

2.4. Exercise of development rights

A. To exercise any development right reserved in Section 2.2(A)(7), the declarant shall prepare, execute, and file for registry an amendment to the declaration in accordance with Section 2.1(D). The amendment to the declaration shall assign an identifying number to each new lot created, and, except in the case of subdivision or conversion of lots described in Subsection C of this Section, reallocate the common expense liabilities, common surpluses, and voting interest in the association among all lots. The amendment shall describe any common areas and any limited common areas created and, in the case of limited common areas, designate the lots by letter, name, or number, or a combination thereof to which each is appurtenant thereto.

Mr. Roussel then noted that in Section 2.6, Subsection C was changed by the Committee to clarify that conveyance of the common areas and limited common areas occurs by operation of law and does not require a separate conveyance thereof. The Council agreed that when the common areas are shown on the plat and designated as such, the transfer of ownership occurs by operation of law, and the following language was approved:

2.6. Plats

* * *

C. The ownership interest of the declarant in the common areas and limited common areas is transferred to the association when the declaration has been filed for registry, the incorporation of the association has occurred, and the plat has been filed for registry.

Turning to Section 2.11, the Reporter noted that Subsections C and G require final Council approval and that Subsection C had been recommitted by the Council in December of 2019. Mr. Roussel explained that the Committee had reworked the language to provide that the adoption of a more burdensome use restriction is effective twelve months after the filing of the amendment. The Council adopted the redrafted provision as presented. Mr. Roussel also explained that Subsection G provides a one-year preemptive period to challenge the validity of an amendment to the declaration. Council members noted that this seems to have the opposite effect in that it does not cure procedural defects after one year. The Reporter and Committee members agreed that to best protect homeowners, procedural defects should not be cured when amending the declaration. If notice is not provided to the homeowners and the proper vote is not obtained, an amendment to the declaration should not be valid after one year passes. The preemptive period would cure substantive defects only, and procedural objections can be raised in perpetuity. After this discussion, the Council approved Subsection G as it appears in the materials.

The Reporter next reminded Council members that Section 2.13 had been approved in March of 2017 but noted that the provision had been reworked by the Committee to achieve consistency throughout the materials. Regarding the rights of secured parties, most mortgage documents provide the lender absolute discretion over the use of insurance proceeds received by the association. However, because the common elements benefit the entire community, the Committee recommended overruling this standard practice to provide that the declaration may not require that creditors approve the use of insurance proceeds to make necessary repairs resulting from a casualty. The Reporter noted that this Section should be read with Section 3.12 and that the intention is to provide protection in the declaration when common elements are encumbered because the result of the encumbrance may be removal from the planned community. Mr. Roussel answered a few of the Council's questions, and the following was then approved:

2.13. Rights of secured parties

A. The declaration may require that creditors who hold security rights in the lots or who have extended credit to the association approve specified actions of the lot owners or the association, but no requirement for approval may operate to do any of the following:

(1) Deny or delegate control over the general administrative affairs of the association by the lot owners or the executive board.

(2) Control the establishment or imposition of assessments except as provided in Subsection C of this Section.

(3) Prevent the association or the board of directors from commencing, intervening in, or settling any litigation or proceeding.

(4) Prevent the association from receiving and distributing any insurance proceeds to make necessary repairs as a result of a casualty.

B. A lender who has extended credit to an association secured by a security right to the income of the association or a security right in the common areas or limited common areas may enforce the security right in accordance with its terms, subject to the requirements of this Part or other provisions of law. Requirements that the association shall deposit its periodic income with the lender, to whom the income of the association has been given as collateral, do not violate the prohibitions on lender approval.

C. If approved by an association in accordance with Section 3.11, the holder of a security right may require that assessments shall not be decreased without its approval.

Next, the Reporter explained that Section 2.14 addresses the authority of master associations. Mr. Roussel noted that when mixed use properties are developed, multiple associations and sub-associations are established to protect the interests of both homeowners and the commercial properties. He also noted that Section 2.15 then provides for the merging of planned communities. Without discussion, both Sections were approved as written.

Moving to Subpart C, "Management of the Community," the Reporter informed the Council that the Committee had reworked Section 3.2 for consistency by changing "convey" to "transfer" and by defining "occupant." He explained that these changes clarify the actions that an association can take against an owner of a lot and against an occupant that is merely physically present on a lot. Mr. Roussel also noted that Section 3.3 was amended in accordance with the discussion during the March Council meeting regarding the use of the terms "directors" and "members." Both Sections were adopted as presented. In the Comment to Section 3.5, the Council had previously directed the Reporter to add an example, and the following was ultimately approved:

Revision Comment – 2022

Lack of privity does not deprive any lot owner of standing to maintain an action to enforce any obligation of the transferor. See Section 4.5(C). For example, in the event a declarant entered into a contract to construct improvements on common areas, a lot owner would be subrogated to the rights of the declarant to enforce a claim for defective construction.

The Council had adopted Section 3.10 in March of 2020 but asked the Reporter to review the Uniform Common Interest Ownership Act for consistency. Mr. Roussel explained that the uniform act defers to local law just as this proposal does. Without further discussion, this Section was again approved. The Reporter then noted that Sections 3.11 through 3.22 have not been considered by the Council prior to this meeting, and that Section 3.11 sets forth the voting procedures for meetings of the board and association meetings. Members of the Council first discussed how to count votes when a lot is owned by more than one person and considered a few examples. The default rule is that the vote will be cast in accordance with the majority in interest of the lot owners, but if there is disagreement as to the interest, the association can treat all of the owners of a single lot as having equal shares. With the acceptance of a few technical changes, the following was approved:

3.11. Voting; proxies; ballots

A. Directors may not vote by proxy at any meeting of the board of directors or at any committee thereof.

B. Lot owners may vote at a meeting of the association in person, by absentee ballot, by proxy or, when a vote is conducted without a meeting, by electronic transmission or paper ballot.

C. The voting interest allocated to lots owned by the association shall be cast in the same proportion as the votes cast on the matter by lot owners other than the association.

D. At a meeting of the association in which a quorum is present, the following requirements apply:

(1) Lot owners who are present may cast a vote in person by voice, show of hands, standing, or any other method for determining votes, as designated by the association.

(2) Unless a greater number of the votes in the association is required, a majority of the voting interest cast is required for the approval of any action of the association.

(3) A lot owner may vote by absentee ballot without being present at the meeting. The association shall promptly deliver an absentee ballot to a lot owner upon request made at least three days before the scheduled meeting.

(4) Except as provided in Subsection E of this Section, if the name signed on a vote, consent, waiver, ballot, or proxy appointment corresponds to the name of a lot owner as indicated in the records of the association, the association, if acting in good faith, is entitled to accept the vote, consent, waiver, ballot, or proxy appointment and give it full effect as the act of the lot owner.

E. If only one of several owners of a lot owned in indivision votes, that lot owner has the right to cast the voting interest allocated to that lot. If more than one of the lot owners vote, the voting interest allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the lot owners. There is majority agreement if any one of the lot owners casts the voting interest allocated to the lot without any of the other lot owners promptly protesting to the association. In the event there is disagreement among the owners of a lot as to their interests, the association, acting in good faith, is entitled to rely upon what is evidenced in its records as to that lot. In the event the records do not indicate the allocation of interests in a lot, the association is entitled to treat the multiple lot owners as having equal shares. If a lot or an undivided interest in a lot is subject to a usufruct, the usufructuary shall be deemed the owner of that lot or the undivided interest of the lot for purposes of this Section.

F. The following requirements apply to proxy voting:

(1) A lot owner may appoint a proxy to vote or otherwise act by signing a written appointment or by making an electronic transmission. An electronic transmission shall contain or be accompanied by information from which it can be determined that the lot owner authorized the transmission.

(2) The appointment of a proxy is effective when a signed written appointment or an electronic transmission of the appointment is received by the officer or agent of the association authorized to tabulate votes. A proxy is valid only for the meeting for which it is cast and any recessed session of that meeting and is subject to any limitation contained therein.

(3) The appointment of a proxy is revocable.

(4) The revocation of a proxy appointment, the death of the lot owner, or the appointment of a curator for the lot owner appointing a proxy does not affect the right of the association to accept the proxy's authority unless notice of the revocation, death, or appointment of a curator is received by the officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

G. Unless prohibited or limited by the community documents, when an association conducts a vote without a meeting, the following requirements apply:

(1) The association shall notify the lot owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot in accordance with Section 3.20.

(3) The ballot shall set forth each proposed action and provide an opportunity to vote for or against each action.

(4) The ballot shall also contain all of the following:

(a) The number of responses needed to meet the quorum requirements.

(b) The voting interest necessary to approve each matter other than the election of directors.

(c) The time and date by which a ballot shall be delivered to the association to be counted, which shall be no fewer than seven days after the date the association delivers the ballot.

(5) After delivery to the association, a ballot is not invalidated by death, disability, or attempted revocation by the person who cast it.

(6) A vote conducted pursuant to this Subsection is valid only if the number of votes cast on an item equals or exceeds the requirement to authorize each proposed action.

H. If the declaration requires that votes on specified matters affecting the planned community be cast by lessees of leased lots rather than by lot owners, this Section applies to lessees as if they were lot owners. Lot owners who lease their lots to other persons may not cast votes on those specified matters.

Moving to Section 3.12, the Council questioned the required filing of an agreement regarding an incorporeal movable. The Reporter explained that the intention is to provide for the encumbrance of both real estate and income. After discussion, the Council approved the following changes to the last sentence of Subsection B and the creation of new Subsection E:

3.12. Transfer or encumbrance of common areas or right to income

A. All or portions of the common areas may be transferred or subjected to a security right by a two-thirds vote. Any limited common area may be transferred or subjected to a security right with the consent of all owners of lots to which any limited common area is allocated. The declaration may specify a larger percentage, or if all of the lots are restricted exclusively to nonresidential uses, a smaller percentage.

B. An agreement to transfer common areas or limited common areas or to subject them to a security right, shall be prepared and executed by an authorized officer or agent of the association, and shall contain a certification that the minimum voting requirements have been met. The agreement, and all ratifications thereof, shall be filed for registry in accordance with Section 2.1(D) and is effective only upon registry. An agreement to subject property of the association to a security right shall be created and made effective against third persons as required by law.

C. The association, on behalf of the lot owners, may contract to transfer or encumber a right in a planned community, or to grant a security right in the association's right to receive assessments or other income, but the contract is not enforceable against the association until approved pursuant to Subsections A and B of this Section. Thereafter, the association has all powers necessary and appropriate to effect the transfer or encumbrance.

D. Unless the security right is effective and filed for registry prior to the filing of the declaration, the transfer or encumbrance of ownership of any portion of a common area shall not release that common area from the burdens and restrictions imposed by the declaration. Subject to the rights of a holder, proceeds from the sale of a common area are an asset of the association, but the proceeds from the sale of limited common areas shall be distributed equitably among the owners of the lots to which the limited common areas were allocated. If any common area is foreclosed upon, or is transferred to a creditor pursuant to a giving in payment in accordance with Civil Code Article 2655, the rules of consensual sale shall govern the designation of the areas following the transfer of record ownership to the creditor.

E. Loan proceeds shall only be used for the purposes approved by the association.

Mr. Roussel then explained that Section 3.13 requires the association to maintain certain types of insurance, and the Council questioned the need for medical payment insurance. The Reporter quickly provided an example of an association that owns vehicles, thereby making this coverage necessary, and the provision was approved. Section 3.14 was adopted without debate, and Mr. Roussel moved to Section 3.15. The Council discussed, and the Reporter accepted, an amendment to clarify that the lot owner is only liable for the payment of assessments that are made during the period of his ownership. The following change to Subsection B was adopted:

3.15. Assessments

* * *

B. Except for assessments made in accordance with Subsections C, D, and E of this Section or as otherwise provided in this Part, all common expenses shall be assessed against all of the lots in accordance with the allocations set forth in the declaration pursuant to Section 2.3. The owner of a lot shall be personally liable for the payment of all assessments levied against the lot during the period of his ownership. The association may charge interest on any past due assessment or portion thereof at the rate established by the association, not exceeding twelve percent per year.

Moving to Section 3.16, one Council member questioned the specific reference to good faith and wondered if that standard is not applicable to every action taken by the directors. The Reporter noted that the language was taken from the uniform act but can be deleted because the proposal includes a general good faith requirement. The following change to Subsection C was approved:

3.16. Adoption of budgets; special assessments

* * *

C. If the board of directors, by a two-thirds vote, determines that a special assessment is necessary to respond to an emergency:

* * *

Next, the Council considered Section 3.17 concerning privileges for sums due to the association and decided to recommit Subsection A for the Committee to review the exemption of the privilege from R.S. 13:3881. Of the property listed in R.S. 13:3881 as being exempt, the Council opined that perhaps only the homestead exemption has any relevance to this Section. The Reporter then asked the Council to add language to Subsection C to ensure that the privilege is enforced in accordance with existing law in Title 9. The Council agreed and also clarified the ranking of the privilege against third persons. Subsection K was removed as being repetitive and unnecessary, and the following was adopted:

3.17. Privileges for sums due to the association; enforcement

* * *

B. To be preserved, the privilege shall be evidenced by a statement of privilege, signed and verified by affidavit of an authorized officer or agent of the association, and shall be filed for registry in the mortgage records of the parish in which the lot is situated. The statement of privilege shall include a description of the lot in a manner sufficient for purposes of granting a mortgage, the name of its record owner, the amount of delinquent or accelerated assessment, the date on which the assessment became delinquent, and any fines or late fees assessed. The association shall, at least seven days prior to the filing for registry of the statement of privilege, serve upon the lot owner by personal service or registered or certified mail a sworn detailed statement of its claim for the delinquent or accelerated assessment that includes the date the assessment became delinquent or accelerated.

C. A privilege under this Section is effective from the time the statement of privilege is filed for registry and, except as otherwise provided in the Private Works Act, R.S. 9:4801 et seq., is preferred in rank to all mortgages, privileges, and other rights in the lot that become effective against third persons after that time. The privilege shall be enforced in accordance with R.S. 9:1145 et seq.

D. Unless the declaration otherwise provides, if two or more associations have privileges for assessments created at any time on the same property, those privileges have equal priority.

E. A privilege for unpaid assessments is extinguished unless proceedings to enforce the privilege are instituted within five years after the privilege becomes effective.

F. This Section does not affect the personal liability of a lot owner for the payment of past due sums for which Subsection A of this Section grants a privilege or prevent an association from taking a deed in lieu of foreclosure.

G. A judgment or decree in any action brought under this Section shall include costs and reasonable attorney fees for the prevailing party.

H. The association, upon request made in a record, shall furnish to a lot owner a statement setting forth the amount of unpaid assessments against the lot. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every lot owner.

I. An association may commence an action to foreclose a privilege on a lot in accordance with this Section only with approval from the executive board.

J. The association shall apply any sums paid by owners of lots who are delinquent in paying assessments in the following order:

(1) Unpaid assessments.

(2) Late charges.

(3) Reasonable attorney fees, costs, and other collection charges.

(4) All other unpaid fees, charges, fines, penalties, and interest.

Section 3.18 was approved as presented, and the discussion moved to Section 3.19. One Council member questioned the use of the phrase "shall be reasonable" in Subsection F, and the Reporter explained that the intent of this provision was to allow the lot owner to raise the issue of whether a rule is arbitrary and capricious. Several Council members expressed concern that as drafted, the language seemed to suggest that every rule was deemed or presumed to be reasonable. The Council replaced "shall" with "is required to," and the following was approved:

3.19. Rules

A. Before adopting, amending, or repealing any rule, the board of directors shall give all lot owners notice of the proposed action and provide the text of the rule or the proposed change and the date on which the board of directors will act after considering comments from lot owners.

B. Following the adoption, amendment, or repeal of a rule, the board of directors shall notify the lot owners of its action and provide a copy of any new or revised rule.

C. The board of directors shall adopt procedures for enforcement of standards and for approval of construction applications adopted in accordance with Section 2.11(C), including a reasonable time within which the board of directors shall act after an application is submitted and the consequences of its failure to act.

D. A rule regulating display of the flag of the United States shall be consistent with federal law.

E. The board of directors may adopt rules that affect the use of or behavior on lots that may be used for residential purposes only to implement a provision of the declaration or regulate any behavior in or occupancy of a lot that violates the declaration or adversely affects the use and enjoyment of other lots or the common areas by other lot owners.

F. Every rule adopted pursuant to this Section is required to be reasonable.

Motions were also made and seconded to adopt Sections 3.20 and 3.21 as presented, and the motions passed with no objection. Next, the Council turned to Section 3.22, and one Council member questioned use of the phrase "not being in good standing" in Subsection B, asking how this interacts with corporate law concerning the status of a

corporation as reflected on the secretary of state records. The Reporter explained that the Committee's intent was to mirror general corporate law, and the President then asked for clarification as to the rules with respect to good standing as they apply to nonprofit corporations. One member of both the Council and the Committee suggested that perhaps "a termination as a result of the association not being in good standing" should be replaced with "an administrative termination," and the Council discussed the provisions concerning administrative terminations under corporate law. Ultimately, a motion was made and seconded to adopt Subsection A as presented but to recommit Subsection B for the Committee to review the provisions of Title 12 concerning administrative termination.

At this time, the Reporter noted that the remaining provisions concern consumer protections and asked the Council to turn to Section 4.1 on page 56 of the materials. One Council member questioned why the word "purchasers" was used as opposed to "owners," and Mr. Roussel explained that persons acquiring an interest in the planned community are entitled to receive a public offering statement before they become actual owners. A motion was made and seconded to adopt Sections 4.1 and 4.2 as presented, as well as the Comment on page 56, and the motion passed with no objection.

Next, members of the Council considered Section 4.3. The Council agreed to change "leases" to "occupancy agreements" in Paragraph (A)(4), and the remainder of the provision was approved as presented. The Reporter then noted in Section 4.4 that the Committee had made the policy decision to provide that if the purchaser does not receive the public operating statement and the contract is cancelled, the purchaser is entitled to recover costs and expenses incurred as well as actual damages, such as if the purchaser acquired a mortgage or sold his house. The President then inquired about attorney fees, and the Reporter explained that attorney fees were not specifically provided but that these could be included as costs and expenses. With two technical amendments, this Section was approved.

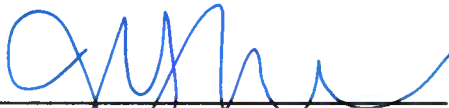
Mr. Roussel then asked the Council to consider Section 4.5. One Council member suggested that "real estate" be changed to "immovable property" in Subsection B, and the Reporter agreed. Section 4.5 was approved as amended, and Section 4.6 was approved as presented. With respect to Section 4.7, a Council member questioned whether "statute of limitations" in the heading of this provision should be changed to "prescriptive period." After additional discussion concerning the fact that this provision does not really deal with prescription at all, members of the Council ultimately agreed to replace "Statute of limitations for warranties" with "Warranties," and the Section was then adopted.

Next, the Council considered Section 4.8 of the materials. They questioned whether the effect of the provision allowing the court to award reasonable costs and attorney fees to the prevailing party is that the "loser pays," and Mr. Roussel responded that the Committee's intent was that this award could be made in the judge's discretion but was not automatic. Sections 4.8 and 4.9, as well as the Comment on page 63, were adopted as presented.


Finally, the Council discussed Section 4.10 and questioned whether a violation of this provision that resulted in an improper transfer being executed and recorded would be an absolute or relative nullity. The Reporter responded that it would be an absolute nullity and that curative documents would need to be executed, and the Council responded by noting that this would penalize the innocent purchaser and would place the burden on him to obtain these curative documents, which seems unfair. Mr. Roussel then explained that in practice, a developer would file a preliminary plat and sell lots based on that preliminary plat, but the plat would not be approved. The lot owners would then find out that they had purchased property that could not be permitted by the parish because the plat had not been approved and would need some sort of mechanism to invalidate the transaction while also allowing the developer to submit curative documents. Members of the Council then discussed their understanding of the need to pre-sell lots in a development but that as a policy matter to protect the purchaser, perhaps the conveyance should be retroactive or at least effective without the additional need for the purchaser to obtain curative documents from the developer, similar to the after-acquired title doctrine.

Ultimately, the Council agreed to recommit Section 4.10 to the Committee for further contemplation.

At this time, Mr. Roussel concluded his presentation, and the May 2021 Council meeting was adjourned.



Jessica Braun



Mallory C. Waller

**MEMBERSHIP AND NOMINATING COMMITTEE
SUPPLEMENTAL REPORT
5/07/2021**

After the meeting on March 30, 2021, this committee respectfully makes the following supplemental nominations to fill vacancies on the Council of the Louisiana State Law Institute for 2021 as follows:

Position to be Approved by the Council:

PRACTICING ATTORNEY ELECTED AS MEMBER:

For the term expiring, December 31, 2021

Patrick S. Ottinger; P.O. Drawer 52606, Lafayette, Louisiana, 70503.

Proxies and Designees:

**AS PROXY FOR CHANCELLOR JOHN PIERRE OF SOUTHERN UNIVERSITY
LAW CENTER:**

Appointed March 30, 2021

Regina Ramsey, 1 Roosevelt Steptoe Drive, AA Lenoir Hall, Baton Rouge, Louisiana, 70813-9294.

Respectfully submitted,

Rick J. Norman, *President*
L. David Cromwell
Kevin C. Curry
Leo C. Hamilton
Thomas M. Hayes, III
Emmett C. Sole
Monica T. Surprenant
Susan G. Talley
John David Ziober

MEMBERSHIP AND NOMINATING COMMITTEE

By:



Emmett C. Sole, Chair

May 7, 2021