

**LOUISIANA STATE LAW INSTITUTE**

**THE MEETING OF THE COUNCIL**

**September 15-16, 2017**

**Friday, September 15, 2017**

**Persons Present:**

Bergstedt, Thomas  
Braun, Jessica  
Breard, L. Kent  
Carroll Andrea  
Castle, Marilyn  
Castille, Prston J., Jr.  
Crawford, William E.  
Crigler, James C.  
Cromwell, L. David  
Curry, Robert L., III  
Dawkins, Robert G.  
Di Giulio, John E.  
Dimos, Jimmy N.  
Doguet, Andre  
Domingue, Billy J.  
Gregorie, Isaac M. "Mack"  
Hamilton, Leo C.  
Haymon, Cordell H.  
Hester, Mary C.  
Hogan, Lila T.  
Holdridge, Guy  
Jackson, Katrina R.  
Johnson, Pamela Taylor  
Knighten, Arlene D.  
Kogos, Steve  
Kostelka, Robert "Bob" W.

Kunkel, Nick  
Lawrence, Quintillis Kenyatta  
Levy, H. Mark  
McIntyre, Edwin R., Jr.  
Morris, Glenn G.  
Nedzel, Nadia R.  
Norman, Rick J.  
Ottinger Pat  
Philips, Harry "Skip" Jr.  
Rials, Megan  
Riviere, Christopher H.  
Scalise, Ronald J., Jr.  
Scardulla, Anna  
Singletary, Robert  
Stuckey, James A.  
Talley, Susan G.  
Tate, George J.  
Thibeaux, Robert P.  
Tooley-Knoblett, Dian  
Trahan, J. Randall  
Tucker, Zelda W.  
Wallace, Monica  
Waller, Mallory  
White, H. Aubrey, III  
Wilson, Evelyn  
Ziober, John David

President John David Ziober opened the Friday session of the September 2017 Council meeting at 10:00 a.m. on Friday, September 15, 2017, at the Lod Cook Alumni Center in Baton Rouge. During today's session, Professor J. Randall Trahan presented for the Lesion Beyond Moiety Committee, Mr. L. David Cromwell presented for the Security Devices Committee, and Professor Katharine Spaht for presented the Marriage-Persons Committee.

**Lesion Beyond Moiety Committee**

The Reporter, Professor Trahan, represented the Lesion Beyond Moiety Committee and briefly updated the Council on the Committee's work since the last presentation. Today, he sought the Council's confirmation of a number of the Committee's policy decisions. Turning to page 3 of the materials, point A.1., the Reporter explained that the Committee agreed not to include a provision in the law of lesion that would allow the defendant-buyer to raise the defense that he did not exploit the seller. After discussion, and with a motion and second to adopt, the Council approved the Committee's decision to reject the addition of defenses to the law of lesion.

The Reporter then directed the Council's attention to point A.2. on pages 3 to 4 of the materials, which asked whether the law of lesion should be expanded to cover contracts other than sales, such as leases; the sale of things other than corporeal immovables, such as incorporeal immovables and movables; and complaints by buyers in addition to sellers. After a motion and second to adopt, the Council approved the Committee's decision not to expand the scope of the law of lesion beyond sales, corporeal immovables, and sellers only.

Turning to point A.3. on page 4 of the materials, the Reporter illustrated the problem with a hypothetical. If no one, including the buyer, seller, and the market, is aware at the time of the sale that the land has some characteristic that raises its value such that an updated fair market value would render the sale lesionary, and the characteristic is discovered *after* the sale, is the seller entitled to relief? In response to this question, the Committee decided to clarify the law with a Comment stating that a characteristic of the land that raises its value should *not* be considered in determining the fair market value of the land because the fair market value is determined *at the time of the sale* and is based on what is actually known. The Council cautioned against not disturbing "fair market value" as the term is used in other areas of the law, as well as not disturbing the law of error and the remedies it already provides in this situation. After a motion and a second, the Council approved the Committee's decision that the fair market value is based on the limited knowledge at the time of the sale.

The Reporter drew the Council's attention to point A.4. on page 4 of the materials. The Committee agreed to preserve the current rule that the supplemental price the buyer pays as an alternative to returning an immovable is the difference between the sale price and the fair market value of the thing, rather than the difference between the sale price and "lesionary threshold" price. With little discussion, the Council approved the Committee's decision.

The Reporter then brought before the Council a matter on which the Committee had deadlocked, point B on page 4 of the materials, and opened the floor for general discussion. The question is whether to consider, in the case of a sale of land, the land's potential for "mineral development" in determining the fair market value of the land. The Reporter explained that this point is disputed by Louisiana courts. Some courts state that a sale of land with mineral potential should be covered by the law of lesion, while others believe that the determination of mineral value is speculative by its very nature and therefore lesion law should not be applied because these sales are tantamount to selling a mineral right, which the Mineral Code expressly excludes from lesion law.

A motion was made and seconded not to consider the possible mineral development value in the fair market value. The Council engaged in a great deal of discussion regarding whether excluding the potential for mineral development from the fair market value is logical when all other characteristics of the land are considered when determining the value; whether because of the lasting quality of minerals, potential mineral development should be considered, as this is a different measure from mineral servitudes; whether the proposal should be limited to the potential development of solid minerals because the characteristics of oil and gas may warrant a different approach; and the severable nature of minerals. The Council also discussed the desirability of leaving the law of lesion as it currently stands with its fluid rules and the possibility of addressing this issue in the Mineral Code rather than the Civil Code.

When the Reporter next presents to the Council, he will resume this discussion and seek a policy vote.

## Security Devices Committee

Mr. Cromwell began his presentation by first explaining that Senate Concurrent Resolution No. 102 of the 2015 Regular Session urged and requested the Law Institute to study and make recommendations regarding whether an assignment or transfer of a mortgage loan on residential real property should be required to be recorded in the mortgage or conveyance records in order to be effective as to third parties. The resolution further asked the Law Institute to determine whether there are alternative measures that may assist in ensuring that mortgagors are better advised of the identity and contact information of mortgagees. Mr. Cromwell then explained that the report before the Council recommended that no change be made with respect to either of these issues for a number of reasons, including that the public records doctrine is intended to protect third persons as opposed to parties to instruments, such as mortgagors, and is not intended to serve as a registry to be consulted by mortgagors seeking information concerning who owns the property at any given time.

Mr. Cromwell explained that, beginning on page 2, the report first provides an overview of the public records doctrine and explains that the public records doctrine is a negative doctrine in that the absence, rather than the presence, of a recordation renders interests ineffective as to third persons. Mr. Cromwell also noted that notice forms no part of the public records doctrine, which instead involves the effectiveness *vel non* of interests with respect to third persons based on whether such interests were properly recorded. He then informed the Council that, beginning on page 4, the report makes several preliminary observations about the public records doctrine: first, that it protects third persons rather than the parties themselves; second, that it applies only to immovables rather than movables; and third, that it contains no statutory edict requiring the recordation of certain instruments, but rather imposes a consequence for failing to record – namely, ineffectiveness as to third persons. He also noted that the resolution is incorrect in its statement that Civil Code Article 3338 does not require mortgage assignments to be recorded in order to be effective against third persons. Mr. Cromwell explained that Paragraph (1) of Article 3338 provides that an instrument that establishes a real right in or over an immovable, such as a mortgage, is without effect as to third persons unless it is recorded. He also explained that Paragraph (4) of the Article imposes the same requirements on an instrument that modifies, terminates, or transfers the rights created or evidenced by the instruments described in the Article, which would include the assignment of a mortgage.

Mr. Cromwell next asked the Council to consider the section of the report concerning the application of the public records doctrine to mortgage assignments. He explained that, beginning on line 24 of page 4, Part A of the report provides that the mortgagor is a party to the mortgage transaction, rather than a third person, and therefore is not entitled to the benefit of the public records doctrine. Additionally, Part B provides that the laws of registry do not and should not apply to a mortgage note because doing so would have the undesirable consequence of forcing transferees to conduct a title examination in every case and would almost certainly make it extremely difficult, if not impossible, to obtain residential mortgage financing in Louisiana.

Mr. Cromwell also explained that, beginning on line 12 of page 5, Part C of the report provides that although a mortgage note is movable, the mortgage securing the note creates a real right in the immovable property that, as an accessorial obligation, will be transferred along with the transfer of the mortgage note. As a result, the public records doctrine will apply with respect to transfers of mortgage notes to the extent that the transfer affects the mortgage or the immovable property. Mr. Cromwell then provided the example of an unrecorded act releasing, amending, or modifying the mortgage, which, under Civil Code Article 3356(A), will not be effective as to third persons, including the transferee

of the mortgage. He also provided the example of a recorded act made by the obligee of record transferring, modifying, amending, or releasing the mortgage, which, under Civil Code Article 3356(B), will be effective as to third persons even if the obligee of record had previously engaged in an unrecorded assignment of the mortgage loan.

Finally, Mr. Cromwell explained that, beginning on line 21 of page 6, Part D of the report provides that the interests of the mortgagor are protected by state and federal law other than the laws of registry, and he provided the Council with the example of the federal regulation appended to the report. He noted that federal regulations already require transferors and servicers of federally related mortgage loans to provide the borrower with a notice of transfer of any assignment of the servicing of the mortgage loan. He also noted that, in the case of any conflict between these regulations and state laws, the regulations require compliance only with those provisions and therefore preempt conflicting state laws.

Mr. Cromwell then explained that for all of the above reasons, the Security Devices Committee concluded that no change should be recommended with respect to existing law governing the recordation of assignments of mortgages. It was then moved and seconded to adopt the report as presented for submission to the legislature, and the motion passed with no objection.

At this time, Mr. Cromwell concluded his presentation, and the President invited the Director of the Law Institute, Professor William E. Crawford, to make a few announcements with respect to changes in the staff of the Law Institute. Professor Crawford first announced the retirement of Mr. H. "Hal" Mark Levy, the Law Institute's Coordinator of Research and Revisor of Statutes, and he presented Mr. Levy with a certificate recognizing his 35+ years of dedicated and invaluable service to the Law Institute. Professor Crawford also announced that Ms. Mallory Waller would be succeeding Mr. Levy as the Law Institute's Coordinator of Research and Revisor of Statutes. Professor Crawford then concluded his presentation, at which time the Council recessed for lunch.

## LUNCH

After lunch, the President called on the Chair of the Marriage-Persons Committee, Professor Katherine S. Spaht, to begin her presentation of materials on the complete revision of tutorship.

### **Marriage Persons Committee**

Professor Spaht distributed an Exposé des Motifs to reorient the Council with this revision and explained that the two main goals are to reunite custody and tutorship and to move the substantive provisions from the Code of Civil Procedure to the Civil Code. A few other highlights of the revision include making grandparents with custody natural tutors of right, extending tutorship to a single person who adopts a minor, and placing more restrictions on the alienation, encumbrance, or lease of a minor's property.

Although most articles of this revision have previously been approved, the Chair presented Civil Code Article 259 because the Committee eliminated as grounds for disqualification of a tutor those persons who are adverse parties to an action in which the minor is also a party. The Committee reasoned that the Best Interest of the Child standard will allow the court more flexibility than the previous strict set of rules. With a motion and second, Article 259 was approved.

The next substantive change is in Civil Code Article 263. The Committee revised this provision to explicitly add the concept of split tutorship where there may be both a tutor of the person and a tutor of the property. The Chair explained that historically the cases have held the person responsible for the behavior of the minor liable for damage occasioned by the minor. This article clarifies that if there are two separate tutors, the tutor of the person will be held personally liable in accordance with Civil Code Article 2318. However, the tutor of the property may also be sued, as a representative of the minor, to ensure the plaintiff's recovery from the minor's property. During discussion, the Council was concerned with whether a tutor of the property who fails to maintain the property upon which someone is injured may also be personally responsible. The Chair agreed to bring this concern back to her Committee for more research. The Council also inquired about existing law which provides for the emancipation by juridical act to absolve the tutor from the acts of the minor, but thereafter adopted the proposal.

The Chair next turned the Council's attention to the last paragraph of Civil Code Article 266, which relieves the tutor of the person from qualifying unless he needs to represent the child in a civil action. Dispensing with qualification saves the tutor money by eliminating the need for a petition, inventory or detailed descriptive list, security, and an oath. The Council questioned the need for a tutor of the person to ever represent the minor in an action and the ensuing discussion led to reexamining the placement of this article. The Chair suggested an alternative placement and agreed to take the last paragraph of proposed Article 266 back to the Committee.

In reviewing Articles 278 and 279, the Council struggled with the details of having a tutor of the person and a tutor of the property. They questioned what would happen if only a tutor of the person were appointed, if family court would be required to approve a settlement in a civil tort case and whether upon divorce the parents are automatically tutors of right. This discussion exposed a gap in the proposal. The Council took a policy vote in favor of drafting an article to explicitly state that prior to an award of custody, both parents are tutors of the child and thus responsible for the damage caused by him.

The Chair next presented the Comments to the proposed Civil Code articles and they were approved in globo by the Council.

Lastly, the Chair explained that the Revised Statutes materials before them today reorganize all Title 9 provisions that relate to tutorship. With no further discussion, the Council approved the reorganization and additional substantive changes. Regarding the changes to Title 13, the Council passed a motion to change the term "ordinary tutorship" to "tutorship, other than continuing or permanent" throughout the revision.

With the business before it complete, the Council adjourned.

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Kunkel, Nick  
Levy, H. Mark  
Norman, Rick J.

Rials, Megan  
Richardson, Sally  
Scalise, Ronald J., Jr.  
Talley, Susan G.  
Tate, George J.  
Thibeaux, Robert P.  
Trahan, J. Randall  
Tucker, Zelda  
Vance, Shawn  
Waller, Mallory  
White, H. Aubrey, III  
Ziober, John David

President David Ziober began the Saturday session of the September 2017 Council meeting at 9:00 a.m on Saturday, September 16, 2017. He first called on the Law Institute's Assistant Coordinator of Research, Ms. Mallory Waller, to present a staff report in response to House Concurrent Resolution No. 36 of the 2017 Regular Session.

**"d/Deaf" Presentation**

Ms. Waller began her presentation by explaining that the report before the Council had been drafted in response to House Concurrent Resolution No. 36, which urged and requested the Law Institute to study the prospective use of the term "d/Deaf" throughout Louisiana law. Ms. Waller explained that according to the resolution, the term "d/Deaf" has emerged as an inclusive means of referring to two distinct groups of individuals within the deaf community: those who self-identify as "deaf" and those who self-identify as "Deaf." She then provided the Council with background information concerning Acts 2017, No. 146, which was enacted during the 2017 Regular Session to amend terminology concerning members of the deaf community by replacing "hearing-impaired" with "deaf or hard of hearing" throughout Louisiana law. According to legislative testimony, the term "hearing-impaired," though once favored, was now interpreted by members of the deaf community as having a negative connotation because those individuals do not consider themselves to be impaired at all. Ms. Waller also explained that this legislation was sponsored by the author of the resolution, who suggested during legislative testimony that in addition to these changes, Louisiana should also incorporate the term "d/Deaf" as a means of inclusively referring to members of the deaf community, particularly since this use of the term was being studied in other states across the country.

Ms. Waller then noted that although one state had enacted legislation during its most recent legislative session that changed terminology with respect to members of the deaf community, it did so in a way that was almost identical to the changes made by Louisiana – namely, by replacing “hearing-impaired” with “deaf or hard of hearing” throughout its statutory provisions. She also noted that only two states use the term “d/Deaf” in their administrative provisions, and only one of these states uses the term in a way that defines the differences between “deaf” and “Deaf” individuals. Ms. Waller then explained these differences by noting that individuals who self-identify as “deaf” typically consider their hearing loss solely in medical terms, associate with hearing persons as opposed to other members of the deaf community, and, as a general rule, are persons who lost their hearing due to an accident, illness, or trauma. In contrast, individuals who self-identify as “Deaf” typically consider themselves to be members of the deaf community, have life experiences that are shaped by deaf culture, and, as a general rule, are persons who were born deaf, attended deaf schools, and communicate using American Sign Language. She also explained that although research revealed slight differences in the meanings of these terms, all sources agree that a person’s decision to self-identify as “deaf” or “Deaf” is a personal one based on their unique circumstances and several factors, including hearing status, communication preferences, and cultural orientation.

Ms. Waller then asked the Council to turn to page 4 of the draft report and explained that should the legislature decide to incorporate the term “d/Deaf” throughout Louisiana law, all instances of “deaf” or “Deaf” in existing statutory provisions were reproduced in the attached appendix. She then explained that as an alternative, perhaps the legislature should consider enacting one or more provisions stating that unless the context clearly indicates otherwise, each of the terms “deaf” and “Deaf” are intended to refer to both “deaf” and “Deaf” individuals. Ms. Waller then explained the reasons for this suggestion as opposed to use of the term “d/Deaf,” namely that Louisiana currently does not use slashes in its statutory provisions and that this very proposal was suggested during legislative testimony as a more efficient manner of inclusively referring to members of the deaf community. She also noted that Louisiana currently employs this methodology in its Codes and Revised Statutes by providing that, with respect to gender and number, use of one gender includes the others, and use of the singular includes the plural.

Ms. Waller then informed the Council that the report also includes a suggestion to the legislature that it may wish to consider defining the terms “deaf” and “Deaf” in a way that provides guidance and clarity with respect to the distinctions that have arisen between these two terms within the deaf community. She noted that proposed definitions based on the information contained in House Concurrent Resolution No. 36 were provided on page 5 of the draft report, along with several examples of definitions that are currently used in other states. Finally, Ms. Waller also suggested that perhaps the legislature should include a policy statement explaining that the legislature recognizes that the language used to refer to persons with disabilities shapes and reflects societal attitudes and perceptions and that, as a result, the legislature remains committed to reviewing and evaluating this sort of terminology.

At this time, it was moved and seconded to adopt the draft report as presented. Council members then questioned whether Louisiana’s current statutory provisions distinguish between persons who are “deaf” as opposed to “Deaf,” as well as whether the resolution addresses the applicability of these same considerations to persons who are blind, and Ms. Waller answered both questions in the negative. Expressing concern with respect to the consequences that may result if the Law Institute does not engage in an analysis of whether existing terminology should be changed on a case-by-case basis, another Council member then suggested that the last sentence of the conclusion, on lines 35 through 38 of page 6 of the draft report, and the attached appendix should be removed. Ms. Waller responded that this report was drafted based on a report previously submitted by the Law Institute concerning terminology used to refer to persons with disabilities in general, and she also noted that although the

report as drafted did not presently make specific recommendations or express a preference for one approach to handling these issues over another, the Council could certainly make this policy determination.

The Council then engaged in a great deal of discussion with respect to whether to delete the appendix and the corresponding references on pages 4 and 6 of the report or whether to retain the appendix and soften the language to simply provide that all instances of the term "deaf" throughout Louisiana law are reproduced in the attachment. Members also discussed retaining the appendix for purposes of providing examples of instances where existing terminology should not be changed, such as in Civil Code Article 1580.1, on page 1 of the appendix, which requires a person to have been legally declared physically deaf. One Council member then proposed expressly recommending against incorporating the term "d/Deaf" throughout Louisiana law and instead suggesting to the legislature that perhaps it should enact one or more provisions stating that unless the context clearly indicates otherwise, the terms "deaf" and "Deaf" are each intended to refer to both "deaf" and "Deaf" individuals. Other Council members agreed with this suggestion, noting that simply replacing existing terminology with "d/Deaf" throughout Louisiana law could create legal distinctions that do not currently exist if future provisions are inadvertently drafted in a way that refers only to "deaf" or "Deaf" as opposed to "d/Deaf" individuals.

It was then moved and seconded to adopt as a matter of policy the approach of recommending against the incorporation of the term "d/Deaf" throughout Louisiana law and instead suggesting that the legislature consider enacting one or more provisions stating that unless the context clearly indicates otherwise, each of the terms "deaf" and "Deaf" are intended to refer to both "deaf" and "Deaf" individuals. The motion passed with no objection. The Council also decided to retain the appendix for purposes of providing examples of provisions where replacing existing terminology with "d/Deaf" could lead to unintended or undesirable consequences. Ms. Waller then agreed to make these changes and to return to the Council with a revised draft of the report, at which time her presentation was concluded.

### **Lease of Movable Act Committee**

Following Ms. Waller's presentation, the President called on the Reporter of the Lease of Movable Act Committee, Mr. Robert P. Thibeaux, to present materials prepared by that Committee.

Mr. Thibeaux began his presentation by noting that the issue he would be discussing was one that monopolized nearly two full meetings of the LMA Committee. This issue, he specified, was the existence of language in the current Louisiana Lease of Movable Act allowing for the purported lessor in a so-called "financed" lease to retain "legal and equitable title" to the ostensibly "leased" property.

Giving an overview of the term financed lease, the Reporter referenced R.S. 9:3302, which provides that "financed leases, which have previously been construed as conditional sales transactions, are hereby recognized as valid and enforceable in this state." Mr. Thibeaux continued, noting that a conditional sale contract is essentially identical in substance to a financed lease—a contract of sale characterized by the parties as a lease, purporting to provide for delayed passage of title, but instead treated as a secured transaction under UCC 1-302. For these reasons, Mr. Thibeaux noted, the Committee favored use of the term "nominal lease" in place of "financed lease," which has become confusing in light of terminology employed by the national UCC.

Under the terms of both conditional sales and nominal leases, the Reporter explained, ownership is retained by the seller-lessor until the entire purchase price or "rent" is paid, at which point the purchaser-lessee becomes the owner—by operation of contract in a traditional conditional sale, or by payment of



some nominal consideration in the case of a financed lease. Mr. Thibeaux noted that such transactions are by no means a novel or solely-modern construct, listing the classic "dollar-out" lease as a common example of one of these conditional-sale-disguised-as-a-lease transactions.

Mr. Thibeaux then turned focus to pre-revision law in order to give the Council a contextual backdrop for the issue at hand. Prior to the adoption of R.S. 9:3302, he explained, Louisiana law was both clear and longstanding with respect to the effects of conditional sales contracts: *Barber Asphalt* and its progeny set out that the parties' attempt to delay passage of title is ineffective notwithstanding an otherwise perfected sale, and that such a contract is thereby treated as a perfected sale—resulting in an immediate transfer of ownership and all other legal consequences attendant to a perfected sale. Decades later, the Reporter continued, *Byrd v. Cooper* explicitly extended this generally applicable principle to conditional sales disguised or mischaracterized by the parties as lease contracts.

The Reporter then shifted to current law. He explained that Article 9 now articulates that the any attempted retention of title in a conditional sale is limited in effect to retention of a security interest. However, Mr. Thibeaux continued, under current law, this is not always the case. This tension, he specified, results from the fact that the LMA not only makes financed leases valid and enforceable, but provides a mechanism by which the lessor may retain title to property subject to a financed or nominal lease—in spite of the fact that Article 9 expressly provides that such transactions are merely sales with reservation of security interests.

Moving next to true leases, the Reporter turned to Professor Ron Scalise for rhetorical confirmation of the notion that the concept of "title" is not referred to in the Louisiana law of lease. Professor Scalise having expectedly answered in the affirmative, Mr. Thibeaux explained that this is the case because a lease transaction, by its very nature, creates a right of *possession*, as opposed to ownership. Thus, according to Mr. Thibeaux, the very use of the term "title" in relation to leases conflicts with the entire underlying concept of a lease—and accordingly, leads to confusion in the law.

Mr. Thibeaux then turned his attention to financed leases. Reiterating that the LMA allows the purported lessor in a financed lease to retain the right to reacquire the leased property even in spite of property rights held by third parties, the Reporter noted that, in 1990, Louisiana adopted the UCC [style] for distinguishing between true leases and secured transactions. Again, he reminded the Council that Louisiana law clearly dictates that financed leases are treated as secured transactions. Mr. Thibeaux explained that this provision of law causes conflict due to the fact that security interests are governed by UCC Article 9. The problem, he continued, is that although Article 9 applies to such transactions, it applies in tandem with the LMA language allowing for retention of title by the purported lessor in a financed lease. Thus, the Reporter emphasized, a party can theoretically circumvent the rules of UCC 9 and gain a windfall simply by fictitiously styling their conditional sale a lease—allowing him to not only recover the property despite any other existing security interests, but to keep whatever rents he may already have been paid.

This language—the language which allows a financed lessor to retain title to the "leased" equipment in spite of the fact that the transaction is, in reality, a security interest properly governed by Article 9—the Reporter suggested, should be suppressed from the law.

Here, a motion was made to adopt the policy articulated above, and brief discussion ensued.

One member volunteered that such a change would help serve to clarify issues regarding mortgages and extinguishment by confusion. With this, the Reporter agreed.

Another member, seeking to clarify precisely what Mr. Thibeaux and the Lease of Movables Act Committee sought to do, asked whether it was the above referred-to “retention of title” idea that would be eliminated. Mr. Thibeaux answered in the affirmative, adding that the Committee seeks, additionally, to eliminate any mention of “title” from the LMA altogether. He further clarified that the provision at issue is one which the commercial leasing industry is both surprised by and dislikes—especially owing to its implications in bankruptcy proceedings—and that the industry does not at all oppose this change.



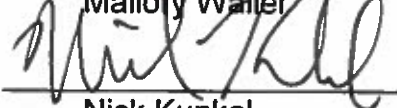
Next, one member voiced a concern, wondering whether the justification for the language as it currently stands was originally articulated as benefit in the areas of tax and depreciation accounting, and the like. Mr. Thibeaux reassured the member, explaining that each of the aforementioned areas have their own bodies of law and their own mechanisms for dealing with the issues to which the member’s question referred. For this reason, he continued, the Committee does not want to address those concerns directly in the LMA.

The Reporter next assured another Council member that lessors are undoubtedly on board with the change being discussed. The member followed up, wondering whether the proposed change would have any impact on the process for enforcement. Mr. Thibeaux replied, explaining that the goal of the Committee is simply to make judicial results in this context consistent with the expectations of the parties.

The next question posed to the Reporter pondered whether the Committee had discussed the prospective effectivity of the change. Mr. Thibeaux explained that, because of the vast breadth and complexity of the revision, that issue—and others like it—will simply be dealt with as they arise. Currently, he continued, the question before the Council is one dealing only with a basic policy decision, and that the more granular details will be addressed moving forward.

One member voiced agreement that the proposal would strengthen clarity and predictability in the bankruptcy context. Another member posed the simple question of whether other articles would be affected by this change to R.S. 9:3310, to which the Reporter replied in the negative. Instead, he explained, this would be a simple and surgical excision.

Again, a motion to adopt the above policy was made and seconded. The motion passed without objection.

	<u>5-4-18</u>
Jessica Braun	Date
	<u>5/4/2018</u>
Mallory Walter	Date
	<u>5-4-18</u>
Nick Kunkel	Date