

**LOUISIANA STATE LAW INSTITUTE**

**MEETING OF THE COUNCIL**

**January 15, 2021**

**Friday, January 15, 2021**

**Persons Present:**

Adams, Marguerite (Peggy) L.	Lev, Dan
Bartholomew, Trey K.	Lovett, John A.
Becnel, Sadie	Maloney, Marilyn C.
Belleau, Ashley L.	Meade, Mallory
Bowers, Clinton M.	Medlin, Kay C.
Braun, Jessica	Mengis, Joseph W.
Breard, L. Kent	Miller, Gregory A.
Carroll, Andrea B.	Mire, Alaina R.
Castle, Marilyn	Nedzel, Nadia E.
Chehardy, Susan M.	Norman, Rick J.
Comeaux, Jeanne C.	Ottinger, Patrick
Coreil, Jeffrey	Peterson, Megan S.
Crigler, James C., Jr.	Philips, Harry "Skip", Jr.
Cromwell, L. David	Pirtle, Amy
Curry, Kevin C.	Price, Donald W.
Donewar, Blake C.	Rayford, Andrew C.
Duhe, Martin Bofill	Riviere, Christopher H.
Duplechain, Alixe L.	Robert, Deidre Deculus
Foil, Franklin J.	Roussel, Randy
Forrester, William R., Jr.	Saloom, Douglas J.
Freel, Angelique D.	Schimpf, Michael C.
Garofalo, Raymond E., Jr.	Simien, Eulis, Jr.
Gauthier, Emily M.	Smith, Annie
Garrett, J. David	Smith, Gary L., Jr.
Gonzales, Zack	Stuckey, James A.
Gregorie, Isaac M. "Mack"	Talley, Susan G.
Guidry-Leingang, Kansas M.	Tate, George J.
Hamilton, Leo C.	Thibeaux, Robert P.
Haymon, Cordell H.	Title, Peter S.
Hogan, Lila T.	Trahan, J. Randall
Holdridge, Guy	Tucker, Zelda W.
Holthaus, C. Frank	Ventulan, Josef Philip M.
Janke, Benjamin West	Veron, J. Michael
Johnson, Pamela Taylor	Waller, Mallory
Knighten, Arlene D.	Wenstrom, Kristin
Kunkel, Nick	Whittington, Sarah
Lampert, Loren M.	Willis, Grant
Lawrence, Quintillis	White, H. Aubrey, III
LaVergne, Luke A.	Wilson, Evelyn L.
LeDuff, Taylor M.	Woodruff-White, Lisa
Lee, Amy Allums	Ziober, John David
LeLeux, Katie	

President Rick J. Norman called the Zoom meeting of the Council to order at 10:05 a.m. on Friday, January 15, 2021. He announced that the Law Institute's longtime Director, Professor William E. Crawford, had passed away and informed members that a more formal tribute would be planned when the Council is able to reconvene in person. Several administrative announcements concerning meeting procedures and other matters were then made, after which the President called on Judge Guy Holdridge, Acting Reporter of the Code of Criminal Procedure Committee, to begin his presentation of materials.

## **Code of Criminal Procedure Committee**

Judge Holdridge began by explaining that House Concurrent Resolution No. 4 of the 2018 Third Extraordinary Session urged and requested the Law Institute to study and make recommendations relative to fees for the expungement of arrest and conviction records. The Acting Reporter also noted that the resolution specifically referenced variations throughout the state with respect to the fees being charged for expungements and the methods of collecting those fees. He explained to the Council that a parish-by-parish review of this information had been conducted and compiled into the chart presented in Appendix B to the Committee's report. Judge Holdridge also noted that the Committee had discussed the "vicious circle" created by the cost-prohibitive nature of expungements – offenders cannot afford to have their criminal records expunged because they cannot obtain jobs because they have criminal records.

Judge Holdridge then explained that the Committee had discussed all of this information, as well as recent legislation concerning expungements and the creation of a Clean Slate Task Force to study automatic criminal record-clearing in Louisiana. Ultimately, the Committee's conclusion was that the compiled data concerning expungement fees should be submitted to the Clean Slate Task Force for consideration in their formulation of more comprehensive recommendations concerning expungements generally. A motion was made and seconded to adopt the Committee's report as presented, and the motion passed with no objection. Judge Holdridge then concluded his presentation, 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 of the history of the Common Interest Ownership Regimes Committee and its journey since 2016. Mr. Roussel noted that the Committee has finished the materials, thus he will begin the presentation today with Subpart A on definitions and general provisions. Directing the Council first to Section 1.1, the Reporter explained that this provision simply names the new law the "Louisiana Planned Community Act." Without discussion, this Section was approved.

Moving to Section 1.2, the Reporter began presenting each definition, beginning with the first, which is "affiliate of the declarant." Mr. Roussel noted that this definition was taken from the Uniform Common Interest Ownership Act of 2008. The Council discussed whether this definition would have any bearing on the Code of Evidence. A member wondered particularly about hearsay statements by representatives of the declarant and allowing the offering of evidence into the record when the declarant is not present. The Reporter explained that this term is used only three times in the Act and does not seem to directly impact issues concerning evidence, but that he would take the definition back to the Committee and consult experts in this area of the law. The Reporter also accepted additional language to include managers of limited liability companies in the list of people who can control or who are controlled by the declarant. The final point for further consideration by the Committee was a situation whereby common control exists. The Council questioned whether the proposal covers a scenario where the declarant and person X are both controlled by person Y.

The definitions of "assessment" and "association" were then approved without debate, and the Council moved to discussion of the definition of "bylaws." The Council was concerned that this language is so broad that it includes the articles of incorporation. The Council debated removing the words "however denominated" and specifically excluding the articles of incorporation. The Reporter also suggested adding a cross-reference to Section 3.7 which provides for the requirements of the bylaws. The Council briefly entertained the idea of eliminating this definition altogether, but many noted how useful it is to laypersons serving in homeowner associations. Ultimately, the following was adopted:

**1.2. Definitions**

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

\* \* \*

(4) "Bylaws" means a written instrument, other than the articles of incorporation, that contains the procedures for the conduct of the affairs of the association, including any amendments to the instrument, that meets the requirements of Section 3.7.

\* \* \*

Mr. Roussel next presented the definitions of "common areas," "common expenses," "common expense liability," and "community document," all of which were approved without change. Moving to Section 1.2(9) and the definition of "complete property description," the Council noted that this definition was taken from the Private Works Act but wondered why the phrase "against third persons" was not included. The Reporter quickly agreed to the amendment, and the following was approved:

**1.2. Definitions**

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

\* \* \*

(9) "Complete property description" means any description of immovable property that, if contained in a mortgage of the immovable property filed for registry, would be sufficient for the mortgage to be effective against third persons.

\* \* \*

Next, Section 1.2(10) through (13) were adopted without debate, and Mr. Roussel read the definition of "executive board." The Council noted a potential problem with the use of the term "executive board" and the definition of "member" as a lot owner because the substantive provisions of the Act often use the phrase "executive board member" in a different manner. It was suggested that "executive board" be changed to "board of directors." One Council member worried that these terms are not interchangeable because directors do not manage under corporate law. The Council voted to change the definition of "executive board" to "board of directors," to add a definition of "director," and to make all of the necessary corresponding changes throughout the Act.

Section 1.2(15) through (17) and (19) through (20) were next adopted without dialogue. Section 1.2(18) which defines "lot owner" was questioned for the use of the phrase "an individual or entity" instead of "person." The Reporter explained that prior litigation questioned whether entities could be members of a homeowner association. After more discussion, Mr. Roussel accepted the suggestion to use "natural or juridical person," and the following was approved:

**1.2. Definitions**

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

\* \* \*

(18) "Lot owner" means a natural or juridical person appearing as an owner in the conveyance records of the parish where the lot is located.


\* \* \*

Next, the Council examined the definition of "nonresidential use" in Section 1.2(21). The Reporter noted that certain provisions of the Planned Community Act apply only to residential use and that there are several exemptions to requirements for nonresidential use. The Committee borrowed the phrase "building containing more than four separate housing units" from the Federal Housing Authority rules and regulations. The Council was concerned with mixing references to the type of use with the type of structure encompassing that use and co-ownership notions. Members also discussed the difference between owners in common and a collection of owners. The Reporter ultimately withdrew this definition for further consideration by the Committee.

Section 1.2(22) defines "occupant" as "any person" so the Council again wondered if both natural and juridical persons are included. Mr. Roussel pointed to Section 3.2 to explain that only natural persons are occupants for purposes of the Planned Community Act because of the resulting consequences for persons physically on the property. Some members suggested that the definition should include both natural and juridical persons and others were concerned with the existing definitions of "person" in Civil Code Article 24 and R.S. 1:10. After these observations, the Reporter agreed to add a definition of "person," and Section 1.2(22) was approved as presented.

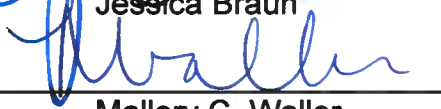
Mr. Roussel then noted that in the definition of "planned community," condominium property is excluded even though some mixed use planned communities have condominiums. The intention is for those structures to be governed by the Condominium Act in deference to the fact that the land upon which a condominium building sits is owned by all who own a unit. Thereafter, Section 1.2(23) and (24) were adopted. Section 1.2(25) was recommitted to the Committee in light of the previous discussion on residential and nonresidential use. Finally, the Reporter presented Section 1.2(26) through (28) defining "restriction," "rule," and "security right," all of which were adopted with little discussion and without change.

At this time, Mr. Roussel concluded his presentation, and a few administrative announcements were made concerning CLE credits and plans for future Council meetings. The January 2021 Council meeting was then adjourned.



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Jessica Braun



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Mallory C. Waller