

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

October 8, 2021

Friday, October 8, 2021

Persons Present:

Bowers, Clinton M.	Manning, C. Wendell
Braun, Jessica	Norman, Rick J.
Breard, L. Kent	Ottinger, Patrick S.
Comeaux, Jeanne C.	Papillion, Darrel James
Cromwell, L. David	Peterson, Megan S.
Davrados, Nikolaos	Philips, Harry "Skip", Jr.
Donewar, Blake C.	Pirtle, Amy
Dwyer, Stephen I.	Price, Donald W.
Dyess, Desiree Duhon	Ramsey, Regina
Foil, Franklin J.	Robert, Deidre Deculus
Forrester, William R., Jr.	Roussel, Randy
Gauthier, Emily M.	Saloom, Douglas J.
Gregorie, Isaac M. "Mack"	Simien, Eulis, Jr.
Hamilton, Leo C.	Smith, Annie
Hayes, Thomas M., III	Sole, Emmett C.
Hogan, Lila T.	Stuckey, James A.
Holdridge, Guy	Tew, Robert S.
Holthaus, C. Frank	Thibeaux, Robert P.
Janke, Benjamin W.	Title, Peter S.
Jewell, John Wayne	Vance, Shawn D.
Knighten, Arlene D.	Ventulan, Josef Philip M.
Kunkel, Nick	Veron, J. Michael
Lawrence, Quintillis	Waller, Mallory C.
LeDuff, Taylor M.	Weems, Charles S., III
Lee, Amy Alums	Woodruff-White, Lisa
Lovett, John A.	Ziober, John David
Maloney, Marilyn C.	

President Rick J. Norman called the Zoom meeting of the Council to order at 10:00 a.m. on Friday, October 8, 2021. After a few administrative announcements were made, 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 he is only seeking approval of the three Subsections that were recommitted during the May 2021 Council meeting, and that once the Council approves these provisions, the project will be ready to submit to the legislature during the 2022 Regular Session.

Mr. Roussel then directed the Council to Section 3.17(A) of the materials and noted that at its May meeting, the Council had recommitted this provision for further review of the exemption of the privilege from R.S. 13:3881. After further discussion, the Committee concluded that the intent was not to create a special rule for these privileges and recommended revisions accordingly. Without discussion, the Council approved the following:

3.17. Privileges for sums due to the association; enforcement

A. A privilege in favor of the association shall arise on a lot for any assessment attributable to that lot or fines imposed against the lot owner. Reasonable attorney fees and costs, other fees, charges, fines, and interest charged pursuant to Section 3.2(A)(10), (11), (12) and (13), and any other sums due to the association under the declaration, this Part, or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this Section. If an assessment is payable in installments, the privilege is for the full amount of the annual assessment from the time the first installment becomes due.

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The Reporter moved to Section 3.22(B) and explained that members of the Council had previously questioned the use of certain terms and the interaction with the provisions concerning administrative terminations under corporate law. After Mr. Roussel explained that the Committee's intent was to mirror corporate law, and therefore its recommendation was to simply cross-reference these provisions for consistency, Subsection B was adopted as follows:

3.22. Curative

* * *

B. The effect of the revocation and reinstatement of an association shall be in accordance with law.

Next, Mr. Roussel asked the Council to turn to Section 4.10 on page 61 of the materials. The Council recommitted this Section to determine whether a violation that resulted in an improper transfer would be an absolute or relative nullity. The Committee opined that nullity is too strong of a remedy and preferred the right to rescind the sale and any other remedies available by law. The Reporter reminded the Council that there are several court decisions resulting in purchasers being stuck with property that cannot be used for its intended purpose, and there is a distinction in the case law between compliance with the provisions of this Subpart and merchantability of title. A member of the Council then suggested changing the wording so that the developer is prohibited from transferring any interest in a lot until certain conditions are met, even if a contract to sell has been executed. After this discussion, Section 4.10 was approved as follows:

4.10. Substantial completion of lots

A. In the case of a sale of a lot for which delivery of a public offering statement is required, a contract to sell may be executed, but the declarant shall transfer no interest in any lot until the declaration is filed for registry, the requirements of R.S. 33:114 et seq. have been met, and all other required governmental approvals have been obtained.

B. Purchasers of lots in a planned community shall have the right to rescind the transfer or demand specific performance that the declarant comply with the provisions of Subsection A of this Section, and pursue any other remedy provided by law for the failure to comply with the provisions of Subsection A of this Section.

Next, the Reporter asked the Council to review Subpart D one more time before this project is submitted to the legislature. At this time, one Council member questioned whether the proposals would result in the creation of a cottage industry because Section 4.8 authorizes the court to award reasonable costs and attorney fees without requiring proof of actual damages. The discussion ultimately turned to standing, and the proposal was amended to ensure that any other person must suffer actual damages to bring an action to enforce the rights and obligations imposed by this Subpart. The Council was

comfortable with the discretionary nature of the award of attorney fees as a check and balance, and the following was adopted:

4.8. Effect of violations on rights of action; attorney fees

A declarant, association, lot owner, or any other person who has suffered actual damages may bring an action to enforce a right granted or obligation imposed by this Subpart. The court may award reasonable costs and attorney fees to the prevailing party.

Mr. Roussel then concluded his presentation, and the October 2021 Council meeting was adjourned.



Jessica G. Braun