LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

November 7, 2025

Friday, November 7, 2025

Persons Present:

Adams, Marguerite (Peggy) L.
Baker, Pamela J.
Belanger, Kathryn (Katie)
Borel, Danielle L.
Braun, Jessica G.
Breard, L. Kent
Castle, Marilyn
Crigler, James C., Jr.
Crochet, Anne J.
Cromwell, L. David
Daniels, Zachary T.
Darensburg, June Berry
Davrados, Nikolaos A.
Doguet, Andre'
Drury, Lloyd "Trey", III
Flemings-Davillier, Tracey
Forrester, William R., Jr.
Hamilton, Leo C.
Hayes, Thomas M., III
Hogan, Lila Tritico
Holdridge, Guy
Holthaus, C. Frank
Johnson, Rachael D.
Knighten, Arlene D.
Kutcher, Robert A.
Lee, Amy Allums
Manning, C. Wendell
Miller, Gregory A.
Norman, Rick J.
Philips, Harry "Skip", Jr.
Price, Donald W.
Procell, Christopher A.
Reeves, Ruth A.
Richard, Herschel E., Jr.
Richardson, Sally Brown
Riviere, Christopher H.
Riviere, Michelle
Rusovich, Sydney G.
Saloom, Douglas J.
Sossamon, Meera U.
Talley, Susan G.
Thibaut, Martha A.
Thibeaux, Robert P.
Title, Peter S.
Tucker, Zelda W.
Waller, Mallory C.
Ziober, John David
Tulane Civil Law Society

President L. David Cromwell called the November Council meeting to order at 10:00 a.m. on Friday, November 7, 2025 at the Louisiana Supreme Court in New Orleans. After asking Council members to briefly introduce themselves and announcing that members of the Tulane Civil Law Society would be observing the meeting this afternoon, the President called on retired Judge Marilyn Castle, Reporter of the Code of Criminal Procedure Committee, to begin her presentation of materials.

Code of Criminal Procedure Committee

The Reporter, retired Judge Marilyn Castle, started with the report in response to House Concurrent Resolution No. 85 of the 2024 Regular Session. The resolution authorized and directed the Law Institute to conduct a study of the criminal statutes relative to white-collar crimes, financial crimes, and crimes involving elected officials. The Reporter noted that the Committee coordinated with legislative staff to produce and review a chart comparing Louisiana's various white-collar crimes with their federal counterparts, specifically with respect to the applicable penalties being imposed. She explained that this chart has been incorporated into the report, and that the Committee could identify no significant disparities between state and federal law with respect to substantive crimes but acknowledged that advancements in technology such as computer crimes and artificial intelligence are rapidly changing this area of the law. As a result, Judge Castle explained that the Committee has no recommendations for change at this time but will continue to monitor the federal law for new additions that may need to be replicated or incorporated into Louisiana law in the future. With little discussion, the report was approved by the Council.

Judge Castle then introduced House Concurrent Resolution No. 9 of the 2025 Regular Session, which authorized and directed the Law Institute to study and recommend legislation for implementation of procedures for recusal of judges and justices of the peace in criminal proceedings to mirror the provisions currently applicable to recusal in civil cases. The Reporter reminded the Council of previous recommendations by the Law Institute relative to this topic, specifically the recommendation to not extend the civil recusal procedure to criminal cases because of time restraints and due process concerns. Because these same concerns still exist today, the Committee is therefore not recommending any changes to current law. Without discussion, the report was approved by the Council.

The Reporter next informed the Council that the three remaining resolutions are all relative to aspects of bail and therefore overlap to an extent. The first is House Resolution No. 191 of the 2024 Regular Session, which urged and requested the Law Institute to study and provide recommendations relative to the feasibility of statewide bail schedules. Judge Castle first noted that felony bail schedules are not widespread in Louisiana – a few jurisdictions have schedules for felonies, but more have them for misdemeanors. Most misdemeanors, however, are currently handled by misdemeanor summons or unsecured release via the issuance of a ticket and notice to appear. Second, the Committee reviewed constitutional implications, evidenced by recent litigation, with respect to imposing any mandatory statewide bail schedule that does not consider the defendant's ability to pay. Therefore, the report provides factors for the legislature to consider if it wishes to implement a statewide bail schedule, including the appropriate calculation of bail amounts, alternatives akin to electronic monitoring and drug testing, and funding a reminder system to ensure appearances. The Council discussed the lack of evidence available when the court of appeal reviews writs relative to inappropriate bail amounts and the fact that a schedule may exacerbate the problem. Members of the Council also discussed that it would be helpful for judges to state the reasons, based on the list of factors in Code of Criminal Procedure Article 316, for setting the bail so that these reviews are productive. It was further noted that in practice, judges often make minute entries when there are unusual circumstances regarding the setting of bail, and removing that discretion by implementing a uniform schedule may lead to more constitutional challenges. After this discussion, the Council approved the report as presented.

House Resolution No. 243 of the 2024 Regular Session authorized and directed the Law Institute to study the applicable provisions relative to physical or sexual abuse of a minor and the feasibility of the pretrial detention of these offenders for a minimum of seventy-two hours. The Reporter explained that the report first seeks to make the legislature aware of existing provisions relative to the timing of bond hearings that may serve as a mechanism for holding offenders, in some cases for up to five days. Secondly, the report notes the many bail provisions scattered throughout the law and recommends the exploration of creating a bench book to assist judges. Thirdly, judges may delay the setting of bond until they have received a full criminal history in the types of cases mentioned in the resolution. Finally, the report addresses the need to further educate the judiciary about the mandatory issuance of protective orders as a condition of bail when the accusation is of a crime of violence. The Committee reasoned that if the underlying concern of the resolution relates to eliminating contact with the victim, protective orders are a great tool to address this issue. With little discussion, the report was approved by the Council.

The final resolution concerning bail was House Concurrent Resolution No. 100 of the 2018 Regular Session, which urged and requested the Law Institute to review the laws regarding bail and study whether a system that provides for the presumed release of a person on unsecured personal surety or bail without surety in lieu of a preset bail schedule would be more successful in ensuring the appearance of the defendant and the public safety of the community. The Reporter explained that the Committee's response to this resolution had been delayed in part because gathering statistics and hard data has proven to be difficult. Only anecdotal information regarding issues of public safety and repeat offenses by those released without bond could be found. Nevertheless, coupled with the 2024 resolutions on bail and in keeping with the goal of increased appearances, the Committee recommends the implementation of a statewide email and text message

reminder system to prevent the snowball effect of open warrants, increased caseloads, and crowded jails. Another recommendation by the Committee is to authorize cash deposits in lieu of bail that may be returned upon appearance. This system allows defendants to bond out upon paying an amount that is less than a commercial bond premium and provides a powerful incentive for offenders to appear; however, current law only authorizes this system in the parishes of St. John the Baptist and St. Charles.

Members of the Council discussed the mechanics of how the cash deposit system works and the political challenges of expanding it to all parishes. They also mentioned the lack of procedure for the forfeiture of deposits when a defendant does not appear in court and issues regarding how interest earned on the account will be distributed. One Council member also noted that drug testing upon appearance serves as a deterrent to defendants from coming to court and eliminating this practice as a possible solution. After additional discussion, the Council approved the report.

There being no additional business on behalf of the Code of Criminal Procedure Committee, retired Judge Castle concluded her presentation, and the President called on Professor Lloyd "Trey" Drury, III, Reporter of the Corporations Committee, to begin his presentation of materials.

Corporations Committee

Professor Drury began by reminding the Council of the provisions that had been recommitted during his last presentation. Turning to the Part 6 materials, specifically to R.S. 12:22-601(B)(2)(d) on page 1, he explained that the Committee had reviewed this provision to consider whether specific mention of a Louisiana trustee is necessary but ultimately determined that such a trustee would be a person who is an individual and therefore already covered. As a result, the provision leads to the correct outcome as drafted with the redlined changes, and a motion was made and seconded to adopt the provision as presented. That motion passed with no objection, and the adopted proposal reads as follows:

R.S. 12:22-601. Power to dissociate as member; wrongful dissociation

* * *

~~(b)~~ B. A person's dissociation as a member is wrongful only ~~if the dissociation~~ in the following cases:

* * *

(2) The dissociation occurs before the completion of the winding up of the limited liability company and is caused in one of the following ways:

* * *

~~(D)~~ (d) ~~in~~ In the case of a person that is not an individual, an estate, or a trust other than a business trust, ~~an estate, or an individual,~~ the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

* * *

Next, the Council turned to R.S. 12:22-602, on page 6 of the materials, and Professor Drury noted that Paragraph (7) had been recommitted and Paragraph (10) had been changed slightly by the Committee. The Council agreed that the redlined language addressed one of the issues involving limited interdictions but questioned whether the Committee had considered reinstating a dissociated member when the incapacity that served as the cause of the dissociation ends, such as when a judgment of interdiction is terminated. Members of the Council discussed the pick-your-partner principle, the fact that dissociation would occur under existing LLC law pursuant to R.S. 12:1333, and the ability to vary default rules in the operating agreement except in very limited

circumstances, which would not be applicable here. A motion was then made and seconded to provide for the automatic restoration of a dissociated member's membership upon termination of the interdiction or other incapacity, and to recommit this provision for the purpose of considering and drafting language to this effect. After additional discussion concerning the fact that this would be a significant departure from the Uniform Law as well as existing Louisiana LLC law, and that reversals of interdictions are extremely rare, the motion to recommit passed by a vote of 16-12.

After adjourning for lunch, the Council returned and quickly approved the redlined changes to R.S. 12:22-602(10), on page 8 of the materials. The adopted proposal reads as follows:

R.S. 12:22-602. Events causing dissociation

A person is dissociated as a member ~~when~~ in the following cases:

* * *

(10) ~~in~~ In the case of ~~a person that is~~ an estate or ~~is acting as a member by virtue of being a personal representative of an estate~~ a succession representative who has been admitted as a member, the ~~estate's~~ entire transferable interest in the limited liability company held in the estate is distributed~~;~~.

* * *

Next, Professor Drury reminded the Council that certain provisions of R.S. 12:22-702 had been recommitted to ensure that the "powers of a sole manager" language in Subsections B, C, and D also allow the appointed person to alienate immovables and take other actions that would normally require a vote by the members. Additionally, the Committee added language to Subsection B to require the name of the appointed person and any limitations to their authority to be included in the articles of dissolution. Motions were made and seconded to adopt the redlined edits to these provisions, and after the Reporter accepted a friendly amendment to change "to" to "on" on line 30 of page 10, the motions passed without objection. The adopted proposals read as follows:

R.S. 12:22-702. Winding up

* * *

~~(b)~~ B. (1) In winding up its activities and affairs, a limited liability company shall:

* * *

(b) Upon the commencement of dissolution, deliver to the secretary of state for filing articles of dissolution stating all of the following:

* * *

(v) The name and address of the person, if any, who has been appointed to wind up the company's activities and affairs under Subparagraph (2)(a) of this Subsection, including any limitations on that person's authority.

(c) Upon the completion of winding up, deliver to the secretary of state for filing articles of termination as provided in R.S. 12:22-712.

(2) The company may also do any of the following:

~~(a) deliver~~ Deliver ~~to the [Secretary of State secretary of state] for filing a statement of dissolution stating the name of the company and that the company is dissolved;~~.

(a) Appoint a person with the exclusive authority to wind up the company's activities and affairs. If the company does so, unless otherwise provided, the person is deemed to be a manager for the purposes of R.S. 12:22-304(A), has the powers of a sole manager under R.S. 12:22-407(C), and has the power to take the actions described in R.S. 12:22-407(C)(4) and (5)(d) without the vote or consent of the members.

* * *

~~(c)~~ C. If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the company. If the person does so, the person ~~has the powers of a sole manager under Section 407(c) and~~ is deemed to be a manager for the purposes of ~~Section 304(a)~~ R.S. 12:22-304(A), has the powers of a sole manager under R.S. 12:22-407(C), and has the power to take the actions described in R.S. 12:22-407(C)(4) and (5)(d) without the vote or consent of the members.

~~(d)~~ D. (1) If the legal representative, if any, under ~~subsection (c)~~ Subsection C of this Section declines or fails to wind up the limited liability company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective.

(2) A person appointed under this ~~subsection:~~ Subsection

~~(1) has the powers of a sole manager under Section 407(c) and~~ is deemed to be a manager for the purposes of ~~Section 304(a); and~~ R.S. 12:22-304(A), has the powers of a sole manager under R.S. 12:22-407(C), and has the power to take the actions described in R.S. 12:22-407(C)(4) and (5)(d) without the vote or consent of the members.

~~(2)~~ (3) A person appointed under this Subsection has the authority to file and shall deliver promptly to the ~~[Secretary of State]~~ secretary of state for filing an amendment to the company's ~~certificate~~ articles of organization stating all of the following:

* * *

Next, the Council turned to R.S. 12:22-704, on page 26 of the materials, and Professor Drury expressed his intent to include all of the bracketed "in writing/written" language throughout this provision but noted that the Committee would be reviewing the provisions of ULLCA, the LBCA, and existing LLC law to harmonize definitions and terminology involving documents, writings, records, etc. A motion was made and seconded to adopt this provision, and one Council member suggested making conforming changes to the corresponding provision of the LBCA – R.S. 12:1-1406 – with respect to use of the singular rather than the plural. The Reporter agreed, and the Council then discussed the result if the notice contemplated by Subsection B provided that the claim would be extinguished but did not specifically state *by peremption*. The Council agreed to change "it" to "the company" on line 8 of page 26 and discussed the need to include a provision similar to R.S. 12:1-141 of the LBCA for purposes of determining the effective date of the notice as contemplated by Paragraph (B)(3). A motion was made and seconded to delete "by peremption" on line 21 of page 26, and the motion passed by a vote of 14-13. A vote was then taken to adopt R.S. 12:22-704 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 12:22-704. Known claims against dissolved limited liability company

A. A dissolved ~~corporation~~ limited liability company may dispose of ~~the~~ a known ~~claims~~ claim against ~~it~~ the company by notifying ~~its~~ the known ~~claimants~~ claimant in writing of the dissolution at any time after its effective date.

B. The written notice ~~must~~ shall do all of the following:

(1) Describe information that must be included in a claim.

(2) Provide a mailing address where a claim may be sent.

(3) State the deadline, which ~~may~~ shall not be fewer than one hundred ~~and~~ twenty days from the effective date of the written notice, by which the dissolved ~~corporation~~ limited liability company must receive the claim.

(4) State that the claim will be extinguished ~~by peremption~~ if not received by the deadline.

C. A claim against the dissolved ~~corporation~~ limited liability company is perempted by either of the following:

(1) If a claimant who was given written notice under Subsection B of this Section does not deliver ~~the~~ a written claim to the dissolved ~~corporation~~ company by the deadline.

(2) If a claimant whose claim was rejected in writing by the dissolved ~~corporation~~ company does not commence a proceeding to enforce the claim by the deadline stated in the rejection notice for the commencement of an enforcement proceeding, which ~~may~~ shall not be fewer than ninety days after the effective date of the rejection notice.

D. For purposes of this Section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Professor Drury then directed the Council's attention to R.S. 12:22-705, on page 31 of the materials. Members quickly agreed to delete "by peremption" on lines 19 and 20 for purposes of consistency before discussing the requirement of publishing notice in the parish of the LLC's principal office, which may differ from where the LLC is primarily doing business. The Council agreed that the Committee should consider replicating Comment (d) to R.S. 12:1-1407, and a motion was then made and seconded to adopt the provision as amended. The motion passed without objection, and the adopted proposal reads as follows:

R.S. 12:22-705. Other claims against dissolved limited liability company

A. A dissolved ~~corporation~~ limited liability company may also publish notice of its dissolution and request that persons with claims against the dissolved ~~corporation~~ company present them in accordance with the notice.

B. The notice ~~must~~ shall do all of the following:

(1) Be published one time in a newspaper of general circulation in the parish where the dissolved ~~corporation's~~ limited liability company's principal office or, if none in this state, its registered office, is or was last located.

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

(3) State that a claim against the dissolved ~~corporation~~ company will be extinguished ~~by peremption~~ unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

C. If the dissolved ~~corporation~~ limited liability company publishes a newspaper notice in accordance with Subsection B of this Section, any claim not earlier perempted by ~~R.S. 12:1-1406(C)~~ R.S. 12:22-704(C) is perempted unless the claimant commences a proceeding to enforce the claim against the dissolved ~~corporation~~ company within three years after the publication date of the newspaper notice.

~~D. A claim that is not perempted by R.S. 12:1-1406(C) or 1-1407(C) may be enforced against either of the following:~~

~~(1) The dissolved corporation, to the extent of its undistributed assets.~~

~~(2) Except as provided in R.S. 12:1-1408(D), if the assets have been distributed in liquidation, a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this Section may not exceed the total amount of assets distributed to the shareholder.~~

~~E. A proceeding to enforce the liability of a shareholder under Paragraph (D)(2) of this Section is perempted unless it is commenced within two years after the date that the assets were distributed to the shareholder.~~

~~F. For purposes of this Section, the term "claim" includes a claim of any kind, including a contingent liability and a claim based on an event occurring after the effective date of dissolution.~~

The Council then turned to R.S. 12:22-705.1, on page 36, and Professor Drury explained that this language was moved from Section 705 because it applies to both that provision and Section 704. A motion was made and seconded to adopt the provision, at which time one Council member noted that "either" suggests that a choice must be made between these two options, when really both can be done. The Council agreed to change "either" to "one or more" on line 4 and to consider making conforming changes to R.S. 12:1-1407(D). A vote was then taken on the motion to adopt R.S. 12:22-705.1 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 12:22-705.1. Enforcement of claims

A claim that is not perempted by R.S. 12:22-704 or 22-705 may be enforced against one or more of the following:

(1) A dissolved limited liability company, to the extent of its undistributed assets.

(2) Except as otherwise provided in R.S. 12:22-706, if assets of the company have been distributed after dissolution, a member or transferee to the extent of that person's proportionate share of the claim or of the company's assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this Section may not exceed the total amount of assets distributed to the person after dissolution.

Next, the Council considered R.S. 12:22-706, on page 37 of the materials, and quickly agreed to change "barred" to "extinguished" on line 14 for purposes of consistency, and to make a conforming change to the corresponding provision of the LBCA. A motion was made and seconded to adopt this provision as amended, and the motion passed without objection. The adopted proposal reads as follows:

R.S. 12:22-706. Court proceedings

A. A dissolved ~~corporation~~ limited liability company that has published a notice under R.S. ~~12:1-1407~~ 12:22-705 may file an application with the district court of the parish where the dissolved ~~corporation's~~ company's principal office or, if none in this state, its registered office is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved ~~corporation~~ company or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved ~~corporation~~ company, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be ~~barred~~ extinguished under R.S. ~~12:1-1407(C)~~ 12:22-705(C).

B. Within ten days after the filing of the application, notice of the proceeding shall be given by the dissolved ~~corporation~~ limited liability company to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved ~~corporation~~ company.

C. The court shall appoint an attorney at law to represent all claimants whose identities or whereabouts are unknown in any proceeding brought under this Section, as if those claimants were absentee defendants under Code of Civil Procedure Article 5091. The reasonable fees and expenses of the appointed attorney, including all reasonable expert witness fees, shall be paid by the dissolved ~~corporation~~ limited liability company.

D. Provision by the dissolved ~~corporation~~ limited liability company for security in the amount and the form ordered by the court under Subsection A of this Section shall satisfy the dissolved ~~corporation's~~ company's obligations with respect to claims that are contingent, have not been made known to the dissolved ~~corporation~~ company, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a ~~shareholder~~ member or transferee who received assets in liquidation.

Members of the Council then turned to R.S. 12:22-707, on page 39 of the materials, and engaged in a great deal of discussion with respect to the language in Subsection A that treats member creditors as having equal footing to third-party creditors, as opposed to partnership law which requires that third-party creditors be paid before related parties. The Council agreed to defer consideration of this provision pending research as to whether this was the rule under existing LLC law and elsewhere. A motion was then made and seconded to adopt R.S. 12:22-708, on page 41 of the materials, as presented, and the motion passed without objection. The adopted proposal reads as follows:

R.S. 12:22-708. Administrative dissolution

~~(a)~~ A. ~~The~~ Subject to Subsection B of this Section, the ~~[Secretary of State]~~ secretary of state ~~may~~ shall ~~commence a proceeding under subsection (b) to~~ administratively dissolve a limited liability company ~~administratively~~ if, according to the records of the secretary of state, the company ~~does not~~ has failed for ninety consecutive days to do any of the following:

(1) ~~pay~~ Pay any fee, tax, interest, or penalty required to be paid to the ~~[Secretary of State]~~ secretary of state ~~not later than [six months] after it is due.~~;

(2) ~~deliver~~ Deliver ~~[~~an annual~~]~~ ~~[a biennial]~~ report to the ~~[Secretary of State]~~ secretary of state ~~not later than [six months] after it is due.; or~~

(3) ~~have~~ Have a registered agent in this state ~~for [60] consecutive days~~.

~~(b)~~ B. ~~If the [Secretary of State] determines that one or more grounds exist for administratively dissolving a limited liability company, the [Secretary of State] shall serve the company with notice in a record of the [Secretary of State's] determination.~~ The secretary of state shall give the limited liability company at least thirty days' written notice of the secretary's intention to administratively dissolve the company under Subsection A of this Section. If the company eliminates the grounds for its administrative dissolution before the end of the thirty-day notice period, the secretary of state shall not administratively dissolve the company.

~~(c)~~ C. ~~If a limited liability company, not later than [60] days after service of the notice under subsection (b) does not cure or demonstrate to the satisfaction of the [Secretary of State] the nonexistence of each ground determined by the [Secretary of State], the [Secretary of State] shall administratively dissolve the company by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The [Secretary of State] shall file the statement and serve a copy on the company pursuant to Section 210.~~ The secretary of state administratively dissolves a limited liability company under this Section by filing a statement of administrative dissolution that states the grounds for administrative dissolution.

~~(d)~~ D. A limited liability company that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under ~~Sections~~ R.S. 12:22-702, 704, 705, 706, and 707, or to apply for reinstatement under ~~Section~~ R.S. 12:22-709.

~~(e)~~ E. The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

Finally, the Council considered R.S. 12:22-709, on page 43 of the materials, and concerns were expressed with respect to the "is satisfied that the information is correct" language on lines 27 and 28 and whether the secretary of state's office was willing to undertake this obligation. Members of the Council discussed whether this language was protective in nature, allowing the secretary of state to reject an application containing obviously false information, or whether it imposed an additional fact-checking obligation upon the secretary of state's office. The Reporter agreed to consult with representatives of the secretary of state's office as to these issues at the Committee's next meeting, and the Council also discussed the fact that some states do not provide for relation back to the effective date of the administrative dissolution.

At this time, Professor Drury concluded his presentation, and the Friday session of the November 2025 Council meeting was adjourned.

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

November 8, 2025

Saturday, November 8, 2025

Persons Present:

Adams, Marguerite (Peggy) L.
Baker, Pamela J.
Borel, Danielle L.
Braun, Jessica G.
Breard, L. Kent
Cromwell, L. David
Darensburg, June Berry
Doguet, Andre'
Hamilton, Leo C.
Hayes, Thomas M., III
Holdridge, Guy
Holthaus, C. Frank
Knighten, Arlene D.
Lee, Amy Allums
Lovett, John A.
Manning, C. Wendell
Meyer, Julia A.
Miller, Gregory A.
Norman, Rick J.
Opotowsky, Randy
Price, Donald W.
Procell, Christopher A.
Reeves, Ruth A.
Richard, Herschel E., Jr.
Richardson, Sally Brown
Riviere, Christopher H.
Roussel, Randy
Ruffin, Aaron M.
Saloom, Douglas J.
Talley, Susan G.
Title, Peter S.
Tucker, Zelda W.
Waller, Mallory C.
Ziober, John David

President L. David Cromwell called the Saturday session of the November Council meeting to order at 9:00 a.m. on Saturday, November 8, 2025 at the Louisiana Supreme Court in New Orleans. He then called on Mr. Randy Roussel, Reporter of the Common Interest Ownership Regimes Committee, to begin his presentation of materials.

Common Interest Ownership Regimes Committee

Mr. Roussel began by reminding the Council of the discussion at its last meeting about a possible gap in the law when leased land, usufructs, and servitudes are subjected to a condominium regime. In response to that discussion, the Committee reworked several related provisions for further deliberation. Mr. Roussel noted the first change on page 24 of the materials, in R.S. 9:1122.103, with the addition of the phrase "servitude, or other right of possession." He explained that this phrase was also added in four other places for consistency and clarity but first asked the Council to delete the definition of "leasehold condominium regime," noting that this term is unnecessary because the substance of the definition is repeated throughout the Act. With a note by the Council to renumber the remaining proposed definitions, the repeal of this provision was approved.

Mr. Roussel then turned to page 18 and R.S. 9:1122.101(A). The Committee revised this provision to clarify that condominium regimes may be established on servitudes and other rights of possession in addition to leased property. In those cases, all owners, grantors, and grantees are required to execute a declaration to establish the regime. The last sentence was added to ensure that regimes created prior to the effective date of these proposed changes are not invalidated. One Council member questioned whether the effectiveness language should be moved to the applicability section of the Act, and another Council member noted that the intent to "grandfather in" existing regimes may not be clear. Some members mentioned that an explicit statement may not be necessary, but others worried about the ramifications with respect to title insurance if such a statement is not included. After further discussion, the Council ultimately deleted the last sentence and directed the Committee to add a Comment to this effect instead. The following language was approved:

R.S. 9:1122.101 Creation of condominium regimes; ~~condominium~~ declaration; recordation

A. A condominium regime is established by the execution of a ~~condominium~~ declaration by ~~the owner~~ all owners of the immovable property ~~to be conveyed and by every lessor of a lease~~ subjected to the condominium regime and each grantor and grantee of a lease, servitude, or other right of possession the expiration ~~and~~ or termination of which will terminate the condominium regime or reduce its size. The ~~condominium~~ declaration and any instrument by which the condominium regime is altered or terminated shall be ~~effective~~ without effect against third ~~parties when~~ persons unless filed for registry in the conveyance records ~~in~~ of the parish in which the immovable property to be subjected to the condominium regime is ~~located~~ situated.

The Reporter then directed the Council's attention to R.S. 9:1122.110 and the expanded requirement of showing on the plat any property subject to a servitude or other right of possession. Without discussion, the following language was approved:

R.S. 9:1122.110. Plats and plans

A. Each plat and each plan, as applicable, shall be clear and legible and shall show all of the following:

* * *

~~(6)~~ (7) The location, ~~and~~ dimensions, and complete property description of any ~~immovable~~ condominium property ~~in which the unit owners will own only an interest as lessee,~~ subject to a lease, servitude, or other right of possession the termination or expiration of which will terminate the condominium regime or reduce its size, labeled ~~as "immovable property subject to lease"~~ in a manner to identify the areas subject to the reduction or termination.

Mr. Roussel next asked the Council to review the changes to the definition of "unit owner" in R.S. 9:1121.105 to capture co-ownership in the common elements. Discussion began with some members questioning the need for this change because the definition of condominium property already includes all interest in land and improvements thereon. Members of the Council also wondered whether the change should be added to the definition of "unit" instead of "unit owner." The Reporter responded by noting that the same concept had been included in R.S. 9:1122.104(F) to make the Act user friendly and that the language had been placed here instead of in other definitions because this definition relates to the rights that the owner has and may transfer. The language attempts to capture the concept that the unit is the four walls and the common elements owned in indivision, but the Council then questioned whether the definition of "condominium parcel" is redundant. In further discussion, the Council speculated whether the Committee may have used the term "unit" in other places in the Act to mean the four walls but really intended for the term to also include the undivided interest in the common elements and limited common elements. The Reporter agreed to review the use of the terms "unit," "unit owner," "condominium parcel," and "condominium property" and to return to the Council with new proposals at a later date.

Next, the Reporter reminded the Council of its directive to add a definition of "common surplus" and pointed to page 11 of the materials. He explained what the surplus may be used for and the fact that it is calculated by determining receipts less expenditures and less reserves. After the Reporter further clarified that surpluses and reserves are two different things, the following definition was approved:

R.S. 9:1121.~~103~~105. Definitions

As used in this Part, the following terms have the meanings indicated below:

* * *

(9) "Common surplus" means receipts in excess of common expenditures and reserves for the benefit and use of the condominium property, calculated each fiscal year.

Moving to page 32 of the materials and R.S. 9:1122.107(D), the Reporter described a clean-up based on the discussion at the last meeting regarding the appropriate party to determine the amount of compensation versus the reallocation. One Council member suggested that the first sentence of the Subsection be constructed like the second sentence to ensure that the language is not suggesting that it is possible to override the court's authority to set the compensation. Other Council members suggested language to clarify that in addition to seeking compensation, the association and the unit owners have the right to receive the compensation, appear in the proceedings, and raise objections. Acknowledging that expropriation includes the value and just compensation is the award but also severance, the loss of revenue, and other actions, the Council recommitted this Subsection to the Committee for further consideration.

Mr. Roussel next discussed R.S. 9:1122.111 regarding use for sales purposes and explained the clarifications made to Subsection B after the Council questioned the intent of this provision at the last meeting. Subsection B was thereafter approved as follows:

R.S. 9:1122.111. Use for sales purposes

* * *

B. The rights of the declarant in accordance with this Section shall terminate as follows:

(1) If the condominium regime is to be developed in a single phase or consists of a single building, declarant control terminates upon the last of the following to occur:

(a) The expiration or termination of development rights reserved in the declaration, subject to R.S. 9:1123.103.

(b) The third anniversary of the first sale of a unit to an unrelated purchaser.

(c) The sale of seventy-five percent of the units to unrelated purchasers.

(2) If the condominium regime is to be developed in multiple phases or consists of multiple buildings declarant control terminates upon the last of the following to occur:

(a) The expiration or termination of development rights reserved in the declaration.

(b) The sale of seventy-five percent of the units to unrelated purchasers of the total number of units provided for in the declaration, including units to be added pursuant to unexpired special declarant rights.

Moving to R.S. 9:1122.112, the Reporter explained that the Committee redrafted this concept after considering feedback from the previous Council meeting regarding inconsistencies and liability issues. The Council recommended adding an exception for emergencies in Subsection C because reasonable notice and reasonable hours may not be achievable. Council members also questioned the inclusion of language relative to limited common elements and units if this is intended to be the general rule for access by the association. After further discussion, Subsection C was amended and combined with Subsection B. In Subsection D, on lines 6 through 11 of page 41, the Council added an exception for emergencies and clarified a unit owner's right to access other units and

limited common elements assigned to other owners to fulfill obligations in accordance with the condominium documents, such as maintenance and repairs. Mr. Roussel described Subsection E as the right to access common elements and limited common elements without notice and the right to access another unit after taking reasonable steps to contact the owner in the event of an emergency. The Council next refined the language regarding a right of use of an owner's own property and a servitude of access to other units throughout the proposal. In the final Subsection, the Council rearranged the clauses, and all of the following provisions were approved:

R.S. 9:1122.112. Servitude and use rights

A. A declarant has a personal servitude of right of use on and through the common elements as may be reasonably necessary for the purpose of discharging obligations or exercising special declarant rights, whether in accordance with this Part or reserved in the declaration.

B. The association has servitudes of access through units, common elements, and limited common elements for purposes of the exercise of rights in accordance with R.S. 9:1123.115. Except in case of emergency, use of the servitude of access to a unit or limited common element shall be limited to reasonable hours, after reasonable notice or as further provided in the condominium declaration.

C. Unit owners have a nonexclusive right to use, for the purpose for which they were intended, all common elements other than limited common elements. Unit owners shall have the right to use limited common elements in accordance with the condominium documents. Except in case of emergency, a unit owner has a servitude of access to other units and limited common elements not directly allocated to his unit after reasonable notice and during normal business hours, to the extent necessary to comply with the unit owner's obligations under the condominium documents.

D. In case of emergency, the association and every unit owner shall have a servitude of access through all common elements and limited common elements without prior notice. In case of emergency and if necessary for the protection of any person or property, the association and each unit owner shall have a servitude of access to any unit, provided that before entering the unit, reasonable steps to contact the unit owner or occupant are taken.

E. Any portion of a unit that contributes to the structural support of the improvements on the condominium property is burdened with a servitude of structural support for the benefit of the common elements and the other units.

At this time, Mr. Roussel concluded his presentation, and the November 2025 Council meeting was adjourned.

Jessica G. Braun

Mallory C. Waller