LOUISIANA STATE LAW IINSTITUTE

MEETING OF THE COUNCIL

February 27, 2026

Friday, February 27, 2026

Persons Present:

Adams, Marguerite "Peggy" L.
Amacker, Dawn
Braun, Jessica G.
Breard, L. Kent
Bromley, Kris T.
Brown, Brandon B.
Carroll, Andrea B.
Crigler, James C., Jr.
Cromwell, L. David
Curry, Kevin C.
Dara, Joshua J., Jr.
Darensburg, June Berry
Doguet, Andre'
Forrester, William R., Jr.
Grover, Gail
Guice, Jon K.
Gulotta, James
Hamilton, Leo C.
Hawthorne, George "Trippe"
Hebert, Christopher B.
Hogan, Lila Tritico
Holdridge, Guy
Johnson, Rachael D.
King, Megan M.
Lovett, John A.
Manning, C. Wendell
McCallum, Jay B.
Miller, Gregory A.
Norman, Rick J.
North, Donald W.
Penzato, Allison H.
Pettigrew, Landon C.
Philips, Harry "Skip", Jr.
Price, Donald W.
Procell, Christopher A.
Romanach, Kyla
Roussel, Randy
Saloom, Douglas J.
Smith, Mary Watson
Sole, Emmett C.
Swensek, Adam J.
Talley, Susan G.
Talluto, John
Thrower, Jason B.
Title, Peter S.
Tucker, Zelda W.
Ventulan, Josef
Waller, Mallory C.
Weems, Charles S., III
White, H. Aubrey, III
Ziober, John David

President Leo C. Hamilton called the February Council meeting to order at 10:00 a.m. on Friday, February 27, 2026 at the Lod Cook Alumni Center in Baton Rouge. After asking Council members to briefly introduce themselves and honoring Chair David Cromwell for his service as President in 2024 and 2025, the President called on the Reporter of the Constitutional Laws Committee, Mr. Charles S. Weems III, to begin his presentation of materials.

Constitutional Laws Committee

Mr. Weems began by informing the Council that he would be presenting the Committee's sixth biennial report on statutes that have been declared unconstitutional by final and definitive judgment pursuant to R.S. 24:204(A)(10). He explained that the report was divided into two parts – provisions that were not included in previous reports, and provisions that were included in previous reports but have not yet been addressed by the legislature. He also explained that the report includes an appendix of all of the provisions that have been addressed by the legislature after having been previously reported on. Mr. Weems noted that the Committee's recommendations with respect to the unconstitutional provisions vary in form – sometimes amendment or repeal is recommended, and other times the recommendation includes referral to another Law Institute Committee for substantive study, publication of validity notes by the printer, or other remedies. With that introduction, Mr. Weems asked the Council to turn to the letter on page i of the report, noting that a new last sentence had been adding emphasizing that the report does not include matters that are currently pending before a court because these are not "final and definitive" in accordance with the Law Institute's charge. A motion was made and seconded to approve the inclusion of this sentence, and the letter as a whole, and the motion passed without objection.

Directing the Council's attention to the provisions that were new to the report, the Reporter first explained R.S. 4:143 et seq. beginning on page 1. He noted that the *Fremin v. Boyd Racing* case cited on page 6 held the 2021 amendments to these provisions in Title 4 unconstitutional, finding that historical horse racing is a new form of gambling that required authorization in a local election that did not take place before the amendments were made. As a result, the Committee's recommendation on page 7 is that the legislature reenact the amendments contingent upon prior local voter approval in each parish where historical horse racing will be licensed or conducted. A motion was made and seconded to adopt the proposed recommendation as presented, and the motion passed without objection.

Turning to page 8 of the report, Mr. Weems presented R.S. 13:4163, a prior version of which was declared unconstitutional by the Louisiana Supreme Court in *Fisher v. Harter* cited on page 11. Specifically, the Reporter explained that the constitutional infirmity involved the mandatory nature of the continuance for legislators and legislative employees, which the Supreme Court found violated the separation of powers doctrine because it removes all judicial discretion. The legislature immediately responded to this decision by amending the provision to instead create a presumption that a motion for legislative continuance is proper, which can be overcome by clear and convincing evidence. Nevertheless, the Committee remained concerned about the "shall be granted" language in Paragraph (B)(1), as well as the fact that the statute does not explicitly provide that if the presumption is overcome, the motion does not have to be granted. As a result, the Committee determined that the best course of action would be to include a legislative note on page 14 explaining that it is uncertain whether the constitutional infirmity has been remedied, and a motion was made and seconded to adopt the recommendation as presented. After additional discussion by Council members with respect to the Supreme Court's decision and the legislature's attempted fix, the recommendation was adopted without objection.

Next, the Reporter directed the Council's attention to R.S. 14:109, on page 15 of the report, and the district court's decision in *Deep South Today v. Murrill* finding that this statute concerning approaching a peace officer engaged in law enforcement duties is unconstitutionally vague in violation of the Fourteenth Amendment because it fails to set forth any sort of standards for the public or for law enforcement officers. As a result, the Committee recommends that the legislature amend this provision to include definite or determinate standards by which officers may issue orders to stand back or retreat, and a motion was made and seconded to adopt this recommendation as presented. After discussion concerning the fact that the official duties of a police officer are quite broad but that this would certainly pass muster if the officer were, for example, actively engaged in apprehending a suspect, the motion passed without objection.

Mr. Weems then asked the Council to consider R.S. 32:412, on page 16 of the report, which was declared unconstitutional in *Nelson v. Landry* for the same reason as the provision on special identification cards that has continuously been included in the report – the requirement that a driver's license contain the words "sex offender" in orange capital letters is not the least restrictive means of signaling that the individual is a registered sex offender; rather, this compelled speech fails strict scrutiny because a code or symbol could be used instead. The court explained that this ruling is necessary even though the DMV has voluntarily ceased enforcing the provisions of this statute because that decision could just as easily be reversed in the future. A motion was made and seconded to adopt the proposed recommendation on page 17 of the report, and the motion passed with no objection.

Having concluded consideration of all of the provisions that were new to the report, the Reporter directed the Council's attention to the provisions that were previously included but have not yet been addressed by the legislature, noting that he would be focusing only on the provisions that include some sort of change or update since the Committee's last report and would later ask for *in globo* approval of all remaining provisions in this section. The first such provision including a change was Children's Code Article 305 on page 26, specifically the redlined language on pages 28 and 29 which explains that a constitutional amendment was submitted to the voters that would have

remedied the constitutional infirmity by allowing the legislature to dictate the crimes for which minors could be tried as adults. Because this constitutional amendment ultimately failed to pass, the provision of the Children's Code that includes an additional crime not appearing in the Constitution remains a violation according to the Louisiana Supreme Court in *State in Interest of D.T.* A motion was made and seconded to include the redlined language updating the legislative note, and the motion passed with no objection. Next, the Council turned to R.S. 13:3715.1 on page 30, which had been declared unconstitutional by the Louisiana Supreme Court in *State v. Skinner*. Since the last iteration of the Committee's report, the provision was amended to permit notice of the subpoena to be delivered by commercial courier, which does not address the constitutional infirmity nor change the Law Institute's recommendation that the validity note be updated to specify that the procedural requirements were found unconstitutional *for criminal investigative purposes*. A motion was made and seconded to include the redlined language on pages 33 and 34 in a note to the legislature, and the motion passed with no objection.

Mr. Weems then asked the Council to consider R.S. 14:91.5, on page 41 of the report, concerning unlawful use of a social networking website by registered sex offenders. Specifically, he pointed to the redlined language in the note to the legislature on page 44, explaining that there had been a split in the courts of appeal regarding the constitutionality of this provision and whether it is more narrowly tailored than the statute at issue in *Packingham v. North Carolina*. Since the issuance of the Committee's last report, the U.S. Fifth Circuit held that "fair-minded jurists could easily uphold section 14:91.5 under Packingham." A motion was made and seconded to include this redlined language in the legislative note and to update the recommendation on page 45 to cite the Fifth Circuit case. One Council member then questioned why a minor is defined as "under the age of eighteen" on line 21 of page 41 when seventeen is used as the age of majority in other criminal statutes that trigger the application of this statute, such as in R.S. 14:80. The Council member suggested that these ages be made consistent and a more comprehensive review be conducted, but the Reporter noted that this would not be the appropriate Committee to conduct that inquiry. As a result, Law Institute staff agreed to refer the issue to the Code of Criminal Procedure Committee for substantive review. Returning to the motion at issue, the Council adopted the updated language as presented, and Mr. Weems noted that this provision would likely be moved to the appendix as having been addressed in the report's next iteration.

Turning to R.S. 14:106.1, on page 48, the Reporter quickly explained that the only change with respect to this provision is that it had been newly categorized in the "not addressed" section of the report. A motion was made and seconded to approve this categorization, and the motion passed without objection. The same motion was made and seconded with respect to R.S. 9:2800.54, on page 79 of the report, and that motion also passed without objection. Returning to R.S. 18:1505.2 on page 55, Mr. Weems explained that the redlined language was new and reflected 2024 and 2025 amendments to this provision, but that the amendments do not resolve the constitutional infirmity because the provision still applies to all committees, including those that are independent expenditure-only, in violation of the *Fund for Louisiana's Future* case. The Reporter explained that the recommendation had also been updated to clarify that a prior version of the provision at issue had been declared unconstitutional. A motion was made and seconded to adopt the redlined language on pages 55 and 56 as presented, and the motion passed with no objection.

At this time, Mr. Weems requested a motion *in globo* to adopt all of the remaining provisions in the "previously included but not yet addressed" section of the report, noting that all had remained unchanged since the report's last iteration. A motion was made and seconded to this effect, and the motion was adopted without objection. Moving to the appendix, the Reporter explained that he would be proceeding in a similar fashion – he would first explain the provisions that were new to the appendix and had been updated in some manner since the last report, and he would then ask for an *in globo* motion to approve all remaining provisions in the appendix. The Reporter noted that the first update appears on page A-20 concerning Code of Criminal Procedure Article 930.10, which was held unconstitutional in *State v. Lee* and later repealed by the legislature during the 2025 Regular Session. A motion was made and seconded to approve the categorization of this

provision and the accompanying note to the legislature, and the motion passed with no objection.

Turning to page A-53, the Council considered R.S. 42:1113, which had been declared unconstitutional by the Louisiana Supreme Court in the *Cartesian Company* case because the phrase "in any way interested in" was impermissibly vague. Mr. Weems informed the Council that the redlined note on page A-54 had been added to explain that the amendment of this phrase by the legislature in 2024 to instead read "have a substantial economic interest in" likely resolved the constitutional deficiency. A motion was made and seconded to adopt the redlined language as presented, and the motion passed with no objection. The Reporter next asked the Council to consider R.S. 47:301(3) and (13) and the addition of the redlined language on pages A-61 and 62, explaining that because the definition of "sales price" was amended to include transportation charges to match the definition of "cost price," the constitutional infirmity recognized by the Louisiana Supreme Court in the *Chicago Bridge* case appears to have been resolved. A motion was made and seconded to adopt the redlined language as presented, and the motion passed without objection.

With respect to R.S. 47:301(10)(c)(i)(aa), on page A-63, which was held unconstitutional by the Louisiana Supreme Court as a new tax that did not garner the required two-thirds vote by each house of the legislature, Mr. Weems explained that the entire provision had been repealed by the legislature in 2024. A motion was made and seconded to adopt the redlined note to the legislature on page A-64 as presented, and the motion passed with no objection. Turning to R.S. 47:301(14)(g)(i)(bb) and 337.10(F), the Reporter explained that these provisions were similarly repealed by the legislature during the 2024 Third Extraordinary Session, and as a result, the unconstitutional singling out of tax authorities in East Feliciana Parish was no longer an issue. A motion was made and seconded to adopt the redlined note to the legislature on page A-67 of the appendix, and the motion passed with no objection. Finally, Mr. Weems asked for a motion *in globo* to adopt all remaining provisions in the appendix for submission to the legislature without change. A motion was made and seconded to this effect, and the motion passed with no objection.

Having reached the end of the report and appendix, Mr. Weems then concluded his presentation, and the President called on the Law Institute's Director and Reporter of the Code of Civil Procedure Committee, Judge Guy Holdridge, to begin his presentation of materials.

Code of Civil Procedure Committee

Judge Holdridge first directed the Council's attention to Article 1702 and explained that the amendments were proposed at the request of the Clerks of Court Association. Practitioners have asserted that the provision requiring that a copy of the proposed default judgment be submitted to the clerk of court precludes the use of electronic filing as to default judgment since an electronic copy of a default judgment is indistinguishable from the electronic original. Judge Holdridge further noted that the provision likely originated from the fact that copy machines and electronic filing were not ubiquitous in the past. Accordingly, the proposed language would remove the requirement that the plaintiff submit to the clerk of court a copy of the proposed default judgment. After brief discussion, the Council adopted the proposed language as follows:

Article 1702. Default judgment

* * *

C. In those proceedings in which the sum due is on an open account or a promissory note, other negotiable instrument, or other conventional obligation, or a deficiency judgment derived therefrom, including those proceedings in which one or more mortgages, pledges, or other security for the open account, promissory note, negotiable instrument, conventional obligation, or deficiency judgment derived therefrom is sought to be enforced, maintained, or recognized, or in which the amount sought is that

authorized by R.S. 9:2782 for a check dishonored for nonsufficient funds, a hearing in open court shall not be required unless the ~~judge~~ court, in ~~his~~ its discretion, directs that ~~such a~~ the hearing be held. The plaintiff shall submit to the clerk of court the proof required by law and the original ~~and not less than one copy~~ of the proposed default judgment. The ~~judge~~ court shall, within seventy-two hours of receipt of ~~such~~ the submission from the clerk of court, sign the proposed default judgment or direct that a hearing be held. The clerk of court shall certify that no answer or other pleading has been filed by the defendant. The minute clerk shall make an entry showing the dates of receipt of proof, review of the record, and rendition of the default judgment. A certified copy of the signed default judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing of the default judgment shall be given ~~as provided in~~ in accordance with Article 1913.

* * *

Next, Judge Holdridge directed the Council's attention to Articles 2166 and 2167. He indicated that the amendment would remove facsimile as a means of transmitting notice of judgment in the court of appeal and supreme court, respectively. He noted to the Council that transmission via facsimile has already fallen out of practice, and the various clerks, including those from the appellate courts and the supreme court, agreed with the proposed changes. After brief discussion, the Council adopted the proposed language as follows:

Article 2166. Court of appeal judgment rehearing; finality; stay

* * *

F. For the purposes of this Article, "transmission of the notice" means the sending of the notice via the United States Postal Service~~,~~ or electronic mail~~, or facsimile~~.

Article 2167. Supreme court judgment rehearing; finality; stay

* * *

D. For the purposes of this Article, "transmission of the notice" means the sending of the notice via the United States Postal Service~~,~~ or electronic mail~~, or facsimile~~.

Judge Holdridge then began his presentation of Articles 2126 and 2128. He reminded the Council that it previously recommitted the proposals due to concerns regarding the commencement of certain legal delays triggered by the sending of notice of the estimated cost for appeal. Beginning with Paragraph A of Article 2126, Judge Holdridge indicated that though the provision remains largely the same, the proposal changes the article's current method of sending notice of estimated costs. He explained that the use of "send" has been replaced throughout the article with "transmit," which is defined in new Paragraph H and includes the sending of notice via certified mail, electronic mail to the email address designated by counsel or the party, or commercial courier. This change, adapted from the methods of service set forth in Article 1313(C), would make the sending of notice more efficient by extending electronic means as a method of transmission. Granting clerks the ability to send notice via electronic mail would assist in alleviating issues often encountered with traditional mailing systems including unforeseen delays and inaccurate deliveries. Additionally, Paragraph H provides that the sending of notice by electronic means is complete upon transmission, provided that the sender receives an electronic confirmation of delivery.

Moving to Paragraph B, Judge Holdridge indicated that the proposed language would make clear that if the parties have not designated the record on appeal, the appellant must, within twenty days of transmission of the notice, pay the amount of the estimated costs of the appeal to the clerk. He then directed the Council's attention to Paragraph C and explained that the language of this provision is new and provides that if

the parties have designated the record on appeal, the clerk shall transmit a revised notice of estimated costs to the appellant and appellee, and the appellant shall, within twenty days of the transmission of the revised notice, pay the amount of the estimated costs to the clerk. Paragraph C also provides that the trial court may grant one extension of the period for paying the amount of the revised estimated costs for not more than an additional twenty days upon written motion showing good cause for the extension. Judge Holdridge then moved to Paragraph D and indicated that the provision would permit the appellant to question the excessiveness of the estimated costs by filing a written motion for reduction within the first twenty-day time limit if the record has not been designated, or within twenty days of transmission of the revised notice of the estimated costs if the record has been designated. Judge Holdridge then pointed out to the Council additional technical changes throughout the article and asserted that the combination of these changes seeks to address the Council's previous concerns regarding notice relative to the commencement of legal delays predicated upon whether the record on appeal has been designated pursuant to Article 2128. After brief discussion, the Council adopted the proposed language and Comments as follows:

Article 2126. Payment of Costs

A. ~~The clerk of the trial court, immediately after~~ After the order of appeal has been granted, the clerk of the trial court shall estimate the cost of the preparation of the record on appeal, including the fee of the court reporter for preparing the transcript and the filing fee required by the appellate court. The clerk shall ~~send~~ transmit notices of the estimated costs ~~by certified mail~~ to the appellant and ~~by first class mail to the~~ appellee.

B. If the parties have not designated the record on appeal pursuant to Article 2128 ~~Within twenty days of the mailing of notice~~, the appellant shall within twenty days of transmission of the notice of the estimated costs pay the amount of the estimated costs to the clerk. The trial court may grant one extension of the period for paying the amount of the estimated costs for not more than an additional twenty days upon written motion showing good cause for the extension.

C. If the parties have designated the record on appeal pursuant to Article 2128, the clerk shall transmit a revised notice of the estimated costs to the appellant and appellee. The appellant shall within twenty days of transmission of the revised notice of estimated costs pay the amount of the estimated costs to the clerk. The trial court may grant one extension of the period for paying the amount of the revised estimated costs for not more than an additional twenty days upon written motion showing good cause for the extension.

D. The appellant may question the excessiveness of the estimated costs by filing a written ~~application~~ motion for reduction in the trial court within the first twenty-day time limit if the record has not been designated pursuant to Article 2128, or within twenty days of transmission of the revised notice of estimated costs if the record has been designated pursuant to Article 2128.~~, and the~~ The trial court may order reduction of the estimate upon proper showing. If ~~an application~~ the motion for reduction has been timely filed, the appellant shall have twenty days to pay the costs beginning from the date of the action by the trial court on ~~application~~ the motion for reduction.

~~D.~~ E. After the preparation of the record on appeal has been completed, the clerk of the trial court shall, as the situation may require, either refund to the appellant the difference between the estimated costs and the actual costs if the estimated costs exceed the actual costs, or ~~send a~~ transmit notice ~~by certified mail~~ to the appellant of the amount of additional costs due, if the actual costs exceed the estimated costs. If the payment of additional costs is required, the appellant shall pay the amount of additional costs within twenty days of ~~the mailing~~ transmission of the notice.

~~E.~~ F. If the appellant fails to pay the estimated costs, or the difference between the estimated costs and the actual costs, within the time specified, the trial judge, on his own motion or upon motion by the clerk or by any party, and after a hearing, shall:

(1) Enter a formal order of dismissal of the appeal on the grounds of abandonment; or

(2) Grant a ten day period within which costs must be paid in full, in default of which the appeal is dismissed as abandoned.

~~F.~~ G. If the appellant pays the costs required by this Article, the appeal may not be dismissed because of the passage of the return day without an extension being obtained or because of an untimely lodging of the record on appeal.

H. For the purposes of this Article, "transmit" means the sending of notice via certified mail, electronic mail to the email address designated by counsel or the party, or commercial courier. The sending of notice by electronic means is complete upon transmission, provided that the sender receives an electronic confirmation of delivery.

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Requirements relative to the transmission of the notice for the payment of estimated costs are adapted from the service requirements set forth in Article 1313(C) applicable to pleadings and orders that set a court date, and Article 2166(F) defining "transmission of notice" with respect to the appellate court.

The Council's attention was then directed to Article 2128 relative to the form and content of the record on appeal. Judge Holdridge explained that the entire record on appeal may not be necessary, and litigants will often designate the record to save on costs of the appeal – for example, appellate courts only need specific portions of the record on the appeal of summary judgment. The proposed language provides that within ten days after transmission of the notices of estimated costs by the clerk of court, as provided in Article 2126, the appellant may designate by written notice filed with the trial court the portions of the record that the appellant desires to constitute the record on appeal. Moreover, within fourteen days after service of a copy of the designation on the other party, that party may also designate portions of the record by written notice filed with the trial court. Judge Holdridge further noted that the proposed language would also increase the time allotted to the appellant and other party. After brief discussion, the Council adopted the proposed language as follows:

Article 2128. Same; determination of contents

The form and content of the record on appeal shall be in accordance with the rules of the appellate court, except as provided in the constitution and as provided in Article 2128.1. However, within ~~three days exclusive of holidays~~ ten days after transmission of the notices of estimated costs by the clerk of court, as provided in Article 2126, ~~taking the appeal~~ the appellant may designate ~~in a writing~~ by written notice filed with the trial court ~~such~~ the portions of the record ~~which he~~ that the appellant desires to constitute the record on appeal. Within ~~five~~ fourteen days~~, exclusive of holidays,~~ after service of a copy of this designation on the other party, that party may also designate ~~in a writing~~ by written notice filed with the trial court ~~such~~ other portions of the record as ~~he~~ the party considers necessary. In ~~such~~ those cases the clerk shall prepare the record on appeal as so directed, but a party or the trial court may cause to be filed thereafter any omitted portion of the record as a supplemental record. When no designation is made, the

record shall be a transcript of all the proceedings as well as all documents filed in the trial court.

Judge Holdridge then began his presentation of Article 561 relative to abandonment. He reminded the Council that it previously tasked the Code of Civil Procedure Committee with combining several of the earlier proposals indicating a desire for a detailed affidavit and additional discretion to the court regarding whether a contradictory hearing was necessary. Judge Holdridge further reminded the Council that the Committee also plans to create an exclusive list of conduct that would constitute a step in the prosecution or defense of an action or renunciation of the defense of abandonment.

Beginning with Paragraph A, Judge Holdridge indicated that while Subparagraph (1) remains largely the same, Subparagraph (2) would codify current jurisprudence providing that a step in the prosecution or defense in the trial court shall interrupt the abandonment period and that after the three-year abandonment period has expired, the defendant may renounce the defense of abandonment. Beginning discussion, a question was raised as to the reason "renounce" is used rather than "waiver." Judge Holdridge responded that the use of "renounce" is taken from jurisprudence and, after additional discussion regarding semantic changes, indicated that the Committee sought to preserve as much of the original language as possible, though it did implement some technical changes. A member then asked for clarification regarding waiver and renunciation of the defense of abandonment. Judge Holdridge replied that the Supreme Court has held that post-abandonment waiver contemplates that a defendant has taken an action renouncing the defense of abandonment by an express demonstration that the defendant intends to pursue the matter – for example, submitting a case for decision on the merits. Jurisprudence, however, has declined to deem an answer filed after the three-year period a renunciation, thus necessitating the Committee's codification of an exclusive list of conduct.

One Council member then asserted that perhaps a court should be given the ability to raise abandonment on its own motion, noting that a stagnant matter may remain on the docket for many years, skewing the data that is reported to the Supreme Court. He suggested that the court be permitted to order parties to attend a contradictory hearing and show whether the action should be abandoned. Other members, however, opposed this notion, explaining that many actions occur outside of the court's purview and record. Additionally, the suggestion raises issues regarding which party would be required to pay for the costs of the hearing. Judge Holdridge then noted that changes to the abandonment framework were prompted by various stakeholders including the legislature, the judiciary, and many practitioners. He explained that despite the substantial jurisprudence underlying abandonment, the concept of abandonment remains nebulous, and practitioners are wary of its consequences and unsure as to what specific actions interrupt the abandonment period. The Council then discussed the historical practice of filing discovery in the record and how that practice often made for straightforward determinations as to whether a matter has been abandoned. Another Council member then suggested that perhaps practitioners should file a notice indicating whenever discovery is propounded and served. Questions were raised regarding the utility of such a notice since the current iteration of Article 561 only deems formal discovery served on all parties to be a step in the prosecution or defense of an action. Further discussing the practicalities of the current abandonment framework, it was raised that not all parties may be necessary for the taking of a deposition, thus some parties may not be served with the notice of deposition and there would be no interruption of the abandonment period as to those unserved parties. After much discussion regarding conduct constituting a step in the prosecution or defense of an action, including whether certain motions constitute a step, Judge Holdridge reminded the Council that the Committee plans to create an exclusive list in the future.

One Council member then suggested deferring any proposed changes until a complete overhaul of Article 561 could be prepared, but another member contended that the proposed language is conceptually a vast improvement over the current article in that it grants the court discretion, preserves much of the efficiency provided via abandonment by operation of law, and ensures that the burden of proof rests with the mover of the

original motion to dismiss based on abandonment. It was then suggested that the Council permit the Reporter to finish his presentation, then vote as to whether it would be appropriate to submit the proposed language to the legislature this Session with the knowledge that an exclusive list of conduct constituting a step in the prosecution or defense of an action would likely be proposed for introduction the following year.

Judge Holdridge then proceeded to Subparagraph (A)(3) and explained that the proposed language is current law – specifically, Paragraph B of the current iteration of Article 561. After accepting semantic changes, Judge Holdridge stated that Subparagraph (B)(1) continues the previous rule that a party or other interested person may file an ex parte motion to dismiss based on abandonment and attach to it an affidavit. The affidavit, however, would require more detail – specifically, the mover or the mover's attorney must certify that the three-year abandonment period has expired, that no timely step in the prosecution or defense of the action has been taken in accordance with Subparagraphs (A)(2) and (3), and that no renunciation has occurred in accordance with Subparagraph (A)(2). Subparagraph (B)(2) further requires that the affidavit include a list of any pleadings, documents, or judgments filed in the record during the three years preceding the expiration of the abandonment period, and any written communication pertaining to the action between the mover and any adverse party or their attorneys of record in the one year preceding the expiration of the abandonment period. Judge Holdridge then emphasized that in order to interrupt the abandonment period, the written communication must be toward an adverse party. He further explained that the rule permits the court to review the record in order to determine whether an action is truly abandoned.

Discussion then turned to Paragraphs C and D setting forth the substantive requirements of the mover's affidavit and permitting the court to either sign the judgment ex parte or set the motion to dismiss for a contradictory hearing, respectively. Judge Holdridge noted that granting the court discretion to set the matter for contradictory hearing deviates from current law and is a change that has been requested by many members of the judiciary. Moreover, the provision would further judicial efficiency as there would be no need for a party to request a rehearing or reconsideration of the matter. One Council member then questioned the interplay between abandonment being operative by law and the defendant's ability to renounce the defense of abandonment and asked why a defendant would ever attest to renunciation of the defense of abandonment. Judge Holdridge indicated that although a defendant may not believe a renunciation has occurred, the court may extrapolate potential renunciation from the affidavit and attachments and order a contradictory hearing. The member then suggested that whether the mover has renounced the defense of abandonment be the first determination by the court since renunciation would render moot an examination of any other conduct. The Council discussed whether an affidavit was necessary and suggested that a certification was sufficient. The Reporter, however, declined to accept any suggested changes, reasoning that several other laws require the submission of an affidavit.

Moving to Paragraph E, Judge Holdridge explained that the provision retains present law but adds that at the hearing to set aside a dismissal, the burden of proof rests with the mover of the original motion to dismiss based on abandonment. He then noted that this shifting of the burden of proof deviates from current law requiring that a plaintiff prove that an action was not abandoned at the hearing to set aside a dismissal. Judge Holdridge then stated that Paragraph F provides for the methods of appealing a judgment of dismissal rendered ex parte and after a contradictory hearing. After brief discussion, he proceeded to Paragraph G retaining current law and providing that an appeal is abandoned when the parties fail to take any step in its prosecution or disposition for the time provided in the appellate court rules. Judge Holdridge then directed the Council's attention to Paragraph H and explained that the provision is derived from jurisprudence holding that the vacating or reversal of a judgment of dismissal shall be deemed a step in the prosecution or defense of an action.

The Council then discussed whether to pursue solidifying the changes for introduction during the upcoming legislative session or recommit Article 561 for further study. Members agreed that the proposal would be a vast improvement over the current article. While acknowledging that the Code of Civil Procedure Committee would likely recommend further changes for introduction next year – specifically, an exhaustive list of

conduct that would interrupt the abandonment period or renounce the defense of abandonment – the Council ultimately decided to further discuss the matter after recessing for lunch.

After lunch, Judge Holdridge resumed his presentation of Article 561 on abandonment. One Council member suggested deleting the "unless" clause at the end of line 3 of page 7 as well as the entirety of lines 4 through 7, and the Reporter agreed. In its place, the Council adopted a new Paragraph at the end of the article to read as follows: "This Article shall not apply to succession proceedings." Members of the Council debated whether tutorship and/or interdiction should also be included in this new Paragraph, but the Council ultimately distinguished these because if a judgment is rendered with respect to a tutorship or interdiction, that regime will continue indefinitely, but if no judgment is rendered, the person may want the filing removed in the future if, for example, they decide to run for office. Ultimately, the Council agreed that neither tutorship nor interdiction should be mentioned and that the new provision should simply exempt succession proceedings as is the case under current law.

Turning to Subparagraph (A)(3), a motion was made and seconded to delete "and served on all parties" from line 19 of page 7 and to add the following language to the end of line 20: "against all parties on which the discovery was served or in attendance at the deposition." Judge Holdridge accepted this change and agreed to add "or not" after "whether" on line 19 and to change "shall be deemed" to "constitutes" on line 20. Members of the Council then discussed Subparagraph (B)(2), with one Council member questioning whether the written communications referenced on line 15 of page 8 are included in the things that must be listed or whether these communications actually have to be attached to the affidavit for the court to review. Members of the Council discussed how practitioners should handle situations in which these communications contain confidential information – privileged information should not be attached, but it should be described to let the judge know that the action has not, in fact, been abandoned. Ultimately, the Council agreed to end the first sentence of this provision after "period" on line 15 and to start a new sentence that reads "The mover shall also list and attach all written communication..." The Reporter also accepted a change to replace "any" with "all" on line 13 of page 8.

With respect to Paragraph D, the Council agreed to change "may" to "shall" on line 15, making clear that the judge can review but must either sign the judgment ex parte or set a contradictory hearing. One Council member then noted that Subparagraph (2) on lines 9 and 10 of page 9 applies to both Paragraphs C and D, and as a result, should be designated as Paragraph E, clarifying that the judgment on line 9 is an "ex parte judgment of dismissal." The Council also agreed to change "a judgment" to "an ex parte judgment" on line 18 of page 8 for consistency before one member of both the Committee and the Council suggested adding "and the record confirms" after "certifies" on line 11 of page 9. The Council engaged in a great deal of discussion with respect to this suggestion, ultimately determining that this addition would be inappropriate and that there is no need to independently verify whether something has been filed if the party admits that it has been. Moving to Paragraph E, which will now be Paragraph F, on line 17 of page 9, the Council agreed to change "a dismissal" to "the dismissal" on lines 17 and 19 as well as to delete "only" on line 18. The Council also agreed to delete "only" on lines 1, 4, and 7 of page 10 and to change the cross-reference on lines 2 and 3 to "Paragraph E" and on line 7 to "Paragraph F." Additionally, Paragraph F on line 1 will be redesignated as Paragraph G, Paragraph G on line 9 will be redesignated as Paragraph H, and Paragraph H on line 11 will be redesignated Paragraph I.

Turning to old Paragraph H/new Paragraph I on line 11 of page 10, the Council agreed to rewrite the first sentence of this provision to read as follows: "The granting of a motion to set aside a judgment of dismissal based on abandonment or the reversal of a judgment of dismissal on appeal shall constitute a step in the prosecution or defense of an action." After discussing whether to add "or reversing" after "setting aside" on line 13, the Council ultimately agreed to delete the second sentence of this provision in its entirety. One Council member then questioned the distinction between "mailing" vs. "transmitting" and why the concept of transmission was not defined in the provision itself. After the Reporter explained that "transmission" is defined in Comment (f) on page 11, the Council agreed that this definition should be included in the text as Paragraph J, with the new

exemption of succession proceedings appearing as Paragraph K. In addition, the Council agreed to delete "as used in Subparagraphs (F)(2) and (3)" on line 12 of page 11, to add "commercial courier" to the list on line 13, and to delete the reference to Article 2166 on lines 13 and 14. A motion was then made and seconded to adopt Article 561 as amended and to grant the Reporter the authority to amend the Comments as necessary for consistency with these changes, and the motion passed with no objection. The adopted proposal reads as follows:

Article 561. Abandonment in trial and appellate court

A.(1) An action is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years~~, unless it is a succession proceeding:~~

~~(a) Which has been opened;~~

~~(b) In which an administrator or executor has been appointed; or~~

~~(c) In which a testament has been probated~~.

(2) This ~~provision~~ Article shall be operative without formal order~~, but, on ex parte motion of any party or other interested person by affidavit that states that no step has been timely taken in the prosecution or defense of the action, the trial court shall enter a formal order of dismissal as of the date of its abandonment. The sheriff shall serve the order in the manner provided in Article 1314 and shall execute a return pursuant to Article 1292~~. A step in the prosecution or defense in the trial court shall interrupt the abandonment period. After the three-year abandonment period has expired, the defendant may renounce the defense of abandonment

(3) ~~A motion to set aside a dismissal may be made only within thirty days of the date of the sheriff's service of the order of dismissal. If the trial court denies a timely motion to set aside the dismissal, the clerk of court shall give notice of the order of denial pursuant to Article 1913(A) and shall file a certificate pursuant to Article 1913(D).~~ Any formal discovery authorized by this Code, whether or not filed of record, including the taking of a deposition with or without formal notice, constitutes a step in the prosecution or defense of an action against all parties on which the discovery was served or in attendance at the deposition.

~~(4) An appeal of an order of dismissal may be taken only within sixty days of the date of the sheriff's service of the order of dismissal. An appeal of an order of denial may be taken only within sixty days of the date of the clerk's mailing of the order of denial.~~

B.(1) ~~Any formal discovery as authorized by this Code and served on all parties whether or not filed of record, including the taking of a deposition with or without formal notice, shall be deemed to be a step in the prosecution or defense of an action.~~ Any party or other interested person may file an ex parte motion to dismiss based on abandonment and shall attach to the motion to dismiss an affidavit of the mover or the mover's attorney of record certifying all of the following:

(a) The three-year abandonment period has expired.

(b) No timely step in the prosecution or defense of the action has been taken in accordance with Subparagraphs (A)(2) and (3) of this Article.

(c) No renunciation has occurred in accordance with Subparagraph (A)(2) of this Article.

(2) The affidavit shall also include a list of all pleadings, documents, or judgments that have been filed in the record during the three years preceding the expiration of the abandonment period. The mover shall also list and attach all written communication pertaining to the action between the mover and any adverse party or their attorneys of record in the one year preceding the expiration of the abandonment period.

C.(1) The court shall enter an ex parte judgment of dismissal without prejudice as of the date of the abandonment of the action if the record confirms and the mover's accompanying affidavit attests to all of the following:

(a) The three-year abandonment period has expired.

(b) No timely step in the prosecution or defense of an action has been taken in accordance with Subparagraphs (A)(2) or (3) of this Article.

(c) The defendant has not renounced the defense of abandonment in accordance with Subparagraph (A)(2) of this Article.

(d) No pleadings, documents, or judgments have been filed in the record during the three years immediately preceding the expiration of the abandonment period.

(e) There has been no written communication pertaining to the action between the mover and any adverse party or their attorneys of record during the last year of the abandonment period.

D. If the mover's affidavit certifies that any pleadings, documents, or judgments have been filed in the record during the three years preceding the expiration of the abandonment period or that there has been written communication pertaining to the action between the mover and any adverse party or their attorneys of record during the last year preceding the expiration of the abandonment period, the court shall either sign the judgment ex parte or set the motion to dismiss for a contradictory hearing.

E. The sheriff shall serve the ex parte judgment of dismissal in accordance with Article 1314 and shall execute a return pursuant to Article 1292.

F. If an ex parte judgment of dismissal is granted, a motion to set aside the dismissal may be filed within thirty days of the date of the sheriff's service of the judgment of dismissal. At the hearing to set aside the dismissal, the burden of proof rests with the mover of the original motion to dismiss based on abandonment. If the trial court denies a timely motion to set aside the dismissal, the clerk of court shall send notice of the order of denial pursuant to Article 1913(A) and shall file a certificate pursuant to Article 1913(D).

G.(1) An appeal of a judgment of dismissal rendered ex parte may be taken within sixty days of the date of the sheriff's service of the judgment of dismissal pursuant to Paragraph E of this Article.

(2) An appeal of a judgment of dismissal rendered after a contradictory hearing may be taken within sixty days of the clerk's transmission of that judgment.

(3) An appeal of a denial of the motion to set aside a dismissal rendered pursuant to Paragraph F of this Article may be taken within sixty days of the clerk's transmission of the order of denial.

~~C.~~ H. An appeal is abandoned when the parties fail to take any step in its prosecution or disposition for the period provided in the rules of the appellate court.

I. The granting of a motion to set aside a judgment of dismissal based on abandonment or the reversal of a judgment of dismissal on appeal shall constitute a step in the prosecution or defense of an action.

J. For purposes of this Article, "transmission" means the sending of notice via the United States Postal Service, a commercial courier, or electronic mail.

K. This Article shall not apply to succession proceedings.

Comments – 2026

(a) The amendments to Subparagraph (A)(2) of this Article retain the provision setting forth that abandonment is operative without formal order. The amendments also adopt current jurisprudential rules providing that a step in the prosecution or defense of an action interrupts the three-year abandonment period and that after the three-year abandonment period has expired, the defendant may renounce the defense of abandonment. See Foundation Elevation & Repair, LLC v. Miller, 408 So. 3d 893 (La. 2025).

(b) Subparagraph (B)(1) of this Article is new and requires a more detailed affidavit be included with the ex parte motion to dismiss based on abandonment.

(c) Paragraph C of this Article now requires the court to sign an ex parte judgment of dismissal without prejudice if the mover's affidavit attests to all of the following: the abandonment period has expired; no timely step in the prosecution or defense of the action has occurred; the defendant has not renounced the defense of abandonment; no pleadings, documents, or judgments have been filed in the record during the three years immediately preceding the expiration of the abandonment period; and there has been no written communication pertaining to the action between the mover and any adverse party or their attorneys of record during the last year of abandonment.

(d) Paragraph D of this Article is new and requires the court to either sign a judgment of dismissal ex parte or set the motion for a contradictory hearing if the mover's affidavit indicates that pleadings, documents, or judgments have been filed in the record during the three-year abandonment period or that there has been written communication pertaining to the action between the mover and any adverse party or their attorneys of record during the last year immediately preceding the expiration of the abandonment period.

(e) Paragraph F of this Article establishes a new rule that the burden of proof at a hearing on a motion to set aside a dismissal rests upon the mover of the initial motion to dismiss based on abandonment.

There being no additional business on behalf of the Code of Civil Procedure Committee, Judge Holdridge 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

Mr. Roussel began his presentation by reminding the Council of its previous discussion regarding the terms "unit", "condominium parcel", "unit owner", and "condominium property" and its directive to review the use of these terms and make revisions as appropriate. The Committee intends to clarify that the use of the term "unit" is the physical portion that is occupied and the use of the term "parcel" includes the unit

and the unit owner's rights in the common elements and limited common elements. The Council reviewed and approved the changes to the definition of "unit" as follows:

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

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

* * *

(37) "Unit" means ~~a part~~ the physical portion of the condominium property subject to individual ownership and occupancy, the boundaries of which are described in the declaration. A unit may include air space only. ~~A unit includes such accessory rights and obligations as are stipulated in the condominium declaration.~~

* * *

Thereafter, the Council approved the revisions to the use of the terms in R.S. 9:1121.104 as follows:

R.S. 9:1121.~~105~~104. Separate taxation

~~All kinds of taxes~~ Taxes and special assessments authorized by law shall be assessed against each individual condominium parcel. A multi-unit building, the condominium property as a whole, and any of the common elements, including limited common elements, shall not be deemed to be an individual tax parcel for ad valorem tax purposes. Each unit shall be deemed to contain its percentage of undivided interest in the common elements, including limited common elements, and computation of taxes and special assessments against the ~~unit~~ condominium parcel shall include the percentage of undivided interest. The taxes and special assessments levied against a condominium parcel shall constitute a basis for claiming a ~~lien~~ privilege only upon the individual condominium parcel assessed. There shall be no forfeiture or sale of a multi-unit building or the common elements, including limited common elements, as a whole for delinquent taxes or assessments on individual units.

Mr. Roussel moved to page 11 of the materials and the use of the term "unit" within the definition of "complete property description." One Council member suggested that the use of the term "unit" in the first instance should be changed to "condominium parcel" because the intent is to transfer the unit and the accessory rights even if the description does not specifically include those rights. Another Council member questioned the use of the defined term "complete property description" as relating only to the unit and not both the unit and the land and suggested deleting the second sentence as more appropriately appearing in the substantive law rather than in this definitional section. The Council then discussed the sufficiency of a complete property description for a mortgage as opposed to a legal description needed to transfer property. The Reporter suggested retaining the language so that the Act remains user friendly, but the Council ultimately approved the following:

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

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

* * *

(10) "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 as to third persons.

* * *

After reviewing page 18 of the materials and the definitions of "unit owner" and "unrelated purchaser," the Council quickly approved the change of the term "unit" to "condominium parcel" as follows:

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

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

* * *

(40) "Unit owner" means a person appearing as an owner of a condominium parcel in the conveyance records of the parish where the condominium property is situated.

(41) "Unrelated purchaser" means a person who purchases a condominium parcel and who is not any of the following:

(a) The declarant or an affiliate of the declarant.

(b) An individual, trust, or other person that directly or indirectly owns twenty percent or more of the declarant.

(c) An immediate family member of a person described in Subparagraph (a) or (b) of this Paragraph.

* * *

The Council also approved, without further discussion, the following corresponding changes:

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

* * *

B. All provisions of the declaration ~~and bylaws~~ are severable. The effectiveness of the ~~condominium~~ declaration and merchantability of title to a condominium parcel ~~is~~ are not affected by ~~reason of~~ an insubstantial failure of the declaration to comply with this Part.

* * *

R.S. 9:1122.~~105~~ 102. Contents of the ~~condominium~~ declaration

* * *

B. The ~~condominium~~ declaration may contain other provisions not inconsistent with this Section, such as any of the following:

(1) ~~(3)~~ The purpose or purposes for which the condominium property ~~and units~~ are intended.

~~(4)~~ (2) Procedures whereby a unit owner may ~~convey~~ transfer his ~~unit~~ condominium parcel to the association and thereby release himself from any further obligation for ~~the~~ common ~~expenses of the condominium~~ expense liabilities.

* * *

Mr. Roussel next noted that the stricken language in R.S. 9:1122.104(F) on lines 13 through 15 of page 28 has been captured in the definition of "unit description." The Council approved the following revision:

R.S. 9:1122.~~108~~104. Allocation of ~~common element interest, votes, and~~ common expense liabilities, common surpluses, and voting interest in the association

* * *

F. The alienation, transfer, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in a condominium parcel includes membership in the association and any other rights in the association appurtenant to that condominium parcel.

* * *

The Reporter turned the Council's attention to the definition of "condominium property" on page 12 of the materials, reminding members of previous discussions concerning a possible gap in the law when leased land, usufructs, and servitudes are subjected to a condominium regime. The phrase "servitude, or other right of possession" was added throughout the Act, and the Committee suggests a revision to the definition of "condominium property" to include that concept. Upon further reflection, one Council member suggested that the definition refer to all rights of lessees, grantees, and beneficiaries of leases of immovable property to ensure that persons who may have subordinate rights, such as when a unit owner leases his unit to another person, are excluded. The Reporter pointed out places where the same phrase is used and urged its continued use for consistency; however, the Council found that the phrase is used in different contexts.

The Council then discussed the previously approved language in R.S. 9:1122.101(A) and remarked that the grantor of a servitude is the owner of the immovable property and thus already included in the list of persons required to approve the establishment of a condominium regime. The Reporter informed the Council that sometimes a person is both a grantee of a servitude and a grantor of that same servitude to another and therefore should also be included. One Council member provided the example of adding land that is burdened with a servitude or subjected to a lease to the condominium regime without subjecting the actual lease to the regime and the need to obtain authorization because the regime may be reduced in size or terminated. On the flip side, in a leasehold condominium regime, the land is not part of the regime but the lease itself is and the lessor must consent. The debate continued until the Council realized that principles relating to certain rights and principles relating to persons are both present in this Subsection and thus intertwined. The Council also opined that the prior language may be overly expansive in view of the Civil Code rules governing possession. The Reporter agreed to take this concept back to the Committee, and the Council reiterated that including leases and servitudes would be sufficient and the application to mere possessors may be inappropriate.

Next, Mr. Roussel presented minor changes to several additional definitions. The Council first reviewed the addition of a "grantee" to the definition of "declarant." For the new definition of "immediate family member," the Reporter stated that the term is only used in regard to the declarant and an unrelated purchaser. One Council member wondered why step-grandchildren are included but grandparents are not, and the Reporter responded that this definition was taken from security law. The revisions to the definition of "member" and the deletion of a definition of "membership" resulted from a previous request by the Council to add a definition of "membership." Upon further reflection of the request, the Committee suggests only a clarification in the definition of "member." In the definition of "restriction," Mr. Roussel explained that the only change is from using the term "unit" to using the term "condominium property" to broaden the concept. The Committee added a definition of "sixty percent vote" to address concerns raised during the process to approve a budget and the general lack of participation by

unit owners. In discussions relative to complete property descriptions, the Committee realized that a definition of "unit description" would be beneficial and a slight modification to the definition of "unit designation" was needed. All of the following provisions were approved:

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

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

* * *

(15) "Declarant" means: the person designated as such in the declaration or, in the absence of a designation, the owner, lessee, or grantee of condominium property who executes the declaration to establish the condominium regime.

* * *

(21) "Immediate family member" means, with respect to a declarant, any spouse, parent, stepparent, child, stepchild, grandchild, step grandchild, sibling, mother- or father-in-law, son- or daughter-in-law, or brother- or sister-in-law of the declarant, or anyone residing in the declarant's home, other than a tenant or an employee.

* * *

(24) "Member" means a unit owner or, following termination of the condominium regime, a former unit owner entitled to distributions of proceeds pursuant to R.S. 9:1122.118, or his heirs, successors, or assigns.

* * *

(30) "Restriction" means an obligation imposed on the condominium property, whether affirmative or negative, by the declaration.

* * *

(33) "Sixty percent vote" means the vote cast through a method permitted by R.S. 9:1123.108 by at least sixty percent of the voting interest in the association.

* * *

(38) "Unit description" means a description containing the unit designation, the name of the condominium regime, and the parish in which the declaration is recorded and is complete even if the undivided interest of the unit in the common elements, including limited common elements, is not separately described or referred to therein.

(39) "Unit designation" means the identifying number, letter, symbol, or combination thereof or any other official designation identifying a particular unit in the ~~condominium~~ declaration.

* * *

Moving to R.S. 9:1122.101(F), the Reporter stated that the last sentence was added to address recent jurisprudence regarding partition by licitation. The following language was approved:

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

* * *

F. Unit owners may not demand a partition of the common elements as long as the condominium regime is in existence notwithstanding any other provision of law. A unit owner may demand a partition by licitation of a unit among owners in indivision.

In R.S. 9:1122.102(A)(4), Mr. Roussel explained that the Committee recommends using the defined term. With respect to Paragraph (A)(14), the Council questioned the intent as it would relate to a declarant conducting projects all over the country with hundreds of affiliates. Although the definition of "affiliates" requires control, it also pertains to persons under common control which is overly broad in this case. With a slight modification, the following provisions were adopted by the Council:

R.S. 9:1122.~~105~~ 102. Contents of the ~~condominium~~ declaration

A. The ~~condominium~~ declaration shall contain ~~or provide for~~ all of the following ~~matters~~:

* * *

(4) ~~An identification of each unit by letter, name, or number, or combination thereof, so that no unit bears the same designation as any other unit~~ The unit designation.

* * *

(14) The names of all of the affiliates of the declarant who control the declarant, if the declarant is not a natural person.

* * *

The Reporter subsequently directed the Council to R.S. 9:1122.106(A) and (B) regarding reapportionment, specifically the clarification regarding the community documents and a cross-reference to the more general article on limited common elements. The following provisions were approved:

R.S. 9:1122.106. Reapportionment among unit owners ~~of the percentage ownership interest in the common elements; percentages of sharing common expenses and common surplus; voting power in the association of unit owners~~

A. Except as provided in this Part or in the condominium documents, the percentage of undivided interest of the unit owner in the common elements, other than the limited common elements, of the condominium regime as expressed in the declaration shall not be altered without the consent of the unit owners as required by R.S. 9:1122.113 and evidenced by an amendment to the declaration duly filed for registry.

B. A unit owner's interest in the limited common elements is governed by R.S. 9:1122.105.

* * *

Mr. Roussel next reminded the Council of discussions at a previous meeting concerning the proper party to receive compensation for an expropriation. The Committee revised Subsection D to clarify that the association is the proper party as to the common elements and the unit owner is the proper party as to his unit. The following language was adopted:

R.S. 9:~~1421.107~~1122.107. Expropriation or condemnation

* * *

D. The association shall have the exclusive authority and shall be the proper party to seek, settle, and receive just compensation for the common elements, including limited common elements, and exercise any other rights relative to expropriation of the common elements. A unit owner shall have the exclusive authority and shall be the proper party to seek, settle, and receive just compensation for his unit as provided by law and exercise any other rights relative to expropriation of his unit.

Moving to the partial transfer of special declarant rights in R.S. 9:1122.109(G), the Reporter explained the need to broaden the language to encompass the numerous possible outcomes. The Council discussed the intent of the provision and found that sometimes a lender may not want the special declarant rights because these rights also come with corresponding obligations. Members of the Council then questioned the rationale of the expiration of rights if the rights are not exercised by a secured party and argued that lenders should not automatically lose all special declarant rights simply because they take only one necessary action. The Reporter agreed to take this issue back to the Committee for further review. The Council then swiftly approved the addition of "lots" to R.S. 9:1122.110(A)(8) and the grammatical change in R.S. 9:1122.115(A) as presented.

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

Jessica G. Braun

Josef Ventulan

Mallory C. Waller