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December 10, 2013

Senator John A. Alario
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

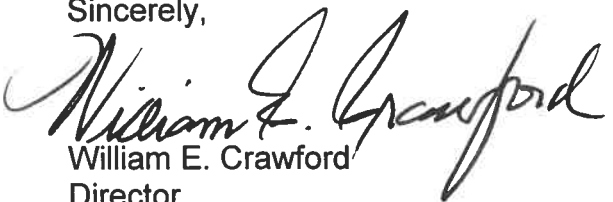
Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

RE: SCR NO. 57 of 2012

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2012 Senate Concurrent Resolution No. 57, relative to the valuation of usufructs.

Sincerely,


William E. Crawford
Director

WEC/puc

cc: Senator Edwin R. Murray

e-mail cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
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LOUISIANA STATE LAW INSTITUTE

SUCCESSIONS AND DONATIONS COMMITTEE

**REPORT TO THE LOUISIANA LEGISLATURE
IN RESPONSE TO SCR NO. 57 OF THE 2012 REGULAR SESSION
(VALUATION OF USUFRUCTS)**

December 10, 2013
Baton Rouge, Louisiana

Max Nathan, Jr., Chairman-Reporter
Claire Popovich, Staff Attorney

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Max Nathan, Jr., Chairman-Reporter
Claire Popovich, Staff Attorney

December 10, 2013

To: Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, LA 70804

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**REPORT TO THE LOUISIANA LEGISLATURE IN RESPONSE TO
SCR NO. 57 OF THE 2012 REGULAR SESSION RELATIVE TO
THE VALUATION OF USUFRUCTS**

Introduction

Senate Concurrent Resolution No. 57, sponsored by Senator Murray during the 2012 Regular Legislative Session, requests that the Louisiana State Law Institute study “how the value of a usufruct should be properly determined under state law.” More specifically, the resolution requests that the Law Institute determine the value of a usufruct within the context of “property transfers, successions, business transactions, tax, family and other personal and commercial legal activities.” The Law Institute assigned this study resolution to the Successions and Donations Committee.

Council Recommendation

After a thorough study of the nature and function of usufructs in Louisiana law and practice, including the consideration of the valuation of usufructs, the Council unanimously agrees that there is currently no problem regarding the valuing of a usufruct.¹ This opinion follows from the work already done on the law of usufruct and the members’ collective experience in this area of the law. The members agree that the question of the value of a usufruct is generally resolved in a sale context according to an agreement by the parties as to the price. If this attempt proves unsuccessful, the parties have recourse to federal tables to calculate the value of the usufruct.

Thus, when the issue of the valuation of a usufruct arises between private parties, they can, and often do, privately negotiate and agree on the value of a property under usufruct.² The Exposé des Motifs to Title III: Personal Servitudes in the Civil Code acknowledges the

¹ Most recently, the Committee examined the law of usufructs from October 2006 until February 2011.

² *West's Louisiana Statutes Annotated, Civil Code Articles 493.1 to 645, Exposé des Motifs, Title III: Personal Servitudes*, p. 115 at p. 127 (West 2013). “Quite frequently, property subject to usufruct is converted into money or other property with the participation of the usufructuary. [This is usually accomplished when] the naked owner and the usufructuary agree to sell the property to a third person free of the usufruct.”

widespread use of this method of valuing a usufruct when it addresses the related issue of how the proceeds are to be divided. It states that, “[t]he usufructuary and the naked owner may agree that the usufructuary shall have enjoyment of the entire price for the period of the usufruct or that the price shall be apportioned between them in any manner they see fit.”³

When the parties fail to reach an agreement, the parties commonly resort to legal help. Generally, practitioners then make use of the federal rules to evaluate a usufruct.⁴ These federal tables give the rough value of the property under usufruct thereby providing sufficient information to resolve the issue of the value of the usufruct.

Conclusion

These scenarios cover the possible outcome of how property subject to a usufruct can be successfully valued for the purposes of “transfers, successions, business transactions, taxes, and other personal and commercial legal activities...”⁵ Given the relative ease of deciding the value of a usufruct, the Council believes that further study of usufruct valuation would not likely yield unique or helpful results.

If the Legislature desires that the Law Institute draft Louisiana-specific provisions for valuation of usufructs, this will, in turn, give rise to several ancillary issues. For example, in order to be precise, the valuations would necessarily require continual updating to accommodate the continuous and constant changes in life expectancy and variable interest rates. This would require much effort and money on the part of the State.

Overall, the post-1976 revision to the law of usufruct has proven to be manageable and satisfactory.⁶ Also, the repeal of the Louisiana inheritance tax has removed the only other area where valuation of a usufruct might have been important. The Council of the Louisiana State Law Institute believes that there is no real need for any change to be made to the current usufruct law at this time.

³ *Id.*

⁴ Actuarial Life Table, *available at*: <http://www.ssa.gov/oact/STATS/table4c6.html>.

⁵ La. Senate Con. Res. No. 57, Reg. Sess. (2012).

⁶ *See* Acts 1976, No. 103.

SENATE CONCURRENT RESOLUTION NO. 57

BY SENATOR MURRAY

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study how the value of a usufruct should be properly determined under state law.

WHEREAS, a usufruct is defined in Louisiana Civil Code Article 535 as "a real right of limited duration on the property of another. The features of the right vary with the nature of the things subject to it as consumables or nonconsumables."; and

WHEREAS, the question of how to properly determine the value of a usufruct may arise in matters involving property transfers, successions, business transactions, tax, family, and other personal and commercial legal activities; and

WHEREAS, there exists a lack of certainty under present state law and cases as to how the value of a usufruct should be properly determined in such matters; and

WHEREAS, such lack of certainty increases the potential for disputes, confusion, disagreement, and litigation; and

WHEREAS, the Louisiana State Law Institute should study how the value of a usufruct should be properly determined under state law, and report its findings or recommended legislation to the legislature not later than February 1, 2013.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study how the value of a usufruct should be properly determined under state law.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall report its findings or recommended legislation to the legislature not later than February 1, 2013.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES