



**LOUISIANA STATE LAW INSTITUTE**

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February 26, 2021

Representative Clay Schexnayder  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

**RE: HOUSE RESOLUTION NO. 49 OF THE 2020 REGULAR SESSION**

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits its interim report to the legislature relative to divorce by authentic act and perpetual trusts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge  
Director

cc: Representative Robby Carter

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.la.gov](mailto:drplibrary@legis.la.gov)  
Secretary of State, Mr. R. Kyle Ardoin  
[admin@sos.louisiana.gov](mailto:admin@sos.louisiana.gov)

**LOUISIANA STATE LAW INSTITUTE  
MARRIAGE-PERSONS COMMITTEE  
TRUST CODE COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE  
IN RESPONSE TO HR NO. 49 OF THE 2020 REGULAR SESSION**

**Relative to divorce by authentic act and perpetual trusts**

Prepared for the  
Louisiana Legislature on

**February 26, 2021**

Baton Rouge, Louisiana

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Andrea B. Carroll, Reporter

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Ronald J. Scalise, Jr., Reporter  
Thomas B. Lemann, Secretary (Emeritus)  
Mallory C. Waller, Staff Attorney

2020 Regular Session

HOUSE RESOLUTION NO. 49

BY REPRESENTATIVE ROBBY CARTER

A RESOLUTION

To urge and request the Marriage-Persons Committee of the Louisiana State Law Institute to study, and the Louisiana State Law Institute to make specific recommendations and the Task Force on Benefits of Marriage and Incentives for Premarital Counseling and Pre-Divorce Counseling to study and make recommendations for revisions to Louisiana laws in order to implement divorce by authentic act and to urge and request the Louisiana State Law Institute to study and make recommendations regarding the laws on trusts with an indefinite term.

WHEREAS, although some Louisiana residents may wish to divorce, the expenses associated with seeking a divorce under present law can make a divorce cost prohibitive; and

WHEREAS, being unable to incur the cost of seeking a divorce, some Louisiana residents may instead separate and continue their lives by having children with someone other than their spouse, thereby creating a presumption of paternity that must be overcome; and

WHEREAS, for a couple who is married without children or immovable property, there is no legal or practical need to involve the court in the termination of the matrimonial regime; and

WHEREAS, in certain limited circumstances, it is prudent to enable Louisiana residents to secure a divorce without incurring the legal fees and court costs associated with a divorce under present law; and

WHEREAS, when judicial proceedings are unnecessary, the same legal effects may be achieved by authentic act; and

WHEREAS, in recognition of the value of providing a means to avoid judicial proceedings in certain limited circumstances, the legislature enabled small succession by affidavit in Code of Civil Procedure Articles 3431 through 3434; and

WHEREAS, for a couple who is married without children or immovable property, the law should enable the couple to achieve a divorce through an authentic act; and

WHEREAS, the Trust Code imposes limitations on the term of a trust; and

WHEREAS, perpetual trusts without a term are allowed in other states; and

WHEREAS, a settlor may wish to create a perpetual trust in Louisiana; and

WHEREAS, the Trust Code could be improved by allowing for perpetual trusts.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby urge and request the Marriage-Persons Committee of the Louisiana State Law Institute and the Task Force on Benefits of Marriage and Incentives for Premarital Counseling and Pre-Divorce Counseling to each study divorce by affidavit and the Louisiana State Law Institute and the Task Force on Benefits of Marriage and Incentives for Premarital Counseling and Pre-Divorce Counseling to each make recommendations, if any, of specific revisions in state law to authorize divorce by affidavit when the married couple has no children and owns no immovable property.

BE IT FURTHER RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute study the Trust Code and make recommendations, if any, for the implementation of perpetual trusts and that the Louisiana State Law Institute report its findings and recommendations to the Legislature of Louisiana on or before March 1, 2021.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute and the chair of the Task Force on Benefits of Marriage and Incentives for Premarital Counseling and Pre-Divorce Counseling and that the Louisiana State Law Institute and the Task Force on Benefits of Marriage and Incentives for Premarital Counseling and Pre-Divorce Counseling each report its findings and recommendations to the Legislature of Louisiana on or before March 1, 2021.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

February 26, 2021

To: Representative Clay Schexnayder  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LEGISLATURE  
IN RESPONSE TO HR NO. 49 OF THE 2020 REGULAR SESSION**

House Resolution No. 49 of the 2020 Regular Session urges and requests the Louisiana State Law Institute to study and make recommendations for revisions to Louisiana law regarding the implementation of divorce by authentic act when the spouses have no children and own no immovable property. The resolution further requests the Law Institute to study and make recommendations for revisions to the Trust Code concerning the implementation of trusts with an indefinite term.

In fulfillment of these requests, the Law Institute assigned the resolution to the Marriage-Persons Committee, which operates under the direction of Professor Andrea B. Carroll as Reporter, and to the Trust Code Committee, which operates under the direction of Professor Ronald J. Scalise, Jr. as Reporter. Background research has been conducted and compiled with respect to both divorce by authentic act and perpetual trusts.

The Marriage-Persons and Trust Code Committees will continue meeting to consider this information and formulate their recommendations with respect to each of these issues. A final report will be submitted to the Legislature once the Committees have received approval of their recommendations from the Council of the Law Institute.