



LOUISIANA STATE LAW INSTITUTE

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May 6, 2024

Representative Phillip R. DeVillier
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HOUSE CONCURRENT RESOLUTION NO. 92 OF THE 2021 REGULAR SESSION

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to partition of community property.

Sincerely,

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

Guy Holdridge
Director

GH/pc

Enclosure

cc: Representative Paula Davis

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State, Ms. Nancy Landry
admin@sos.louisiana.gov

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

**REPORT IN RESPONSE TO HOUSE CONCURRENT
RESOLUTION NO. 92 OF THE 2021 REGULAR SESSION**

Relative to partition of community property

Prepared for the
Louisiana Legislature on

May 6, 2024

Baton Rouge, Louisiana

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

Dawn Amacker, Covington

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Katherine S. Spaht, Chair

Andrea B. Carroll, Reporter

Jessica G. Braun, Staff Attorney

2021 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 92

BY REPRESENTATIVE DAVIS

A CONCURRENT RESOLUTION

To request the Louisiana State Law Institute to study provisions of law on partition of community property and report its findings to the Louisiana Legislature no later than February 1, 2022.

WHEREAS, the laws of this state provide that property held in community can be partitioned following a divorce; and

WHEREAS, during divorce proceedings, one spouse may hold financial advantage over the other spouse; and

WHEREAS, advances of community property to the spouse with fewer resources to complete a partition are customarily limited to twenty-five percent or less of the total community to ensure fairness in final partitions; and

WHEREAS, a spouse with a financial advantage may adversely drain the assets of the other spouse prior to arriving at a final partition judgment; and

WHEREAS, the proceedings to partition the community property may render one spouse at a significant financial disadvantage due to extended litigation prior to the final judgment; and

WHEREAS, disadvantaged spouses may have been subject to domestic abuse even when not asserted to the court; and

WHEREAS, the extended litigation may be used as a continuation of domestic abuse by way of "litigation abuse"; and

WHEREAS, both parties and the court may benefit from equitable, expedient, and efficient partitions of community property.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study community property partition laws and to report its findings and recommendations to the Louisiana Legislature no later than February 1, 2022.

BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to include representatives of the Louisiana Appleseed Center for Law and Justice, the Louisiana Coalition Against Domestic Violence, the Domestic Violence Clinic at Tulane Law School, the New Orleans Family Justice Center, and the United Way of Southeast Louisiana, to the extent not already included in the study group.

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

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit one print copy and one electronic copy of any report produced pursuant to this Resolution to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

May 6, 2024

To: Representative Phillip R. DeVillier
Speaker of the House
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE IN RESPONSE TO
HOUSE CONCURRENT RESOLUTION NO. 92 OF THE 2021 REGULAR SESSION**

House Concurrent Resolution No. 92 of the 2021 Regular Session requested the Louisiana State Law Institute to study the law on partition of community property with a view toward preventing extended litigation as a continuation of domestic abuse when one party may have a financial advantage over the other party. In fulfillment of this request, the Law Institute assigned this resolution to its Marriage-Persons Committee, which operates under the direction of Professor Andrea B. Carroll as Reporter. In accordance with the resolution, the Committee worked with representatives from Louisiana Appleseed Center for Law and Justice, the Louisiana Coalition Against Domestic Violence, the Domestic Violence Clinic at Tulane Law School, the New Orleans Family Justice Center, and the United Way of Southeast Louisiana during its study.

The Committee received background information from Louisiana Appleseed and understood that the goal of the resolution, which was based on House Bill No. 100 of the 2021 Regular Session, was to craft laws to prevent litigation abuse in the form of drawing out cases and depleting assets. The Committee, however, recognized several areas of concern with allowing partial partition of community assets. As an alternative solution, the Law Institute proposes amending R.S. 9:374 relative to possession and use of community movables and immovables to ensure access to the assets and liabilities at the time of the hearing for liquidation to maintain the households and pay for the litigation. The Law Institute further recommends granting additional judicial discretion for the allocation of the use of community property and the recognition of special circumstances involved in abusive and controlling relationships. In further response to concerns of litigation abuse raised by stakeholders, the Law Institute also proposes specifically providing for an award of attorney fees in the partition litigation, which will serve as a further deterrent.

The Law Institute's proposed recommendations to address the concerns raised by the resolution without creating additional problems by permitting partial partitions were submitted to the Legislature and have been introduced as Senate Bill No. 29 of the 2024 Regular Session.