



LOUISIANA STATE LAW INSTITUTE
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January 31, 2017

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

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

RE: SCR 42 OF 2016

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its interim report relative to the applicability of the possessory action.

Sincerely,

William E. Crawford
Director

WEC/puc

Enclosure

cc: Senator Dan "Blade" Morrish

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
POSSESSORY ACTIONS COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO SCR 42 OF THE 2016 REGULAR SESSION**

Relative to the applicability of the possessory action

Prepared for the
Louisiana Legislature on

January 31, 2017

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
POSSESSORY ACTIONS COMMITTEE**

Nikolaos A. Davrados	New Orleans
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L. David Cromwell, Reporter
Mallory C. Waller, Staff Attorney

SENATE CONCURRENT RESOLUTION NO. 42

BY SENATOR MORRISH

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations regarding the applicability of "possessory action", as provided in the Louisiana Code of Civil Procedure Articles 3655 through 3662, relative to claims of possession by an individual of another person's land even though that landowner has occupied the land undisturbed for many years.

WHEREAS, the law regarding "possessory action" has received minimal changes since it was enacted; and

WHEREAS, Code of Civil Procedure Article 3660(A) states, "A person is in possession of immovable property or of a real right therein, within the intendment of the articles of this Chapter, when he has the corporeal possession thereof, or civil possession thereof preceded by corporeal possession by him or his ancestors in title, and possesses for himself, whether in good or bad faith, or even as a usurper."; and

WHEREAS, the clause "whether in good or bad faith, or even as a usurper" is often unfair to landowners because of its abuse in practical application.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations regarding the applicability of "possessory action", as provided in the Louisiana Code of Civil Procedure Articles 3655 through 3663, to claims of possession by an individual of another person's land even though that landowner has occupied the land undisturbed for many years.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit a written report of its findings, together with any proposed legislation, to the Legislature of Louisiana no later than February 1, 2017.

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

January 31, 2017

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

Representative Taylor F. Barras
Speaker of the House of Representatives
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**INTERIM REPORT TO THE LOUISIANA LEGISLATURE
IN RESPONSE TO SCR NO. 42 OF THE 2016 REGULAR SESSION**

Senate Concurrent Resolution No. 42 of the 2016 Regular Session urges and requests the Law Institute to study and make recommendations regarding the applicability of “possessory action” as provided in Louisiana Code of Civil Procedure Articles 3655 through 3662, relative to claims of possession by an individual of another person’s land even though that landowner has occupied the land undisturbed for many years. In fulfillment of this request, the Law Institute created the Possessory Actions Committee, comprised of both professors and practitioners, and placed it under the direction of Mr. L. David Cromwell as Reporter.

Background information was compiled concerning the issue that the author of SCR 42 was interested in addressing, namely the inclusion of the “whether in good or bad faith, or even as a usurper” language in Code of Civil Procedure Article 3660(A) and the ability of unscrupulous actors to take advantage of unaware landowners. Additionally, the Reporter has been conducting research and composing a memorandum for the Committee’s consideration. The Committee will consider these issues at its upcoming meeting in early February and will make recommendations with respect to whether and to what extent the Code of Civil Procedure articles on possessory actions should be amended to prevent abuse by usurpers or other bad faith actors.

A final report will be submitted to the Legislature once the Possessory Actions Committee has reviewed these materials and has received approval of its recommendations from the Council of the Law Institute.

Respectfully submitted,

L. David Cromwell, Reporter
Possessory Actions Committee
Louisiana State Law Institute