

July 6, 1973

<u>Time</u>	<u>Place</u>
July 12 - 7:00 p.m. - 10:00 p.m.	State Bar Building
July 13 - 9:00 a.m. - 5:00 p.m.	601 McAllister Street San Francisco 94102

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

July 12-13, 1973

July 12

1. Minutes of June 7-9, 1973, Meeting (sent 6/20/73)
2. Administrative Matters
3. Study 78 - Rights and Duties Upon Termination of Lease of Real Property
Memorandum 73-54 (sent 6/26/73)
Draft of Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 73-54 (enclosed)
4. Study 72 - Liquidated Damages
Memorandum 73-47 (sent 6/27/73)
Tentative Recommendation as distributed for comment
(attached to Memorandum)

July 13

5. Study 36 - Condemnation

Outline of Eminent Domain Law

Memorandum 73-58 (sent 7/5/73)
Outline (attached to Memorandum)

Approval for Sending to Printer

Chapter 1 - General Provisions
Chapter 2 - Principles of Construction; Definitions
Chapter 4 - Precondemnation Activities
Chapter 6 - Deposit and Withdrawal of Probable Compensation;
Obtaining Possession Prior to Judgment

Memorandum 73-49 (sent 6/27/73)
Draft (Chapters 1, 2, 4, and 6)(attached to Memorandum)

July 6, 1973

Approval for Sending to State Bar Committee for Comment

Chapter 5 - Commencement of Proceeding

Memorandum 73-56 (sent 7/2/73)
Draft (Chapter 5)(attached to Memorandum)
First Supplement to Memorandum 73-56 (enclosed)

Chapter 8 - Procedures for Determining Right to Take and Compensation

Memorandum 73-59 (sent 7/5/73)
Draft (Chapter 8)(attached to Memorandum)

Chapter 11 - Postjudgment Proceedings

Memorandum 73-57 (sent 7/5/73)
Draft (Chapter 11)(attached to Memorandum)

New Matters

Chapter 7 - Discovery; Exchange of Valuation Data

Memorandum 73-61 (sent 6/29/73)

Condemnation Proceedings--Acceleration Clauses

Memorandum 73-55 (sent 6/29/73)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

JULY 12 AND 13, 1973

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on July 12 and 13, 1973.

Present: John D. Miller, Chairman
Marc W. Sandstrom, Vice Chairman
Noble K. Gregory
Thomas E. Stanton, Jr.
Howard R. Williams

Absent: Alister McAlister, Member of Assembly
Robert S. Stevens, Member of Senate
John J. Balluff
John N. McLaurin
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, Nathaniel Sterling, and Stan G. Ulrich, members of the Commission's staff, also were present. Thomas M. Dankert, Commission consultant on condemnation law and procedure, was present on Friday, July 13.

The following persons were present as observers on days indicated:

Thursday, July 12

Ronald P. Denitz, Tishman Realty & Construction Co., Los Angeles
Fred C. Feiten, California Apartment Ass'n & California Motel Ass'n,
Sacramento

Friday, July 13

S. Robert Ambrose, County Counsel's Office, Los Angeles
Ronald P. Denitz, Tishman Realty & Construction Co., Los Angeles
Norval Fairman, Department of Public Works, San Francisco
Fred C. Feiten, California Apartment Ass'n & California Motel Ass'n,
Sacramento
John M. Morrison, Attorney General's Office, Sacramento
Denis G. Rose, Department of Water Resources, Sacramento
Anthony J. Ruffolo, Department of Public Works, Los Angeles

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ADMINISTRATIVE MATTERS

Minutes

The Minutes of the June 7-9, 1973, meeting of the Law Revision Commission were approved after the following correction was made: On page 11, lines 2 and 3, the words "rules regarding verification and the responsibility of the attorney signing the pleading" should be substituted for "rule regarding verification by an attorney."

Priority of Topics

The Commission discussed the priority to be given to the various topics on its agenda. It was recognized that there will not be time at Commission meetings within the next few months to complete work on some of the matters ready for Commission consideration. After discussion, the Commission decided to give top priority to the prejudgment attachment recommendation since the existing legislation on this subject expires and legislation must be enacted at the 1974 session. Other aspects of the legislative program now before the Legislature also should be given a top priority.

The next priority is to be given to eminent domain. The Commission plans to complete work on the draft of the Eminent Domain Law itself at the October meeting and plans to send Chapters 5, 8, 9, 10, and 11 to the printer after the September meeting. The remainder of the recommended legislation, including changes in other codes, will be approved at the October and November meetings.

The next priority is to be given to landlord-tenant relations. The Commission is hopeful that a recommendation on this topic can be submitted to the 1974 session.

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The Commission did not have time to consider the subject of liquidated damages at its July meeting, and the staff was directed to put this subject on the agenda not later than the January 1974 meeting.

Printing

The Commission discussed the delay in receiving copies of printed pamphlets after the pamphlets are approved for printing. The Executive Secretary reported that it will take more than five months to receive the pamphlet on prejudgment attachment. Part of this delay is caused by the fact that the proposed legislation must be reviewed by the Legislative Counsel before it can be printed since the printed pamphlet contains the bill as introduced, and no bill can be introduced unless it has been reviewed for form by the Legislative Counsel. A major portion of the delay, however, is caused by the legislative printing demands which take priority over the Commission's printing jobs.

The Commission indicated great concern about the delay. The Executive Secretary was directed to discuss the problem with the legislative members of the Commission to see if they had any suggestions for improving the situation. The Executive Secretary also reported that he was investigating the use of an IBM Mag Card typewriter to produce material for input to the computers in the printing department in Sacramento. The staff now has such a machine on a rental basis and is optimistic that its use will significantly improve the printing situation within the next year or so.

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STUDY 36.400 - COMPREHENSIVE STATUTE GENERALLY

The Commission considered Memorandum 73-58 and the attached outline of the Eminent Domain Law. The outline was approved as the basis for drafting the Eminent Domain Law. It was recognized that changes in the outline will be necessary to reflect changes in particular chapters as those chapters are revised before being sent to the printer.

Chapters 1, 2, 4, and 6 (attached to Memorandum 73-49) were approved for printing as submitted. However, Commissioners are to be given a week or so to submit their editorial suggestions to the staff. After this time has passed, the staff is to send these chapters to the printer.

The Commission discussed the way the staff should handle suggested editorial changes that appear to involve policy questions of some importance. It was suggested that the staff report those editorial changes that are made or not made that involve policy questions to the Commission so that the policy questions can be considered and resolved by the Commission. The number of such policy questions, it was thought, would not be great and should not delay sending Chapters 1, 2, 4, and 6 to the printer.

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STUDY 36.80 - CONDEMNATION (CHAPTER 5--~~COMMENCEMENT~~
OF PROCEEDING)

The Commission considered Memorandum 73-56, the First Supplement to Memorandum 73-56, and the statutory provisions attached to those memoranda. Sections 426.70 and 428.10 (attached to First Supplement to Memorandum 73-56) were approved as drafted for inclusion with the Amendments, Additions, and Repeals of the Eminent Domain Law. Chapter 5 was approved to be sent to the State Bar Committee on Condemnation for comment subject to the actions indicated below.

Article 1 (Sections 1250.010-1250.040). Approved as drafted except the last sentence of the Comment to Section 1250.040 was deleted.

Sections 1250.110-1250.120. Approved as drafted.

Section 1250.130. The phrase "if not already recorded" was added before the second requirement of this section. The Comment should state that the court may indicate the manner of posting.

Section 1250.140. This section was revised to provide:

Where the state is a defendant, the summons and complaint shall be served on the Attorney General.

Section 1250.150. Approved as drafted.

Section 1250.210. Approved as drafted.

Section 1250.220. The material in brackets in the staff draft was deleted; otherwise, the section was approved as drafted.

Section 1250.230. The staff was directed to reexamine this section to make certain that any person with an interest in the property sought to be

taken is permitted to appear and that, in this regard, the substance of Sections 1245.3 and 1246 is not lost.

Section 1250.240. Approved as drafted.

Section 1250.310. In connection with this section, the staff was directed to consider the appropriate disposition of present Section 1248a. The staff was further directed to revise paragraph (3) of subdivision (c) to make clear that the required statutory authorization may be inconsistent or in the alternative and what the term "declaration" refers to. The reference in the Comment to verification must be corrected to conform to the action taken on Section 1250.330.

Section 1250.320. Approved as drafted.

Section 1250.330. This section was revised to provide substantially as follows:

1250.330. Where a party is represented by an attorney, his pleading need not be verified but shall be signed by the attorney for the party. The signature of the attorney constitutes a certificate by him that he has read the pleading, that to the best of his knowledge, information, and belief there is ground to support it and, if it is an answer, it is not interposed for delay. If the pleading is not signed or is signed with intent to defeat the purposes of this section, it may be stricken as sham and false.

Section 1250.350. Approved as drafted.

Section 1250.360. Short descriptions of the subject matter of the sections listed in subdivision (f) should be included in parentheses. The last two sentences of the Comment to subdivision (c) were deleted.

Section 1250.370. The substance of the following introductory clause was added to this section: "In addition to the grounds stated in Section 1250.360."

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Section 1250.380. The staff was directed to revise this section to provide in substance that either party may amend his pleadings on such terms and conditions as the court determines are appropriate, including a change in the date of valuation and an award of attorney's fees, appraisal fees, and fees for the services of other experts attributable to the amendment. An amendment to add property sought to be taken should require passage of a resolution of necessity related to the property to be added. An amendment to delete property sought to be taken should be treated as a partial abandonment.

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STUDY 36.80 - CONDEMNATION (CHAPTER 8--PROCEDURES FOR
DETERMINING RIGHT TO TAKE AND COMPENSATION)

The Commission considered Memorandum 73-59 and the draft of Chapter 8 attached thereto. Chapter 8 was approved to be sent to the State Bar Committee on Condemnation for comment subject to the actions indicated below.

Section 1260.010. Approved as drafted.

Section 1260.020. The words "engendered by" in subdivision (b) were changed to "attributable to."

Section 1260.110. Approved as drafted.

Section 1260.120. Paragraph (1) and the first sentence of paragraph (2) of subdivision (c) were revised to read:

- (1) Immediate dismissal of the proceeding as to that property, or
- (2) Conditional dismissal of the proceeding as to that property unless such corrective and remedial action as may be prescribed has been taken within the period prescribed by the court in the order. . . .

The last sentence of subdivision (c) was made a separate subdivision and revised to provide: "(d) An appeal may be taken from a dismissal under subdivision (c)."

Section 1260.210. The section was approved as drafted. The staff was directed to consider editorial changes to the Comment and to add a Note stating that consideration of whether subdivision (b) should apply in an inverse condemnation action or to inverse condemnation issues in an eminent domain proceeding has been deferred.

Section 1260.220. Approved as drafted.

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Section 1260.230. The staff was directed to revise this section to make clear that the separate interests of the heirs and devisees of a deceased person should not be determined in the eminent domain proceeding.

Section 1260.240. Approved as drafted.

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STUDY 36.80 - CONDEMNATION (CHAPTER 11--POSTJUDGMENT PROCEDURE)

The Commission considered Memorandum 73-57 and the attached draft of Chapter 11 of the Eminent Domain Law. The Commission approved sending this chapter to the State Bar Committee for comment with the following changes:

§ 1268.020. Remedies of defendant if judgment not paid. The phrase "written notice of" was inserted immediately following the word "Upon" at the beginning of subdivision (b), subject to confirmation by research in the Code of Civil Procedure.

§ 1268.110. Deposit after judgment. The phrase "with the court" was added immediately following the word "deposit" in subdivision (a).

§ 1268.140. Withdrawal of deposit. The phrase "upon giving such notice to the other defendants as the court may require" was added to the first sentence of subdivision (a). The section should also be revised to require notice to the other defendants in any case where the award has not been apportioned.

§ 1268.150. Deposit in State Treasury unless otherwise required. Subdivision (b) was deleted subject to staff research on the effect of the deletion on escheat. Subdivision (c) was revised to permit investment of deposits in "United States government obligations or interest-bearing accounts insured by an agency of the federal government."

§ 1268.310. Date interest commences to accrue. The phrase "or the damage to the property occurs" was deleted from subdivision (b). The Comment to this section should indicate that the deletion is not intended to affect the law relating to inverse condemnation, a matter that is also under study by the Commission. The staff should research whether case law under inverse condemnation

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permits accrual of interest as of the date of damage and, if so, should refer to the law in the Comment.

§ 1268.320. Date interest ceases to accrue. Reference should be made either in the statute or Comment to the content of the sections presently referred to in the statute by number only.

§ 1268.340. Interest to be assessed by court. The phrase "or damage to" was deleted from this section subject to the outcome of the research undertaken pursuant to Section 1268.310.

§ 1268.610. Reimbursement of defendant upon dismissal or judgment that no right to take. The Comment to this section should be corrected to indicate that existing law is being expanded to apply to private condemnors as well as to public utilities; the bill in the present legislative session that would also accomplish this should be followed by the staff.

§ 1268.620. Damages caused by possession. The phrase "order or agreement for possession" was substituted for "order for possession" wherever it occurs in this section. The Comment to this section should indicate that the section does not affect any liability the plaintiff may be subject to by way of inverse condemnation for damage to the property during litigation.

§ 1268.710. Court costs. Subdivisions (c) and (d) were deleted from this section. The final two paragraphs of the Comment to this section relating to recoverable costs were also deleted.

§ 1268.720. Costs on appeal. This section was revised to allow the defendant his costs in all cases except where otherwise provided by the Judicial Council.

STUDY 78 - LANDLORD-TENANT RELATIONS

The Commission considered the staff draft of the tentative recommendation relating to disposition of property left on premises when lease terminates and related problems, which was attached to Memorandum 73-54, and the First Supplement to Memorandum 73-54. The Commission made the following decisions:

Title

The title of the recommendation should be a general heading such as "Landlord-Tenant Relations" followed by an itemization of the various subjects involved in the recommendation.

Preliminary Part

The discussion on pages 2 and 3 concerning the meaning of "abandonment of the property" should not be qualified by words like "apparently."

Part I: Abandonment of Leased Real Property

Civil Code Section 1953.10. The words "by the lessee" should be added after "abandoned" in both sentences. In the first sentence of the second paragraph of the Comment, the words "the real property" should replace "his leasehold interest; appearances of abandonment are not sufficient."

Civil Code Section 1953.20. The requirement in subdivision (a) that the property be unoccupied for 20 days should be eliminated and the subdivision rewritten substantially as follows: "If the rent on leased real property has been due and unpaid for at least 20 consecutive days and the lessor reasonably believes that the lessee has abandoned the property, the lessor may give written notice to the lessee" The words "by the lessee" should be

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added after "abandoned" in paragraph (2) of subdivision (a). Paragraph (3) of subdivision (a) should read substantially as follows: "The property will be deemed abandoned and the lease will terminate on the 16th day after the effective date of the notice unless the lessee, not later than 15 days after the effective date of the notice, communicates to the lessor his intent not to abandon the property." Paragraph (4) of this subdivision should state that notice is effective when delivered to the lessee personally or, as in Rule 6(e) of the Federal Rules of Civil Procedure, three days after being mailed. The notice should also contain a statement of the name, address, and telephone number of the person to whom the lessee is to communicate his intent not to abandon.

The provisions in subdivision (b) concerning airmail and temporary location should be deleted. The subdivision should provide that notice is effective when it is delivered to the lessee personally or three days after it is deposited in the mail addressed to the lessee at his last known address. Where the lessor has reason to believe that the lessee might be located at another address, notice should be mailed to each address. The Comment to this subdivision should explain that notice should be sent anywhere the lessee can be reached, whether it is a residence or place of business.

In subdivision (c), the words "within 15 days from" should be changed to "not later than 15 days after" and "17th" should be "16th." The last sentence of subdivision (c) should be deleted. "Contact" should read "communicate to."

Subdivisions (d) and (e) will have to be rewritten to conform to changes made in subdivisions (a)-(c).

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The Comment should contain a cross-reference to Section 1963.70 which allows the notice of abandoned personal property to be sent at the same time as the notice under Section 1953.20.

Civil Code Section 1953.30. This section should be deleted.

Part II: Disposition of Abandoned Personal Property

Civil Code Section 1963.10. In the Comment to subdivision (a), the sentence regarding the privacy of the owner and the last sentence should be deleted. The Comment should indicate that the significance of the option not to open trunks is that the contents then need not be itemized in the notice.

Subdivision (b) should be reworded substantially as follows: "'Landlord' means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for hire, or his agent or successor in interest."

Subdivision (d) should be retained only for the purpose of including common areas in the coverage of the act. The term "real property" should not be used in this subdivision or anywhere else in Section 1963.10 et seq. where "premises" would suffice.

The Comment to subdivision (e) should indicate that the title taken in a sale of property under Section 1963.10 et seq. is a function of other law and should give examples of sales of inventory and equipment subject to a security interest.

Civil Code Section 1963.20. In subdivision (b)(1), the word "agreement" should be replaced by "interest." Subdivision (b)(2) should read as follows: "A provision that all or a portion of any improvements and alterations and personal property affixed to the premises shall not be removable." In the

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Comment to subdivision (b) in the first sentence, the words "a valid statutory lien or" and the citation to Civil Code Section 1861a should be deleted. In the second sentence, the word "lease" should be replaced by "rental agreement."

Civil Code Section 1963.30. In subdivision (b)(1), the words "a person reasonably believed by the landlord to be" should precede "the owner." It should be provided in this section and in Sections 1963.40 and 1963.50 that the tenant must pay for the storage of all the property regardless of what he intends to reclaim but that the owner who is not a tenant need pay for only the storage of the property he is claiming.

Civil Code Section 1963.40. This section and Section 1963.50 should make clear that a person who actually receives notice cannot contest the disposition of the property. The staff should also consider whether miscellaneous items of property should be listed generally in the notice provided in Sections 1963.40 and 1963.50.

In the first sentence of subdivision (a), the word "is" should be changed to "may be." In subdivision (a)(5), the words "within 15 days from" should be changed to "not later than 15 days after." Subdivisions (a)(7) and (a)(8) should be combined to read substantially as follows: "The name and address of the landlord and, if different, the address at which the tenant or the owner may pay the reasonable cost of storage."

The Comment to subdivision (b) should make clear that, where the statute says the landlord may dispose of the property in any manner, he may keep it.

The Comment to subdivision (c) should explain that the landlord is protected against liability for damages or the return of the property or any other liability.

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Civil Code Section 1963.50. In the first sentence, the words "any item of" should be deleted.

In the first sentence of subdivision (a), the word "is" should be changed to "may be." In subdivision (a)(4), the words "within 15 days from" should be replaced by "not later than 15 days after." Subdivision (a)(4) should begin "A statement in substance as follows:" followed by the substance of the notice addressed directly to the person to be notified.

Subdivisions (a)(7) and (a)(8) should be combined as in Section 1963.40.

In the first sentence of subdivision (b), the words "a person reasonably believed by the landlord to be" should precede "the owner." In the third sentence of subdivision (b), the words "more than five days" should be deleted. Subdivision (b) should provide that the owner should make his claim for the balance to the county treasurer or other person designated by the county supervisors. The last sentence of subdivision (b) should provide that the county is relieved of any further liability upon payment of the balance to a person claiming ownership but should not say that the decision is "final."

The Comment to this section should explain the relationship between the terms "tenant" and "owner" and should make clear that the tenant can obtain property or money in the landlord's hands, whether or not he is the owner, upon payment of the landlord's expenses of storage, advertising, and sale but that the landlord must reasonably believe that a person is an owner. After the money has been paid into the county treasury, it may be paid only to an owner regardless of whether that person is a tenant or a third-party owner.

Civil Code Section 1963.60. This section should be revised in accordance with the federal rule as discussed under Section 1953.20(b) above.

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Miscellaneous. A provision should be added, perhaps to Section 1963.10, which would avoid conflicts with statutes providing for disposition of property in specific situations such as the warehousemen's act, Civil Code Section 2081 et seq. The staff should use "personal property" instead of "item of personal property" where possible.

Code of Civil Procedure Section 1174. This section should be conformed to changes made in Section 1963.10 et seq. It should be made clear that the tenant has to pay for storage of all the property whereas the owner has to pay for only the property he is claiming. The last sentence of the Comment should be deleted. The Comment should state that the Commission believes Section 1174 is unconstitutional to the extent that it allowed the landlord to require the payment of the judgment before returning the property and should cite Gray v. Whitmore for the proposition that the assessment of reasonable costs by the landlord as a condition to returning the property to the tenant is constitutional. Instead of the cf. citation to Love v. Keays, the Comment should state that Gray was approved in Love.

Part III: Leases Executed Before July 1, 1971, Which Are Later Amended

Civil Code Section 1952.2. This section should be deleted from this recommendation, and its subject matter should be given further study at some future time.

Part IV: Innkeeper's and Landlord's Liens

Civil Code Section 1861a. Subject to further study, either the statute or the Comment should make clear that the statute is not intended to affect the availability of existing common law rights if the Commission is provided

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with citations to cases indicating that such common law rights exist. The Comment to this section and Section 1861 (repealed) should state that the Commission believes Section 1861 is unconstitutional and should note that Klim v. Jones held Section 1861 unconstitutional. Where Klim v. Jones is cited, the statement that it was a three-judge court should be deleted because the three-judge court was dissolved.

APPROVED

Date

Chairman

Executive Secretary