

5/11/74

Date

Mar 3 - 9:30 a.m. - 5:00 p.m.  
Mar 4 - 9:00 a.m. - 5:00 p.m.

Place

Marriott Hotel  
Airport & Century Blvd.  
Los Angeles 90045

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

Mar 3-4, 1974

Mar 3

1. Minutes of March 21-23, 1974, Meeting (sent 4/3/74)

2. Administrative Matters

Research Consultants

Memorandum 74-18 (sent 4/19/74)

3. Study 39.70 - Prejudgment Attachment (AB 2948)

Memorandum 74-16 (sent 4/19/74)

4. Study 39.120 - Execution (Exemptions)

Memorandum 74-17 (sent 4/10/74)

Draft Statute (attached to Memorandum)

First Supplement to Memorandum 74-17 (to be sent)

Memorandum 74-23 (sent 4/23/74)

Mar 4

1. Report on 1974 Legislative Program

Memorandum 74-24 (sent 4/23/74)

2. Study 63 - Evidence

Physician-Patient Privilege

Memorandum 74-19 (sent 4/10/74)

Business Records

Memorandum 74-20 (sent 4/19/74)

SPECIAL ORDER OF BUSINESS

AT 9:30 A.M.

10/12/74

1. Study 72 - Unilateral Waiver (01/11/74)

Memorandum 74-20 (sent 4/19/74)

Draft of Proposed Memorandum 74-20 (sent 4/23/74)

2. Study 71 - Joint Modification of Related Contracts

Memorandum 74-22 (sent 6/10/74)

Preliminary Recommendation (attached to Memorandum)

3. Study 43 - Fertilizer Procedure

Memorandum 74-21 (sent 4/23/74)

Draft of Portion of Statute (attached to Memorandum)

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
MAY 3 AND 4, 1974  
Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on May 3 and 4, 1974.

Present: Marc Sandstrom, Chairman  
John N. McLaurin, Vice Chairman  
John J. Balluff  
Noble K. Gregory  
John D. Miller  
Thomas E. Stanton, Jr. (Friday)  
Howard R. Williams

Absent: Robert S. Stevens, Member of Senate  
Alister McAlister, Member of Assembly  
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. Professor Stefan A. Riesenfeld, Commission consultant on creditors' remedies, was present on Friday, May 3. Mr. Garrett H. Elmore, Commission consultant on partition sales, was present on Saturday, May 4.

The following persons were present as observers on days indicated:

Friday, May 3

David Howard Battin, Staff Attorney, State Bar, Los Angeles  
William Kumli, Credit Managers Associations, San Francisco  
Harold Marsh, Jr., Credit Associations of California, Los Angeles  
William W. Vaughn, State Bar Ad Hoc Committee, Los Angeles

Saturday, May 4

Ronald P. Denitz, Tishman Realty & Construction, Los Angeles  
Dugald Gillies, California Real Estate Association, Sacramento  
Judge Bernard S. Jefferson, Superior Court, Los Angeles

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## ADMINISTRATIVE MATTERS

### Approval of Minutes

The Minutes for the March 21, 22, and 23, 1974, meeting were approved as submitted.

### Legislative Program

The Commission considered Memorandum 74-24 containing a report on the legislative program. Actions taken by the Commission with respect to individual bills are recorded in the portion of the Minutes relating to the subject matter of the bills.

### Research Consultants

The Commission considered Memorandum 74-18 relating to research consultants and an oral report of the Executive Secretary on this matter.

Execution. The Commission authorized and directed the Executive Secretary to execute on behalf of the Commission a contract with Professor Riesenfeld in the amount of \$5,000 (plus \$500 for travel expenses) to cover his work in connection with the preparation of a statute relating to enforcement of judgments.

Partition. The Commission authorized and directed the Executive Secretary to execute on behalf of the Commission an addendum or other suitable document to increase by \$200 the amount of travel expenses that may be paid to Mr. Elmore in attending Commission meetings.

Power of sale in trust deed and related matters. The Executive Secretary reported that he had made little progress in obtaining a consultant to deal with the procedure for private power of sale under trust deeds and

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mortgages and other related problems. Among the difficulties encountered by the Executive Secretary is the lack of sufficient funds to finance such a study.

Arbitration. The Commission directed the Executive Secretary to write to the Arbitration Committee of the San Francisco Bar Association requesting that the committee supply the Commission with names of possible consultants for the arbitration study.

Reimbursement of Property Taxes Paid by Stanford

The Commission approved amendment of its lease with Stanford to include provision for reimbursement of property taxes paid by Stanford on account of the Commission's lease. The Commission authorized and directed the Executive Secretary to execute the necessary documents on its behalf.

Cooperation With State Bar on Nonprofit Corporation Study

The Executive Secretary was authorized to communicate with the State Bar concerning the nonprofit corporation study. The Executive Secretary should make every effort to have the State Bar Corporations Committee, or creation of an ad hoc committee, authorized to work with the Commission on this study.

STUDY 23 - PARTITION PROCEDURE

The Commission considered Memorandum 74-21, the First Supplement to Memorandum 74-21, and a letter from Mr. J. D. Cooper distributed at the meeting relating to partition procedure. The Commission took the following action with respect to the draft statute attached to Memorandum 74-21.

§ 875.110. Persons Authorized to Commence Partition Action

The staff was directed to investigate whether community property should be made subject to partition in light of recent legislation affecting the nature of community property. The staff was also directed to give further consideration to whether "co-owner" should include personal representatives, receivers, trustees, and the like.

Subdivision (a), authorizing a co-owner of personal property to maintain a partition action, was left unchanged. Money should not be expressly excluded from partition. The possibility of itemization of the requisite degree of ownership was deferred pending resolution of other related problems.

Subdivision (b), authorizing a life tenant or remainderman to maintain a partition action, was deleted in favor of Section 875.130 (which was broadened in its application--see below).

§ 875.120. Right to partition

The word "clearly" was deleted from the phrase "clearly inequitable" in this section. The staff should also give consideration to use of a word other than "co-owner," which has various unwanted connotations. The section should incorporate a balancing of equities in determining the right to partition.

The Comment should be expanded to indicate the types of considerations, economic and otherwise, the court might take into account in determining the

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equity of permitting partition. The Comment should also make clear that one of the decisive factors in the court's decision will be any valid contractual waiver of the right to partition.

§ 875.130. Right to Partition Successive Estates

This section, providing a right to partition successive estates with the approval of the court, was expanded to apply to any case where partition is sought as against a successive interest.

§ 875.240. Referee

The words "including a new referee" were deleted from subdivision (a) relating to appointment and removal of a referee.

§ 875.510. Contents of Complaint

Subdivision (c), requiring that the complaint indicate all persons of record or known to the plaintiff to have interests in the property, was revised to require only an indication of persons who will be affected by the action.

The words "and for division or sale of the property" were deleted from subdivision (e) relating to the prayer for relief. Subdivision (f) was amended to require an allegation of the facts justifying a sale if the plaintiff at the time of filing the complaint is seeking a sale. The Comment should be adjusted accordingly.

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**J. D. COOPER**  
ATTORNEY AT LAW  
342 BANK OF AMERICA BUILDING  
1212 BROADWAY  
OAKLAND, CALIFORNIA 94612  
TELEPHONE 893-0000

April 30, 1974

California Law Revision Commission  
School of Law  
Stanford University,  
Stanford, California, 94305  
Attn: Nathaniel Sterling

Dear Mr. Sterling:

I make the following comments on the proposed new partition legislation and I trust this will be in your hands prior to the meeting early in May.

875.020 co-owner should include personal representatives, receivers, trustees, etc.

875.110 Money or currency should be exempted from partition. I was in the DCA on this very point involving proceeds from a condemnation. The law is very sketchy and money is partitionable by its very nature.

875.220 should enable the referee to apply for orders where the parties will not cooperate and are hostile to the action.

875.240 should set up a fee schedule as in probate subject to extra compensation for extraordinary services. The court should also be authorized to fix a bond of the referee if required.

The court should be given jurisdiction to hear and determine all preliminary motions, reports, accounts, and to set the same for hearing on its own motion.

875.250 should allow the court to direct payment of the various employees - otherwise they will not perform their tasks without assurance of present payment. Liens for this purpose are useless.

875.260 the court SHALL (not may) prescribe conditions of sale or partition and it should require additional "special notice" in some cases where class interests may be involved.

This section should require the referee to render to the court a statement of his intentions as to proceeding in the form of a report to be noticed to the parties and set by the court. Unless this is done the court will not have any basis for directing the trustee as to procedure. Such an order would later be superseded by an interlocutory decree.

875.270 "Compensatory adjustments" is meaningless. Are the adjustments to be made out of property or out of cash of the party compelled to make it? Some parties have no cash for this purpose.



## EXHIBIT I - STUDY 23

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875.510 should provide for joinder of all persons having any right, title or interest in the property of record as shown by a current title report or certificate or actually otherwise known by the plaintiff, cross complainant or answering defendant.

875.520. Joinder should be permissible of all persons claiming interest in both the real and personal property involved. It could be considerable hardship on a person claiming an interest in personal property only to sit through a long procedure where the main issue is the real property.

875.530. Is lis pendens jurisdictional as in quiet title or is it merely a convenience for binding subsequent vestees. I think that lis pendens should be mandatory and be filed within 10 days after filing the complaint.

875.540 should be deleted insofar as it stays the action until lis pendens is filed. This would allow many deliberate delays. The court should demand that lis pendens be filed within 10 days after filing the complaint.

875.610. The summons should be as prescribed in sections 749 et. seq of the Civil Code. Partition is also a quiet title action and quiet title action provisions, rather than eminent domain forms, should be followed.

875.620 should provided for publishing the summons without any frills. Also the property should be posted within 10 days after filing the complaint.

875.630 should be eliminated.

875.810 (a) needs clarification. The word "conveyance" is inappropriate.

875840 is bad. There is no assurance that the holder of a master lease will inform the sub-lessees, royalty claimants, etc. of a pending action. These persons should receive some kind of notice of the proceeding.

878.530 is bad. The court should compel joinder of all necessary parties and make an in rem judgment. The title companies could not insure under the present proposed section.

878.540 Same Comment as in connection with 878.530.

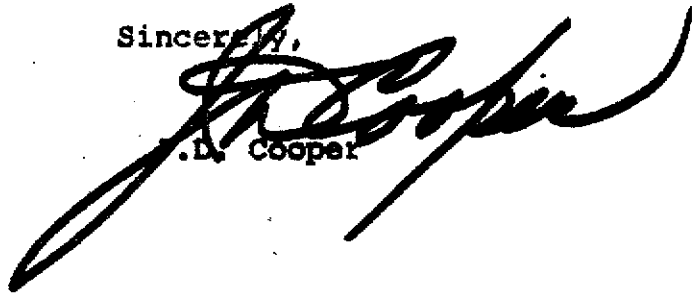
878.560 should be restated. The transferred interest vests in the transferee subject to the effect of the pending action.

879.040 is incomplete. It is possible that joint holders of a condominium might disagree as to its use or sale. Such a unit should also be subject to sale in partition

Beyond the foregoing comments I believe the staff has done a good job.

I have represented title companies and tried property cases for many years, including partition actions. Accordingly, my comments are based primarily on practical experience which may be of some value to those who have not been on the actual firing line.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'J.D. Cooper'. The signature is written over the typed name 'J.D. Cooper'.

J.D. Cooper

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STUDY 39.70 - PREJUDGMENT ATTACHMENT

The Commission considered Memorandum 74-16, the written materials attached thereto, and the oral presentations made at the meeting by Mr. Harold Marsh, Jr., representing the California Credit Managers Association, and Mr. William W. Vaughn, representing the State Bar of California. The Commission directed the staff to have amended A.B. 2948 (prejudgment attachment) and to conform the Comments to the statute to incorporate the decisions indicated below.

Section 483.010. The last sentence of subdivision (a) should be revised as follows:

The claim shall not be secured by any interest in real or personal property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty, any security interest subject to Division 9 (commencing with Section 9101) of the Commercial Code, and any statutory, common law, or equitable lien). However, an attachment may be issued where the claim was originally so secured but, without any act of the plaintiff or the person to whom the security was given, such security has become valueless or where the claim was secured by a nonconsensual possessory lien but such lien has been relinquished by the surrender of the possession of the property.

The Comment to this section should be supplemented to explain that the statute does not prohibit attachment where the plaintiff has given up a statutory or common law possessory lien by surrendering possession of the property subject to such lien.

Section 484.080. This section should be revised to provide as follows:

484.080. (a) At the time set for the hearing, the plaintiff shall be ready to proceed. If the plaintiff is not ready, or if he has failed to comply with Section 484.040, the court may either deny the application for the order or, for good cause shown, grant the plaintiff a continuance for a reasonable period. If such a continuance is granted, the effective period of any protective order issued pursuant to Chapter 6 (commencing with Section 486.010) may be extended by the court for a period ending not more than

10 days after the new hearing date, if the plaintiff shows a continuing need for such protective order.

(b) The court may, in its discretion and for good cause shown, grant the defendant a continuance for a reasonable period to enable him to oppose the issuance of the right to attach order. If such a continuance is granted, the court shall extend the effective period of any protective order issued pursuant to Chapter 6 (commencing with Section 486.010) for a period ending not more than 10 days after the new hearing date, unless the defendant shows pursuant to Section 486.100 that the protective order should be modified or vacated.

Section 484.320. This section should be revised to add the following subdivision:

(d) A statement that the applicant has no information or belief that the claim is discharged in a proceeding under the National Bankruptcy Act or that the prosecution of the action is stayed in a proceeding under the National Bankruptcy Act.

Subdivision (d) of Section 484.020 should be revised to conform to subdivision (d) of Section 484.320 as set forth above.

Section 484.340. Subdivision (d) should be revised to add the underlined phrase indicated below:

(d) If the defendant claims that the property specified in the application, or a portion thereof, is exempt from attachment, he shall file with the court a claim of exemption with respect to the property as provided in Section 484.350 not later than five days prior to the date set for hearing. If he does not do so, the claim of exemption will be barred in the absence of a showing of a change in circumstances occurring after the hearing.

Section 487.010. If it is determined that the assets of an individual partner may be reached prior to exhausting the assets of the partnership, a subdivision should be added to provide substantially as follows:

(d) Where the defendant is an individual who is a partner and is sued for his individual liability as a partner of a partnership which is engaged in a trade, business, or profession, all of the defendant's real property and all of his property which is of a type described in subdivision (c) and which is used or held for use in the partnership's trade, business, or profession.

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Section 488.030. This section should be revised to add the following subdivision:

(c) Where a copy of the summons and complaint has not previously been served on the defendant, the plaintiff, or his attorney of record, shall instruct the levying officer to make such service at the same time he serves the defendant with a copy of the writ of attachment.

Method of levy generally. The staff was directed to work out appropriate revisions which would make clearer the effect of a failure to give the notices required under the various levy procedures.

Section 488.410. No change was made in the statute, but the Comment should make clear that the Commercial Code does provide equitable relief.

Section 490.010. Subdivision (c) was deleted; the following subdivisions should, of course, be renumbered.

Section 490.020. The phrase "whether direct or consequential" was deleted from subdivision (a). The Comment, however, should make clear that all damages proximately caused by a wrongful attachment are recoverable, and this may include such items as loss of credit and business losses.

Sections 492.070 and 492.080. Section 492.080 was deleted, and subdivision (c) of Section 492.070 should be revised to provide:

(c) A description of the property to be attached under the writ of attachment, and a statement that the plaintiff is informed and believes that such property is subject to attachment pursuant to Section 492.040. The description shall satisfy the requirements of Section 484.020.

Other issues. The Commission also carefully considered the other issues raised by the associations and the Bar--including whether there should be a "balancing of the equities" before an attachment issues, whether a protective order may be issued without a showing of need therefor, whether a plaintiff's liability for a wrongful attachment should be limited in

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all cases to the amount of his undertaking, and whether such liability may be determined pursuant to a simple motion procedure--and determined that any further changes would be undesirable..

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STUDY 39.120 - EXECUTION

The Commission discussed policy questions concerning exemptions from execution presented in the First Supplement to Memorandum 74-17. The Commission decided that the exemption provisions should forward the basic policy of providing support for the debtor and his dependents. To further this end, exemptions should be grouped in categories so as to minimize the effect of holding particular assets on the total amount of exempt property allowed the debtor. In addition, the Commission decided that the amount of the exemptions should be tied to some form of cost of living index so that exemption levels will not become obsolete because of inflation. The Commission decided to postpone further work on exemptions because exemptions from bankruptcy are currently being developed by the Commission on the Bankruptcy Laws of the United States.

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STUDY 47 - ORAL MODIFICATION OF WRITTEN CONTRACTS

The Commission considered Memorandum 74-22 and the attached staff draft of a tentative recommendation relating to Civil Code Section 1698 (oral modification of a written contract). The Commission decided that the tentative recommendation should be revised to delete any discussion or provision concerning the effect of the statute of frauds on contracts which are orally modified and that it should be made clear in the Comment to Section 1698 that the person relying on the oral modification will have to prove the existence of the oral modification. Subject to these two changes, the Commission approved the tentative recommendation to be distributed for comment.



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STUDY 63 - EVIDENCE

Evidence Code Section 999

The Commission considered Memorandum 74-19 and the views of Judge Bernard S. Jefferson concerning Evidence Code Section 999 (the criminal conduct exception to the physician-patient privilege) and alternative solutions to the problem of the admissibility of evidence concerning a patient's condition in a civil trial.

The Commission decided to drop the existing recommendation (Senate Bill 1534) which would have repealed Section 999. Instead, the staff was directed to draft a new tentative recommendation which would provide an exception to the physician-patient privilege where it is shown that the evidence relating to the party-patient's condition is relevant and that there is good cause for its disclosure.

Evidence Code Sections 1271 and 1561

The Commission considered Memorandum 74-20 and the views of Judge Bernard S. Jefferson concerning the relationship between the business records exception provided by Section 1271 and the authentication procedures provided by Sections 1560-1566.

The Commission approved the staff draft of a statute set out in Exhibit II attached to Memorandum 74-20 and directed the staff to prepare a tentative recommendation on this basis.

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STUDY 72 - LIQUIDATED DAMAGES

The Commission considered Memorandum 74-26, the First Supplement to Memorandum 74-26, and Senate Bill 1532 which was introduced to effectuate the Commission's recommendation relating to liquidated damages.

After a review of the nature of the opposition to the bill and in light of the fact that an amendment was made to the bill that makes it no longer one that can be recommended by the Commission, the Commission decided to withdraw its recommendation that the bill be enacted, to suggest to Senator Stevens that he drop the bill, and to give the subject matter of liquidated damages further consideration when time permits. It was suggested that this topic perhaps should be taken up when work on recommendations to be submitted to the 1975 session has been completed.

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STUDY 78 - LANDLORD-TENANT RELATIONS

The Commission considered Memorandum 74-74 insofar as that memorandum related to Assembly Bills 2830 and 2831, which were introduced to effectuate the Commission's recommendations relating to landlord-tenant relations. The Commission approved the amendments previously made to the bills and directed the Executive Secretary to request that Assemblyman McAlister make the substance of the following additional amendments to the bills before the bills are heard by the Senate Judiciary Committee.

Assembly Bill 2830

(1) Section 1986 was revised to read:

1986. The personal property described in the notice shall *either be left on the vacated premises or be stored* by the landlord in a place of safekeeping until the landlord either releases the property pursuant to Section 1987 or disposes of the property pursuant to Section 1988. The landlord shall exercise reasonable care in storing the property, but he is not liable to the tenant or any other owner for any loss not caused by his deliberate or negligent act.

(2) Section 1987 was revised to read:

1987. (a) The personal property described in the notice shall be released by the landlord to the former tenant or, at the landlord's option, to any person reasonably believed by the landlord to be its owner if such tenant or other person pays the reasonable cost of storage and takes possession of the property not later than the date specified in the notice for taking possession.

(b) *Where personal property is not released pursuant to subdivision (a) and the notice stated that the personal property would be sold at a public sale, the landlord shall release the personal property to the former tenant if he claims it prior to the time it is sold and pays the reasonable cost of storage, advertising, and sale incurred prior to the time the property is withdrawn from sale.*

(3) Subdivision (a) of Section 1989 was revised to read:

~~1989. (a) Where the landlord releases property to the former tenant pursuant to Section 1987, the landlord~~  
*1989 (a) Notwithstanding subdivision (c) of Section 1981, where the landlord releases to the former tenant property which remains on the premises after a tenancy is terminated, the landlord is not liable with respect to that property to any person.*

Assembly Bill 2831

(1) The lessor should be permitted to give a notice of belief of abandonment when the rent has been due and unpaid for at least 14 days, instead of 20 days as originally recommended by the Commission.

(2) The form of the Notice of Belief of Abandonment was revised to read:

Notice of Belief of Abandonment

To: \_\_\_\_\_  
(Name of ~~lessee~~ lessee/tenant)  
\_\_\_\_\_  
(Address of ~~lessee~~ lessee/tenant)

This notice is given pursuant to Section 1951.3 of the Civil Code concerning the real property leased by you at \_\_\_\_\_ (state location of the property by address or other sufficient description). The rent on this property has been due and unpaid for ~~20~~ 14 consecutive days and the ~~lessee~~ lessor/landlord believes that you have abandoned the property.

The real property will be deemed abandoned within the meaning of Section 1951.2 of the Civil Code and your lease will terminate on \_\_\_\_\_ (here insert a date not less than 15 days after this notice is served personally or, if mailed, not less than 18 days after this notice is deposited in the mail) unless before such date the undersigned receives at the address indicated below a written notice from you stating both of the following:

- (1) Your intent not to abandon the real property.
- (2) An address at which you may be served by certified mail in any action for unlawful detainer of the real property.

You are required to pay the rent due and unpaid on this real property as required by the lease, and your failure to do so can lead to a court proceeding against you.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Signature of ~~lessee~~ lessor/landlord)  
\_\_\_\_\_  
(Type or print name of ~~lessee~~ lessor/landlord)  
\_\_\_\_\_  
(Address to which ~~lessee~~ lessee/tenant is to send notice)

(3) Subdivision (e) of Section 1951.3 should be revised to add a new paragraph (4) to read:

(e) The real property shall not be deemed to be abandoned pursuant to this section if the lessee proves any of the following:

\* \* \* \*

*(4) During the period commencing 14 days before the time the notice of belief of abandonment was given and ending on the date the lease would have terminated pursuant to the notice, the lessee paid to the lessor all or a portion of the rent due and unpaid on the real property.*

(4) Section 415.47 was revised to read:

415.47. (a) Where the lessee has given the lessor written notice of the lessee's intent not to abandon leased real property as provided in Section 1951.3 of the Civil Code, the summons in an action for unlawful detainer of the real property may be served on the lessee by certified mail, postage prepaid, addressed to the lessee at the address stated in the lessee's notice of intent not to abandon if such summons is deposited in the mail within 60 days from the date the lessee's notice of intent not to abandon is received by the lessor. Service in this manner is deemed completed on the 10th day after such mailing.

*(b) Where the lessee has given the lessor written notice of the lessee's intent not to abandon leased real property*

*as provided in Section 1951.3 of the Civil Code, but failed to include in such notice an address at which the lessee may be served by certified mail in any action for unlawful detainer of the real property; the summons in an action for unlawful detainer of the real property may be served on the lessee by certified mail, postage prepaid, addressed to the lessee at (1) the same address or addresses to which the lessor's notice of belief of abandonment was addressed if that notice was given by mail or (2) the address of the real property if the lessor's notice of belief of abandonment was personally served on the lessee. Service may not be made pursuant to this subdivision unless the summons is deposited in the mail within 60 days from the date the lessee's notice of intent not to abandon is received by the lessor. Service in the manner authorized by this subdivision is deemed completed on the 10th day after such mailing.*

~~(b)~~ (c) This section provides an alternative method of service on the lessee and does not preclude service in any other manner authorized by this chapter.

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Executive Secretary