

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
JUNE 8 AND 9, 1978
Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on June 8 and 9, 1978.

Present: Howard R. Williams, Chairman
Beatrice P. Lawson, Vice Chairman
Judith Ashmann
Jean C. Love
John D. Miller
Thomas E. Stanton, Jr.
Laurence N. Walker

Absent: George Deukmejian, Member of Senate
Alister McAlister, Member of Assembly
Bion M. Gregory, Ex Officio

Members of Staff Present: John H. DeMouilly
Stan G. Ulrich
Nathaniel Sterling
Robert J. Murphy III

Consultant Present:

Garrett H. Elmore, Guardianship-Conservatorship, June 8 and 9

ADMINISTRATIVE MATTERS

Minutes of May Meeting

The Minutes of the May 4 and 5, 1978, Meeting were approved as submitted by the staff.

Research Consultant on Liability of Community and Separate Property to Third-Party Creditors and Exemptions Allowed Married Persons

The Commission considered Memorandum 78-30. The Commission authorized and directed the Executive Secretary on behalf of the Commission to enter into a contract with Professor Susan Westerberg Prager of the U.C.L.A. Law School to prepare a background study on the liability of various kinds of community and separate property for the debts and torts of one or both spouses, the application of exemptions from execution where one or both of the spouses are judgment debtors, and related matters. Related matters would include the disposition of the statute pertaining to married women as sole traders (Code Civ. Proc. §§ 1811-1821). The compensation for the study is to be \$5,000. The study is to be delivered in draft form by March 1, 1979. The contract is to follow the usual form of Law Revision Commission research consultant contracts.

Legislative Program

The Commission noted Memorandum 78-36 which set forth a brief report concerning the 1978 Legislative Program.

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STUDY F-30.300 - GUARDIANSHIP-CONSERVATORSHIP
Compromise of Claims; Other Protective Proceedings;
Miscellaneous Matters

The Commission considered Memorandum 78-31 and the attached exhibits concerning compromise of claims of minors and incompetent persons and miscellaneous other matters.

Transitional Provisions

The Commission approved the staff draft of proposed Section 1475.5 and the staff revision to proposed Section 1476 concerning the effect under the proposed law of an appointment of a conservator under prior law on the ground that the conservatee was a person "for whom a guardian could be appointed under Division 4" of the Probate Code.

Court Review Upon Accounting

The Commission revised proposed Section 2625 as follows:

2625. Any sale or purchase of property or other transaction made without court approval, instruction, or confirmation is subject to review by the court upon the next succeeding accounting of the guardian or conservator. Upon such accounting and review, the court may hold the guardian or conservator liable for any violation of duties in connection with the sale, purchase, or other transaction. Nothing in this section shall be construed to affect the validity of any sale or purchase or other transaction.

As thus revised, proposed Section 2625 was approved by the Commission.

Contents of Account

The staff was directed to draft a section to provide for the contents of an account, to be included with the materials to be distributed for consideration at the July meeting.

Deposits to a Controlled Account

The Commission revised proposed Section 2525.1 as follows:

2525.1. Upon ex parte application of the guardian or conservator, the court may make an order requiring that:

(a) All or a portion of the money of the estate be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or be invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) All or a portion of the personal assets of the estate be deposited with a trust company authorized to transact a trust business in this state, subject to withdrawal only upon authorization of the court.

As thus revised, proposed Section 2525.1 was approved by the Commission.

Compromise of Claims and Actions

The Commission approved the inclusion of the new article on compromise of claims and actions as Article 5 of Chapter 6 (powers and duties of guardian or conservator of the estate) and the renumbering of sections as set forth in the revised outline (Exhibit 4 to Memorandum 78-31).

§ 2500. Authority to compromise claims and actions and to extend, renew, or modify obligations

The word "from" was inserted in the second sentence of subdivision (b) of proposed Section 2500 following the word "conservator." There should be some explanation, either in the Comment to Section 2500 or in the preliminary part, of the reason underlying the recommended departures from existing law in the proposed compromise provisions (viz., to avoid unnecessary court approval).

§ 2501. Matters relating to real property

The Commission requested the staff to redraft subdivision (b) of proposed Section 2501 so that court approval would not be required for modification of a lease to the extent that the lease as modified would be one that would not have required court approval if a new lease.

§ 2502. Compromise in excess of specified amounts

The Commission revised proposed Section 2502 as follows:

2502. Court approval is required for a compromise or settlement of a matter when the transaction requires the transfer or encumbrance of assets of the estate, or the creation of an unsecured liability of the estate, or both, in an amount or value ~~in~~ an amount in excess of either:

(a) ~~Twenty-five~~ twenty-five thousand dollars (\$25,000).

(b) ~~Ten percent of the then value of the estate less other liens, encumbrances, debts, or obligations of the estate.~~

As thus revised, proposed Section 2502, was approved by the Commission.

§ 2504. Support, parentage, wrongful death, and personal injury claims

The staff was directed to revise subdivision (a) of proposed Section 2504 to make it clearer, and to investigate whether subdivision (b) might possibly conflict with the Uniform Parentage Act (Civil Code §§ 7000-7018).

Subdivision (c) was revised to read:

(c) A claim of the ward or conservatee for wrongful death of a person other than the ward or conservatee .

Subdivisions (d) and (e) should be consolidated into one subdivision. The following language was suggested for the consolidated subdivision: "A claim of the ward or conservatee for physical or nonphysical harm to the person."

§ 2505. Court authorized to approve transaction or matter

The Commission determined that proposed Section 2505 should be revised as follows:

(1) The staff should investigate provisions for approval of a compromise of an administrative proceeding (e.g., worker's compensation proceeding) involving a ward or conservatee to determine whether approval should also be required to be obtained from the guardianship or conservatorship court.

(2) When the claim or matter is the subject of a pending court action or proceeding not in a state court in this state, the approval of a compromise may be obtained either from the court in which the action or proceeding is pending or from the court in which the guardianship or conservatorship proceeding is pending.

(3) Subdivision (b) (approval of compromise of claim not the subject of pending suit is by guardianship-conservatorship court) should be revised to authorize approval of a compromise of a claim not the subject of suit by the superior court of the county where the ward or conservatee resides at the time the petition is filed or of the county where suit might properly have been brought, in addition to the guardianship-conservatorship court. See also Section 3500(b).

§ 3400. "Total estate of the minor" defined

The Comment to proposed Section 3400 should be expanded to indicate that the "California Gifts of Securities to Minors Act" has been replaced by the "California Uniform Gifts to Minors Act."

The Commission considered the possibility of excluding from "total estate of the minor" money held in trust for the benefit of the minor, but ultimately decided not to exclude such money.

§ 3401. Delivery of money or property to parent

The Commission decided that proposed Section 3401 should be revised so that if the minor has a guardian of the estate, money or property of the minor shall be paid to the guardian regardless of how small the amount, and that the authority for payment of small amounts to a parent where there is a guardianship applies only to the guardian. (Where there is no guardianship, the authority to pay small amounts to the parent will apply to anyone making payment as under the present draft.)

The staff was requested to investigate the interrelationship of Civil Code Section 197 (parent entitled to minor's earnings) with proposed Section 3401.

§ 3500. Parent's right to compromise minor's claim

The Commission revised subdivision (a) of proposed Section 3500 as follows:

3500. (a) When a minor has a disputed claim for damages, money, or other property against a third person and does not have a guardian of the estate, the following persons have the right to compromise, or execute a covenant not to sue on or a covenant not to enforce judgment on, the claim, unless the claim is against such person or persons :

(1) Either parent . . . [etc.]

Subdivision (b) should be revised to permit a parent to file a petition for court approval of a minor's claim not the subject of suit in any county in which suit might properly have been brought, in addition to the county of the minor's residence.

§ 3600. Order directing payment of expenses, costs, and fees

Proposed Section 3600 (a one-sentence section) should be broken into several shorter sentences. The section should also make clear that

the authority presently found in Probate Code Section 1511 for the court in its discretion to order payment of attorney's fees direct to the attorney is continued.

§ 3601. Disposition of remaining balance

The Commission revised proposed Section 3601 as follows:

3601. (a) If there is ~~not an existing~~ no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3600) shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610).

(b) Except as provided in subdivision (c), if there is an ~~existing~~ a guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3600) shall be paid or delivered to the guardian or conservator of the estate. Upon ex parte application of the guardian or conservator, the court making the order or giving the judgment referred to in Section 3600 or the court in which the guardianship or conservatorship proceeding is pending may make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section [2525.1].

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order that all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in a bank or in a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares ~~or~~ of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court. If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

As thus revised, proposed Section 3601 was approved by the Commission.

§ 3610. Disposition of remaining balance

The Commission revised proposed Section 3610 as follows:

3610. When money or other property is to be paid or delivered for the benefit of a minor or incompetent person under a compromise, covenant, order or judgment and there is ~~not an existing~~

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no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3600) shall be paid, delivered, deposited, or invested as provided in this article.

As thus revised, proposed Section 3610 was approved by the Commission.

Modification by Will of Powers of
Testamentary Guardian

The Commission considered Memorandum 78-32 concerning modification by will of the powers and duties of a testamentary guardian and the staff draft of a proposed section. The proposed section was approved with the addition of a provision (to be drafted) authorizing a parent to provide by will that a testamentary guardian of the child's person shall have, to the extent provided in the will, the same powers with respect to the child's person that the parent would have if living, unless such powers are limited by the court for good cause shown.

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STUDY F-30.300 - GUARDIANSHIP-CONSERVATORSHIP REVISION

The Commission considered Memorandum 78-33 relating to community and homestead property of a spouse lacking legal capacity and the attached staff draft of the statute and explanatory material. The Commission expressed a general desire that provisions which are new have appended some commentary relating to their purpose. The Commission also made the following determinations with respect to specific portions of the draft.

Preliminary part. The explanatory portion of the draft should include an explanation of the structure of the statute and the alternative procedures. The preliminary part should also indicate more clearly the changes from existing law. The reference to "burdensome assets" should be clarified.

§ 3004. Community property. The Comment to this section (and to Section 3016 [separate property]) should indicate the reasons quasi-community property is treated as separate property for purposes of dealing with and disposing of the property.

§ 3008. Homestead. The reference to a married person's separate homestead should include a reference to the statutes authorizing it.

§ 3012. Lack of legal capacity. The Commission discussed revising or omitting this definition but deferred decision until it had reviewed the various contexts in which the defined phrase is used.

§ 3020. Scope. The Comment to this section should be expanded to explain the interrelation of the alternative procedures provided for dealing with and disposing of the property.

§ 3021. Mandatory or permissive nature of provisions. This provision should be modified to make clear that the procedures are mandatory only where one or both spouses lacks legal capacity.

§ 3022. Limitations. The Comment to this section should articulate the reasons for limiting the applicability of the procedures provided for dealing with and disposing of the property.

§ 3030. Persons required to join or consent. The conservator of a spouse should be required to consent for the spouse only if the spouse lacks legal capacity. This section should be combined with Section

3031. The staff should consider whether "conservator" should include a guardian of the estate of a minor.

§ 3031. Proceeding if joinder or consent not given. This section should be combined with Section 3030.

§ 3051. Protection of third persons. This section should be combined with Section 3050(b) to which it relates. The last phrase referring to "other third persons" was deleted.

§ 3060. Authority of spouse owning property. This section was deleted.

§ 3061. Other permissible action. This section was deleted.

§ 3100. Nature of proceeding. Reference should be made in this section to a "proposed" transaction. Subdivision (b), relating to disapproval of a proposed transaction, was deleted.

§ 3101. Transactions that may be subject of the proceeding. This section should be reorganized so that public transactions are grouped together and private transactions are grouped together.

§ 3111. Who may petition. The words "as conservator" were deleted from subdivision (b).

§ 3113. Appointment of conservator of estate not required. This provision should be revised to make clear that a conservator of the estate of a nonpetitioning spouse need not be appointed whether or not the spouse lacks legal capacity.

§ 3122. Petition for court order authorizing transaction. This section should be broadened to include persons likely to be supported by the spouse lacking capacity, not just persons the spouse is legally obligated to support.

§ 3124. Petition for court order declaring legal capacity for transaction. The petition should contain simply an allegation of legal capacity for the transaction and not the facts on which the allegation is based.

§ 3131. Notice to spouse having legal capacity. The notice required by this section should be limited to nonpetitioning spouses.

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§ 3140. Representation of spouse alleged to lack legal capacity.
The provision for representation of a spouse by the public guardian or public administrator should be limited so that an appointment is made only upon the request of the spouse.

§ 3142. Rights of spouse. The reference to the legal standards by which the issue of lack of legal capacity is determined was deleted.

§ 3250. Purchase of another home. The phrase "held by the same tenure" should be clarified.

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STUDY E-36.56 - AD VALOREM PROPERTY TAXES IN
EMINENT DOMAIN PROCEEDINGS

The Commission considered Memorandum 78-29 and the draft of the Tentative Recommendation Relating to Ad Valorem Property Taxes in Eminent Domain Proceedings, along with a staff draft of Section 1268.415 distributed at the meeting and attached hereto. The Commission took the following actions:

Scope of recommendation. The staff should prepare a tentative recommendation on fixed assessment liens on property taken by eminent domain. This should be done on a nonpriority basis in a manner similar to the tentative recommendation on ad valorem property taxes. A footnote in the preliminary part of the ad valorem property taxes recommendation should note that the assessment lien problem is under study.

Title of legislation. The title of the legislation was revised to read:

An act to amend Section . . . , relating to ad valorem property taxes on property subject to eminent domain proceedings or acquired by public entities.

Code Civ. Proc. § 1260.250. Determination of property taxes. The headline was revised to read: "Determination and payment of property taxes."

Subdivision (a). The Commission revised the introductory portion of subdivision (a) to read:

The court, on the date it issues an order for possession, on or before the date set for trial or on or before the date of entry of judgment, whichever occurs first, shall give the tax collector the legal description of the property sought to be taken and direct the tax collector to certify to the court the following information: . . .

A comparable change should be made in subdivision (b).

Subdivision (a)(1). The provision for separate valuation of property was deleted. It should be restored to Section 1268.420 as in existing law. The substance of the following provision should be added instead in an appropriate place in the section or in a separate section:

If the property does not have a separate valuation on the assessment roll, the information required by this section shall be for the larger parcel of which the property is a part.

It should be made clear that the taxes collected pursuant to this provision may not exceed the value of the property taken.

Subdivision (b). The phrase "on a form approved by the board of supervisors" was deleted.

Subdivision (c). The first sentence of subdivision (c) was revised to read:

The court, as part of the judgment, shall separately state the amount certified pursuant to this section and order that the amount be paid to the tax collector from the award.

Code Civ. Proc. § 1268.410. Liability for taxes. This section was revised for clarity to read in substance:

As between the plaintiff and defendant, the plaintiff is liable for any ad valorem taxes, penalties, and costs upon property acquired by eminent domain that would be subject to cancellation under Article 5 (commencing with Section 5081) of Chapter 4 (commencing with Section 4986) of Part 9 of Division 1 of the Revenue and Taxation Code if the plaintiff were a public entity and if such taxes, penalties, and costs had not been paid, whether or not the plaintiff is a public entity if the property were exempt from taxation, whether or not it is so exempt .

Code Civ. Proc. § 1268.415. Collection of taxes. The substance of this provision was adopted. The last portion of subdivision (b) relating to payment to the tax collector from the award should be made a separate sentence. The Comment should contain examples of when property taken by eminent domain might be exempt and when it might not be exempt from taxation.

Code Civ. Proc. § 1268.440. Refund of taxes paid by public entity. Subdivision (a) was revised to refer to taxes paid by any person, not just taxes paid by a public entity. The lead line should be adjusted accordingly.

Rev. & Tax. Code § 5083. Delinquent taxes, penalties, and costs. Subdivision (a) should be revised for clarity to read:

No cancellation shall be made of all or any portion of any unpaid taxes, or of any penalties or costs that have accrued thereon while on the unsecured roll, levied for prior tax years that constitute a lien at the time of acquisition of exempt property .

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Subdivision (b) was revised to make unpaid taxes collectible from the acquiring entity, to the extent of the award:

Such unpaid taxes, penalties, and costs shall be paid through escrow at the close of escrow or from the award in eminent domain, or if unpaid for any reason, shall be collected from either the person from whom the property was acquired or the public entity that acquired the property like any other taxes, penalties, and costs on the unsecured roll. The amount collectible from the public entity pursuant to this subdivision shall not exceed the amount paid or awarded for the property.

The Comment should indicate that the reason for this provision is to assure that the tax collector will be paid from the funds available at the time of acquisition of the property. Similar changes should be made in Sections 5085(a) and 5086.

Rev. & Tax. Code § 5084. Current taxes: prior to commencement of fiscal year. The references in this section to current taxes should be deleted. Where necessary, reference may be made to taxes for the ensuing fiscal year.

Rev. & Tax. Code § 5089. Transfer of lien. This section should precede Section 5083.

Rev. & Tax. Code § 5091. Liability as between public entity and property owner. A new provision was added to read:

5091. As between the person from whom property was acquired and the public entity that acquired to property, the person from whom the property was acquired is liable for any unpaid taxes, penalties, and costs on exempt property that are not subject to cancellation pursuant to this article.

Comment. Section 5091 is new. Even though unpaid taxes, penalties, and costs may be collected from the public entity pursuant to Sections 5083 (delinquent taxes), 5085 (current taxes), and 5086 (taxes transferred to unsecured roll), the property owner is liable to the public entity for taxes so collected.

APPROVED AS SUBMITTED _____

APPROVED AS CORRECTED _____ (for corrections, see Minutes of next meeting)

Date

Chairman

Executive Secretary

EXHIBIT 1

§ 1268.415. Collection of taxes

1268.415. (a) Except as provided in subdivision (b):

(1) If the acquisition of property by eminent domain will make the property exempt from taxation, any ad valorem taxes, penalties, or costs on the property for which the plaintiff is liable pursuant to Section 1268.410 shall not be collectible.

(2) If the acquisition of property by eminent domain will not make the property exempt from taxation, any ad valorem taxes, penalties, and costs on the property for which the plaintiff is liable pursuant to Section 1268.410 shall be collectible from the plaintiff. The plaintiff shall be deemed to be the assessee for the purposes of collection.

(b) To the extent there is a dismissal or partial dismissal of the eminent domain proceeding or a final judgment that the plaintiff cannot acquire all or a portion of the property sought to be acquired, the amount of any unpaid ad valorem taxes, penalties, and costs on the property for which the plaintiff is liable pursuant to Section 1268.410 shall be awarded to the defendant and shall be paid from the award or be collectible from the defendant.

Comment. Section 1268.415 is new. The taxes, penalties, and costs for which the plaintiff is liable referred to in the section are those accruing after the date of acquisition. See Rev. & Tax. Code § 5082 (date of acquisition of exempt property). In the case of a partial taking, a separate valuation may be necessary in order to make taxes, penalties, and costs collectible. Cf. Section 1268.420 (application for separate valuation of property).

Subdivision (a)(1) places a moratorium on collection of taxes on property that it appears will become exempt from taxation. Cf. Rev. & Tax. Code § 5090 (notice of proposed acquisition of property that will become exempt). If the eminent domain proceeding is ultimately abandoned or otherwise dismissed, the moratorium ends and collection may thereafter be made from the award or from the defendant. See subdivision (b).

Subdivision (a)(2) makes clear that taxes on property that will not become exempt are collectible from the plaintiff, notwithstanding the fact that the final order of condemnation vesting title in the plaintiff has not yet been made or recorded. In the case of abandonment or other dismissal, unpaid taxes for which the plaintiff is liable must be awarded to the defendant, and are collectible either from the award or from the defendant. See subdivision (b).