

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
DECEMBER 8, 1978
Los Angeles

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

PERSONS ATTENDING MEETING

Law Revision Commission

Present:	Howard R. Williams, Chairperson	George Y. Chinn
	Beatrice P. Lawson, V. Chairperson	Ernest M. Hiroshige
	Judith Meisels Ashmann	Laurence N. Walker
Absent:	Alister McAlister, Assembly Member	Jean C. Love
	Bion M. Gregory, <u>Ex Officio</u>	

Staff Members Present

John H. DeMouilly	Stan G. Ulrich
Nathaniel Sterling	

Consultant Present

Charles W. Adams, Homesteads

ADMINISTRATIVE MATTERS

Minutes of November Meeting

The Minutes of the November 2 and 3, 1978, Meeting were approved as submitted by the staff.

Schedule for Future Meetings

The schedule for future meetings was revised so that future meetings are scheduled as follows:

January

No meeting

February

February 9 - 10:00 a.m. - 5:00 p.m.	San Francisco
February 10 - 9:00 a.m. - 1:00 p.m.	

March

March 29 - 7:00 p.m. - 10:00 p.m.	Asilomar (Pacific Grove)
March 30 - 9:00 a.m. - 5:00 p.m.	
March 31 - 9:00 a.m. - 12:00 noon	

April

No meeting

May

May 11 - 10:00 a.m. - 5:00 p.m.	San Francisco
May 12 - 9:00 a.m. - 1:00 p.m.	

STUDY D-300 - ENFORCEMENT OF JUDGMENTS

The Commission considered Memorandum 78-37 concerning definitions and general provisions, Memorandum 78-49 concerning enforcement of non-money judgments, Memorandum 78-69 concerning the homestead exemption, and part of Memorandum 78-46 concerning execution. The Commission made the following decisions:

Homestead Exemption

§§ 707.820-707.830. Availability and amount of exemption. These provisions should be revised to provide a \$50,000 exemption for persons 65 years of age or older and for heads of families. Other persons should continue to have a \$25,000 exemption. A husband and wife who live separately should be able to claim an exemption for each dwelling just as would unmarried persons.

§ 707.840. Exemption of personal property used as dwelling. The provision for a keeper levy on mobilehomes and other personal property used as a dwelling should be retained (see Section 703.380), but the judgment creditor should be permitted to waive the keeper at his or her own risk.

§ 707.850. Exemption procedure for real property dwelling. The Comment to this section should state which court is the "proper court" under subdivision (a) for filing the application for issuance of an order permitting sale of a dwelling. The court should not be required to determine the value of the property or the amount of any excess over the total of prior liens and the exempt amount, but only whether or not there is an excess, in which case the property may be offered for sale on execution. Subdivision (g), which requires a showing of a material change of circumstances before the creditor may seek to sell it within one year after the denial of an order permitting sale, should apply only to the creditor who made the first application and should not restrict the rights of other creditors.

Definitions and General Provisions (Chapters 1 and 2)

Preliminary text. Note 24 on page 7 of the preliminary text for Chapters 1 and 2 (Definitions and General Provisions) should provide examples of permissible reasons for bringing an action on a domestic judgment.

§ 701.120. Application of definitions. The Comment to this section should state that the definitions of Chapter 1 prevail over the definitions in Code of Civil Procedure Section 17. Cross-references to Section 17 in other Comments should be deleted.

§ 701.170. Document. This section should define "document of title" rather than "document".

§ 702.130. Remedies of state tax agency. The second sentence of this section should be deleted. The specific references to the Revenue and Taxation Code and the Unemployment Insurance Code should be deleted. A lien should be enforceable under the draft statute whenever a warrant may be issued by a state agency to enforce a lien.

§ 702.160. Rules and forms. The Judicial Council should be authorized rather than required to prepare forms under the Enforcement of Judgments Law. The staff is to give consideration to preparing complete forms under the Enforcement of Judgments Law to be set forth in a separate chapter. Alternatively, the essential statements to be included in the various forms could be set forth, leaving the remaining detail to the law book publishers and the Judicial Council. If forms are prepared by the staff and the Commission, they should be subject to being superseded by forms prepared by the Judicial Council. The Enforcement of Judgments Law should not provide for forms in languages other than English.

§ 702.210. Time for enforcement of judgment. The staff should re-search the question whether, for example, a 25 year old money judgment of another state would be enforceable by some means under the draft statute.

§ 702.340. Extinction of liens. This section should be divided into subdivisions and reworded to make its meaning clearer.

§ 702.540. Request for notice of sale. This section should be deleted unless it is found to be useful in a significant number of cases under existing law. Deleting this provision would result in a saving for clerks' offices because they would no longer be required to search the file to determine whether anyone had requested notice of sale when a writ of execution is issued.

Execution

The Commission considered the questions raised by the staff in Memorandum 78-46, but did not review the draft statute in full.

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§§ 703.120, 703.140, 703.250. Leviability and life of writ of execution. The Commission discussed the rules concerning the issuance, leviability, duration, and return of a writ of execution with a view toward administrative efficiency and economy. The staff was directed to give further consideration to these matters. It was suggested that the judgment creditor might be authorized to issue the writ of execution rather than the clerk of court. The duration of the writ of execution could be extended as suggested in Memorandum 78-46. The levying officer could be authorized to return the writ to the judgment creditor rather than to the clerk, if no levy has been made or perhaps in any case, to avoid the expense to the judgment creditor (and ultimately the judgment debtor) and to the judicial system of issuing a new writ every time another levy is sought. The duration of the lien of execution could be increased to as long as 20 years to provide for a continuing levy on debts accruing to the judgment debtor. The staff should contact some levying officers and clerks to determine their reactions to possible changes in this area and to determine the detail of practice under existing law, particularly as concerns the manner and content of a return on execution.

Garnishment by registered process server. The substance of the new provision for garnishments of debts by registered process servers (see 1978 Cal. Stats. ch. 1419) should be incorporated into the draft statute.

§ 703.420. Levy on securities. The existing law concerning levy on securities should be preserved until the proposed revisions of Article 8 of the Commercial Code are enacted or rejected.

Enforcement of Nonmoney Judgments

Chapters 8 through 11 of the Enforcement of Judgments Law pertaining to enforcement of nonmoney judgments were approved in general, subject to revisions in light of eventual changes in the rules governing issuance, levy, duration, and return of writs of execution. The view was expressed, however, that some suggested revisions in execution procedures might not be appropriate for writs for the enforcement of judgments for the possession or sale of property.

STUDY D-500 - CONFESSION OF JUDGMENT

The Commission considered Memorandum 78-72 and the attached draft of a questionnaire relating to confession of judgment procedures. The Commission determined to distribute the questionnaire. The questionnaire should be revised to eliminate any implication that the Commission believes that confessions of judgment can or should be made constitutional. The items in the questionnaire relating to the utility and problems with confession of judgment should be revised to request information concerning the utility and problems of the confession as it might be revised. The item concerning postjudgment review of the validity of the confession should mention the possibility of a stay of execution. The questionnaire should be sent to Herschel T. Elkins of the Attorney General's office. Also a list of names of persons to whom it will be sent should be given to Commissioner Hiroshige for supplementation.

STUDY E-200 - SPECIAL ASSESSMENT LIENS IN
EMINENT DOMAIN PROCEEDINGS

The Commission considered Memorandum 78-71, and also discussed suggestions made in a letter from Charles L. Hemmings, a copy of which is attached, relating to special assessment liens on property taken by eminent domain.

The Commission directed the staff to investigate the possibility of preparing a broader recommendation to cover the situation where property subject to assessment liens is taken by a public entity by negotiated purchase. The redrafted version should also incorporate the following features:

(1) The assessment lienholder, in lieu of an answer, should file a certificate indicating the status of payments due under the lien.

(2) In the case of a partial taking of property subject to an assessment lien secured by bonds, where there is a statutory procedure for division of land and bond, the bondholder should have the option of invoking the division procedure and having a portion of the lien paid out of the award, rather than having the whole lien transferred to the remainder.

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December 1, 1978

California Law Revision Commission
Stanford Law School
Stanford, California 94305Re: Study E-200
Special Assessment Liens in
Eminent Domain Proceedings

Gentlemen:

I have the following comments on the most recent tentative recommendation.

The proposed amendment to Code of Civil Procedure Section 1250.250 requires that holders of special assessment liens shall be named as defendants in eminent domain proceedings.

I. Code of Civil Procedure Section 1250.320(a) requires that the answer shall include a statement of the nature and extent of the interest the defendant claims in the property described in the Complaint.

The amount of a special assessment lien remaining due will be ascertained as of the date of judgment. Perhaps it would be advisable to add a sentence to Code of Civil Procedure 1250.250(b) along these lines. "The holder of the lien may in lieu of an answer file a certificate setting forth (1) a complete description of the special assessment or bond; (2) a description of the real property to which the assessment or bond applies; (3) the amount of the assessment or lien as of the date of the certificate; and (4) the date upon which each installment payment is due, and the amount of each such installment."

I have in mind something similar to Revenue and Taxation Code Section 4986.9, as it is being amended.

It would be helpful if there was added to the Comment a reference to the Roster of Public Agencies required to be kept by Government Code Section 53051, because an obscure assessing district or public agency may be difficult to locate and serve, Code of Civil Procedure Section 416.50.

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II. With reference to proposed Code of Civil Procedure Section 1260.260(b)(2) dealing with segregation in partial takings, I have looked at: (1) Streets and Highways Code Sections 6480-6488 dealing with the required procedure for division of land and bond under the Improvement Act of 1911; (2) Streets and Highways Code Section 8730-8734 dealing with division of lands, etc., under the Improvement Bond Act of 1915; and (3) Streets and Highways Code Sections 8740-8740.5 providing an alternative procedure under the same 1915 Act.

Peggy L. McElligott and Robert Brunsell are undoubtedly aware of similar legislation dealing with the subject of apportionment of special assessments.

Present Code of Civil Procedure Section 1265.225 does not deal with the situation where there is a statutory method prescribed for apportionment.

The solution seems to be to add to proposed Code of Civil Procedure Section 1260.260(b)(2): "Apportionment of special assessment liens or bonds shall be in accordance with the enabling legislation under which the assessment or bond was levied or issued.

III. The proposed legislation is clearly applicable to proceedings in which fee title is being acquired by eminent domain. It might be desirable to make these provisions applicable to the extent that they apply to public agency acquisitions by purchase through escrow. See existing Revenue and Taxation Code Section 4986(b).

It also should be made clear that the legislation does not apply to an action to acquire an easement or right-of-way which does not affect the security of the assessment lien holder.

I believe that the staff has done excellent work in dealing with this difficult problem.

Sincerely,



Charles L. Hemmings

CLH:jag

Minutes
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APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary