

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
JANUARY 9, 1981
LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on January 9, 1981.

Law Revision Commission

Present: Beatrice P. Lawson, Chairperson
Judith Meisels Ashmann
Robert J. Berton
Thomas S. Loo
Bion M. Gregory, Ex Officio

Absent: Omer L. Rains, Senate Member
Alister McAlister, Assembly Member
George Y. Chinn
Jean C. Love
Warren M. Stanton

Staff Members Present

John H. DeMouilly
Nathaniel Sterling
Robert J. Murphy III

Others Present

Charles I. Collier Jr., State Bar, Estate Planning, Trust &
Probate Section, Los Angeles
N.G.T. Rajapakse, Sri Lanka Law Commission, Sri Lanka

Note. The members of various sections, committees, and subcommittees of the State Bar attend as individuals and not as representatives of the State Bar.

ADMINISTRATIVE MATTERS

MINUTES OF NOVEMBER 1980 MEETING

The Minutes of November 14, 1980, meeting were approved without change.

CONSULTANT CONTRACTS

The Commission considered Memorandum 81-1 concerning consultant contracts. The Commission authorized the Executive Secretary to make a contract with Professor Jesse Dukeminier, UCLA Law School, to provide expert advice and information at Law Revision Commission meetings on the subjects of real property law and probate law. The Commission authorized expenditures under the contract up to a maximum of \$1,500.00.

The Commission also authorized the Executive Secretary to make a contract with Professor Russell Niles, Hastings College of the Law, to

provide expert advice and information at Law Revision Commission meetings on the subjects of real property law and probate law. The Commission authorized expenditures under the contract up to a maximum of \$1,500.00.

ATTENDANCE AT MEETINGS.

The Commission considered Memorandum 81-8 concerning attendance at meetings. It was determined that a letter should be sent over the signature of the Chairperson to the Commissioners having attendance of less than 25%. The letter would express the concern of the Commission over the difficulty of obtaining a quorum when certain members are regularly absent, and pointing out that this places an additional burden on those Commissioners who ordinarily attend regularly when a schedule conflict develops.

FUTURE MEETINGS

The Commission considered Memorandum 81-10 concerning meeting places. The previously scheduled date for the March 1981 meeting was changed, and the following schedule for future meetings was adopted:

March 1981

March 27 (Friday)	- 10:00 a.m. - 5:00 p.m.	San Francisco
March 28 (Saturday)	- 9:00 a.m. - 4:00 p.m.	

May 1981

May 15 (Friday)	- 10:00 a.m. - 5:00 p.m.	Los Angeles
May 16 (Saturday)	- 9:00 a.m. - 4:00 p.m.	

July 1981

July 10 (Friday)	- 10:00 a.m. - 5:00 p.m.	San Diego
July 11 (Saturday)	- 9:00 a.m. - 4:00 p.m.	

September 1981

September 11 (Friday)	- 10:00 a.m. - 5:00 p.m.	San Francisco
September 12 (Saturday)	- 9:00 a.m. - 4:00 p.m.	

STUDY D-300 - ENFORCEMENT OF JUDGMENTS

The Commission considered Memorandum 81-9 concerning the procedure in the Commission's recommendation relating to enforcement of judgments for discharging a judgment lien on property. The Commission determined to delete the procedure from the recommendation.

The Commission considered the problem raised orally by the Executive Secretary of making computations of amounts due under a judgment where there are frequent renewals. The Commission determined that renewal of a judgment should not be permitted if there has been another renewal within the preceding five years. When a judgment is renewed, the renewed amount should be all amounts due under the judgment, including accrued interest.

STUDY D-800 - SUMMARY PROCEDURE FOR REMOVAL OF LIENS

The Commission considered Memorandum 81-5, relating to summary procedures for removal of liens. The Commission decided not to work on a uniform procedure but to leave the topic on its agenda and observe the experience under existing procedures to see whether any amendment is necessary.

STUDY D-801 - INTERFAMILY TRANSFERS AS FRAUDULENT CONVEYANCES

The Commission considered Memorandum 81-6 and the attached draft of a tentative recommendation relating to transfers between members of a household as fraudulent conveyances. The Commission determined to distribute the tentative recommendation for comment.

STUDY H-250 - REVISION OF REAL PROPERTY LAW

The Commission considered Memorandum 80-92 and the First Supplement thereto, along with a copy of a letter from John J. Eagan which was distributed at the meeting and is attached hereto, relating to the scope of and approach to the Commission's study of real property law. The Commission decided to commence work on a marketable title act. Any consideration of the possibility of a Torrens type of title registration system should be deferred.

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January 6, 1981

John H. DeMouilly, Executive Secretary
CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road - Room D-2
Palo Alto, California 94306

Dear Mr. DeMouilly:

I am writing to comment on my opinion of the desirability of the Commission proceeding with some of the subjects in the real property field which have been suggested for further study.

The Torrens type land registration system which was in force in California at one time was abandoned quite a few years ago. It was used in only a few counties and was not considered satisfactory where it was used. The fund supposedly available to compensate claimants for losses had been almost entirely depleted. The title insurance system in operation in California handles title problems satisfactorily and expeditiously for parties participating in real estate transactions in this state. The cost is reasonable and is paid for by the participants. The public and private cost and expenditure of time necessary to impose a public system on the complicated but well-ordered system, which currently is operating quite well, strikes me as wasteful of time and talent and altogether unnecessary.

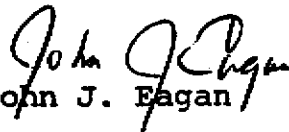
The desirability of a public tract indexing system also seems to me to be quite questionable. If such an index were maintained properly it could avoid the duplication now existing whereby several title plants are maintained in a county by different companies or groups of companies. This advantage would have to be considered in light of several potential disadvantages. The start-up cost, the devising of a system, would be a very substantial public expense. There would be much less incentive to maintain an accurate system on the part of a group of public employees than there is by employees of a company which is insuring the accuracy of the plant work it performs. Would the public offices be willing to maintain substantial work areas, security, etc., to guarantee members of the public adequate access to the files? The geographical plant would not eliminate the need for a name plant as there are many documents affecting real property which do not include a description of land. Examples are judgements, tax liens, omnibus decrees and

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powers of attorney. Title companies or some experts would be required to search and presumably insure titles; the existence of a geographical plant, though obviously helpful, would not eliminate the need for interpretation of documents which describe land, the location and examination of documents which do not describe any specific land, providing indemnity in case of error and loss, etc. The present system is working quite satisfactorily, and it appears to me that the investing of substantial time and money in an experiment which does not seem too likely to produce significant improvement and saving of money does not seem to me to be warranted. I believe the time and efforts of the Commission could be better spent in other fields.

Cordially,


John J. Eagan

JJE/sy

cc: William McDonough, Esq.

STUDY L-200 - POWERS OF APPOINTMENT

The Commission considered Memorandum 81-3 and the attached staff draft of a Recommendation Relating to Revision of the Powers of Appointment Statute. Proposed new Section 1386.2 of the Civil Code was revised as indicated below so that as revised the section will use the exact language of the Uniform Probate Code (Section 2-610), as follows:

1386.2. A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of the intention to include the property subject to the power.

As thus revised, the recommendation was approved for printing and submission to the Legislature.

STUDY L-500 - DURABLE POWER OF ATTORNEY

The Commission considered Memorandum 81-4, the attached staff draft of a Recommendation Relating to Uniform Durable Power of Attorney Act, and the attached letters commenting on the tentative recommendation which was earlier circulated. The Commission approved the recommendation for printing and submission to the Legislature.

STUDY L-601 - NON-PROBATE TRANSFERS

The Commission considered Memorandum 81-2, the First Supplement to Memorandum 81-2, the attached staff draft of a Recommendation Relating to Non-Probate Transfers, and the exhibits consisting of letters commenting on Article VI of the Uniform Probate Code. The Commission made the revisions set out below to the sections in the staff draft. The comments and preliminary portion of the recommendation are to be conformed to these revisions.

Probate Code § 6104. Right of survivorship

The Commission revised the first sentence of proposed Section 6104 as follows:

6104. (a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention ~~at the time the account is created~~ .

Probate Code § 6115. Delay in payment after death

The Commission revised proposed Section 6115 as follows:

6115. (a) Except as provided in subdivision (b), notwithstanding any other provision of this chapter, whenever payment is authorized to be made to a P.O.D. payee, the heirs of a deceased original payee, a beneficiary of a trust account, or the heirs of a deceased trustee, the payment shall not be made until ~~30~~ 60 days has elapsed since the death of the original party to the P.O.D. account or the trustee.

(b) Subdivision (a) does not apply if the payment is made to a person who is a spouse, minor or dependent child, executor, administrator, guardian, conservator, or other court-appointed fiduciary of the deceased original party to the P.O.D. account or of the deceased trustee.

Probate Code § 6117. Inheritance tax law requirement not affected

The Commission revised proposed Section 6117 as follows:

6117. Nothing in this division affects or limits ~~Section 14345~~ any provision of the Revenue and Taxation Code.

Probate Code § 6201. Dispositive provisions in written instruments

The Commission revised subdivision (a) of proposed Section 6201 to change "pension plan" to "pension or profit-sharing plan." The Commission also asked the staff to consider whether language should be added to paragraph (2) of subdivision (a) so that cancellation of the debt may be accomplished either in the instrument itself or in a separate writing (including a will).

As thus revised, the recommendation was approved for printing and submission to the Legislature.