

Memorandum 89-76

Subject: Annual Report

Attached is a draft of the Annual Report for the year 1989. The Commission must approve the report for printing at this meeting.

The report closely follows the form of previous reports. The staff will revise the draft after the meeting to reflect actions taken at the meeting. We will also make any needed revisions to cover any appointments the Governor makes to the Commission before December 2, 1989. We will then print the report.

We urge you to read pages 187-205 of the attached draft. Please note the statement on page 196 that, among the individual probate studies in progress, is creditors' rights in nonprobate assets. The staff prepared materials on this problem some time ago, and we believe that the Commission should review this material and make a determination whether to make an effort to develop legislation to deal with the problem. If the Commission agrees, we should report that we are working on this matter in our Annual Report so interested persons and organizations will be aware of that fact.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

jd974
11/07/89

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Respectfully submitted,

John H. DeMouly
Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Annual Report



December 1989

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

THE CALIFORNIA LAW REVISION COMMISSION

COMMISSION MEMBERS

EDWIN K. MARZEC <i>Chairperson</i>	ARTHUR K. MARSHALL <i>Member</i>
ROGER ARNEBERGH <i>Vice Chairperson</i>	FORREST A. PLANT <i>Member</i>
BION M. GREGORY <i>Member</i>	ANN E. STODDEN <i>Member</i>
ELIHU M. HARRIS <i>Member of Assembly</i>	VAUGHN R. WALKER <i>Member</i>
BILL LOCKYER <i>Member of Senate</i>	VACANCY <i>Member</i>

COMMISSION STAFF

Legal

JOHN H. DEMOULLY <i>Executive Secretary</i>	ROBERT J. MURPHY III <i>Staff Counsel</i>
NATHANIEL STERLING <i>Assistant Executive Secretary</i>	STAN G. ULRICH <i>Staff Counsel</i>

Administrative-Secretarial

STEPHEN F. ZIMMERMAN <i>Administrative Assistant</i>	VICTORIA MATIAS <i>Word Processing Technician</i>
EUGENIA AYALA <i>Word Processing Technician</i>	

NOTE

The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 20 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1991.

Cite this pamphlet as *Annual Report, 20 Cal. L. Revision Comm'n Reports 185 (1990)*

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Annual Report



December 1989

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

SUMMARY OF WORK OF COMMISSION

Recommendations to 1990 Legislative Session

The major recommendation to the 1990 legislative session is a proposal to enact a new Probate Code to replace the existing Probate Code.

At the 1990 legislative session, the Legislature also will take final action on two recommendations submitted to the 1989 Legislature:

- Compensation of probate attorney and personal representative
- Trustees' fees

The Commission plans to submit a number of other recommendations to the 1990 legislative session:

- Qualified Domestic Trusts
- Notice to Creditors in Estate Administration
- Disposition of Small Estate by Public Administrator
- Springing Powers of Attorney
- Uniform Statutory Form Power of Attorney Act
- Duration of Custodianship Under Uniform Transfers to Minors Act
- Repeal of Probate Code Section 6402.5 (In-Law Inheritance)
- Survival Requirement for Beneficiary of Statutory Will
- Execution or Modification of Lease Without Court Authorization
- Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding
- Court-Authorized Medical Treatment

The Commission has prepared drafts of other recommendations. These are now being reviewed for possible submission to the 1990 legislative session. The Commission also plans to recommend legislation in 1990 to make any needed technical or substantive revisions in legislation recently enacted on Commission recommendation.

Recommendations Enacted by the 1989 Legislative Session

In 1989, six of the seven bills introduced to effectuate Commission recommendations were enacted. The enacted bills effectuated Commission recommendations relating to:

- 120-Hour Survival Requirement
- No Contest Clauses
- Multiple-Party Accounts
- Notice to Creditors
- Brokers' Commissions on Probate Sales of Real Property
- Bonds of Guardians and Conservators
- Creditors' Remedies
- Assignment and Sublease
- Authority of the Law Revision Commission

The bill not enacted in 1989 will be considered and acted upon by the Legislature in 1990.

Commission Plans for 1990

During 1990, the Commission will review and make recommendations concerning possible revisions in the Commission recommended new Probate Code which will then be under legislative consideration. The Commission will also commence work on two new major projects—administrative law and family relations law. The Commission may also consider other matters if time permits.

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

CALIFORNIA LAW REVISION COMMISSION

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SENATOR BILL LOCKYER
ARTHUR K. MARSHALL
FORREST A. PLANT
ANN E. STODDEN
VAUGHN R. WALKER

December 1, 1989

To: The Honorable George Deukmejian
Governor of California, and
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1989.

Six of the seven bills introduced in 1989 to implement Commission recommendations were enacted. The bill not enacted will be acted on by the Legislature in 1990. A concurrent resolution recommended by the Commission was adopted.

The Commission is grateful to the members of the Legislature who carried Commission recommended bills:

—Assembly Member Friedman (two probate bills enacted in 1989 and the two-year bill proposing enactment of a new Probate Code).

—Senator Beverly (assignment and sublease bill and multiple-party accounts bill, both enacted in 1989).

—Assembly Member Harris (bill enacted in 1989 relating to statutory authority of the Law Revision Commission and two-year bill relating to trustees' fees).

—Assembly Member Isenberg (bill relating to creditor remedies enacted in 1989).

Senator Lockyer secured the adoption of a concurrent resolution continuing the Commission's authority to study previously authorized topics.

In 1989, the Legislature added an additional topic—family relations law—to the Commission's calendar of topics.

The Commission held two one-day meetings and four two-day meetings during 1989. Meetings were held in Irvine, Los Angeles, Sacramento, and San Francisco.

Respectfully Submitted,

Edwin K. Marzec
Chairperson

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ANNUAL REPORT FOR THE YEAR 1989

INTRODUCTION

The California Law Revision Commission¹ was created in 1953 as the permanent successor to the Code Commission, with the responsibility for a continuing substantive review of California statutory and decisional law.² The Commission studies California law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- (1) Intensively studying complex and sometimes controversial subjects;
- (2) Identifying major policy questions for legislative attention;
- (3) Gathering the views of interested persons and organizations; and
- (4) Drafting recommended legislation for legislative consideration.

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with the technical problems in preparing background studies, working out intricate legal problems, and drafting needed legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

- A Member of the Senate appointed by the Committee on Rules.
- A Member of the Assembly appointed by the Speaker.
- Seven members appointed by the Governor with the advice and consent of the Senate.
- The Legislative Counsel who is an ex officio member.

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 26 topics.³

1. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission).

2. See 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 7 (1957).

3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 1 *infra*.

Commission recommendations have resulted in the enactment of legislation affecting 11,107 sections of the California statutes: 4,984 sections have been added, 2,426 sections amended, and 3,697 sections repealed. Of the 235 Commission recommendations submitted to the Legislature, 217 (93%) have been enacted in whole or in substantial part.⁴ Two recommendations submitted in 1989 will be acted on by the Legislature in 1990.

The Commission's recommendations are published in softcover and later are collected in hardcover volumes. A list of past publications and information on obtaining copies is at the end of this Report.

1990 LEGISLATIVE PROGRAM

New Probate Code. The major recommendation of the Commission to the 1990 Legislature is enactment of a new Probate Code to replace the existing Probate Code.⁵ The new code will continue existing sections without changing section numbers and will make technical, clarifying, and noncontroversial substantive revisions in the existing code provisions that will be carried forward into the new code. Assembly Bill 759 was introduced in the 1989 session as a vehicle for enactment of the new Probate Code. The bill is a two-year bill and will be acted on by the Legislature in 1990.

Trustees' Fees; Compensation of Probate Attorney and Personal Representative. The Legislature will take final action in 1990 on two recommendations made by the Commission to the 1989 Legislature: (1) trustees' fees⁶ and (2) compensation of probate attorney and personal representative.⁷ The recommended legislation relating to trustees' fees is included in Assembly Bill 831, a two-year bill introduced by Assembly Member Harris at the 1989 legislative session. The recommended legislation relating to compensation of the probate attorney and personal representative would be effectuated by amendments to Assembly Bill 831 which will be offered when the bill is heard by the Senate Committee on Judiciary in 1990.

4. See list of recommendations and legislative action in Appendix 2 *infra*.

5. See *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990).

6. See *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 279 (1990).

7. See *Recommendations Relating to Probate Law (Compensation of Attorney & Personal Representative)*, 20 Cal. L. Revision Comm'n Reports 31 (1990).

Other Probate Law Recommendations. The Commission also will recommend probate legislation in 1990 in bills separate from the bill proposing the enactment of the new Probate Code.⁸

- Duration of custodianship under Uniform Transfers to Minors Act
- Repeal of Probate Code Section 6402.5 (in-law inheritance)
- Disposition of small estate by public administrator
- Survival requirement for beneficiary of statutory will
- Execution or modification of lease without court authorization
- Limitation period for action against surety in guardianship or conservatorship proceeding
- Court-authorized medical treatment
- Qualified domestic trusts
- Notice to creditors in probate proceedings

Powers of Attorney. Two recommendations relating to powers of attorney will be recommended for enactment in 1990:⁹

- Springing powers of attorney
- Uniform Statutory Form Power of Attorney Act

Additional Recommendations for 1990. The Commission has prepared drafts of other recommendations. These are now being reviewed for possible submission to the 1990 legislative session. The Commission also plans to recommend legislation in 1990 to make any needed technical or substantive revisions in legislation recently enacted on Commission recommendation.

MAJOR STUDIES IN PROGRESS

During 1990 the Commission plans to work on three major topics: probate law, administrative law, and family relations law. The Commission will consider other matters to the extent time permits.

Probate Law Study. Individual probate law studies in progress include:

- Deposit of estate planning document with attorney
- Debts that are contingent, disputed, or not due
- Collection by affidavit despite probate
- Summary collection of small estate

8. The recommendations listed in the text will be collected and published in *Recommendations Relating to Probate Law*, 20 Cal. L. Revision Comm'n Reports 501 (1990), except for the *Recommendation Relating to Notice to Creditors in Probate Proceedings*, 20 Cal. L. Revision Comm'n Reports 165 (1990).

9. See *Recommendations Relating to Powers of Attorney*, 20 Cal. L. Revision Commission 401 (1990).

- Access to decedent's safe deposit box
- Affidavit procedure for substitution of parties
- TOD designation in real property deeds
- TOD registration for vehicles and vessels
- Creditors' rights in nonprobate assets

During 1990, the Commission will review a number of uniform acts that have probate implications:

- Uniform TOD Security Registration Act
- Uniform Management of Institutional Funds Act
- Uniform Statutory Rule Against Perpetuities

Administrative Law. The Commission has divided the administrative law study into four phases: (1) administrative adjudication, (2) administrative rule making, (3) judicial review, and (4) nonjudicial oversight. The Commission has retained a consultant for the first phase, Professor Michael Asimow of UCLA Law School. The Commission will begin review of the consultant's background studies in 1990.

Family Relations Law. The family relations law study was added to the Commission's agenda by 1989 California Statutes, Resolution Chapter 70. The resolution directs that the study be given equal priority with the administrative law study. The Commission will determine the scope of this study and begin work on the study in 1990.

Other Matters. To the extent time permits during 1990, in addition to the major studies, the Commission will complete work on two other studies in progress:

- Landlord and tenant remedies for assignment and sublease violations
- Limitations on disposition of community property during marriage

CALENDAR OF TOPICS FOR STUDY

The Commission's calendar of topics is set out in Appendix 1 to this Report. Each of these topics has been authorized for Commission study by the Legislature.¹⁰ Because of the number and scope of the topics already on its calendar, the Commission does not at this time recommend any additional topics for Commission study.

10. Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study.

FUNCTION AND PROCEDURE OF COMMISSION

The principal duties of the Commission¹¹ are to:

(1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.

(2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,¹² bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.

(3) Recommend such changes in the law as it deems necessary to bring the law of this state into harmony with modern conditions.¹³

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.¹⁴

The Commission's work on a recommendation is commenced after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field of law involved who is retained as a consultant. Using expert consultants provides the Commission with invaluable assistance and is economical because the attorneys and law professors who serve as consultants have already acquired the considerable background necessary to understand the specific problems under consideration. Expert consultants are also retained to advise the Commission at meetings.

11. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission).

12. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

13. See Gov't Code § 8288. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the Supreme Court of the United States. Gov't Code § 8290.

14. See Gov't Code § 8293. However, the Commission may study and recommend revisions to correct technical or minor substantive defects in the statutes of the state without a prior concurrent resolution referring the matter to it for study. See Gov't Code § 8298. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments each 10 years and to recommend any needed revisions.

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to effectuate its recommendation) is published.¹⁵ The background study is sometimes published with the recommendation or in a law review.¹⁶

The Commission ordinarily prepares a Comment explaining each section it recommends. These Comments are included in the Commission's report and are frequently revised by legislative committee or Commission reports to reflect amendments made after the recommended legislation has been introduced in the Legislature.¹⁷ These reports, which are sometimes printed or noted in the legislative journals, provide background with respect to the Commission intent in proposing the enactment, such intent being reflected in the Comments to the various sections of the bill contained in the Commission's recommendation except to the extent that new or revised Comments are set out in the committee report itself or in a report on file with the committee.¹⁸ The Comment indicates the derivation of the section and often explains its purpose, its relation to other sections, and potential problems in its meaning or application. The Comments are

15. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

16. For a background study published in a law review in 1989, see Coskran, *Assignment and Sublease: The Tribulations of Leasehold Transfers*, 22 Loy.L.A.L. Rev. 405 (1989). For a list of background studies published in law reviews prior to 1989, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971), 11 Cal. L. Revision Comm'n Reports 1008 n.5 & 1108 n.5 (1973), 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976), 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982), 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984), 18 Cal. L. Revision Comm'n Reports 212 n.17 & 1713 n.20 (1986), and 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988).

17. Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after its recommendation was printed. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

18. For an example of such a report, see Appendix 3 to this Report. All of the reports (usually designated as "Communications") are printed in the Annual Report of the Law Revision Commission published for the year in which the report was submitted. For a description of the legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

legislative history and are entitled to substantial weight in construing the statutory provisions.¹⁹ However, while the Commission endeavors in the Comment to explain any changes in the law made by the section, the Commission does not claim that every inconsistent case is noted in the Comment, nor can it anticipate judicial conclusions as to the significance of existing case authorities.²⁰ Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.²¹

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.²² Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.²³

The annual reports and the recommendations and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out of print, but others are available for purchase.²⁴

19. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968). See also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983) ("To ascertain the legislative intent, courts have resorted to many rules of construction. However, when the Legislature has stated the purpose of its enactment in unmistakable terms [e.g., in official comments], we must apply the enactment in accordance with the legislative direction, and all other rules of construction must fall by the wayside. Speculation and reasoning as to legislative purpose must give way to expressed legislative purpose."). The Comments are published by the Bancroft-Whitney Company and the West Publishing Company in their editions of the annotated codes.

20. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 109 Cal. Rptr. 421 (1973).

21. The Commission does not concur in the Kaplan approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the Kaplan approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stat. ch. 227.

22. See Gov't Code § 8291.

23. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965).

24. See "Publications of the California Law Revision Commission" *infra*.

PERSONNEL OF COMMISSION

As of December 1, 1989, the membership of the Law Revision Commission is:

	<i>Term Expires</i>
Edwin K. Marzec, Santa Monica, <i>Chairperson</i>	October 1, 1991
Roger Arnebergh, Van Nuys, <i>Vice Chairperson</i>	October 1, 1991
Bion M. Gregory, Sacramento, <i>Legislative Counsel, ex officio Member</i>	
Elihu M. Harris, Oakland, <i>Assembly Member</i>	*
Bill Lockyer, Hayward, <i>Senate Member</i>	*
Arthur K. Marshall, Los Angeles, <i>Member</i>	October 1, 1991
Forrest A. Plant, Sacramento, <i>Member</i>	October 1, 1993
Ann E. Stodden, Los Angeles, <i>Member</i>	October 1, 1991
Vaughn R. Walker, San Francisco, <i>Member</i>	October 1, 1993
Vacancy, <i>Member</i>	October 1, 1993

* The legislative members of the Commission serve at the pleasure of the appointing power.

In November 1989, Governor Deukmejian reappointed Forrest A. Plant and Vaughn R. Walker as members of the Commission. Their terms end on October 1, 1993. As of December 1, 1989, there is one vacancy on the Commission. The term of Tim Paone expired on October 1, 1989.

Effective September 1, 1989, the Commission elected Edwin K. Marzec as Chairperson (succeeding Forrest A. Plant) and Roger Arnebergh as Vice Chairperson (succeeding Edwin K. Marzec). The terms of the new officers end August 31, 1990. Marzec has previously served as Chairperson of the Commission in 1984-85 and 1985-86.

As of December 1, 1989, the staff of the Commission is:

Legal

John H. DeMouilly <i>Executive Secretary</i>	Robert J. Murphy III <i>Staff Counsel</i>
Nathaniel Sterling <i>Assistant Executive Secretary</i>	Stan G. Ulrich <i>Staff Counsel</i>

Administrative-Secretarial

Stephen F. Zimmerman <i>Administrative Assistant</i>	
Eugenia Ayala <i>Word Processing Technician</i>	Victoria V. Matias <i>Word Processing Technician</i>

During 1989, Helene Leckman, a student at Santa Clara University Law School, Constance Hilscher, a student at McGeorge University Law School, Jennifer Campbell and Jonathan Grossman, students at the Hastings Law School, and Gustavo Gomez, a student at Stanford Law School, were employed as student legal assistants.

LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1989 LEGISLATIVE SESSION

The Commission recommended seven bills and one concurrent resolution for enactment at the 1989 legislative session. The concurrent resolution was adopted and six of the seven bills were enacted. At the 1990 legislative session, the Legislature will take final action on the bill that was not enacted in 1989.

Major Probate Bill

Assembly Bill 158, which became Chapter 544 of the Statutes of 1989, was introduced by Assembly Member Friedman to effectuate Commission recommendations relating to no contest clauses and the 120-hour survival requirement. See *Recommendation Relating to No Contest Clauses*, 20 Cal. L. Revision Comm'n Reports 7 (1990); *Recommendation Relating to 120-Hour Survival Requirement*, 20 Cal. L. Revision Comm'n Reports 21 (1990). Before enactment the bill was amended to effectuate in part the Commission recommendation relating to notice to creditors. See *Recommendation Relating to Notice to Creditors in Probate Proceedings*, 20 Cal. L. Revision Comm'n Reports 165 (1990). The bill also enacted Commission recommended provisions relating to brokers' commissions on probate sales of real property, bonds of guardians and conservators, and other technical and clarifying revisions of probate law. See also *Communication From the California Law Revision Commission Concerning Assembly Bill 158*, reprinted as Appendix 5 of this Report.

Probate Cleanup Bill

Assembly Bill 156, which became Chapter 21 of the Statutes of 1989, was introduced by Assembly Member Friedman to make technical changes in statutes recently enacted upon recommendation of the Commission and also made related conforming and technical changes. See *Communication From the California Law Revision Commission Concerning Assembly Bill 156*, reprinted as Appendix 3 of this Report.

Creditors' Remedies

Assembly Bill 157, which became Chapter 1416 of the Statutes of 1989, was introduced by Assembly Member Isenberg to effectuate the Commission's recommendation on miscellaneous creditors' remedies. See *Recommendation Relating to Creditors' Remedies*, 19 Cal. L. Revision Comm'n Reports 1251 (1988). See also

Communication From the California Law Revision Commission Concerning Assembly Bill 157, reprinted as Appendix 4 of this Report. The bill was enacted after other technical revisions relating to civil procedure were added to the bill by the Assembly Committee on Judiciary.

Multiple-Party Accounts

Senate Bill 985, which became Chapter 397 of the Statutes of 1989, was introduced by Senator Beverly to effectuate the Commission recommendation on multiple-party accounts. See *Recommendation Relating to Multiple-Party Accounts in Financial Institutions*, 20 Cal. L. Revision Comm'n Reports 95 (1990). See also *Communication From the California Law Revision Commission Concerning Senate Bill 985*, reprinted as Appendix 6 of this Report. The bill was enacted after amendments were made.

Commercial Real Property Leases

Senate Bill 536, which became Chapter 982 of the Statutes of 1989, was introduced by Senator Beverly to effectuate the Commission recommendation on assignments and subleases of commercial real property leases. See *Recommendation Relating to Commercial Real Property Leases: Assignment and Sublease*, printed as Appendix 7 of this Report. See also *Report of the California Law Revision Commission Concerning Assembly Bill 536*, reprinted as Appendix 8 of this Report. The bill was enacted after amendments were made.

Trustees' Fees

Assembly Bill 831 was introduced by Assembly Member Harris to effectuate the Commission's recommendation concerning trustees' fees. See *Recommendation Relating to Trustees' Fees*, printed as Appendix 9 of this Report. The bill passed the Assembly after amendments were made. The bill will be considered and acted upon in the Senate in 1990.

Hiring and Paying Attorneys, Advisors, and Others; Compensation of Personal Representative

In the form in which Assembly Bill 158 (introduced by Assembly Member Friedman) passed the Assembly, the bill would have effectuated the Commission's recommendation concerning compensation of probate estate attorneys and personal representatives. See *Recommendations Relating to Probate Law (Hiring and Paying Attorneys, Advisors and Others; Compensation of Personal Representative)*, 20 Cal. L. Revision Comm'n Reports 31 (1990).

However, objections were made to the Commission's recommendation after the bill had passed the Assembly, and Assembly Member Friedman amended the bill to delete the provisions relating to compensation of probate estate attorneys and personal representatives. At the 1990 legislative session, amendments to Assembly Bill 831 will be offered at the time the bill is heard by the Senate Committee on Judiciary to add to that bill the Commission recommended provisions relating to compensation of the estate attorney and personal representative.

Statutory Authority of the California Law Revision Commission

Assembly Bill 625, which became Chapter 152 of the Statutes of 1989, was introduced by Assembly Member Harris to provide continuing authority to the Commission to study minor and technical statutory matters. See 19 Cal. L. Revision Comm'n Reports 1162 (1988).

Resolutions Regarding Topics for Study

Senate Concurrent Resolution 11, introduced by Senator Lockyer and adopted as Resolution Chapter 35 of the Statutes of 1989, continues the Commission's authority to study topics previously authorized.

Assembly Concurrent Resolution 30, introduced by Assembly Member Speier and adopted as Resolution Chapter 70 of the Statutes of 1989, requires the Commission to conduct a careful review of all statutes relating to the adjudication of child and family civil proceedings, with specified exceptions, and to make recommendations to the Legislature regarding the establishment of a Family Relations Code.

REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 8290 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared²⁵ and has the following to report:

(1) No decision of the United States Supreme Court or of the California Supreme Court holding a statute of this state repealed by implication has been found.

(2) One decision of the United States Supreme Court holding a statute of this state unconstitutional has been found: In *Eu v. San Francisco County Democratic Central Committee*, 109 S. Ct. 1013 (1989), the court held that Elections Code Sections 11702 and 29430, barring endorsements of candidates by political parties in primary elections, violate the First Amendment to the United States Constitution by burdening freedom of speech and impinging upon freedom of association. In addition, the sections of the Elections Code that regulate the internal governance of political parties infringe upon the parties' right to freedom of association, protected by the First Amendment.

(3) One decision of the California Supreme Court holding a statute of this state unconstitutional has been found:²⁶ In *Calfarm Insurance*

25. This study has been carried through 49 Cal. 3d 199 (Advance Sheet No. 23, August 22, 1989) and 109 S. Ct. 3272 (Advance Sheet No. 18, July 15, 1989).

26. Two decisions of the California Supreme Court imposed constitutional qualifications on the application of state statutes without invalidating any statutory language: (1) In *People v. Freeman*, 46 Cal. 3d 419, 758 P.2d 1128, 250 Cal. Rptr. 598 (1988), *stay of enforcement denied*, 109 S. Ct. 854 (1989), *cert. denied*, 109 S. Ct. 1133 (1989), the court held that the application of the pandering statute (Penal Code § 266i) to the hiring of actors to perform in the production of a nonobscene film impinged unconstitutionally on rights guaranteed by the First Amendment to the United States Constitution. (2) In *Union Pacific Railroad Co. v. State Board of Equalization*, 49 Cal. 3d 138 (1989), the court held that the general proscription of Section 32 of Article 13 of the California Constitution and its statutory counterpart, Revenue and Taxation Code Section 19081, against prepayment judicial relief from a challenged tax must yield to the requirements of the Fourth Amendment to the United States Constitution, such that a tax assessee is entitled to

Co. v. Deukmejian, 48 Cal. 3d 805 (1989), the court considered the constitutionality of various provisions of Proposition 103, an initiative enacted at the November 1988 election. The court held that the insolvency standard in Insurance Code Section 1861.01(b) violated the due process clauses of both the United States constitution and the California Constitution. In addition, the court held that the part of Insurance Code Section 1861.10(c) creating an insurance consumers advocacy corporation and requiring insurers to inform policy holders of the opportunity to participate in its activities violated Article 2, Section 12, of the California Constitution by identifying a private corporation to perform a function. Both unconstitutional provisions were held to be severable so that the statutes stand as enacted by the voters with the two violative provisions excised.

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized for study (see "Calendar of Topics Authorized for Study" set out as Appendix 1 to this Report).

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent that those provisions have been held unconstitutional and have not been amended or repealed.

prepayment judicial relief from an assessor's demand for information if the assessee can establish that the information is not reasonably relevant to the proposed tax.

One decision of the California Supreme Court held a cause of action brought under a California statute to be preempted by federal law: In *Commercial Life Insurance Co. v. Superior Court*, 47 Cal. 3d 473, 764 P.2d 1059, 253 Cal. Rptr. 682 (1988), the court held that the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 *et seq.*) preempts private causes of action brought under Insurance Code Section 790.03(h).

APPENDIX 1

CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics listed below. Each of these topics has been authorized for Commission study by the Legislature.

Creditors' remedies. Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 15 (1957).)

Probate Code. Whether the California Probate Code should be revised, including but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Real and personal property. Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon termination or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.)

Family law. Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1978 Cal. Stat. res. ch. 65; 16 Cal. L. Revision Comm'n Reports 2019 (1982); 14 Cal. L. Revision Comm'n Reports 22 (1978).)

Prejudgment interest. Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75.)

Class actions. Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).)

Offers of compromise. Whether the law relating to offers of compromise should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).)

Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).)

Procedure for removal of invalid liens. Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney's fees to the prevailing party. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Special assessment liens for public improvements. Whether acts governing special assessments for public improvements should be simplified and unified. (Authorized by 1980 Cal. Stat. res. ch. 37.)

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Injunctions. Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stat. res. ch. 42.)

Involuntary dismissal for lack of prosecution. Whether the law relating to involuntary dismissal for lack of prosecution should be revised. (Authorized by 1978 Cal. Stat. res. ch. 85. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).)

Statutes of limitation for felonies. Whether the law relating to statutes of limitations applicable to felonies should be revised. (Authorized by 1981 Cal. Stat. ch. 909, § 3.)

Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. (Authorized by 1979 Cal. Stat. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).)

Child custody, adoption, guardianship, and related matters. Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised. (Authorized by 1972 Cal. Stat. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stat. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 29 (1957).)

Evidence. Whether the Evidence Code should be revised. (Authorized by 1965 Cal. Stat. res. ch. 130.)

Arbitration. Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stat. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).)

Modification of contracts. Whether the law relating to modification of contracts should be revised. (Authorized by 1974 Cal. Stat. res. ch. 45. See also 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 21 (1957).)

Governmental liability. Whether the law relating to sovereign or governmental immunity in California should be revised. (Authorized by 1977 Cal. Stat. res. ch. 17. See also 1957 Cal. Stat. res. ch. 202.)

Inverse condemnation. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised. (Authorized by 1971 Cal. Stat. res. ch. 74. See also 1970 Cal. Stat. res. ch. 46; 1965 Cal. Stat. res. ch. 130.)

Liquidated damages. Whether the law relating to liquidate damages in contracts generally, and particularly in leases, should be revised. (Authorized by 1973 Cal. Stat. res. ch. 39. See also 1969 Cal. Stat. res. ch. 224.)

Parol evidence rule. Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).)

Pleadings in civil actions. Whether the law relating to pleadings in civil actions and proceedings should be revised. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Administrative law. Whether there should be changes to administrative law. (Authorized by 1987 Cal. Stat. res. ch. 47.)

Attorneys' fees. Whether there should be changes in the law relating to the payment and the shifting of attorneys' fees between litigants. (Authorized by 1988 Cal. Stat. res. ch. 20.)

Family Relations Code. Conduct a careful review of all statutes relating to the adjudication of child and family civil proceedings, with specified exceptions, and make recommendations to the Legislature regarding the establishment of a Family Relations Code. (Authorized by 1989 Cal. Stat. res. ch. 70.)

APPENDIX 2
LEGISLATIVE ACTION ON COMMISSION
RECOMMENDATIONS
(Cumulative)

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954 at 12 (1957)	Enacted. 1955 Cal. Stat. chs. 799, 877
2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954 at 50 (1957)	Enacted. 1955 Cal. Stat. ch. 1183
3. <i>Fish and Game Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957 at 13 (1957); 1 Cal. L. Revision Comm'n Reports, Annual Report for 1956 at 13 (1957)	Enacted. 1957 Cal. Stat. ch. 456
4. <i>Maximum Period of Confinement in a County Jail</i> , 1 Cal. L. Revision Comm'n Reports at A-1 (1957)	Enacted. 1957 Cal. Stat. ch. 139
5. <i>Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions</i> , 1 Cal. L. Revision Comm'n Reports at B-1 (1957)	Enacted. 1957 Cal. Stat. ch. 540
6. <i>Taking Instructions to Jury Room</i> , 1 Cal. L. Revision Comm'n Reports at C-1 (1957)	Not enacted. But see Code Civ. Proc. § 612.5, enacting substance of this recommendation.
7. <i>The Dead Man Statute</i> , 1 Cal. L. Revision Comm'n Reports at D-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 1261.
8. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 Cal. L. Revision Comm'n Reports at E-1 (1957)	Enacted. 1957 Cal. Stat. ch. 490
9. <i>The Marital "For and Against" Testimonial Privilege</i> , 1 Cal. L. Revision Comm'n Reports at F-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 970.

Recommendation	Action by Legislature
10. <i>Suspension of the Absolute Power of Alienation</i> , 1 Cal. L. Revision Comm'n Reports at G-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 14 (1959)	Enacted. 1959 Cal. Stat. ch. 470
11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 Cal. L. Revision Comm'n Reports at H-1 (1957)	Enacted. 1957 Cal. Stat. ch. 102
12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 Cal. L. Revision Comm'n Reports at I-1 (1957)	Enacted. 1957 Cal. Stat. ch. 249
13. <i>Choice of Law Governing Survival of Actions</i> , 1 Cal. L. Revision Comm'n Reports at J-1 (1957)	No legislation recommended.
14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 1 Cal. L. Revision Comm'n Reports at K-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 16 (1959)	Enacted. 1959 Cal. Stat. ch. 468
15. <i>Retention of Venue for Convenience of Witnesses</i> , 1 Cal. L. Revision Comm'n Reports at L-1 (1957)	Not enacted.
16. <i>Bringing New Parties Into Civil Actions</i> , 1 Cal. L. Revision Comm'n Reports at M-1 (1957)	Enacted. 1957 Cal. Stat. ch. 1498
17. <i>Grand Juries</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 20 (1959)	Enacted. 1959 Cal. Stat. ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 21 (1959)	Enacted. 1959 Cal. Stat. ch. 500
19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 29 (1959)	No legislation recommended.
20. <i>Presentation of Claims Against Public Entities</i> , 2 Cal. L. Revision Comm'n Reports at A-1 (1959)	Enacted. 1959 Cal. Stat. chs. 1715, 1724, 1725, 1726, 1727, 1728; Cal. Const., Art. XI, § 10 (1960)

Recommendation	Action by Legislature
21. <i>Right of Nonresident Aliens to Inherit</i> , 2 Cal. L. Revision Comm'n Reports at B-1 (1959); 11 Cal. L. Revision Comm'n Reports 421 (1973)	Enacted. 1974 Cal. Stat. ch. 425
22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports at C-1 (1959)	Enacted. 1959 Cal. Stat. ch. 528
23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports at D-1 (1959)	Enacted. 1959 Cal. Stat. ch. 122
24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 Cal. L. Revision Comm'n Reports at E-1 (1959)	Not enacted. But see 1972 Cal. Stat. ch. 92, enacting substance of a portion of recommendation relating to drunk driving.
25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 Cal. L. Revision Comm'n Reports at F-1 (1959)	Enacted. 1959 Cal. Stat. ch. 469
26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 Cal. L. Revision Comm'n Reports at G-1 (1959)	Not enacted. But see Corp. Code §§ 1001, 1002, enacting substance of recommendation.
27. <i>Evidence in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at A-1 (1961)	Not enacted. But see Evid. Code § 810 <i>et seq.</i> enacting substance of recommendation.
28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at B-1 (1961)	Enacted. 1961 Cal. Stat. chs. 1612, 1613
29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 Cal. L. Revision Comm'n Reports at C-1 (1961)	Not enacted. But see Gov't Code § 7260 <i>et seq.</i> enacting substance of recommendation.
30. <i>Rescission of Contracts</i> , 3 Cal. L. Revision Comm'n Reports at D-1 (1961)	Enacted. 1961 Cal. Stat. ch. 589
31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor In Juvenile Court Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at E-1 (1961)	Enacted. 1961 Cal. Stat. ch. 1616
32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports at F-1 (1961)	Enacted. 1961 Cal. Stat. ch. 657
33. <i>Arbitration</i> , Cal. L. Revision Comm'n Reports at G-1 (1961)	Enacted. 1961 Cal. Stat. ch. 461

Recommendation	Action by Legislature
34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports at H-1 (1961)	Not enacted 1961. See recommendation to 1963 session (item 39 <i>infra</i>) which was enacted.
35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 Cal. L. Revision Comm'n Reports at I-1 (1961)	Enacted. 1961 Cal. Stat. ch. 636
36. <i>Notice of Alibi in Criminal Actions</i> , 3 Cal. L. Revision Comm'n Reports at J-1 (1961)	Not enacted.
37. <i>Discovery in Eminent Domain Proceedings</i> , 4 Cal. L. Revision Comm'n Reports 701 (1963); 8 Cal. L. Revision Comm'n Reports 19 (1967)	Enacted. 1967 Cal. Stat. ch. 1104
38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 801 (1963)	Enacted. 1963 Cal. Stat. ch. 1681
39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1001 (1963)	Enacted. 1963 Cal. Stat. ch. 1715
40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1201 (1963)	Enacted. 1963 Cal. Stat. ch. 1682
41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963)	Enacted. 1963 Cal. Stat. ch. 1683
42. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 4 Cal. L. Revision Comm'n Reports 1401 (1963); 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 1527
43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 Cal. L. Revision Comm'n Reports 1501 (1963)	Enacted. 1963 Cal. Stat. ch. 1684
44. <i>Sovereign Immunity — Amendments and Repeals of Inconsistent Statutes</i> , 4 Cal. L. Revision Comm'n Reports 1601 (1963)	Enacted. 1963 Cal. Stat. chs. 1685, 1686, 2029
45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965)	Enacted. 1965 Cal. Stat. ch. 299

Recommendation	Action by Legislature
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 653
47. <i>Evidence Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 101 (1967)	Enacted in part. 1967 Cal. Stat. ch. 650. Balance enacted. 1970 Cal. Stat. ch. 69.
48. <i>Evidence—Agricultural Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 201 (1967)	Enacted. 1967 Cal. Stat. ch. 262
49. <i>Evidence—Commercial Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 301 (1967)	Enacted. 1967 Cal. Stat. ch. 703
50. <i>Whether Damage for Personal Injury to a Married Person Should be Separate or Community Property</i> , 8 Cal. L. Revision Comm'n Reports 401 (1967); 8 Cal. L. Revision Comm'n Reports 1385 (1967)	Enacted. 1968 Cal. Stat. chs. 457, 458
51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 Cal. L. Revision Comm'n Reports 501 (1967)	Enacted. 1967 Cal. Stat. ch. 702
52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967)	Enacted. 1967 Cal. Stat. ch. 72
53. <i>Abandonment or Termination of a Lease</i> , 8 Cal. L. Revision Comm'n Reports 701 (1967); 9 Cal. L. Revision Comm'n Reports 401 (1969); 9 Cal. L. Revision Comm'n Reports 153 (1969)	Enacted. 1970 Cal. Stat. ch. 89
54. <i>Good Faith Improver of Land Owned by Another</i> , 8 Cal. L. Revision Comm'n Reports 801 (1967); 8 Cal. L. Revision Comm'n Reports 1373 (1967)	Enacted. 1968 Cal. Stat. ch. 150
55. <i>Suit By or Against an Unincorporated Association</i> , 8 Cal. L. Revision Comm'n Reports 901 (1967)	Enacted. 1967 Cal. Stat. ch. 1324
56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967)	Enacted. 1968 Cal. Stat. chs. 247, 356
57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 Cal. L. Revision Comm'n Reports 1361 (1967)	Enacted. 1968 Cal. Stat. ch. 133
58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967)	Enacted. 1968 Cal. Stat. ch. 132

Recommendation	Action by Legislature
59. <i>Sovereign Immunity — Statute of Limitations</i> , 9 Cal. L. Revision Comm'n Reports 49 (1969); 9 Cal. L. Revision Comm'n Reports 175 (1969)	Enacted. 1970 Cal. Stat. ch. 104
60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969)	Enacted. 1969 Cal. Stat. ch. 115
61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969)	Enacted. 1969 Cal. Stat. ch. 114
62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969)	Enacted. 1970 Cal. Stat. ch. 312
63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969)	Enacted. 1970 Cal. Stat. ch. 417
64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969)	Enacted in part. 1970 Cal. Stat. ch. 69. See also 1970 Cal. Stat. chs. 1396, 1397
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 Cal. L. Revision Comm'n Reports 201 (1969)	Enacted. 1969 Cal. Stat. ch. 156
66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969)	Enacted. 1969 Cal. Stat. chs. 113, 155
67. <i>Evidence Code — Revisions of Privileges Article</i> , 9 Cal. L. Revision Comm'n Reports 501 (1969)	Vetoed. But see 1970 Cal. Stat. chs. 1396, 1397
68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969)	Enacted. 1970 Cal. Stat. ch. 618
69. <i>Representation as to the Credit of Third Persons and the Statute of Frauds</i> , 9 Cal. L. Revision Comm'n Reports 701 (1969)	Enacted. 1970 Cal. Stat. ch. 720
70. <i>Revisions of Governmental Liability Act</i> , 9 Cal. L. Revision Comm'n Reports 801 (1969)	Enacted in part. 1970 Cal. Stat. chs. 662, 1099
71. <i>"Vesting" of Interests Under Rule Against Perpetuities</i> , 9 Cal. L. Revision Comm'n Reports 901 (1969)	Enacted. 1970 Cal. Stat. ch. 45
72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 Cal. L. Revision Comm'n Reports 501 (1971)	Enacted. 1971 Cal. Stat. chs. 244, 950. See also 1973 Cal. Stat. ch. 828

Recommendation	Action by Legislature
73. <i>Wage Garnishment and Related Matters</i> , 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976); 14 Cal. L. Revision Comm'n Reports 261 (1978)	Enacted in part. 1978 Cal. Stat. ch. 1133. See also 1979 Cal. Stat. ch. 66
74. <i>Proof of Foreign Official Records</i> , 10 Cal. L. Revision Comm'n Reports 1022 (1971)	Enacted. 1970 Cal. Stat. ch. 41
75. <i>Inverse Condemnation — Insurance Coverage</i> , 10 Cal. L. Revision Comm'n Reports 1051 (1971)	Enacted. 1971 Cal. Stat. ch. 140
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 Cal. L. Revision Comm'n Reports 1147 (1971)	Enacted. 1971 Cal. Stat. ch. 1607
77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973)	Enacted. 1973 Cal. Stat. ch. 20
78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973)	Enacted. 1973 Cal. Stat. ch. 526
79. <i>Unclaimed Property</i> , 11 Cal. L. Revision Comm'n Reports 401 (1973); 12 Cal. L. Revision Comm'n Reports 609 (1974)	Proposed resolution enacted. 1973 Cal. Stat. res. ch. 76. Legislation enacted. 1975 Cal. Stat. ch. 25.
80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973)	Enacted. 1974 Cal. Stat. ch. 211
81. <i>Prejudgment Attachment</i> , 11 Cal. L. Revision Comm'n Reports 701 (1973)	Enacted. 1974 Cal. Stat. ch. 1516. See also 1975 Cal. Stat. ch. 200.
82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973)	Enacted. 1974 Cal. Stat. chs. 331, 332
83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973)	Enacted. 1972 Cal. Stat. ch. 73
84. <i>Evidence—Judicial Notice</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1025 (1973)	Enacted. 1972 Cal. Stat. ch. 764
85. <i>Evidence — "Criminal Conduct" Exception</i> , 11 Cal. L. Revision Comm'n Reports 1147 (1973)	Not enacted 1974. See recommendation to 1975 session (item 90 <i>infra</i>) which was enacted.

Recommendation	Action by Legislature
86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 Cal. L. Revision Comm'n Reports 1163 (1973)	Enacted. 1974 Cal. Stat. ch. 227
87. <i>Liquidated Damages</i> , 11 Cal. L. Revision Comm'n Reports 1201 (1973); 13 Cal. L. Revision Comm'n Reports 2139 (1976); 13 Cal. L. Revision Comm'n Reports 1735 (1976)	Enacted. 1977 Cal. Stat. ch. 198
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 Cal. L. Revision Comm'n Reports 575 (1974)	Enacted. 1975 Cal. Stat. ch. 285
89. <i>View by Trier of Fact in a Civil Case</i> , 12 Cal. L. Revision Comm'n Reports 587 (1974)	Enacted. 1975 Cal. Stat. ch. 301
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 Cal. L. Revision Comm'n Reports 601 (1974)	Enacted. 1975 Cal. Stat. ch. 318
91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974)	Enacted. 1974 Cal. Stat. ch. 426
92. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974)	Enacted. 1975 Cal. Stat. chs. 1239, 1240, 1275
93. <i>Eminent Domain — Conforming Changes in Special District Statutes</i> , 12 Cal. L. Revision Comm'n Reports 1101 (1974); 12 Cal. L. Revision Comm'n Reports 2004 (1974)	Enacted. 1975 Cal. Stat. chs. 581, 582, 584, 585, 586, 587, 1176, 1276
94. <i>Oral Modification of Written Contracts</i> , 13 Cal. L. Revision Comm'n Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2129 (1976)	Enacted. 1975 Cal. Stat. ch. 7; 1976 Cal. Stat. ch. 109
95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976)	Enacted. 1976 Cal. Stat. ch. 73
96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976)	Enacted. 1976 Cal. Stat. ch. 437
97. <i>Undertakings for Costs</i> , 13 Cal. L. Revision Comm'n Reports 901 (1976)	Not enacted 1976. But see recommendation to 1979 session (item 118 <i>infra</i>) which was enacted.

Recommendation	Action by Legislature
98. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2051 (1976)	Not enacted.
99. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 Cal. L. Revision Comm'n Reports 2079 (1976)	Enacted. 1976 Cal. Stat. ch. 145
100. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976)	Enacted. 1976 Cal. Stat. ch. 143
101. <i>Condemnation for Byroads and Utility Easements</i> , 13 Cal. L. Revision Comm'n Reports 2091 (1976)	Enacted in part (utility easements). 1976 Cal. Stat. ch. 994
102. <i>Transfer of Out-of-State Trusts to California</i> , 13 Cal. L. Revision Comm'n Reports 2101 (1976)	Enacted. 1976 Cal. Stat. ch. 144
103. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976)	Enacted. 1985 Cal. Stat. ch. 100
104. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976)	Enacted. 1976 Cal. Stat. ch. 888
105. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976)	Enacted. 1977 Cal. Stat. ch. 232
106. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976)	Enacted. 1977 Cal. Stat. ch. 49
107. <i>Nonprofit Corporation Law</i> , 13 Cal. L. Revision Comm'n Reports 2201 (1976)	Not enacted. Legislation on this subject, not recommended by the Commission, was enacted in 1978.
108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 Cal. L. Revision Comm'n Reports 49 (1978)	Enacted. 1977 Cal. Stat. ch. 155
109. <i>Attachment Law—Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 Cal. L. Revision Comm'n Reports 61 (1978)	Enacted. 1977 Cal. Stat. ch. 499
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 Cal. L. Revision Comm'n Reports 83 (1978)	Enacted. 1978 Cal. Stat. ch. 286

Recommendation	Action by Legislature
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 Cal. L. Revision Comm'n Reports 93 (1978)	Enacted. 1978 Cal. Stat. ch. 151
112. <i>Evidence of Market Value of Property</i> , 14 Cal. L. Revision Comm'n Reports 105 (1978)	Enacted in part. 1978 Cal. Stat. ch. 294. Substance of remainder enacted in 1980. See item 127 <i>infra</i> .
113. <i>Psychotherapist-Patient Privilege</i> , 14 Cal. L. Revision Comm'n Reports 127 (1978); 15 Cal. L. Revision Comm'n Reports 1307 (1980)	Enacted in part. 1985 Cal. Stat. chs. 545 (licensed educational psychologist), 1077 (repeal of Evidence Code § 1028).
114. <i>Parole Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978)	Enacted. 1978 Cal. Stat. ch. 150
115. <i>Attachment Law—Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action"</i> , 14 Cal. L. Revision Comm'n Reports 241 (1978)	Enacted. 1978 Cal. Stat. ch. 273
116. <i>Powers of Appointment</i> (technical changes), 14 Cal. L. Revision Comm'n Reports 257 (1978)	Enacted. 1978 Cal. Stat. ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 Cal. L. Revision Comm'n Reports 291 (1978)	Enacted. 1979 Cal. Stat. ch. 31
118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978)	Enacted. 1980 Cal. Stat. ch. 114
119. <i>Guardianship-Conservatorship Law</i> , 14 Cal. L. Revision Comm'n Reports 501 (1978); 15 Cal. L. Revision Comm'n Reports 451 (1980)	Enacted. 1979 Cal. Stat. chs. 165, 726, 730
120. <i>Effect of New Bankruptcy Law on the Attachment Law</i> , 15 Cal. L. Revision Comm'n Reports 1043 (1980)	Enacted. 1979 Cal. Stat. ch. 77
121. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980)	Enacted. 1979 Cal. Stat. ch. 568
122. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 Cal. L. Revision Comm'n Reports 1101 (1980)	Enacted. 1980 Cal. Stat. ch. 122
123. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980)	Enacted. 1980 Cal. Stat. ch. 135

Recommendation	Action by Legislature
124. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 Cal. L. Revision Comm'n Reports 1137 (1980)	Enacted. 1980 Cal. Stat. ch. 1050
125. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980)	Enacted. 1980 Cal. Stat. ch. 44
126. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 Cal. L. Revision Comm'n Reports 1237 (1980)	Enacted. 1980 Cal. Stat. ch. 682
127. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 Cal. L. Revision Comm'n Reports 301 (1980)	Enacted. 1980 Cal. Stat. ch. 381
128. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980)	Enacted. 1980 Cal. Stat. ch. 119
129. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 Cal. L. Revision Comm'n Reports 1257 (1980)	Enacted. 1980 Cal. Stat. ch. 215
130. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980)	Enacted. 1980 Cal. Stat. ch. 89
131. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980)	Enacted. 1980 Cal. Stat. ch. 124
132. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980)	Enacted. 1982 Cal. Stat. ch. 150
133. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980)	Enacted. 1980 Cal. Stat. ch. 123
134. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980)	Enacted. 1980 Cal. Stat. ch. 600
135. <i>Guardianship-Conservatorship (technical change)</i> , 15 Cal. L. Revision Comm'n Reports 1247 (1980)	Enacted. 1980 Cal. Stat. ch. 246
136. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980)	Enacted. 1981 Cal. Stat. ch. 9
137. <i>The Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980)	Enacted. 1982 Cal. Stat. chs. 497, 1364

Recommendation	Action by Legislature
138. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)	Enacted. 1981 Cal. Stat. ch. 511
139. <i>Non-Probate Transfers</i> , 15 Cal. L. Revision Comm'n Reports 1605 (1980); 16 Cal. L. Revision Comm'n Reports 129 (1982)	Enacted in part (pay-on-death accounts) 1982 Cal. Stat. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stat. ch. 92. Substance of balance enacted. 1989 Cal. Stat. ch. 397 (banks and savings and loan associations) (item 229 <i>infra</i>)
140. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980)	Enacted. 1981 Cal. Stat. ch. 63
141. <i>State Tax Liens</i> (technical change), 16 Cal. L. Revision Comm'n Reports 24 (1982)	Enacted. 1981 Cal. Stat. ch. 217
142. <i>Assessment Liens on Property Taken for Public Use</i> (technical change), 16 Cal. L. Revision Comm'n Reports 25 (1982)	Enacted. 1981 Cal. Stat. ch. 139
143. <i>Federal Pensions as Community Property</i> , 16 Cal. L. Revision Comm'n Reports 47 (1982)	Proposed resolution adopted. 1982 Cal. Stat. res. ch. 44
144. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982)	Enacted. 1982 Cal. Stat. ch. 187
145. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982)	Enacted. 1982 Cal. Stat. ch. 1268
146. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982)	Enacted. 1982 Cal. Stat. chs. 517, 998
147. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982)	Enacted. 1982 Cal. Stat. ch. 1198
148. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982)	Enacted. 1982 Cal. Stat. ch. 182
149. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982)	Enacted. 1983 Cal. Stat. ch. 201
150. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982)	Enacted. 1983 Cal. Stat. ch. 6

Recommendation	Action by Legislature
151. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982)	Enacted. 1983 Cal. Stat. ch. 72
152. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982)	Enacted. 1983 Cal. Stat. ch. 17
153. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982)	Enacted. 1983 Cal. Stat. ch. 842
154. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 Cal. L. Revision Comm'n Reports 2165 (1982)	Enacted. 1983 Cal. Stat. ch. 342
155. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982)	Enacted. 1983 Cal. Stat. ch. 155
156. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 Cal. L. Revision Comm'n Reports 2239 (1982)	Enacted. 1983 Cal. Stat. ch. 18
157. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 Cal. L. Revision Comm'n Reports 2251 (1982)	Enacted. 1983 Cal. Stat. ch. 107
158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984)	Enacted. 1984 Cal. Stat. ch. 1671
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 16 Cal. L. Revision Comm'n Reports 101 (1984)	Enacted. 1983 Cal. Stat. ch. 1204
160. <i>Effect of Death of Support Obligor</i> , 17 Cal. L. Revision Comm'n Reports 897 (1984)	Enacted in part. 1984 Cal. Stat. ch. 19. Balance enacted. 1985 Cal. Stat. ch. 362 (item 186 <i>infra</i>)
161. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984)	Enacted. 1983 Cal. Stat. ch. 52
162. <i>Marital Property Presumptions and Transmutations</i> , 17 Cal. L. Revision Comm'n Reports 205 (1984)	Enacted in part (transmutations). 1984 Cal. Stat. ch. 1733
163. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)	Enacted. 1984 Cal. Stat. ch. 1661

Recommendation	Action by Legislature
164. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984)	Enacted. 1984 Cal. Stat. ch. 156
165. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984)	Enacted. 1984 Cal. Stat. ch. 249
166. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984)	Enacted. 1984 Cal. Stat. ch. 463
167. <i>Disposition of Community Property</i> , 17 Cal. L. Revision Comm'n Reports 269 (1984)	Not enacted.
168. <i>Statutes of Limitation for Felonies</i> , 17 Cal. L. Revision Comm'n Reports 301 (1984)	Enacted. 1984 Cal. Stat. ch. 1270
169. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984)	Enacted. 1984 Cal. Stat. ch. 451
170. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984)	Enacted. 1984 Cal. Stat. ch. 451
171. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984)	Enacted in part (intestate succession). 1989 Cal. Stat. ch. 544 (item 227 <i>infra</i>)
172. <i>Notice of Will</i> , 17 Cal. L. Revision Comm'n Reports 461 (1984)	Not enacted.
173. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 Cal. L. Revision Comm'n Reports 471 (1984)	Enacted. 1984 Cal. Stat. ch. 493
174. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984)	Enacted. 1984 Cal. Stat. ch. 451
175. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984)	Enacted. 1984 Cal. Stat. ch. 527
176. <i>Execution of Witnessed Will</i> , 17 Cal. L. Revision Comm'n Reports 509 (1984)	Not enacted.
177. <i>Revision of Wills and Intestate Succession Law</i> , 17 Cal. L. Revision Comm'n Reports 537 (1984)	Enacted. 1984 Cal. Stat. ch. 892

Recommendation	Action by Legislature
178. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984)	Enacted. 1984 Cal. Stat. ch. 243
179. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 Cal. L. Revision Comm'n Reports 701 (1984)	Enacted. 1984 Cal. Stat. chs. 312 (health care) and 602 (general power of attorney)
180. <i>Dismissal for Lack of Prosecution</i> , 17 Cal. L. Revision Comm'n Reports 905 (1984)	Enacted. 1984 Cal. Stat. ch. 1705
181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984)	Enacted. 1984 Cal. Stat. ch. 519
182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984)	Enacted. 1984 Cal. Stat. ch. 20
183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984)	Enacted. 1984 Cal. Stat. ch. 240
184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984)	Enacted. 1984 Cal. Stat. ch. 538
185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984)	Enacted. 1984 Cal. Stat. ch. 241
186. <i>Provision for Support if Support Obligor Dies</i> , 18 Cal. L. Revision Comm'n Reports 119 (1986)	Enacted. 1985 Cal. Stat. ch. 362
187. <i>Transfer of State Registered Property Without Probate</i> , 18 Cal. L. Revision Comm'n Reports 129 (1986)	Enacted. 1985 Cal. Stat. ch. 982
188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 Cal. L. Revision Comm'n Reports 147 (1986)	Enacted. 1985 Cal. Stat. ch. 362
189. <i>Probate Law</i> (clarifying revisions), 18 Cal. L. Revision Comm'n Reports 216 (1986)	Enacted. 1985 Cal. Stat. ch. 359
190. <i>Creditors' Remedies</i> (technical change), 18 Cal. L. Revision Comm'n Reports 217 (1986)	Enacted. 1985 Cal. Stat. ch. 41
191. <i>Uniform Transfers to Minors Act</i> (technical change), 18 Cal. L. Revision Comm'n Reports 218 (1986)	Enacted. 1985 Cal. Stat. ch. 90

Recommendation	Action by Legislature
192. <i>Protection of Mediation Communications</i> , 18 Cal. L. Revision Comm'n Reports 241 (1986)	Enacted. 1985 Cal. Stat. ch. 731
193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986)	Enacted. 1985 Cal. Stat. ch. 157
194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986)	Enacted. 1985 Cal. Stat. ch. 157
195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986)	Enacted. 1985 Cal. Stat. ch. 982
196. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> , 18 Cal. L. Revision Comm'n Reports 289 (1986)	Enacted. 1985 Cal. Stat. ch. 982
197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986)	Enacted. 1985 Cal. Stat. ch. 403
198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986)	Enacted. 1985 Cal. Stat. ch. 362
199. <i>Civil Code Sections 4800.1 and 4800.2</i> , 18 Cal. L. Revision Comm'n Reports 383 (1986)	One of two recommended measures enacted (Application of Civil Code Sections 4800.1 and 4800.2). 1986 Cal. Stat. ch. 49
200. <i>The Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986)	Enacted. 1986 Cal. Stat. ch. 820.
201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986)	Enacted. 1986 Cal. Stat. ch. 783
202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986)	Enacted. 1986 Cal. Stat. ch. 783
203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986)	Enacted. 1986 Cal. Stat. ch. 783
204. <i>Notice in Guardianship and Conservatorship</i> , 18 Cal. L. Revision Comm'n Reports 1793 (1986)	Enacted. 1987 Cal. Stat. ch. 923
205. <i>Preliminary Provisions and Definitions</i> , 18 Cal. L. Revision Comm'n Reports 1807 (1986)	Enacted. 1987 Cal. Stat. ch. 923
206. <i>Technical Revisions in the Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 1823 (1986)	Enacted. 1987 Cal. Stat. ch. 128

Recommendation	Action by Legislature
207. <i>Supervised Administration</i> , 19 Cal. L. Revision Comm'n Reports 5 (1988)	Enacted. 1987 Cal. Stat. ch. 923
208. <i>Independent Administration</i> , 19 Cal. L. Revision Comm'n Reports 205 (1988)	Enacted. 1987 Cal. Stat. ch. 923
209. <i>Creditor Claims Against Decedent's Estate</i> , 19 Cal. L. Revision Comm'n Reports 299 (1988)	Enacted. 1987 Cal. Stat. ch. 923
210. <i>Notice in Probate Proceedings</i> , 19 Cal. L. Revision Comm'n Reports 357 (1988)	Enacted. 1987 Cal. Stat. ch. 923
211. <i>Marital Deduction Gifts</i> , 19 Cal. L. Revision Comm'n Reports 615 (1988)	Enacted. 1987 Cal. Stat. ch. 923
212. <i>Estates of Missing Persons</i> , 19 Cal. L. Revision Comm'n Reports 637 (1988)	Enacted. 1987 Cal. Stat. ch. 923
213. <i>Public Guardians and Administrators</i> , 19 Cal. L. Revision Comm'n Reports 707 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
214. <i>Inventory and Appraisal</i> , 19 Cal. L. Revision Comm'n Reports 741 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
215. <i>Opening Estate Administration</i> , 19 Cal. L. Revision Comm'n Reports 787 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
216. <i>Abatement</i> , 19 Cal. L. Revision Comm'n Reports 865 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
217. <i>Accounts</i> , 19 Cal. L. Revision Comm'n Reports 877 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
218. <i>Litigation Involving Decedents</i> , 19 Cal. L. Revision Comm'n Reports 899 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
219. <i>Rules of Procedure in Probate</i> , 19 Cal. L. Revision Comm'n Reports 917 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
220. <i>Distribution and Discharge</i> , 19 Cal. L. Revision Comm'n Reports 953 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
221. <i>Nondomiciliary Decedents</i> , 19 Cal. L. Revision Comm'n Reports 993 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
222. <i>Interest and Income During Administration</i> , 19 Cal. L. Revision Comm'n Reports 1019 (1988)	Enacted. 1988 Cal. Stat. ch. 1199

Recommendation	Action by Legislature
223. <i>1988 Probate Cleanup Bill</i> . See 19 Cal. L. Revision Comm'n Reports 1167, 1191-1200 (1988)	Enacted. 1988 Cal. Stat. ch. 113
224. <i>Authority of the Law Revision Commission</i> , 19 Cal. L. Revision Comm'n Reports 1162 (1988)	Enacted. 1989 Cal. Stat. ch. 152
225. <i>Creditors' Remedies</i> , 19 Cal. L. Revision Comm'n Reports 1251 (1988)	Enacted. 1989 Cal. Stat. ch. 1416
226. <i>No Contest Clauses</i> , 20 Cal. L. Revision Comm'n Reports 7 (1990)	Enacted. 1989 Cal. Stat. ch. 544
227. <i>120-Hour Survival Requirement</i> , 20 Cal. L. Revision Comm'n Reports 21 (1990)	Enacted. 1989 Cal. Stat. ch. 544
228. <i>Compensation of Attorneys and Personal Representatives</i> , 20 Cal. L. Revision Comm'n Reports 31 (1990)	Not enacted. The Legislature will take final action on the recommended legislation in 1990.
229. <i>Multiple-Party Accounts</i> , 20 Cal. L. Revision Comm'n Reports 95 (1990)	Enacted. 1989 Cal. Stat. ch. 397
230. <i>Notice to Creditors</i> , 20 Cal. L. Revision Comm'n Reports 165 (1990)	Enacted in part. 1989 Cal. Stat. ch. 544
231. <i>1989 Probate Cleanup Bill</i> , see 20 Cal. L. Revision Comm'n Reports 201, 227-232 (1990)	Enacted. 1989 Cal. Stat. ch. 21
232. <i>Brokers' Commissions on Probate Sales</i> , see 20 Cal. L. Revision Comm'n Reports 237-242 (1990)	Enacted. 1989 Cal. Stat. ch. 544
233. <i>Bonds of Guardians and Conservators</i> , see 20 Cal. L. Revision Comm'n Reports 235 (1990)	Enacted. 1989 Cal. Stat. ch. 544
234. <i>Commercial Real Property Leases</i> , see 20 Cal. L. Revision Comm'n Reports 251 (1990)	Enacted. 1989 Cal. Stat. ch. 982
235. <i>Trustees' Fees</i> , see 20 Cal. L. Revision Comm'n Reports 279 (1990)	Not enacted. The Legislature will take final action on the recommended legislation in 1990.

APPENDIX 3
COMMUNICATION FROM
THE CALIFORNIA LAW REVISION COMMISSION
CONCERNING ASSEMBLY BILL 156

[Extract from Assembly Journal for March 30, 1989 (1988-89 Regular Session)]

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assembly Member Friedman was granted unanimous consent that the following communication relative to Assembly Bill No. 156 be printed in the Journal.

March 28, 1989

Hon. Terry Friedman

State Capitol, Room 4139

Sacramento, California

Re: AB 156

Dear Assembly Member Friedman: Assembly Bill 156 was introduced by the Assembly Committee on Judiciary (as presented by Assembly Member Friedman on behalf of the committee) to effectuate the California Law Revision Commission recommendation relating to Notice to Creditors in Probate Proceedings, 20 Cal. L. Revision Comm'n Reports 165 (1990), and to deal with several technical matters related to recent probate legislation enacted on recommendation of the California Law Revision Commission.

The Comments of the Law Revision Commission explain the provisions of Assembly Bill 156 as amended, and are contained a "Communication from the California Law Revision Commission Concerning Assembly Bill 156". Copies of the Communication are filed with the Assembly and Senate Committees on Judiciary, the office of the Legislative Counsel, and the office of the Law Revision Commission, and will be published with the Commission's Annual Report for 1989.

Sincerely,

JOHN H. DeMOULLY
Executive Secretary

**Communication from California Law Revision
Commission Concerning Assembly Bill 156**

Assembly Bill 156 was introduced by the Assembly Committee on Judiciary (as presented by Assembly Member Friedman on behalf of the committee) to deal with several technical matters related to recent probate legislation enacted on recommendation of the California Law Revision Commission. The Comments of the Law Revision Commission set out below explain the provisions of Assembly Bill 156.

Probate Code § 3 (amended). Transitional provision for changes in Probate Code

Comment. Subdivision (d) of Section 3 is amended to accurately state the intent of the subdivision. Subdivision (g) is amended for completeness.

Probate Code § 254 (amended). Determination of whether killing was felonious and intentional

Comment. Section 254 is amended to add the words "a final judgment of" in subdivision (b). This makes clear that the civil court may determine the issue by the civil standard of proof during the pendency of an appeal from a criminal conviction of felonious and intentional killing.

Since the civil court may determine whether the killing was felonious and intentional notwithstanding the absence of a criminal conviction, a juvenile may be disqualified under this part from receiving property of the decedent. Cf. *In re Estates of Josephsons*, 297 N.W.2d 444, 448 (N.D. 1980).

Probate Code § 330 (added). Delivery of decedent's tangible personal property

Comment. Section 330 is added to make clear that the specified officials and agencies need not wait 40 days from the death of the decedent to deliver decedent's personal effects and other tangible personal property to decedent's spouse, relatives, conservator, or guardian. Cf. Section 13100 (40-day delay for use of affidavit procedure). If the official or agency relies on a document described in subdivision (d) of Section 13104 as reasonable proof of identity, the official or agency is not liable for so relying.

Probate Code § 1023 (amended). Signing and verification by attorney

Comment. Section 1023 is amended to prohibit a fiduciary's attorney from verifying papers for the fiduciary. The prohibition on an attorney signing or verifying papers is limited, however, to a fiduciary appointed in the particular proceeding to which the papers relate. Thus, for example, a petition filed by the personal representative in a probate proceeding would be covered by the prohibition, but an objection or response to such a petition by the trustee of an inter vivos trust or by the conservator of an heir would not be covered, since neither the trustee nor the conservator is a fiduciary appointed in the probate proceeding.

Probate Code § 1200 (amended). Application of part

Comment. The changes in Section 1200 are technical.

Probate Code § 1217 (amended). Mailed notice where no other manner of notice specified

Comment. The change in Section 1217 is technical.

Probate Code § 1220 (amended). Manner of mailing notice of hearing

Comment. The change in Section 1220 is technical.

Probate Code § 2100 (amended). Law governing guardianships and conservatorships

Comment. The change in Section 2100 is technical.

Probate Code § 2105.5 (amended). Liability of joint guardian or conservator for breach of duty by another guardian or conservator

Comment. Section 2105.5 is amended to add subdivision (c) to make the section apply prospectively only. This has the same effect as subdivision (c) of Section 9631, the comparable section in estate management.

Probate Code § 2501 (amended). Matters relating to real property

Comment. Section 2501 is amended to conform to Section 2555 (leases permitted without court authorization).

Probate Code § 2557 (amended). Exchange of property

Comment. Subdivision (c) of Section 2557 is amended to conform that subdivision to subdivision (d) of Section 10200.

Probate Code § 6414 (amended). Law applicable where death before January 1, 1985

Comment. Section 6414 is amended to delete the reference to Section

300 of the Probate Code, which has been repealed.

Probate Code § 7050 (amended). Jurisdiction and authority of court or judge

Comment. Subdivision (b) of Section 7050 is amended to make clear that the subdivision applies in estate administration proceedings throughout the code, whether pursuant to this division or any other division of the code.

Probate Code § 7060 (amended). Disqualification of judge

Comment. Subdivision (a) of Section 7060 is amended to make clear that the subdivision applies in estate administration proceedings throughout the code, whether pursuant to this division or any other division of the code.

Probate Code § 7200 (amended). Trial by jury

Comment. Section 7200 is amended to make clear that the section applies in estate administration proceedings throughout the code, whether pursuant to this division or any other division of the code.

Probate Code § 7622 (amended). General rules governing administration of estates apply

Comment. Section 7622 is amended to incorporate provisions added by Chapter 280 of the Statutes of 1988.

Probate Code § 8404 (amended). Statement of duties and liabilities

Comment. Section 8404 is amended to conform with Section 8800.

Probate Code § 8405 (amended). Form of letters

Comment. Subdivision (c) of Section 8405 is amended for completeness. See Section 10403 (limited authority) and former subdivision (c) of Section 10452 (endorsement on letters).

Probate Code § 8482 (amended). Amount of bond

Comment. Section 8482 is revised to make clear that the fixed minimum bond may exceed the maximum established by subdivision (a).

Probate Code § 8547 (amended). Fees and commissions

Comment. Section 8547 is amended to incorporate material omitted in the recodification of former Section 469.

Probate Code § 9154 (amended). Waiver of formal defects

Comment. Section 9154 is amended to recognize expressly equitable

principles that might permit payment of an informal claim notwithstanding a failure to satisfy all requirements of subdivision (a). Under the facts in *Estate of Sturm*, 201 Cal. App. 3d 14 (1988), for example, recognition and partial payment of the debt by the personal representative within the four-month and thirty-day limitation of subdivision (a) could serve as an equitable basis for allowing completion of payments beyond that period.

Probate Code § 9250 (amended). Allowance and rejection of claims

Comment. The addition of subdivision (e) to Section 9250 makes clear that an informally paid claim under Section 9154 (waiver of formal defects) is not subject to the requirements of this section.

Probate Code § 9612 (amended). Effect of court authorization and approval

Comment. Section 9612 is amended to make clear that the section applies in estate administration proceedings throughout the code, whether pursuant to this division or any other division of the code.

Probate Code § 9620 (amended). Submission of dispute to temporary judge

Comment. Section 9620 is amended to correct an incorrect reference.

Probate Code § 10452 (amended). Hearing; order

Comment. Subdivision (c) is deleted from Section 10452 because it duplicates subdivision (c) of Section 8405 (form of letters).

Probate Code § 10902 (added). Procedure on account

Comment. Section 10902 is new.

Probate Code § 11004 (amended). Expenses of personal representative

Comment. Section 11004 is amended to make clear that the phrase "necessary expenses in the administration of the estate" includes the necessary expenses in the care, management, preservation, and settlement of the estate. This amendment does not make a substantive change in the section. See the Comment to Section 11004 as enacted (Section 11004 "generalizes the former language that provided for allowance of expenses in the care, management, and settlement of the estate"). Section 11004 permits expenses such as insurance, gardening, pool maintenance, and

maintenance of property pending sale or distribution to be paid from the estate.

Probate Code § 11641 (amended). Distribution under court order

Comment. Section 11641 is amended to permit distribution on entry of an order for final distribution. For a stay in case of an appeal, see Section 7241.

Probate Code § 11801 (amended). Distribution despite death of beneficiary

Comment. Subdivision (b) of Section 11801 is revised to make clear that, in the case of a marital deduction gift, any survival requirement in the will that exceeds or may exceed six months is construed to be a six month limitation under Section 21525.

Probate Code § 12530 (amended). Application of general provisions

Comment. Section 12530 is amended to make clear that the section incorporates estate administration provisions throughout the code, and is not limited to provisions in this division.

1988 Cal. Stats. ch. 280, § 2 (repealed). Compensation and allowances of public administrator and attorney

Comment. Section 2 of Chapter 280 of the Statutes of 1988, as amended by Chapter 1199 of the Statutes of 1988, is restated without substantive change in Probate Code Section 7622 (general rules governing administration of estates apply).

APPENDIX 4
COMMUNICATION FROM
THE CALIFORNIA LAW REVISION COMMISSION
CONCERNING ASSEMBLY BILL 157

Assembly Bill 157 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Creditors' Remedies*, 19 Cal. L. Revision Comm'n Reports 1251 (1988). Other technical revisions relating to civil procedure were added to the bill by the Assembly Committee on Judiciary. The Comments in the Commission's recommendation to Code of Civil Procedure Sections 695.070 and 701.680 remain applicable. This report contains revised Comments to Code of Civil Procedure Section 686.020 and 695.070 to reflect amendments made in the Assembly and in the Senate.

Code of Civil Procedure § 686.020 (amended). Enforcement of judgment after death of judgment debtor

Comment. Section 686.020 is amended for conformity with the scope of the Probate Code provisions relating to enforcement of judgments. See Prob. Code §§ 9300-9304, 9391. As a consequence, property transferred subject to an enforcement lien before the death of the judgment debtor may be applied to the satisfaction of a money judgment using the same procedures that would have been available if the judgment debtor were still alive. See Section 695.070 (enforcement of lien after transfer). Under Section 686.020 and Probate Code Section 9300, after the death of a judgment debtor, enforcement of a judgment is governed by the Probate Code, not the Code of Civil Procedure. The language "and not by this title" is added to make this clear. For example, the filing of an abstract of judgment after death of the judgment debtor does not create a lien on estate property. See also Prob. Code § 9304 (conversion of attachment lien to judgment lien).

Code of Civil Procedure § 695.070 (amended). Property subject to lien after transfer

Comment. Section 695.070 is amended to clarify the manner of enforcement of a money judgment against property of a decedent in a situation where the property was transferred during the judgment debtor's lifetime subject to an enforcement lien. For provisions relating to continuation of liens after transfer, see Sections 697.390 (judgment lien on real property), 697.610 (judgment lien on personal property), 697.720-697.750 (execution lien), 697.920 (other liens).

Under subdivision (b), the judgment creditor may enforce the money judgment against the transferred property after the judgment debtor's death using any appropriate procedure available before death. Thus, the death of the judgment debtor has no effect on the judgment creditor's remedies against property that was transferred subject to an enforcement lien. The judgment creditor may use a writ of execution, any other applicable enforcement procedure provided in this division, or an action against the owner of the property to foreclose the lien. Enforcement under this section may proceed only against the property subject to the lien and only in the amount of the lien on the transferred property, as is the case when enforcing a lien on transferred property while the judgment debtor is alive. See Sections 695.210 (amount required to satisfy judgment), 697.010 (amount of lien). As to enforcement of a judgment against property in the decedent's estate, see Code Civ. Proc. § 686.020 (enforcement against property in deceased judgment debtor's estate is governed by Probate code); Prob. Code §§ 9300-9304 (enforcement of claims established by judgment).

APPENDIX 5
COMMUNICATION FROM
THE CALIFORNIA LAW REVISION COMMISSION
CONCERNING ASSEMBLY BILL 158

Assembly Bill 158 was introduced by Assembly Member Friedman to effectuate the California Law Revision Commission's *Recommendation Relating to No Contest Clauses*, 20 Cal. L. Revision Comm'n Reports 7 (1990); and *Recommendation Relating to 120-Hour Survival Requirement*, 20 Cal. L. Revision Comm'n Reports 21 (1990). The Comments of the Law Revision Commission set out below explain the provisions of Assembly Bill 158 as amended.

Probate Code § 2320 (amended). Bond of guardian or conservator

Comment. Section 2320 is amended to make clear that the amount of the bond of a guardian or conservator is to be sufficient to cover public entitlements of the ward or conservatee.

Probate Code § 2405 (amended). Submitting disputed claim for summary determination

Comment. Subdivision (b) of Section 2405 is amended to delete an incorrect and inappropriate section reference.

Probate Code § 3909 (amended). Custodial property; methods of creation and transfer; designation of initial custodian; prescribed form; control of property

Comment. Section 3909 is amended to correct a reference in subdivision (b).

Probate Code § 6112 (amended). Witnesses to wills

Comment. New subdivision (c) of Section 6112 is amended to make clear that, where the will is witnessed by a person to whom a devise is made in a fiduciary capacity, the presumption of undue influence does not apply. This is consistent with *Estate of Tkachuk*, 73 Cal. App. 3d 14, 139 Cal. Rptr. 55 (1977). Even though fraud or undue influence is not presumed in such a case, it may still be proven as a question of fact. See new subdivision (d) (last sentence).

The references to a "subscribing" witness are deleted from new subdivision (c) in recognition of the fact that a will need not be signed at the end.

Former subdivision (d), relating to no contest clauses, is deleted. This matter is dealt with comprehensively in Sections 21300 to 21307.

Probate Code § 6403 (amended). Requirement that heir survive decedent

Comment. Section 6403 is amended to provide a 120-hour survival rule. As amended, Section 6403 is the same in substance as Section 2-104 of the Uniform Probate Code (1982) insofar as that section relates to taking by intestate succession. Where Section 6403 applies, the 120-hour survival requirement is used to determine whether one person survived another for the purposes of Sections 103 (simultaneous death of husband and wife) and 234 (proceedings to determine survival).

Probate Code § 8401 (amended). Deposit in controlled account

Comment. Section 8401 is amended to refer to the procedures in Sections 9700-9705 for depositing money in an insured account in a financial institution and depositing personal property with a trust company. This continues a provision of former Section 541.1(b).

Probate Code § 8406 (amended). Effect of reversal of appointment of personal representative

Comment. Section 8406 is amended for clarity and to conform to Section 8272 (revocation of probate).

Probate Code § 8461 (amended). Priority for appointment as administrator

Comment. Section 8461 is amended to conform the priorities for appointment as administrator more closely to the priorities to take from the decedent by intestate succession. See Section 6402.

Probate Code § 8483 (amended). Reduction of bond by deposit of assets

Comment. Section 8483 is amended to refer to the procedures in Sections 9700-9705 for depositing money in an insured account in a financial institution and depositing personal property with a trust company. This continues a provision of former Section 541.1(a).

Probate Code § 9053 (amended). Immunity of personal representative

Comment. Section 9053 is amended to make clear that the burden of proof of bad faith of the personal representative is on the person seeking to impose liability and to state the conditions necessary to impose liability. The section is also amended to delete the references to the

attorney for the personal representative; this chapter imposes no duty on the attorney to give notice.

Probate Code § 10160.5 (added). No commission where broker is purchaser

Comment. Section 10160.5 is added to change the rule in *Estate of Levinthal*, 105 Cal. App. 3d 691, 164 Cal. Rptr. 628 (1980), that a broker in an estate sale is entitled to a commission even though the purchaser is an entity in which the broker has an interest. Section 10160.5 is consistent with the rule in *Estate of Toy*, 72 Cal. App. 3d 392, 140 Cal. Rptr. 183 (1977) (broker may not receive commission where there is complete identity between broker and purchaser), and broadens that rule to apply in the *Levinthal* situation where there is not complete identity between broker and purchaser but the broker does have an interest in the purchasing entity, whether that interest is substantial or insubstantial. Thus, for example, the broker would not be entitled to a commission if the purchaser is a corporation in which the broker owns stock.

Probate Code § 10162.3 (amended). Compensation where there is no exclusive contract and sale is made to purchaser produced by agent or broker on bid returned to court or on overbid

Comment. Subdivision (a)(3) of Section 10162.3 is amended to provide for the compensation in a situation where the sale is confirmed to a successful overbidder produced by an agent or broker and who also made the original bid returned to the court for confirmation. Under subdivision (b), where the original bidder becomes the successful overbidder at the end of the auction in court, the agent or broker is entitled to compensation on the full amount for which the sale is confirmed. For the rule applicable in this situation where there is another agent or broker holding an exclusive listing contract, see Section 10162.7. The word "person" in subdivision (a)(2) is replaced with "purchaser" for consistency with subdivision (a)(3).

The following example illustrates the application of subdivisions (a)(3) and (b) of this section. As in the Comment to Section 10161, Broker B is the broker whose bid is returned to the court for confirmation.

Example 1. No exclusive listing contract; original bidder produced by Broker B; overbid by one or more other bidders; successful overbid by original bidder produced by Broker B. The bid returned to the court for confirmation is made by a bidder produced by Broker B. At the confirmation hearing, an increased bid is made by a different bidder who is produced by

Broker D. Another increased bid is made by a third bidder who is not produced by a broker. Another increased bid is made by the original bidder, produced by Broker B. The court confirms the sale to the overbidder produced by Broker B. Under this section, Broker B is entitled to a commission on the full amount for which the sale is confirmed. For example, suppose the original bid returned to court is \$100,000, Broker D brings in an overbid of \$120,000, the unrepresented bidder bids \$130,000, and the original purchaser produced by Broker B makes an overbid of \$140,000 on which the sale is confirmed. The court determines that a reasonable commission on the \$140,000 sale is 6%, equal to \$8,400 which is paid to Broker B. Broker D receives nothing, as provided in Section 10161(b).

Probate Code § 10162.5 (amended). Compensation where there is an exclusive contract and no other broker or agent is involved

Comment. Subdivision (a) is revised to provide for the compensation in a situation where the sale is confirmed to a successful overbidder produced by the agent or broker holding the contract and who also made the original bid returned to the court for confirmation. Under subdivision (a), where the original bidder becomes the successful overbidder at the end of the auction in court, the agent or broker holding the contract is entitled to compensation on the full amount for which the sale is confirmed. For an example illustrating the application of subdivision (a)(2) of this section, see the Comment to Section 10162.3. In this case, the exclusive listing contract does not affect who is entitled to compensation and the result for the agent or broker holding the exclusive listing contract is the same as for Broker B in Example 1 in the Comment to Section 10162.3. For the rule applicable where the original bidder who becomes the successful overbidder is produced by another agent or broker, see Section 10162.7.

Subdivision (b)(1) is amended to apply the rule in subdivision (b) to situations where the bid returned to court is produced by an agent with an exclusive listing. For an illustration of the application of this rule, see Example 2 in the Comment to Section 10161.

The word "person" in subdivisions (a)(1) and (b)(1) is replaced with "purchaser" for consistency with the remainder of the section.

Probate Code § 10162.7 (amended). Compensation where there is exclusive contract and sale is made to purchaser produced by another agent or broker on bid returned to court or on overbid

Comment. Subdivisions (a)(3) and (b) of Section 10162.7 are amended to provide for the compensation in a situation where there is an agent or broker holding an exclusive listing contract and the sale is confirmed to a successful overbidder (produced by another agent or broker) who also made the original bid returned to the court for confirmation. In this case, under subdivision (b), in the absence of an agreement between the two brokers, they split the commission on the amount of the original bid and the broker representing the successful bidder receives all of the commission on the overbid.

The following examples illustrate the application of subdivisions (a)(3) and (b) of this section. As in the Comment to Section 10161, Broker A is the broker holding an exclusive listing contract with the personal representative and Broker B is the broker whose bid is returned to the court for confirmation.

Example 1. Exclusive listing contract; original bidder produced by Broker B; overbid by one or more other bidders; successful overbid by original bidder produced by Broker B. The personal representative enters into a written exclusive sales contract with Broker A for the sale of real property of the estate. The bid returned to the court for confirmation is made by a bidder produced by Broker B. At the confirmation hearing, an increased bid is made by a different purchaser who is produced by Broker D. Another increased bid is made by a third bidder who is not produced by a broker. Another increased bid is made by the original bidder, produced by Broker B. The court confirms the sale to the overbidder produced by Broker B. Under this section, in the absence of an agreement between Broker A and Broker B, the reasonable compensation allowed by the court on the original bid is divided between Broker A and Broker B, and all of the commission on the overbid is paid to Broker B.

For example, suppose the original bid returned to court is \$100,000, Broker D brings in an overbid of \$120,000, the unrepresented bidder bids \$130,000, and the original purchaser produced by Broker B makes an overbid of \$140,000 on which the sale is confirmed. The court determines that a reasonable commission on the \$140,000 sale is 6%, equal to \$8,400. Broker B receives \$5,400, which consists of half of the commission on the original bid (half of 6% of \$100,000 = \$3,000) and all of the

commission on the difference between the original bid and confirmed overbid ($\$140,000 - \$100,000 = \$40,000$; 6% of $\$40,000 = \$2,400$). Broker A receives the other half of the commission on the original bid (half of 6% of $\$100,000 = \$3,000$). Broker D receives nothing.

Example 2. Exclusive listing contract; agreement between Broker A and Broker B; original bidder produced by Broker B; overbid by one or more other bidders; successful overbid by original bidder produced by Broker B. The personal representative enters into a written exclusive sales contract with Broker A for the sale of real property of the estate. The bid returned to the court for confirmation is made by a bidder produced by Broker B. Broker A and Broker B have an agreement to split the commission on the full amount for which the sale is confirmed. At the confirmation hearing, an increased bid is made by a different purchaser who is produced by Broker D. Another increased bid is made by a third bidder who is not produced by a broker. Another increased bid is made by the original bidder, produced by Broker B. The court confirms the sale to the overbidder produced by Broker B. Under this section, the reasonable compensation allowed by the court on the full amount is divided between Broker A and Broker B pursuant to their agreement.

For example, suppose the original bid returned to court is $\$100,000$, Broker D brings in an overbid of $\$120,000$, the unrepresented bidder bids $\$130,000$, and the original purchaser produced by Broker B makes an overbid of $\$140,000$ on which the sale is confirmed. The court determines that a reasonable commission on the $\$140,000$ sale is 6%, equal to $\$8,400$. Broker A and Broker B each receive $\$4,200$ pursuant to their agreement. Broker D receives nothing.

Probate Code § 10163 (amended). Compensation where original bid made by purchaser directly to estate and sale made on increased bid to purchaser produced by agent or broker

Comment. Section 10163 is amended to extend its rule to cases where the original bidder is not produced by an agent or broker and a successful overbidder is produced by an agent or broker holding an exclusive listing contract.

Probate Code § 10165 (amended). Compensation where sale made on increased bid by purchaser produced by agent or broker and either the original bid returned to court was made by a purchaser produced by another agent or broker or there is another agent or broker who holds exclusive right to sell contract

Comment. Section 10165 is amended to add paragraphs (4) and (5) to subdivision (c) to cover situations not previously covered. Subdivision (a)(2) is amended to clarify the application of this section.

The following examples illustrate the application of subdivisions (c)(4) and (c)(5) of Section 10165. As in the Comment to Section 10161, Broker A is the broker holding an exclusive listing contract with the personal representative, Broker B is the broker whose bid is returned to the court for confirmation, and Broker C is a broker who does not have a contract with the personal representative and who produces a successful overbidder.

Example 1. Exclusive listing contract; original bidder not produced by a broker; successful overbid by purchaser produced by Broker C. The personal representative enters into a written exclusive sales contract with Broker A for the sale of real property of the estate. The contract provides for a commission to Broker A of 6% of the sale price. The bid returned to the court for confirmation is made by a person who is not produced by a broker. At the confirmation hearing, the highest bid is made by a different purchaser who is produced by Broker C. The court confirms the sale to the overbidder. Under subdivision (b) of Section 10165, Broker C is entitled to half of the commission on the original bid plus all of the commission on the overbid, subject to the limitation on overbids in Section 10162. Under subdivision (c)(4) of Section 10165, Broker A is entitled to the other half of the commission on the original bid.

For example, suppose the original bid returned to court is \$100,000 and Broker C brings in an overbid of \$110,000 on which the sale is confirmed. The court determines that a reasonable commission on the \$110,000 sale is 6%, equal to \$6,600. Broker C receives \$3,600, which consists of half of the commission on the original bid (half of 6% of \$100,000 = \$3,000) and all of the commission on the difference between the original bid and confirmed overbid (\$110,000 - \$100,000 = \$10,000; 6% of \$10,000 = \$600). Broker A (the broker holding the exclusive contract) receives the other half of the commission on the original bid (half of 6% of \$100,000 = \$3,000).

Example 2. Exclusive listing contract; original bidder produced by Broker B; successful overbid by purchaser produced by Broker A. The personal representative enters into a written exclusive sales contract with Broker A for the sale of real property of the estate. The contract provides for a commission to Broker A of 6% of the sale price. The bid returned to the court for confirmation is made by a person who is produced by Broker B. At the confirmation hearing, the highest bid is made by a different purchaser who is produced by Broker A. The court confirms the sale to the overbidder. Under subdivision (b) of Section 10165, Broker A is entitled to half of the commission on the original bid plus all of the commission on the overbid. Under subdivision (c)(5) of Section 10165, Broker B is entitled to the other half of the commission on the original bid.

For example, suppose the original bid returned to court is \$100,000 made by a purchaser produced by Broker B. Broker A brings in an overbid of \$110,000 on which the sale is confirmed. The court determines that a reasonable commission on the \$110,000 sale is 6%, equal to \$6,600. Broker A receives \$3,600, which consists of half of the commission on the original bid (half of 6% of \$100,000 = \$3,000) and all of the commission on the difference between the original bid and confirmed overbid (\$110,000 - \$100,000 = \$10,000; 6% of \$10,000 = \$600). Broker B receives the other half of the commission on the original bid (half of 6% of \$100,000 = \$3,000).

Probate Code § 10454 (amended). Revoking or limiting independent administration authority

Comment. Section 10454 is amended to reflect the repeal of former Section 10452(c) and its replacement by Section 8405(c).

Probate Code § 11006 (repealed). Effect of order settling account

Comment. Section 11006 is repealed because it conflicted with Section 9612 (order settling account releases personal representative and sureties from all claims based upon any act or omission directly authorized, approved, or confirmed in the order).

Probate Code § 20114.5 (technical amendment). Increase in federal estate tax resulting from excess retirement accumulation

Comment. Section 20114.5 is amended to correct references to the Internal Revenue Code.

Probate Code § 21300 (added). Definitions

Comment. Section 21300 is intended for drafting convenience.

Under subdivision (a), an "attack" may initiate a proceeding (e.g., a contest by petition to revoke probate of a will) or may occur as an objection in a proceeding (e.g., a contest by objection to probate of a will).

Subdivision (b) uses the term "no contest clause". This term has been used in the literature, as well as the term "in terrorem clause", to describe a provision of the type defined in this section.

Section 21300 supersedes a portion of former subdivision (d) of Section 6112 ("provision in a will that a person who contests or attacks the will or any of its provisions takes nothing under the will or takes a reduced share"). Unlike the former provision, this part governs trusts and other donative transfers as well as wills. See Section 21101 (application of division); see also Sections 24 ("beneficiary" defined) and 45 ("instrument" defined).

Probate Code § 21301. Application of part

Comment. Section 21301 makes clear that this part is not a comprehensive treatment of the law governing no contest clauses. The section preserves the common law in matters not expressly addressed by this part. This is a special application of the rule stated in Civil Code Section 22.2 (common law as rule of decision in California courts). As used in this section, the "common law" does not refer to the common law as it existed in 1850 when the predecessor of Civil Code Section 22.2 was enacted; rather, the reference is to the contemporary and evolving rules of decision developed by the courts in exercise of their power to adapt the law to new situations and to changing conditions. Such issues, for example, as whether a contest that is later abandoned violates a no contest clause, whether an attack on the jurisdiction of the court violates the clause, and whether proceedings in estate administration other than a direct contest (including proceedings to set aside a small estate or probate homestead, to establish a family allowance, or to take as a pretermitted heir) violate the clause, continue to be governed by relevant case law except to the extent this part deals directly with the issue. The resolution of these matters is determined, in part, by the terms of the no contest clause and the character of the beneficiary's contest. See also Section 21304 (construction of no contest clause).

Probate Code § 21302 (added). Instrument may not make contrary provision

Comment. Section 21302 is new. An instrument may not vary the rules provided in this part, since the rules are intended to implement the public policy of ensuring judicial access to information necessary for the proper administration of justice.

Probate Code § 21303 (added). Validity of no contest clause

Comment. Section 21303 is new. It codifies the existing California law recognizing the validity of a no contest clause. See, e.g., *In re Estate of Hite*, 155 Cal. 436, 101 P. 443 (1909). A no contest clause is strictly construed. Section 21304 (construction of no contest clause). See also Sections 21301 (application of part) and 21302 (instrument may not make contrary provision).

Probate Code § 21304 (added). Construction of no contest clause

Comment. Section 21304 is new. In the interest of predictability, it resolves a conflict in the case law in favor of strict construction. Cf. Garb, *The In Terrorem Clause: Challenging California Wills*, 6 Orange County B.J. 259 (1979). Strict construction is consistent with the public policy to avoid a forfeiture. Cf. Selvin, *Comment: Terror in Probate*, 16 Stan. L. Rev. 355 (1964). As used in this section, the "transferor" is the testator, settlor, grantor, owner, or other person who executes an instrument. See Section 81 ("transferor" defined).

Probate Code § 21305 (added). Declaratory relief

Comment. Subdivision (a) of Section 21305 authorizes a limited form of declaratory relief under the Probate Code. An action for declaratory relief under Code of Civil Procedure Section 1060 would not qualify for protection under subdivision (b), which is limited to a proceeding under subdivision (a).

Subdivision (b) avoids the conflict in the case law concerning whether proceedings for declaratory relief may be held to violate a no contest clause by providing a "safe harbor" for a beneficiary who satisfies the requirements of subdivision (a). Cf. Garb, *The In Terrorem Clause: Challenging California Wills*, 6 Orange County B.J. 259 (1979). Under subdivision (b), if a beneficiary seeks a determination whether a particular act would be considered "an attack in a proceeding on an instrument or on a provision in an instrument" within the meaning of the no contest clause, the request for such a determination cannot itself be considered an attack on the instrument or provision if made under

subdivision (a). Subdivision (b) is not intended to enable a determination of the merits of an attack, but only whether a particular act would be considered an attack. Subdivision (b) is not intended as a complete listing of acts that may be held exempt from enforcement of a no contest clause. See Section 21301 (application of part).

Subdivision (c) emphasizes the point that this section is not intended to permit a determination on the merits by excluding from the coverage of the section a determination of the application of the two statutory exceptions to enforcement of a no contest clause.

Probate Code § 21306 (added). Forgery or revocation

Comment. Section 21306 is new. It codifies existing case law. See, e.g., *Estate of Lewy*, 39 Cal. App. 3d 729, 113 Cal. Rptr. 674 (1974) (forgery); *In re Estate of Bergland*, 180 Cal. 629, 182 P. 277 (1919) (revocation by subsequent will). This section is not intended as a complete listing of acts that may be held exempt from enforcement of a no contest clause. See Section 21301 (application of part).

Probate Code § 21307 (added). Interested participant

Comment. Section 21307 adds a probable cause limitation to, and expands and generalizes, former subdivision (d) of Section 6112, which provided that a no contest clause does not apply to a contest or attack on a provision of the will that benefits a witness to the will.

As used in subdivision (b), a person who gave directions concerning dispositive or other substantive contents of a provision does not include a person who merely provided information such as birthdates, the spelling of names, and the like. Subdivision (b) only applies where the beneficiary directs the drafter of the instrument without concurrence of the transferor. The subdivision does not apply, for example, where the transferor and beneficiary together discuss the contents of the instrument with an estate planner and the transferor requests that the provision or the no contest clause be included in the instrument.

This section is not intended as a complete listing of acts that may be held exempt from enforcement of a no contest clause. See Section 21301 (application of part).

APPENDIX 6
COMMUNICATION FROM
THE CALIFORNIA LAW REVISION COMMISSION
CONCERNING SENATE BILL 985

Senate Bill 985 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Multiple-Party Accounts in Financial Institutions*, 20 Cal. L. Revision Comm'n Reports 95 (1990). The Comments in the Commission's recommendation to the sections contained in Senate Bill 985 remain applicable except to the extent that they are replaced or supplemented by the revised and new Comments set out below. This report includes Comments revised to reflect amendments made in the Senate and in the Assembly.

Probate Code § 5134 (added). Net contribution

Comment. Subdivisions (a) and (b) of Section 5134 restate the substance of subdivision (f) of former Section 5101 with the substitution of "whether or not included in the current balance" for the former phrase "included in the current balance."

Subdivision (a) of Section 5134 is the same in substance as subsection (6) of Section 6-101 of the Uniform Probate Code (1982). As may be seen from an examination of the provisions of this part, "net contribution" as defined in subdivision (a) has no application to the financial institution-depositor relationship. Rather, it is relevant only to controversies that may arise between parties to a multiple-party account. Subdivision (c), which is not found in the Uniform Probate Code (1987), makes this clear.

Subdivision (b) of Section 5134 is not found in the Uniform Probate Code. This subdivision provides a clear rule concerning the amount of "net contribution" in the absence of proof of a different amount.

Probate Code § 5136 (added). Party

Comment. Section 5136 restates the substance of subdivision (g) of former Section 5101 without substantive change, and is the same in substance as subsection (7) of Section 6-101 of the Uniform Probate Code (1982), with the following revisions:

(1) Section 5136 omits the third sentence of former subdivision (g) (defining "party" to include a guardian, conservator, personal representative, or assignee, including a levying creditor, of a party). This part does not apply to an account established for the deposit of funds of the estate of a ward, conservatee, or decedent. See Section 5122(b)(4).

(2) Section 5136 omits the portion of the last sentence of former subdivision (g) relating to "a person identified as a trustee of an account for another whether or not a beneficiary is named," this portion being unnecessary. Insofar as this language applied to the trustee of a Totten trust account, it is unnecessary in view of subdivision (a) of Section 5136 which applies to any person, including a trustee of a Totten trust, who has a present right to payment. Insofar as this language applied to a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account, it is unnecessary because this statute does not apply to such a trustee. See Section 5122(b)(3). See also Section 80 (defining "Totten trust account").

(3) Section 5136 revises the remaining portion of the last sentence of former subdivision (g) to conform to the language used in subdivision (b) of Section 5136.

The phrase "other than as an agent" in subdivision (a) makes clear that the person named as an agent (attorney in fact under a power of attorney) is not a "party" for the purposes of the statute. See Section 5124 (defining "agent"). A P.O.D. payee or a Totten trust beneficiary is a party under subdivision (a) if the payee or beneficiary has, by the terms of the account, a present right, subject to request, to payment from the account other than as an agent.

Probate Code § 5146 (added). Receives

Comment. Section 5146 continues subdivision (f) of former Section 5101 without change, with the exception of the introductory clause which has been added to make clear that the rule provided in this section is subject to contrary provision in the account or deposit agreement. There is no comparable provision in the Uniform Probate Code.

Probate Code § 5302 (amended). Right of survivorship

Comment. Section 5302 is amended to make technical, nonsubstantive revisions and to conform to language used in other provisions of this part.

Under subdivision (a) of Section 5303, rights of survivorship are determined by the form of the account at the death of a party. Under that section, a party having the right of withdrawal can eliminate survivorship rights, for example, by closing out the account having the survivorship rights and opening a new account without survivorship rights. See the Comment to Section 5303.

The rule stated in subdivision (d) of Section 5302 applies to an account where there is clear and convincing evidence of an intent not to have a right of survivorship and the decedent has not designated a P.O.D. payee,

such as a case where the terms of the account expressly provide that there is no right of survivorship or where the account is expressly described in the deposit agreement as a "tenancy in common" account (Section 5306). In a case where the rule stated in subdivision (d) applies, only the decedent's interest in the account becomes a part of the decedent's estate. A party to a "tenancy in common" account may, of course, designate a P.O.D. payee for the party's interest in the account, in which case upon the party's death the party's interest in the account is paid to the P.O.D. payee rather than to the party's estate. In the case of an account expressly designated in the deposit agreement as a "community property" account, either spouse may designate a P.O.D. payee for that spouse's interest, thereby making clear that the other spouse has no survivorship right to that interest, or may provide expressly in the deposit agreement that there is no survivorship right or may make a disposition of the interest in his or her will, in which case the rule in subdivision (d) applies.

Probate Code § 5401 (amended). Multiple-party accounts; terms; requirements

Comment. Section 5401 is amended to add the reference to agents in subdivision (a). See Section 5124 (defining "agent"). See also Section 5204 (power of attorney with respect to accounts at financial institutions). Subdivision (c) is amended to add paragraphs (2) and (3). Subdivision (d) is a new provision that clarifies the effect of liens, security interests, rights of setoff, and charges on the account.

APPENDIX 7

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

Commercial Real Property Leases

Assignment and Sublease

February 1989

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Commercial Real Property Leases: Assignment and Sublease*, 20 Cal. L. Revision Comm'n Reports 251 (1990).

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

CALIFORNIA LAW REVISION COMMISSION

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February 10, 1989

To: The Honorable George Deukmejian
Governor of California, and
The Legislature of California

This recommendation would clarify the law governing assignment and subletting of commercial real property leases. Under the recommendation, the parties to a lease may restrict or prohibit the right to assign or sublet, and their agreement is enforceable. If the lease prohibits assignment or subletting without the landlord's consent, but is silent as to the standard for exercise of the landlord's consent, the recommendation would codify the case law implication of a reasonableness standard. The codification would apply to a lease executed on or after December 5, 1985, the date of the California Supreme Court case establishing the implied standard.

This recommendation is submitted pursuant to Resolution Chapter 81 of the Statutes of 1988.

Respectfully submitted,

Forrest A. Plant
Chairperson

RECOMMENDATION

Background

Traditionally, if a lease required the landlord's consent to an assignment or sublease, the landlord had absolute discretion whether or not to consent. But in 1985, the California Supreme Court reversed this rule in *Kendall v. Ernest Pestana, Inc.*¹ Under *Kendall*, if a commercial real property lease provides no standard governing the landlord's consent, the landlord may not withhold consent to the tenant's assignment or sublease unless the landlord has a commercially reasonable objection.

The *Kendall* decision leaves unresolved a number of related issues. Among these issues are (1) whether the new rule should be applied to leases executed before the decision,² (2) whether the rule should be applied to residential leases,³ and (3) whether a lease may absolutely prohibit assignment or grant absolute discretion over assignment to the landlord.⁴ The uncertainty that now exists in the law relating to assignment and sublease will continue to cause problems in practice and disrupt normal commerce. The California Law Revision Commission has concluded that the law in this area should be codified and clarified.

Codification of *Kendall*

If a lease precludes the tenant from assigning or subletting without the landlord's consent, but is silent as to the standards governing the landlord's consent, should the landlord have absolute discretion or should

1. 40 Cal. 3d 488, 220 Cal. Rptr. 818, 709 P. 2d 837 (1985).

2. See Coskran, *Assignment and Sublease Restrictions: The Tribulations of Leasehold Transfers*, 22 Loy. L.A.L. Rev. 405, 462-68 (1989).

3. "We are presented only with a commercial lease and therefore do not address the question whether residential leases are controlled by the principles articulated in this opinion." *Kendall*, 40 Cal. 3d at 492 n. 1.

4. *Kendall*, 40 Cal. 3d at 499 n. 14.

the law imply a standard of reasonableness? Since December 5, 1985, the date of the *Kendall* decision, California law has implied a standard of reasonableness. Before that date, absolute discretion was the generally accepted rule.⁵

Both of these rules promote identifiable public policies. The *Kendall* rule is supported by the policy against unreasonable restraints on alienation⁶ and the implied contractual duty of good faith and fair dealing⁷. Considerations that support the previous rule of landlord discretion include the landlord's overriding interest in protecting the reversion and the uncertainty and litigation caused by a reasonableness standard.

In deciding between the competing policies, the decisive factor should be the reasonable expectations of the parties who negotiate a provision in a lease requiring the landlord's consent without further guidance. Certainty in the law and the ability to rely on a negotiated agreement are of primary importance in the commercial world. The parties need assurance that the rights and obligations under their tenancy agreement will be honored.

By now, parties who negotiate a lease understand the *Kendall* rule that if the lease is silent on standards for the landlord's consent, the law implies a reasonableness requirement. The parties' reliance on the *Kendall* rule should be protected. The Commission recommends that the *Kendall* rule be codified to confirm this reliance and

5. See Coskran, *Assignment and Sublease Restrictions: The Tribulations of Leasehold Transfers*, 22 Loy. L.A.L. Rev. 406, 433-38 (1989); *Kendall*, 40 Cal. 3d at 507-11 (dissent); *Kreisher v. Mobil Oil Corporation*, 198 Cal. App. 3d 389, 243 Cal. Rptr. 662 (1988), *review denied* May 5, 1988.

6. *Kendall*, 40 Cal. 3d at 498-500.

7. *Kendall*, 40 Cal. 3d at 500.

protect parties from future changes in the currents and tides of judicial philosophy.

Application to Pre-*Kendall* Leases

The *Kendall* rule should be codified only as to leases executed on or after December 5, 1985, the date of the *Kendall* decision. The interest of parties who relied on the pre-*Kendall* rule of absolute landlord discretion is also entitled to protection. This recommendation is consistent with narrow judicial construction of pre-*Kendall* leases by post-*Kendall* cases,⁸ and with case law expressly limiting retroactivity of *Kendall*.⁹

Impact of *Kendall* on Landlord Remedies

Under Civil Code Section 1951.4, the landlord may keep the lease in force and require continued payment of rent notwithstanding abandonment by the tenant. This remedy is available only if the lease expressly incorporates the remedy and only if the lease allows the tenant to assign or sublet. If the landlord's consent is required to assign or sublet, the lease must also provide that the landlord's consent may not unreasonably be withheld. This statute was based on the assumption of prior law that the landlord's consent is not subject to a reasonableness requirement unless the lease imposes it.

With the change in California law to imply a reasonableness requirement in the absence of an express standard for consent in the lease, Section 1951.4 should also be revised. The landlord's right to keep the lease in force should be available if a reasonableness standard is implied, as well as if the lease expressly imposes a

8. See, e.g., *John Hogan Enterprises, Inc. v. Kellogg*, 187 Cal. App. 3d 589, 231 Cal. Rptr. 818 (1985); *Airport Plaza, Inc. v. Blanchard*, 188 Cal. App. 3d 1594, 234 Cal. Rptr. 198 (1987).

9. *Kreisher v. Mobil Oil Corporation*, 198 Cal. App. 3d 389, 243 Cal. Rptr. 662 (1988), *review denied* May 5, 1988.

reasonableness standard. Other technical and clarifying amendments should also be made in Section 1951.4.¹⁰

Other Lease Restrictions on Transfer

Kendall dealt only with a lease clause that requires the landlord's consent but that fails to state a standard for giving or withholding consent. However, the reasoning of the decision raises issues concerning the validity of other types of lease restrictions on transfer. The court's concern over unreasonable restraints on alienation and the court's importation of the good faith and fair dealing doctrine into lease law could easily affect other types of restrictions on lease transfer.¹¹ The Commission believes a systematic statutory exposition of the governing law in this area is necessary to avoid many years of litigation and uncertainty.

The statute should reaffirm the governing principle of freedom of contract between the parties to a lease and honor the reasonable expectations of the parties based on their agreement. The parties should be able to negotiate any restrictions on transfer that are appropriate

10. Changes in Section 1951.4 recommended by the Commission include:

(1) Form language should be provided in the statute that the parties may use to incorporate the remedy provided by Section 1951.4.

(2) The remedy should be available to the landlord if the lease does not prohibit, rather than "if the lease permits," assignment or sublease.

(3) Any lease standards and conditions for transfer should be presumed reasonable, although the tenant should be able to show that a particular standard or condition is unreasonable under the circumstances when it is applied.

(4) The statute should state clearly that, if a condition on transfer has become unreasonable due to a change in circumstances, the landlord may waive the condition and still take advantage of the Section 1951.4 remedy.

(5) The existence or exercise of a provision in a lease that gives the landlord the right to recapture any benefits realized by the tenant as a result of a transfer should not preclude the landlord's use of the Section 1951.4 remedy.

11. See, e.g., Coskran, *Assignment and Sublease Restrictions: The Tribulations of Leasehold Transfers*, 22 Loy. L.A.L. Rev. 405, 445-47 (1989).

for the particular transaction with the assurance that the restrictions will be enforced. While this fundamental principle assumes some bargaining ability by both parties to the lease, it does not necessarily assume equality of bargaining position. Either the landlord or the tenant may have superior bargaining power depending on its financial condition, its representation by legal counsel, the economics of the commercial lease market, and other factors. Where the situation is such that the lease is a contract of adhesion or the particular clause is unconscionable, for example, general principles limiting freedom of contract will govern.¹²

The statute should codify the common law rules that the tenant may assign or sublet freely unless the parties agree to a limitation on the right of the tenant to assign or sublease,¹³ and that any ambiguities in a limitation are to be construed in favor of transferability.¹⁴ The statute should make clear that the right to agree to limitations on transferability includes the right to agree that the tenant's interest will be absolutely nontransferable, or that the tenant's interest may not be transferred without the landlord's consent, which may be given or withheld in the landlord's sole and absolute discretion.

The parties should also be able to agree on standards and conditions for transfer, and those standards and conditions should be enforceable. The conditions might include, for example, that the landlord is entitled to recapture any consideration realized by the tenant as a

12. See, e.g., 1 B. Witkin, *Summary of California Law Contracts* §§23-36 (9th ed. 1987) (adhesion and unconscionable contract doctrines).

13. See, e.g., *Kassan v. Stout*, 9 Cal. 3d 39, 507 P. 2d 87, 106 Cal. Rptr. 783 (1973).

14. See, e.g., *Chapman v. Great Western Gypsum Co.*, 216 Cal. 420, 14 P. 2d 758 (1932).

result of a transfer. So long as the limitation satisfies the general restrictions on freedom of contract, it should be recognized as valid.

Application to Commercial and Not Residential Leases

The recommendations made in this report relate only to commercial real property leases, not to residential leases. While it might be beneficial to clarify the law relating to residential leases and to maintain some degree of uniformity between the residential and commercial lease law of the state, different policy considerations (particularly relating to bargaining position of the parties) affect commercial and residential lease law. Moreover, transfer issues arise less frequently in connection with residential leases because they are generally short in duration and rarely develop a large transfer value. A residential tenant may not expect to receive consideration on assignment or sublease of the tenancy to the same extent a commercial tenant may be seeking consideration as part of the lease transaction.

For these reasons, the Commission believes the recommendations made in this report should be limited to commercial leases at this time. The Commission plans to give further study, in a later report, to the issue of whether some or all of the recommendations should be made applicable to residential leases.

PROPOSED LEGISLATION

The Commission's recommendations would be effectuated by enactment of the following measure.

An act to amend Section 1951.4 of, and to add Chapter 6 (commencing with Section 1995.010) to Title 5 of Part 4 of Division 3 of, the Civil Code, relating to commercial real property leases.

The people of the State of California do enact as follows:

Civil Code §1951.4 (amended). Continuation of lease after breach and abandonment

SECTION 1. Section 1951.4 of the Civil Code is amended to read:

1951.4. (a) The remedy described in this section is available only if the lease provides for this remedy. *In addition to any other type of provision used in a lease to provide for the remedy described in this section, a provision in a lease in substantially the following form satisfies this subdivision:*

The lessor has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign subject only to reasonable limitations).

(b) Even though a lessee of real property has breached ~~his~~ *the* lease and abandoned the property, the lease continues in effect for so long as the lessor does not terminate the lessee's right to possession, and the lessor may enforce all ~~his~~ *the* lessor's rights and remedies under the lease, including the right to recover the rent as it becomes due under the lease, ~~if the lease permits the lessee to do any of the following conditions is satisfied:~~

(1) ~~Sublet~~ *The lease permits the lessee, or does not prohibit or otherwise restrict the right of the lessee, to sublet the property, assign ~~his~~ the lessee's interest in the lease, or both.*

(2) ~~Sublet~~ *The lease permits the lessee to sublet the property, assign ~~his~~ the lessee's interest in the lease, or both, subject to express standards or conditions, provided the standards and conditions are reasonable at the time*

the lease is executed and the lessor does not require compliance with any ~~unreasonable standard for, nor any unreasonable condition on, such subletting or assignment.~~ standard or condition that has become unreasonable at the time the lessee seeks to sublet or assign. For purposes of this paragraph, an express standard or condition is presumed to be reasonable; this presumption is a presumption affecting the burden of proof.

(3) ~~Sublet~~ *The lease permits the lessee to sublet the property, assign his the lessee's interest in the lease, or both, with the consent of the lessor, and the lease provides that such consent shall not be unreasonably be withheld or the lease includes a standard implied by law that consent shall not be unreasonably withheld.*

(c) For the purposes of subdivision (b), the following do not constitute a termination of the lessee's right to possession:

(1) Acts of maintenance or preservation or efforts to relet the property.

(2) The appointment of a receiver upon initiative of the lessor to protect the lessor's interest under the lease.

(d) *Neither the presence nor the exercise of a provision in a lease that, if the lessee receives from a sublessee or assignee consideration in excess of the rent under the lease, the lessor is entitled to some or all of the consideration, precludes the lessor's use of the remedy described in this section.*

Comment. Subdivision (a) of Section 1951.4 is amended to provide a "safe harbor" of specific language that satisfies the requirement that the lease provide for the remedy in this section. The amendment should not be construed to imply that no other form of language will satisfy the requirement. Whether any other language will satisfy the requirement depends on the language used and the understanding of the parties.

Subdivision (b)(1) is amended to recognize that a lessee may sublet the property or assign the lessee's interest in the lease whether or not the lease permits it, so long as the lease does not prohibit it. Cf. Section 1995.210 (right to transfer commercial lease absent a restriction). Under subdivision (b)(1), a lessor may not include a prohibition against subletting or assignment and thereafter take advantage of the remedy of this section by waiving the prohibition; the lessee must have a legal right to sublet or assign subject only to reasonable limitations from the outset if the lessor is to have the remedy provided in this section.

The parties may agree to express standards and conditions for assignment and sublease. Section 1995.240 (transfer restriction in commercial lease subject to standards and conditions). Subdivision (b)(2) is amended to make clear that an express standard or condition on transfer is presumed reasonable. This is consistent with cases involving the reasonableness standard generally and with the underlying philosophy of this chapter. See Coskran, *Assignment and Sublease Restrictions: The Tribulations of Leasehold Transfers*, 22 Loy. L.A.L. Rev. 405, 474 (1989). See also subdivision (d).

Subdivision (b)(2) also is amended to clarify existing law that the lessor may waive a standard or condition on subletting or assignment that, although originally reasonable, has become unreasonable, and still take advantage of the remedy provided in Section 1951.4. See *Recommendation Relating to Real Property Leases*, 9 Cal. L. Revision Comm'n Reports 153, 168 (1969) ("Occasionally, a standard or condition, although reasonable at the time it was included in the lease, is unreasonable under circumstances existing at the time of the subletting or assignment. In such a situation, the lessor may resort to the remedy provided by Section 1951.4 if he does not require compliance with the now unreasonable standard or condition."). However, subdivision (b)(2) does not permit the lessor to take advantage of the remedy provided in this section by including in the lease a standard or condition that is originally unreasonable and thereafter waive it; the lessee must have a legal right to sublet or assign subject only to reasonable limitations from the outset if the lessor is to have the remedy provided in this section.

Subdivision (b)(3) is amended to recognize that the lessor's consent to an assignment or subletting may not unreasonably be withheld, even though the lease does not require reasonableness,

if the lease provides no standard for giving or withholding consent. Section 1995.260 (implied standard for landlord's consent in commercial lease). Under this subdivision a lessor may not take advantage of the remedy provided in this section by including in the lease a clause that gives the lessor absolute discretion or the right unreasonably to withhold consent or that subjects the lessor's consent to unreasonable limitations, and thereafter waiving the clause; the lessee must have a legal right to sublet or assign subject only to reasonable limitations from the outset if the lessor is to have the remedy provided in this section.

Under subdivision (c), a provision in the lease that the lessor may elect either to consent to a subletting or assignment or to terminate the lessee's right to possession, would not constitute a termination of the lessee's right to possession, so long as the lessor does not make the election to terminate the lessee's right to possession.

Subdivision (d) is new. See Section 1995.240 and Comment thereto (transfer restriction in commercial lease subject to standards and conditions).

The other changes in Section 1951.4 are technical, intended to render the provision gender-neutral.

The amendments apply to leases executed before, on, or after the operative date of the amendments, except as provided in Section 1952.

Civil Code §§1995.010-1995.270 (added).

Assignment and sublease

SEC. 2. Chapter 6 (commencing with Section 1995.010) is added to Title 5 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 6. ASSIGNMENT AND SUBLEASE

Article 1. General Provisions

§1995.010. Scope of chapter

1995.010. This chapter applies to transfer of a tenant's interest in a lease of real property for other than residential purposes.

Comment. Section 1995.010 limits the scope of this chapter to commercial real property leases. Assignment and sublease issues concerning personal property leases and residential real property

leases involve different public policies than commercial real property leases, and therefore are governed by the common law and not by this chapter.

§1995.020. Definitions

1995.020. As used in this chapter:

(a) "Landlord" includes a tenant who is a sublandlord under a sublease.

(b) "Lease" means a lease or sublease of real property for other than residential purposes, and includes modifications and other agreements affecting a lease.

(c) "Restriction on transfer" means a provision in a lease that restricts the right of transfer of the tenant's interest in the lease.

(d) "Tenant" includes a subtenant or assignee.

(e) "Transfer" of a tenant's interest in a lease means an assignment, sublease, or other voluntary or involuntary transfer or encumbrance of all or part of a tenant's interest in the lease.

Comment. Section 1995.020 provides definitions for drafting convenience.

Subdivision (b) is consistent with Section 1995.010 (scope of chapter). A restriction separately agreed to by the parties that affects a lease is part of the lease for purposes of this chapter. The provisions of this chapter apply between parties to a sublease and between parties to an assigned lease, as well as between original parties to a lease.

Subdivision (e) makes clear that the statute applies not only to lease restrictions on assignments and subleases but also to lease restrictions on encumbrances of the tenant's interest, by way of mortgage, trust deed, assignment for security purposes, or other creation of a security interest, and to lease restrictions on involuntary transfers of the tenant's interest, including transfer pursuant to execution sale or tax sale. *Cf.* Comment to Section 1995.220 (transfer restriction strictly construed).

§1995.030. Transitional provision

1995.030. Except as provided in Section 1995.270, this chapter applies to a lease executed before, on, or after January 1, 1990.

Comment. Section 1995.030 makes clear that this chapter is intended to be applied to existing leases as well as to leases executed after its operative date. An exception is made in the case of the rule of Section 1995.260 (implied standard for landlord's consent), which only applies to leases executed on or after the operative date of this chapter. See Section 1995.270 (limitation on retroactivity of Section 1995.260).

Article 2. Restrictions on Transfer

§1995.210. Right to transfer absent a restriction

1995.210. (a) Subject to the limitations in this chapter, a lease may include a restriction on transfer of the tenant's interest in the lease.

(b) Unless a lease includes a restriction on transfer, a tenant's rights under the lease include unrestricted transfer of the tenant's interest in the lease.

Comment. Subdivision (a) of Section 1995.210 is a specific application of general principles of freedom of contract. Subdivision (a) is limited by the provisions of this chapter governing restrictions on transfer. See, e.g., Section 1995.260 (implied standard for landlord's consent). Neither the law governing unreasonable restraints on alienation (see, e.g., Civil Code §711) nor the law governing the implied covenant of good faith and fair dealing (see, e.g., *California Lettuce Growers v. Union Sugar Co.*, 45 Cal. 2d 474, 289 P. 2d 785 (1955)) prevents the enforcement of a restriction on transfer in accordance with the express terms of the restriction. It should be noted, however, that subdivision (a) remains subject to general principles limiting freedom of contract. See, e.g., 1 B. Witkin, *Summary of California Law Contracts* §§23-36 (9th ed. 1987) (adhesion and unconscionable contract doctrines).

Subdivision (b) codifies the common law rule that a tenant may freely assign or sublease unless the right is expressly restricted by the parties. See, e.g., *Kassan v. Stout*, 9 Cal. 3d 39, 507 P. 2d 87, 106 Cal. Rptr. 783 (1973).

§1995.220. Transfer restriction strictly construed

1995.220. An ambiguity in a restriction on transfer of a tenant's interest in a lease shall be construed in favor of transferability.

Comment. Section 1995.220 codifies the common law. See, e.g., *Chapman v. Great Western Gypsum Co.*, 216 Cal. 420, 14 P. 2d 758 (1932). This section is also consistent with the common law rule that lease restrictions on involuntary transfer are strictly construed. See discussion in Coskran, *Assignment & Sublease Restrictions: The Tribulations of Leasehold Transfers*, 22 Loy. L.A.L. Rev. 405, 524-31 (1989); cf. Section 1995.020(e) ("transfer" defined).

§1995.230. Transfer prohibition

1995.230. A restriction on transfer of a tenant's interest in a lease may absolutely prohibit transfer.

Comment. Section 1995.230 settles the question raised in *Kendall v. Ernest Pestana, Inc.*, 40 Cal. 3d 488, 220 Cal. Rptr. 818, 709 P.2d 837 (1985), of the validity of a clause absolutely prohibiting assignment or sublease. 40 Cal. 3d at 499 n. 14. A lease term absolutely prohibiting transfer of the tenant's interest is not invalid as a restraint on alienation. Such a term is valid subject to general principles governing freedom of contract, including the adhesion contract doctrine, where applicable. See Section 1995.210 and Comment thereto (right to transfer absent a restriction). It should be noted that an absolute prohibition on transfer precludes the landlord's use of the remedy provided in Section 1951.4 (continuation of lease after breach and abandonment). See Section 1951.4 and Comment thereto.

§1995.240. Transfer restriction subject to standards and conditions

1995.240. A restriction on transfer of a tenant's interest in a lease may provide that the transfer is subject to any standard or condition, including but not limited to a provision that the landlord is entitled to some or all of any consideration the tenant receives from a transferee in excess of the rent under the lease.

Comment. Section 1995.240 codifies the rule stated in *Kendall v. Ernest Pestana, Inc.*, 40 Cal. 3d 488, 220 Cal. Rptr. 818, 709 P.2d 837 (1985), that "nothing bars the parties to commercial lease transactions from making their own arrangements respecting the allocation of appreciated rentals if there is a transfer of the leasehold." 40 Cal. 3d at 505 n. 17. This section does not apply,

and Section 1995.250 does apply, to a restriction on transfer of a tenant's interest in a lease that requires the landlord's consent for transfer.

The authority provided in this section for the parties to agree to an express lease provision governing allocation of consideration for transfer of the tenant's interest in a lease is not intended to create an implication that absent an express provision the landlord is not entitled to demand all or part of the consideration as a condition for consenting to the transfer in a case where the lease requires the landlord's consent. Whether such a demand would be "unreasonable" within the meaning of Section 1995.250(a) (express standards and conditions for landlord's consent) or 1995.260 (implied standard for landlord's consent) is a question of fact that must be determined under the circumstances of the particular case. See Comments to Sections 1995.250 and 1995.260.

Section 1995.240 is a specific application of subdivision (a) of Section 1995.210 (lease may include transfer restriction). It should be noted that an unreasonable restriction on transfer precludes the landlord's use of the remedy provided in Section 1951.4 (continuation of lease after breach and abandonment). See Section 1951.4 and Comment thereto. Moreover, Section 1995.240 remains subject to general principles limiting freedom of contract. See Section 1995.210 and Comment thereto.

§1995.250. Express standards and conditions for landlord's consent

1995.250. A restriction on transfer of a tenant's interest in a lease may require the landlord's consent for transfer subject to any express standard or condition for giving or withholding consent, including, but not limited to, any of the following:

- (a) The landlord's consent may not be unreasonably withheld.
- (b) The landlord's consent may be withheld subject to express standards or conditions.
- (c) The landlord has absolute discretion to give or withhold consent, including the right to unreasonably withhold consent.

Comment. Section 1995.250 is a specific application of the broad latitude provided in this chapter for the parties to a lease to contract for express restrictions on transfer of the tenant's interest in the lease. Such restrictions are valid subject to general principles governing freedom of contract, including the adhesion contract doctrine, where applicable. See Section 1995.210 and Comment thereto (right to transfer absent a restriction). It should be noted that an unreasonable restriction on transfer precludes the landlord's use of the remedy provided in Section 1951.4 (continuation of lease after breach and abandonment). See Section 1951.4 and Comment thereto.

The meaning of "unreasonably withheld" under subdivision (a) is a question of fact that must be determined under the circumstances of the particular case, applying an objective standard of commercial reasonableness as developed by case law.

Subdivision (b) makes clear that the lease may condition the landlord's consent in any manner. Standards and conditions for the landlord's consent may include, for example, a provision that, if the lessee receives consideration for the transfer in excess of the rent under the lease, the landlord may recover some or all of the consideration as a condition for consent. *Cf.* Section 1995.240 (transfer restriction subject to standards and conditions).

Subdivision (c) settles the question raised in *Kendall v. Ernest Pestana, Inc.*, 40 Cal. 3d 488, 220 Cal. Rptr. 818, 709 P.2d 837 (1985), of the validity of a clause granting absolute discretion over assignment or sublease to the landlord. 40 Cal. 3d at 499 n. 14. A lease clause of the type described in subdivision (c) is not invalid as a restraint on alienation, and its exercise by the landlord is not a violation of the law governing good faith and fair dealing.

The inclusion in the lease of a provision that the landlord may elect either to consent or to terminate the tenant's right to possession, does not preclude the landlord's use of the remedy provided in Section 1951.4, so long as the landlord does not exercise the election to terminate the right to possession. See Comment to Section 1951.4.

§1995.260. Implied standard for landlord's consent

1995.260. If a restriction on transfer of the tenant's interest in a lease requires the landlord's consent for transfer but provides no standard for giving or withholding consent, the restriction on transfer shall be

construed to include an implied standard that the landlord's consent may not be unreasonably withheld. Whether the landlord's consent has been unreasonably withheld in a particular case is a question of fact on which the tenant has the burden of proof. The tenant may satisfy the burden of proof by showing that, in response to the tenant's written request for a statement of reasons for withholding consent, the landlord has failed, within a reasonable time, to state in writing a reasonable objection to the transfer.

Comment. Section 1995.260 codifies the rule of *Kendall v. Ernest Pestana, Inc.*, 40 Cal. 3d 488, 709 P. 2d 837, 220 Cal. Rptr. 818 (1985). The retroactive application of Section 1995.260 is limited by Section 1995.270.

Under Section 1995.260, whether a landlord's consent has been unreasonably withheld may be a question of procedure or substance or both. A landlord may act unreasonably in responding to a request of the tenant for consent to a transfer (for example by delaying or failing to respond or by requiring excessive investigation charges), or the landlord may not have a reasonable objection to the transfer. Either of these circumstances may give rise to a determination that the landlord has unreasonably withheld consent to the transfer within the meaning of this section.

This section provides the tenant a means of satisfying the burden of proof on this matter by making a written request for a statement of reasons. However, this is not the exclusive means of satisfying the burden of proof that the landlord's consent has been unreasonably withheld in a particular case, and proof of unreasonableness may be made by other means.

Although *Kendall* states as a matter of law that denial of consent solely on the basis of personal taste, convenience, or sensibility, and denial of consent in order that the landlord may charge a higher rent than originally contracted for, are not commercially reasonable (40 Cal. 3d at 501), Section 1995.260 rejects an absolute approach to the question of commercial reasonableness. Whether a particular objection is reasonable within the meaning of this section is a question of fact that must be determined under the circumstances of the particular case, applying an objective standard of commercial reasonableness as

developed by case law. For example, in some circumstances it may be commercially reasonable for the landlord to require, as a condition for consenting to an assignment, that the premium received by the tenant for the assignment be paid to the landlord. See *John Hogan Enterprises, Inc. v. Kellogg*, 187 Cal. App. 3d 589, 231 Cal. Rptr. 711 (1986).

§1995.270. Limitation on retroactivity of Section 1995.260

1995.270. (a) The Legislature finds and declares:

(1) It is the public policy of the state and fundamental to the commerce and economic development of the state to enable and facilitate freedom of contract by the parties to commercial real property leases.

(2) The parties to commercial real property leases must be able to negotiate and conduct their affairs in reasonable reliance on the rights and protections given them under the laws of the state.

(3) Until the case of *Kendall v. Ernest Pestana, Inc.*, 40 Cal. 3d 488 (1985), the parties to commercial real property leases could reasonably rely on the law of the state to provide that if a lease restriction requires the landlord's consent for transfer of the tenant's interest in the lease but provides no standard for giving or withholding consent, the landlord's consent may be unreasonably withheld.

(4) The Kendall case reversed the law on which parties to commercial real property leases executed before December 5, 1985, the date of the Kendall case, could reasonably rely, thereby frustrating the expectations of the parties, with the result of impairing commerce and economic development.

(b) Section 1995.260 applies to a restriction on transfer executed on or after December 5, 1985. If a restriction on transfer executed before December 5, 1985, requires the landlord's consent for the tenant's transfer but

provides no standard for giving or withholding consent, the landlord's consent may be unreasonably withheld, except that in an action concerning the restriction commenced before January 1, 1990, the law applicable at the time of trial of the action governs. For purposes of this subdivision, if the terms of a restriction on transfer are fixed by an option or other agreement, the restriction on transfer is deemed to be executed on the date of execution of the option or other agreement.

Comment. Section 1995.270 limits the retroactive application of Section 1995.260 (implied standard for landlord's consent) and the *Kendall* case which it codifies. *Kendall v. Ernest Pestana, Inc.*, 40 Cal. 3d 488, 220 Cal. Rptr. 818, 709 P.2d 837 (1985). The date of applicability of Section 1995.260 is December 5, 1985, the date of the *Kendall* opinion. If there is a sublease on or after December 5, 1985, under a lease executed before that date, the rights as between the parties to the sublease are governed by Section 1995.260. See Section 1995.020(b) ("lease" means lease or sublease).

Limitation of retroactive operation of Section 1995.260 is supported by the public policy stated in subdivision (a) of Section 1995.270, including the need for foreseeability, reliance, and fairness, and is consistent with case law expressly limiting retroactivity of *Kendall*. See Coskran, *Assignment and Sublease Restrictions: The Tribulations of Leasehold Transfers*, 22 Loy. L.A.L. Rev. 405, 433-35 (1989); *Kendall, supra*, 40 Cal. 3d at 507-11 (dissent); *Kreisher v. Mobil Oil Corporation*, 198 Cal. App. 3d 389, 243 Cal. Rptr. 662 (1988).

APPENDIX 8
REPORT OF
THE CALIFORNIA LAW REVISION COMMISSION
ON SENATE BILL 536

Senate Bill 536 was introduced by Senator Beverly to enact the California Law Revision Commission's *Recommendation Relating to Commercial Real Property Leases*, 20 Cal. L. Revision Comm'n Reports (1990). The Comments printed in the recommendation remain applicable to the various sections of the bill except that the Comments set out below are revised to reflect amendments made to the bill during the legislative process and replace the corresponding Comments printed in the recommendation.

Civil Code § 1951.4 (amended). Continuation of lease after breach and abandonment

Comment. Subdivision (a) of Section 1951.4 is amended to provide a "safe harbor" of specific language that satisfies the requirement that the lease provide for the remedy in this section. The amendment should not be construed to imply that no other form of language will satisfy the requirement. Whether any other language will satisfy the requirement depends on the language used and the understanding of the parties.

Subdivision (b)(1) is amended to recognize that a lessee may sublet the property or assign the lessee's interest in the lease whether or not the lease permits it, so long as the lease does not prohibit it. *Cf.* Section 1995.210 (right to transfer commercial lease absent a restriction). Under subdivision (b)(1), a lessor may not include a prohibition against subletting or assignment and thereafter take advantage of the remedy of this section by waiving the prohibition; the lessee must have a legal right to sublet or assign subject only to reasonable limitations from the outset if the lessor is to have the remedy provided in this section.

The parties may agree to express standards and conditions for assignment and sublease. Section 1995.240 (transfer restriction in commercial lease subject to standards and conditions). Subdivision (b)(2) is amended to make clear that an express standard or condition on transfer is presumed reasonable; the presumption is only for the purpose of applying subdivision (b)(2). This is consistent with cases involving the reasonableness standard generally and with the underlying philosophy of this chapter. See Coskran, *Assignment and Sublease Restrictions: The Tribulations of Leasehold Transfers*, 22 Loy. L.A.L. Rev. 405, 474 (1989).

Subdivision (b)(2) also is amended to clarify existing law that the lessor may waive a standard or condition on subletting or assignment that, although originally reasonable, has become unreasonable, and still take advantage of the remedy provided in Section 1951.4. See *Recommendation Relating to Real Property Leases*, 9 Cal. L. Revision Comm'n Reports 153, 168 (1969) ("Occasionally, a standard or condition, although reasonable at the time it was included in the lease, is unreasonable under circumstances existing at the time of the subletting or assignment. In such a situation, the lessor may resort to the remedy provided by Section 1951.4 if he does not require compliance with the now unreasonable standard or condition."). However, subdivision (b)(2) does not permit the lessor to take advantage of the remedy provided in this section by including in the lease a standard or condition that is originally unreasonable and thereafter waive it; the lessee must have a legal right to sublet or assign subject only to reasonable limitations from the outset if the lessor is to have the remedy provided in this section.

Subdivision (b)(3) is amended to recognize that the lessor's consent to an assignment or subletting may not unreasonably be withheld, even though the lease does not require reasonableness, if the lease provides no standard for giving or withholding consent. Section 1995.260 (implied standard for landlord's consent in commercial lease). Under this subdivision a lessor may not take advantage of the remedy provided in this section by including in the lease a clause that subjects the lessor's consent to unreasonable limitations and thereafter waiving the clause; the lessee must have a legal right to sublet or assign subject only to reasonable limitations from the outset if the lessor is to have the remedy provided in this section.

The other changes in Section 1951.4 are technical, intended to render the provision gender-neutral.

The amendments apply to leases executed before, on, or after the operative date of the amendments, except as provided in Section 1952.

Civil Code § 1995.020 (added). Definitions

Comment. Section 1995.020 provides definitions for drafting convenience.

Subdivision (b) is consistent with Section 1995.010 (scope of chapter). A restriction separately agreed to by the parties that affects a lease is part of the lease for purposes of this chapter. The provisions of this chapter apply between parties to a sublease and between parties to an assigned lease, as well as between original parties to a lease.

Under subdivision (c), this chapter does not apply to a restriction on transfer of a lease or on encumbrance of a lease unless the restriction on

transfer or the restriction on encumbrance is expressly provided in the lease (as defined in this section).

Subdivision (e) makes clear that the statute applies not only to express lease restrictions on assignments and subleases but also to express lease restrictions on encumbrances of the tenant's interest, by way of mortgage, trust deed, assignment for security purposes, or other creation of a security interest, and to express lease restrictions on involuntary transfers of the tenant's interest, including transfer pursuant to execution sale or tax sale. *Cf.* Comment to Section 1995.220 (transfer restriction strictly construed).

Civil Code § 1995.030 (added). Transitional provision

Comment. Section 1995.030 makes clear that this chapter is intended to be applied to existing leases as well as to leases executed after its operative date. An exception is made in the case of the rule of Section 1995.260 (implied standard for landlord's consent), which only applies to leases executed on or after September 23, 1983. See Section 1995.270 (limitation on retroactivity of Section 1995.260).

Civil Code § 1995.240 (added). Transfer restriction subject to express standards and conditions

Comment. Section 1995.240 codifies the statement in *Kendall v. Ernest Pestana, Inc.*, 40 Cal. 3d 488, 220 Cal. Rptr. 818, 709 P.2d 837 (1985), that "nothing bars the parties to commercial lease transactions from making their own arrangements respecting the allocation of appreciated rentals if there is a transfer of the leasehold." 40 Cal. 3d at 505 n. 17. As used in this section, "consideration" includes "appreciated rentals" or any other term or description used by the parties to define any bonus value of the leasehold interest or any consideration attributable to the value of the leased premises that may be subject to sharing or shifting between the parties pursuant to contract in case of transfer by the tenant. This section does not apply, and Section 1995.250 does apply, to a restriction on transfer of a tenant's interest in a lease that requires the landlord's consent for transfer.

The affirmation stated in this section that the parties may agree to an express lease provision governing allocation of consideration for transfer of the tenant's interest in a lease is not intended to create any presumption that, absent such an express provision, a demand by the landlord for all or part of the consideration as a condition for consenting to the transfer is either reasonable or unreasonable. Whether such a demand would be "unreasonable" within the meaning of Section 1995.250(a) (express standards and conditions for landlord's consent) or

1995.260 (implied standard for landlord's consent) is a question to be governed by the case law on the subject. See also Comments to Sections 1995.250 and 1995.260.

Section 1995.240 is a specific application of subdivision (a) of Section 1995.210 (lease may include transfer restriction). It should be noted that an unreasonable restriction on transfer precludes the landlord's use of the remedy provided in Section 1951.4 (continuation of lease after breach and abandonment). See Section 1951.4 and Comment thereto. Moreover, Section 1995.240 remains subject to general principles limiting freedom of contract. See Section 1995.210 and Comment thereto.

Civil Code § 1995.250 (added). Express standards and conditions for landlord's consent

Comment. Section 1995.250 is a specific application of the broad latitude provided in this chapter for the parties to a lease to contract for express restrictions on transfer of the tenant's interest in the lease. Such restrictions are valid subject to general principles governing freedom of contract, including the adhesion contract doctrine, where applicable. See Section 1995.210 and Comment thereto (right to transfer absent a restriction). It should be noted that an unreasonable restriction on transfer precludes the landlord's use of the remedy provided in Section 1951.4 (continuation of lease after breach and abandonment). See Section 1951.4 and Comment thereto.

The meaning of "unreasonably withheld" under subdivision (a) is a question of fact that must be determined under the circumstances of the particular case, applying an objective standard of commercial reasonableness as developed by case law.

Subdivision (b) makes clear that the lease may condition the landlord's consent in any manner. Standards and conditions for the landlord's consent may include, for example, a provision that, if the lessee receives consideration for the transfer in excess of the rent under the lease, the landlord may recover some or all of the consideration as a condition for consent. *Cf.* Section 1995.240 (transfer restriction subject to standards and conditions).

Civil Code § 1995.270 (added). Limitation on retroactivity of Section 1995.260

Comment. Section 1995.270 limits the retroactive application of Section 1995.260 (implied standard for landlord's consent) and the *Kendall* case which it codifies. *Kendall v. Ernest Pestana, Inc.*, 40 Cal. 3d 488, 220 Cal. Rptr. 818, 709 P.2d 837 (1985). The date of

applicability of Section 1995.260 is September 23, 1983, the date of *Cohen v. Ratinoff*, 147 Cal. App. 3d 321, 195 Cal. Rptr. 84 (1983), which foreshadowed the *Kendall* opinion. If there is a sublease on or after September 23, 1983, under a lease executed before that date, the rights as between the parties to the sublease are governed by Section 1995.260. See Section 1995.020(b) ("lease" means lease or sublease).

Limitation of retroactive operation of Section 1995.260 is supported by the public policy stated in subdivision (a) of Section 1995.270, including the need for foreseeability, reliance, and fairness, and is consistent with case law expressly limiting retroactivity of *Kendall*. See *Coskran, Assignment and Sublease Restrictions: The Tribulations of Leasehold Transfers*, 22 Loy. L.A.L. Rev. 405, 433-35 (1989); *Kendall, supra*, 40 Cal. 3d at 507-11 (dissent); *Kreisher v. Mobil Oil Corporation*, 198 Cal. App. 3d 389, 243 Cal. Rptr. 662 (1988), review denied May 5, 1988.

Nothing in this section is intended to limit the law governing modification or waiver of a lease provision by subsequent conduct or agreement of the parties, including modification or waiver of a restriction on transfer that expressly or impliedly permits the landlord's consent to be unreasonably withheld, whether the lease was executed before or after September 23, 1983. See also Section 1995.020(b) ("lease" includes modifications and other agreements affecting lease). Thus, a tenant may show that the landlord's right to unreasonably withhold consent pursuant to an express or implied lease restriction executed before September 23, 1983, has been modified or waived.

APPENDIX 9

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

Trustees' Fees

April 1989

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 279 (1990).

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

CALIFORNIA LAW REVISION COMMISSION

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VAUGHN R. WALKER

April 13, 1989

To: The Honorable George Deukmejian
Governor of California, and
The Legislature of California

This recommendation proposes several revisions of the Trust Law (Prob. Code §§ 15000-18201) to provide some control over trustees' fees. The recommendation would:

- (1) Make existing judicial remedies for review of fees more explicit.
- (2) Require trustees to give 60 days' notice of proposed fee increases (other than extraordinary fees).
- (3) Clarify the right of beneficiaries to transfer a trust to a successor trust company.
- (4) Make the trustee liable for the beneficiaries' costs and reasonable attorney's fees in proceedings to replace the trustee where the trustee has refused to consent to the transfer without good cause.

The recommended legislation makes other minor clarifications and improvements in the Trust Law. The Trust Law was enacted on Commission recommendation in 1986, and this recommendation is part of the Commission's ongoing effort to review and act on suggestions for improvement in legislation enacted on Commission recommendation. It is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Forrest A. Plant
Chairperson

Review and Control of Trustees' Fees

As compensation for administering a trust, the trustee is entitled to a fee as provided in the trust instrument.¹ The fee specified in the trust is subject to court review and may be reduced where, for example, the amount is inequitable or unreasonably high.² If the trust instrument does not set the trustee's compensation, the trustee is entitled to a reasonable fee under the circumstances.³

In the past, when testamentary trusts were more closely controlled by the courts,⁴ the trustee's fees were subject to review in the annual approval of accounts. Under this scheme, the first bracket percentage fee was typically 3/4 of 1% of the principal value of trust property.⁵

Since 1982, many trust companies have increased their first bracket rates to 1% or more.⁶ In addition, several trust companies have raised the size of the first bracket so that the highest percentage fee is charged over a greater value of trust property.⁷ In most cases, the minimum fee has also been increased.⁸

1. Prob. Code § 15680(a).

2. Prob. Code § 15680(b). This remedy also applies where the amount of compensation is inadequate and the trustee seeks a higher amount. An order changing compensation acts only prospectively.

3. Prob. Code § 15681.

4. Trusts created after 1977 were not subject to continuing jurisdiction, but were made subject to the statute covering living trusts. See Prob. Code § 1120(c), as added by 1976 Cal. Stat. ch. 860, § 3. Beginning in 1983, trusts created before July 1, 1977, were required to be removed from continuing jurisdiction, if the trust had a corporate trustee, or permitted to be removed, if the trust did not have a corporate trustee. See Prob. Code § 1120.1a, as added by 1982 Cal. Stat. ch. 1199, § 2. The Trust Law, operative on July 1, 1987, reconfirmed the preference for intermittent court jurisdiction over both testamentary and living trusts at the instigation of an interested person. See Prob. Code § 17209.

5. See, e.g., Cohan & Fink, *Trustees and Administrative Provisions*, in California Will Drafting § 17.23, at 608 (Cal. Cont. Ed. Bar 1965); California Will Drafting Supplement § 17.23, at 259-60 (Cal. Cont. Ed. Bar 1981).

6. This conclusion is based on information gathered from 24 California trust companies comparing fee schedules in effect in 1982 and 1987. Ten out of 18 respondents had increased percentage rates during this 5-year period. See Corporate Trustees' Fees: Summary and Analysis of Information from Corporate Trustees 2-4 (October 1987) (on file at Commission office).

7. Five of the respondents raised the ceiling of the first bracket to which the highest percentage rate is applied. See Corporate Trustees' Fees: Summary and Analysis of Information from Corporate Trustees 2-6 & supporting data (October 1987) (on file at Commission office).

8. Fifteen of 18 respondents increased minimum fees between 1982 and 1987. One bank lowered its minimum fee. See Corporate Trustees' Fees: Summary and Analysis

The Commission has made no judgment on the propriety of the fees charged by California trustees. Representatives of corporate trustees have suggested that the fee increases result from a number of factors, such as inflation, the increased cost of doing business, the additional burden of regulation and reporting imposed on the banking industry, and a greater exposure to liability.⁹ It has also been suggested that the fees in the past may have been artificially low, and that trust departments are now expected to produce a higher level of return.¹⁰

The Commission has concluded that the appropriate level of fees for services should continue to be determined by the parties to the trust and not by a statutory fee schedule or by requiring court approval of fees. This approach is consistent with modern trust administration principles under which the interested parties, having the needed information, are expected to take the initiative in protecting their rights. The settlor can take the trustee's fee schedule into account in selecting the trustee.¹¹ In addition, the trust instrument may provide a mechanism for determining fees or replacing a trustee without the need to petition the court. However, where the trust instrument does not provide a remedy, the beneficiaries must rely on the statutes or judicial remedies. The cost of court proceedings can act as a significant inhibition to beneficiaries who are dissatisfied with an increase in fees.

The existing statutes do not deal adequately with the situation where the trust beneficiaries are dissatisfied with the trustee's fees. Accordingly, the Commission recommends (1) making more explicit the existing judicial remedies concerning fees and removal of trustees, (2) requiring trustees

of Information from Corporate Trustees 4-6 (October 1987) (on file at Commission office).

9. See statements of bank trust officers quoted in the appendix to Corporate Trustees' Fees: Summary and Analysis of Information from Corporate Trustees 16-18 (October 1987) (on file at Commission office).

10. *Id.*

11. This recommendation is mainly concerned with irrevocable trusts, whether living or testamentary, since the settlor under a revocable trust may replace the trustee at will in response to an unreasonable fee increase.

to give 60 days' notice of proposed fee increases, (3) clarifying the right of beneficiaries to transfer a trust to a successor trust company, and (4) making the trustee liable for the beneficiaries' costs and reasonable attorney's fees in proceedings to replace the trustee where the trustee has refused to consent to the transfer without good cause. These recommendations are discussed below.

Clarifying Judicial Remedies

The recommended legislation gives explicit recognition to the authority of the court, on petition of a beneficiary or cotrustee, to review the reasonableness of the trustee's compensation and to set a different amount.¹² In addition, the grounds for removal of a trustee would specifically include cases where the trustee's fee is excessive under the circumstances.¹³

Notice of Proposed Fee Increase

The recommended legislation requires the trustee to give at least 60 days' written notice of an increased fee to beneficiaries whose interest in the trust would be affected by the increased fee. Notice must be given of any increase in the trustee's periodic base fee, rate of percentage compensation, minimum fee, hourly rate, or transaction charge, but not extraordinary fees. This requirement applies to both individual trustees and trust companies. The requirement is consistent with the trustee's duty to keep the beneficiaries reasonably informed of the administration of the trust.¹⁴

If a beneficiary objects to the proposed fee increase by filing a petition and giving notice to the trustee before the 60-day period expires, the proposed fee increase will not become effective until the court orders otherwise or the petition is dismissed.¹⁵

12. See Prob. Code § 17200(b)(9) (petition to fix or allow payment of the trustee's compensation). As a matter of clarification, this provision would be revised to provide that a petition may be filed to review the reasonableness of the trustee's compensation. This is consistent with Probate Code Section 15681 pursuant to which the trustee is generally entitled to reasonable compensation.

13. See Prob. Code § 15642.

14. Prob. Code § 16060.

15. See Prob. Code § 17200(b)(9) (petition to fix or allow payment of trustee's compensation). The proposed legislation would also revise this provision to explicitly provide for a petition for review of the reasonableness of the trustee's compensation. This would be a clarification, rather than new law.

Transfer of Trust to Successor Trust Company

The recommended legislation clarifies the right of adult beneficiaries, with the consent of the trustee, to transfer administration of the trust from the existing trustee to a successor trust company that has agreed to accept the trust.¹⁶ The recommended legislation permits the adult beneficiaries who are receiving or are entitled to receive income or a distribution of principal if the trust were terminated to select a trust company to fill the vacancy created by the resignation without the need to obtain court approval.¹⁷ Of course, if the trust instrument provides a practical method for selecting the successor trustee or designates the successor, the instrument would govern.¹⁸

Attorney's Fees Award Where Transfer Refused Without Good Cause

In order to encourage out-of-court settlement of disputes over trustees' fees, the recommended legislation makes the trustee liable for costs and reasonable attorney's fees in proceedings to replace the trustee with a successor trust company if the existing trustee refused to resign without good cause. The proposed legislation also makes clear that the trustee may not charge the liability for costs and attorney's fees against the trust. This liability is intended to provide an incentive to consent to the transfer of a trust in an appropriate case, i.e., where the trustee does not have good cause to refuse to consent to the transfer of the trust.

Settlor's Petition For Removal Of Trustee

Traditionally, the settlor of an irrevocable living trust has not been considered to have a sufficient interest in the trust to petition for removal of a trustee, unless such a power is reserved in the trust instrument.¹⁹ If the settlor had or retained

16. See Prob. Code § 15640(a)(3) (resignation of trustee with consent of "all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought").

17. This power to select a new trust company under Probate Code Section 15660 is analogous to the power to accept a trustee's resignation under Probate Code Section 15640.

18. Prob. Code § 15660(b).

19. See, e.g., G. Bogert & G. Bogert, *Handbook of the Law of Trusts* § 160, at 575 (5th ed. 1973).

an unrestricted power to replace the trustee, the trust would be taxable in the settlor's estate.²⁰

The recommended legislation gives the settlor of an irrevocable living trust the limited power to petition the court for removal of a trustee, on the same footing as a beneficiary or cotrustee.²¹ The settlor may be in a good position to assess whether the trustee is failing to administer the trust appropriately. The power to petition for removal would be particularly useful in a case where the settlor has created the trust for minor children, and thus would avoid the need to seek appointment of a guardian ad litem to represent their interests. A statutory right to petition for removal would not have adverse tax consequences because the power to remove the trustee remains in the court's discretion subject to a set of standards.

Recommended Legislation

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 2051 of the Financial Code, and to amend Sections 15640, 15642, 15660, and 17200 of, and to add Sections 15645 and 15686 to, the Probate Code, relating to trusts and trustees.

The people of the State of California do enact as follows:

Financial Code § 2051 (amended). Rights of trust parties on sale of trust business

2051. (a) The selling and purchasing banks shall enter into an agreement of purchase and sale which shall contain all the terms and conditions of the sale and contain proper provision for the payment of all liabilities of the selling bank, or of the business, branch, or branch business sold, and proper provision for the assumption by the purchasing bank of all fiduciary and trust obligations of the selling bank, or business, branch, or branch business sold. The agreement may provide for the transfer of all deposits of the selling bank or of the business, branch, or branch business sold to the purchasing bank, subject to the right of every depositor of the selling

20. See E. Depper & A. Bernstein, *California Trust Administration* § 13.11, at 554 (Cal. Cont. Ed. Bar 1986); *Treas. Reg.* § 20.2041-1(b)(1) (1988).

21. See *Prob. Code* § 15642.

bank or of the business, branch, or branch business sold to withdraw ~~his~~ *the* deposit in full on demand after such transfer, irrespective of the terms under which it was deposited with the selling bank, and may provide for the transfer of all court and private trusts so sold to the purchasing bank, ~~subject to the rights of all trustors and beneficiaries under the trusts so sold after such transfer to nominate another or succeeding trustee of the trust so transferred.~~

(b) If a trust is transferred under this section, the transfer is good cause for removal of the trustee under the Trust Law, Division 9 (commencing with Section 15000) of the Probate Code.

Comment. Subdivision (b) is added to Section 2051 to clarify the rules concerning removal and replacement of trustees following the transfer of a trust business from one trustee to another. Subdivision (b) replaces the provision formerly appearing in the last clause of this section and incorporates the general rules governing removal and replacement of trustees provided by the Trust Law. See, e.g., Prob. Code §§ 15640, 15642, 15660, 17200(b)(10).

Probate Code § 15640 (amended). Resignation of trustee

15640. ~~(a)~~ A trustee who has accepted the trust may resign only by one of the following methods:

~~(1)~~ (a) As provided in the trust instrument.

~~(2)~~ (b) In the case of a revocable trust, with the consent of the person holding the power to revoke the trust.

~~(3)~~ (c) In the case of a trust that is not revocable, with the consent of all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought. *If a beneficiary has a conservator, the conservator may consent to the trustee's resignation on behalf of the conservatee without obtaining court approval. Without limiting the power of the beneficiary to consent to the trustee's resignation, if the beneficiary has designated an attorney in fact who has the power under the power of attorney to consent to the trustee's resignation, the attorney in fact may consent to the resignation.*

~~(4)~~ Pursuant to a court order obtained as provided in subdivision (b):

~~(b)~~ On

(d) Pursuant to a court order obtained on petition by the trustee, ~~the~~ under Section 17200. The court shall accept the

trustee's resignation.—~~The court~~ *and* may also make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

Comment. Section 15640 is revised to make clear that court approval is not required to accomplish a resignation except under subdivision (d). This revision makes explicit what was implicit under former law. Whether court approval is required under subdivision (a) depends on the terms of the trust.

The last two sentences are added to subdivision (c) for consistency with Section 15660(c) (appointment of trustee to fill vacancy) and to make clear that a conservator may consent to the resignation without the need to obtain approval of the court in which the conservatorship proceeding is pending. If the trustee resigns pursuant to subdivision (c), the trust may be transferred to a trust company pursuant to Section 15660(c), all without court approval.

Probate Code § 15642 (amended). Removal of trustee

15642. (a) A trustee may be removed in accordance with the trust instrument ~~or~~, by the court on its own motion, or on petition of a *settlor*, cotrustee, or beneficiary *under Section 17200*.

(b) The grounds for removal of a trustee by the court include the following:

- (1) Where the trustee has committed a breach of the trust.
- (2) Where the trustee is insolvent or otherwise unfit to administer the trust.
- (3) Where hostility or lack of cooperation among cotrustees impairs the administration of the trust.
- (4) Where the trustee fails or declines to act.
- (5) *Where the trustee's compensation is excessive under the circumstances.*
- (6) For other good cause.

(c) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court deems necessary.

Comment. Subdivision (a) of Section 15642 is revised to give the settlor of an irrevocable living trust the right to petition for removal of a trustee. As to the rights of a settlor of a revocable trust, see Sections

15401 (revocation by settlor), 15402 (modification by settlor of revocable trust), 15800 (rights of person holding power of revocation). The right to petition for removal of a trustee does not give the settlor any other rights, such as the right to an account or to receive information concerning administration of the trust.

Paragraph (5) is added to subdivision (b) to make clear that a trustee may be removed in the court's discretion where the trustee's compensation is excessive under the circumstances. This is a clarification of the law, rather than a new principle. If a trustee is removed, another trustee may be appointed to fill the vacancy as provided in Section 15660. See also Section 15681 (trustee entitled to reasonable compensation under the circumstances).

Probate Code § 15645 (added). Costs and attorney's fees in proceedings for transfer of trust to successor trust company

15645. (a) Subject to subdivision (b), in proceedings under Section 17200 to remove a trustee and transfer administration of the trust to a trust company:

(1) The petitioners are entitled to costs and reasonable attorney's fees incurred in the proceeding, to be paid by the trustee and not from the trust.

(2) The trustee may not charge the trust for the costs and attorney's fees incurred in opposing the petition.

(b) This section applies only where both of the following requirements are satisfied:

(1) The court makes an order removing the existing trustee and appointing a trust company as successor trustee.

(2) The court determines that the existing trustee's refusal to resign and transfer the trust property to a successor trust company was without good cause.

(c) Nothing in this section limits any power the court may otherwise have to award or not award costs or costs and attorney's fees.

Comment. Section 15645 is a new provision intended to encourage an out of court solution where the beneficiaries of a trust want to transfer administration of the trust to a successor corporate trustee. For provisions concerning consent to transfer of the trust to a successor trust company, see Sections 15640 (resignation of trustee) and 15660 (appointment to fill vacancy in office of trustee).

Probate Code § 15660 (amended). Appointment to fill vacancy in office of trustee

15660. (a) If the trust has no trustee or if the trust instrument requires a vacancy in the office of a cotrustee to be

filled, the vacancy shall be filled as provided in this section.

(b) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(c) *If the vacancy in the office of trustee is not filled as provided in subdivision (b), the vacancy may be filled by a trust company that has agreed to accept the trust on agreement of all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time the agreement is made. If a beneficiary has a conservator, the conservator may agree to the successor trustee on behalf of the conservatee without obtaining court approval. Without limiting the power of the beneficiary to agree to the successor trustee, if the beneficiary has designated an attorney in fact who has the power under the power of attorney to agree to the successor trustee, the attorney in fact may agree to the successor trustee.*

(d) If the vacancy in the office of trustee is not filled as provided in subdivision (b) or (c), on petition of a cotrustee or beneficiary, the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to the wishes of the beneficiaries who are 14 years of age or older.

Comment. Subdivision (c) is added to Section 15660 to permit a vacancy in the office of trustee to be filled, without the need for court approval, by a trust company selected by agreement of the adult beneficiaries of the trust. The persons who must agree to the new trustee are the same as those who must consent to a resignation under subdivision (c) of Section 15640. A vacancy may be filled under subdivision (c) whether or not the former trustee was a trust company.

If the trustee resigns pursuant to subdivision (c) of Section 15640, the trust may be transferred to a trust company pursuant to subdivision (c) of Section 15660, all without court approval.

Probate Code § 15686 (added). Notice of increased trustee's fee

15686. (a) As used in this section, "trustee's fee" includes, but is not limited to, the trustee's periodic base fee, rate of percentage compensation, minimum fee, hourly rate, and transaction charge, but does not include fees for extraordinary services.

(b) A trustee may not charge an increased trustee's fee for administration of a particular trust unless the trustee first gives at least 60 days' written notice of that increased fee to each beneficiary of the trust whose interest may be affected by the increased fee.

(c) If a beneficiary files a petition under Section 17200 for review of the increased trustee's fee or for removal of the trustee and serves a copy of the petition on the trustee before the expiration of the 60-day period, the increased trustee's fee does not take effect as to that trust until otherwise ordered by the court or the petition is dismissed.

Comment. Section 15686 is new. See also Section 16060 (duty of the trustee under Section 16060 to keep beneficiaries of trust reasonably informed of the trust and its administration).

Probate Code § 17200 (amended). Petitions; grounds for petition

17200. (a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument.

(2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(3) Determining the validity of a trust provision.

(4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.

(5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.

(6) Instructing the trustee.

(7) Compelling the trustee to report information about the trust or account to the beneficiary, if (A) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary and (B) no report or account has been made within six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

(12) Compelling redress of a breach of the trust by any available remedy.

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

Comment. Subdivision (b)(9) of Section 17200 is amended to make clear that the reasonableness of the trustee's compensation is subject to review on petition under this section. This revision is a clarification of prior law and not a substantive change. See also Section 15645 (costs and attorney's fees in proceedings for transfer of trust to successor trust company).

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- Number 2 — Claims, Actions and Judgments Against Public Entities and Public Employees
 - Number 3 — Insurance Coverage for Public Entities and Public Employees
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 - Number 5 — Liability of Public Entities for Ownership and Operation of Motor Vehicles
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 Requirement for Beneficiary of Statutory Will; Execution or Modification of

**Lease Without Court Authorization; Limitation Period for Action Against Surety
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Treatment; Qualified Domestic Trusts
Recommendation Proposing the New Probate Code [Note: The price of this softcover
publication is \$35.00. California residents add \$2.54 sales tax.]**

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