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09/04/91

Memorandum 91-57

Subject: Annual Report for 1991

Attached to this memorandum is a draft of the Commission's Annual Report for 1991. You will notice that some of the information is speculative. The report assumes enactment of all pending bills. The list of recommendations to the 1992 Legislature may be on the optimistic side.

The Commission should pay special attention to the new material in the Annual Report, especially the "Major Studies in Progress" (pp. 11-13) and "Personnel of Commission" (pp. 17-18). New material is also set forth in the "Legislative History of Recommendations Submitted in 1991 Legislative Session" (pp. 19-21) and the "Report on Statutes Repealed by Implication or Held Unconstitutional" (pp. 21-22). The recommendation in Appendix 3 and the reports in Appendices 4-8 have all been previously approved by the Commission. The description of the procedure for ordering Commission publications has also been revised in light of the new policy of charging for pamphlets (p. 77).

The Commission needs to approve the Annual Report for printing at the September meeting, subject to any desired revisions and other technical adjustments, so that money encumbered for this printing job is not lost.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

Annual Report for 1991

December 1991

**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>	BILL LOCKYER <i>Member of Senate</i>
ARTHUR K. MARSHALL <i>Vice Chairperson</i>	FORREST A. PLANT <i>Member</i>
ROGER ARNEBERGH <i>Member</i>	SANFORD M. SKAGGS <i>Member</i>
TERRY FRIEDMAN <i>Member of Assembly</i>	ANN E. STODDEN <i>Member</i>
BION M. GREGORY <i>Member</i>	(VACANCY) <i>Member</i>

COMMISSION STAFF

Legal

NATHANIEL STERLING <i>Executive Secretary</i>	ROBERT J. MURPHY III <i>Staff Counsel</i>
STAN ULRICH <i>Assistant Executive Secretary</i>	PAMELA K. MISHEY <i>Staff Attorney</i>

Administrative-Secretarial

STEPHEN F. ZIMMERMAN <i>Administrative Assistant</i>	VICTORIA MATIAS <i>Composing Technician</i>
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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 21 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published in 1993.

Cite this pamphlet as *Annual Report for 1991*, 21 Cal. L. Revision Comm'n Reports 1 (1992).

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

Annual Report for 1991

December 1991

**California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739**

SUMMARY OF WORK OF COMMISSION

Recommendations to the 1992 Legislative Session

Most of the recommendations the Commission plans to submit to the 1992 legislative session concern probate law and procedure:

- Litigation Involving Decedents
- Recognition of Agent's Authority Under Statutory Form Power of Attorney
- Recognition of Trustees' Powers
- Relocation of Powers of Appointment Statute
- Notice of Increase of Trustees' Fees
- Nonprobate Transfers of Community Property
- Deposit of Money of Minor or Incompetent Person in Special Needs Trust
- Deposit of Estate Planning Documents with Attorney
- Compelling Account of Guardian or Conservator
- Preliminary Distribution Without Court Supervision
- Conservator's Transfer of Omitted Property to Trust
- Nonprobate Transfer to Trustee Named in Will

The Commission also plans to recommend legislation to make any needed technical or corrective revisions in the new Probate Code.

The Commission plans to recommend legislation concerning several creditors' remedies matters.

Recommendations Enacted in the 1991 Legislative Session

In 1990, all five bills introduced to effectuate Commission recommendations were enacted. These bills amended 61 sections, added 79 sections, and repealed 31 sections of California statutes. Commission-recommended legislation enacted in 1991 related to:

- Debts That Are Contingent, Disputed, or Not Due
- Remedies of Creditor Where Personal Representative Fails to Give Notice
- Repeal of Civil Code Section 704 (Passage of Ownership of US Bonds on Death)
- Disposition of Small Estate Without Probate
- Right of Surviving Spouse to Dispose of Community Property
- Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care
- Access to Decedent's Safe Deposit Box
- Gifts in View of Impending Death
- TOD Registration of Vehicles and Certain Other State Registered Property

- Uniform Statutory Rule Against Perpetuities
- Application of Marketable Title Statute to Executory Interests
- Commercial real property leases:
 - Remedies for Breach of Assignment or Sublease Covenant
 - Use Restrictions

Commission Plans for 1992

During 1992, the Commission will work primarily on two major projects—administrative law and drafting a Family Code. The Commission will also consider some probate law matters and will review experience under the new Probate Code to determine whether any corrective legislation is necessary. The Commission may also consider other matters if time permits.

STATE OF CALIFORNIA

PETE WILSON, Governor

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2
PALO ALTO, CA 94303-4739
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EDWIN K. MARZEC
CHAIRPERSON
ARTHUR K. MARSHALL
VICE CHAIRPERSON
ROGER ARNEBERGH
ASSEMBLYMAN TERRY FRIEDMAN
BION M. GREGORY
SENATOR BILL LOCKYER
FORREST A. PLANT
SANFORD M. SKAGGS
ANN E. STODDEN

December 1, 1991

To: The Honorable Pete Wilson
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 1991.

All five bills introduced in 1991 to effectuate Commission recommendations were enacted. A concurrent resolution recommended by the Commission was adopted.

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

- Senator Beverly (bill relating to commercial real property leases).
- Senator Kopp (general probate bill)
- Senator Mello (urgency probate bill)
- Assembly Member Polanco (bill repealing the seven-year limit on durable powers of attorney for health care)
- Assembly Member Sher (bill relating to the Uniform Statutory Rule Against Perpetuities)
- Senator Lockyer (concurrent resolution continuing the Commission's authority to study previously authorized topics)

The Commission held five two-day meetings and one one-day meeting during 1991. Meetings were held in Los Angeles, Sacramento, and San Jose.

Respectfully submitted,

Edwin K. Marzec
Chairperson

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ANNUAL REPORT FOR 1991

Introduction

The California Law Revision Commission¹ was created in 1953 as the permanent successor to the Code Commission and given responsibility for the 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:

- Intensively studying complex and sometimes controversial subjects
- Identifying major policy questions for legislative attention
- Gathering the views of interested persons and organizations
- 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 implementing 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 15,288 sections of the California statutes: 7,028 sections have been added, 2,571 sections amended, and 5,689 sections repealed. Of the 266 Commission recommendations submitted to the Legislature, 245 (92%) have been enacted in whole or in substantial part.⁴

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.

1992 Legislative Program

In 1992 the Commission plans to submit recommendations to the Legislature concerning the following subjects:

Probate Law

The Commission plans to submit the following recommendations concerning probate law and procedure in 1992:⁵

- Litigation Involving Decedents⁶
- Recognition of Agent's Authority Under Statutory Form Power of Attorney⁷
- Recognition of Trustees' Powers⁸
- Relocation of Powers of Appointment Statute
- Notice of Increase of Trustees' Fees
- Nonprobate Transfers of Community Property
- Deposit of Money of Minor or Incompetent Person in Special Needs Trust
- Deposit of Estate Planning Documents with Attorney
- Compelling Account of Guardian or Conservator
- Preliminary Distribution Without Court Supervision
- Conservator's Transfer of Omitted Property to Trust
- Nonprobate Transfer to Trustee Named in Will

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

5. Except as otherwise noted, these probate recommendations will be collected and published in *Recommendations Relating to Probate Law*, 21 Cal. L. Revision Comm'n Reports 101 (1992).

6. See *Recommendation Relating to Litigation Involving Decedents*, 20 Cal. L. Revision Comm'n Reports 2785 (1990).

7. See *Recommendations Relating to Recognition of Agent's Authority Under Statutory Form Power of Attorney*, 20 Cal. L. Revision Comm'n Reports 2629 (1990).

8. See *Recommendation Relating to Recognition of Trustees' Powers*, 20 Cal. L. Revision Comm'n Reports 2849 (1990).

The Commission also plans to recommend additional technical and minor substantive revisions in the new Probate Code that come to the Commission's attention in time to be included in 1992 legislation.

Creditors' Remedies

The Commission plans to submit a recommendation concerning several creditors' remedies matters, including wage garnishment and interrogatories to judgment debtors.⁹

Major Studies in Progress

During 1992, the Commission plans to work on three major topics: administrative law, the Family Code, and probate law. The Commission will consider other matters to the extent time permits.

Administrative Law

The Commission is giving priority to the study of administrative law. The Commission has divided the study into four phases: (1) administrative adjudication, (2) judicial review, (3) administrative rulemaking, and (4) nonjudicial oversight.

The Commission retained a consultant, Professor Michael Asimow of UCLA Law School, to prepare a background study of administrative adjudication. Professor Asimow has delivered the study in four installments: "Structural Issues," "Appeals Within the Agency: The Relationship Between Agency Heads and ALJs," "Impartial Adjudicators: Bias, Ex Parte Contacts and Separation of Functions," and "-----".

The Commission's objective is to prepare a new Administrative Procedure Act to govern constitutionally and statutorily required administrative hearings of all state agencies, with the exception of the Legislature, the courts and judicial branch, the Governor and Governor's office, and the University of California.

The Commission has devoted substantial resources to studying the concept of expansion of the Office of Administrative Hearings to provide administrative law judge services for all state agencies, but has initially concluded this should only be done on a case-by-case basis.

During 1992 the Commission will continue to give consideration to these and other administrative adjudication issues on a priority basis, with the intent to prepare a tentative recommendation on the matter.

9. See *Recommendations Relating to Miscellaneous Creditors' Remedies Revisions*, 21 Cal. L. Revision Comm'n Reports XXXX (1992).

Family Code

In 1990, the Commission began work on a new Family Code.¹⁰ The Commission does not plan to propose any major changes in existing law in the new code. Instead, the new code will reorganize and collect into one code the various scattered provisions of existing family law. Lengthy sections found in existing law will be divided into short, manageable sections. In some cases, provisions duplicated in several existing statutes will be consolidated into one general statute. Statutory language will be improved and simplified.

In August 1991, the Commission's staff prepared a "Revised Staff Working Draft" of the new Family Code.¹¹ This draft included substantially all of the new code, except the portion relating to minors. The draft did not include any conforming amendments or repeals of existing code provisions. The staff draft was made available so that interested persons would be advised of how work on the new code was progressing and could submit comments and suggestions.

The Commission plans to have a draft of the new Family Code available for introduction as a preprinted bill early in 1992. Interested persons and organizations will be requested to review the preprint bill and to provide their comments and suggestions to the Commission. The Commission will prepare a Comment to each section of the preprint bill. The Comments will show the source of each section the preprint bill. The Comments will show the source of each section and note any changes the new sections would make in existing law. These Comments will assist interested persons and organizations in their review of the preprint bill.

10. The 1989 Legislature directed the Commission to review the statutes relating to the adjudication of child and family civil proceedings and to make recommendations to the Legislature regarding the establishment of a Family Relations Code. 1989 Cal. Stat. res. ch. 70. The Legislature directed that this topic be given equal priority with the administrative law study.

The Commission prepared and distributed a questionnaire to approximately 4,000 individuals in 1990. The questionnaire was designed to obtain the views of interested persons whether there should be a new Family Code or separate act in which the family law statutory provisions would be compiled and, if so, what should be contained in the new code or act. The great majority of those who responded to the questionnaire favored a new code or act. See *Annual Report for 1991*, 20 Cal. L. Revision Comm'n Reports 2201, 2212 (1990). The Commission decided to commence the preparation of a Family Code.

In August 1991, the Commission appointed John H. DeMouilly, the Commission's former Executive Secretary and primary draftsman for the Family Code project, as a special consultant on the project.

11. The Revised Draft replaced an earlier draft of a portion of the new Family Code that was made available in April 1991.

During 1992, the Commission will review the comments it receives on the preprint bill and will make any necessary revisions and corrections in its draft of the new code.

The Commission tentatively plans to submit a recommendation proposing a new Family Code to the Legislature and the Governor in December 1992 and has set as its goal the enactment of the new code in 1993.

Probate Law

During the last few years, the Commission has been devoting its time and resources almost exclusively to the study of probate law and procedure. A new Probate Code was enacted in 1990 upon recommendation of the Commission¹² and became operative on July 1, 1991.

Despite the enactment of the new Probate Code, the Commission will continue to devote a substantial amount of its time and resources to work in this field. The Commission will monitor the experience under the new code and make recommendations needed to correct any technical or substantive defects that come to its attention. Interested persons should draw the Commission's attention to any defect believed to exist in the new code so that the Commission can study the matter and present any necessary corrections for legislative consideration.

Calendar of Topics for Study

The Commission's calendar of topics is set out in Appendix I to this Report. Each of these topics has been authorized for Commission study by the Legislature.¹³ 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.

Function and Procedure of Commission

The principal duties of the Commission¹⁴ are to:

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

12. 1990 Cal. Stat. ch. 79. See also 1990 Cal. Stat. ch. 710, § 46 (amending 1990 Cal. Stat. ch. 79, § 37). See also *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990); *Revised and Supplemental Comments to the New Probate Code*, 20 Cal. L. Revision Comm'n Reports 2001 (1990).

13. 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.

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

(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,¹⁵ 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 California law into harmony with modern conditions.¹⁶

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 that the Legislature, by concurrent resolution, authorizes it to study.¹⁷ However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.¹⁸

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.

15. 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.

16. 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 United States Supreme Court. Gov't Code § 8290.

17. See Gov't Code § 8293.

18. 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. See also 1990 Cal. Stat. ch. 943, § 3, which provides: "The California Law Revision Commission shall study the impacts of the changes in Sections 483.010 and 483.015 of the Code of Civil Procedure made by Sections 1 and 2 of this act during the period from January 1, 1991, to and including December 31, 1993, and shall report the results of its study, together with recommendations concerning continuance or modification of these changes, to the Legislature on or before December 31, 1994."

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar, other bar associations, 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.¹⁹ The background study is sometimes published with the recommendation published by the Commission or in a law review.²⁰

The Commission ordinarily prepares an official Comment explaining each section it recommends. These Comments are included in the Commission's recommendations and are frequently revised by the Commission in later published reports to reflect amendments made in the legislative process.²¹ The 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 report on the bill as amended.²²

Comments indicate the derivation of a section and often explain its purpose, its relation to other sections, and potential problems as to its

19. 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.

20. For a recent background study published in a law review, 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), 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988).

21. 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.

22. For examples of such reports, see Appendices 6 and 7 to this Report. Reports containing new or revised comments are printed in the Commission's Annual Report for the year in which the report was proposed. For a description of 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).

meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.²³ However, while the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every inconsistent case is noted in the Comments, nor can it anticipate judicial conclusions as to the significance of existing case authorities.²⁴ 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.²⁵

Commission publications are distributed to the Governor, legislative leadership, and, on request, to heads of state departments and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.²⁶ 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.²⁷

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.²⁸

23. 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) Commission Comments are published by Bancroft-Whitney and West Publishing Company in their editions of the annotated codes.

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

25. 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.

26. See Gov't Code § 8291. In the past, Commission publications have generally been distributed free of charge. Due to budget constraints, the Commission in 1991 began implementing a charge for Commission publications.

27. 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). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

28. See "Commission Publications" *infra*.

Personnel of Commission

As of December 1, 1991, the membership of the Law Revision Commission is:

Legislative Members²⁹

Assembly Member Terry Friedman, Sherman Oaks
 Senator Bill Lockyer, Hayward

Legislative Counsel³⁰

Bion M. Gregory, Sacramento

Members Appointed by Governor³¹

	<i>Term Expires</i>
Edwin K. Marzec, Santa Monica, <i>Chairperson</i>	October 1, 1991
Arthur K. Marshall, Los Angeles, <i>Vice Chairperson</i> ...	October 1, 1991
Roger Arnebergh, Van Nuys	October 1, 1991
Forrest A. Plant, Sacramento	October 1, 1993
Sanford M. Skaggs, Walnut Creek	October 1, 1993
Ann E. Stodden, Los Angeles	October 1, 1991
Vacancy	October 1, 1993

Effective September 1, 1991, the Commission elected Edwin K. Marzec as Chairperson (succeeding Roger Arnebergh) and Arthur K. Marshall as Vice Chairperson (succeeding Edwin K. Marzec). The terms of the new officers end August 31, 1992.

In July 1991, John H. DeMouly retired from his position as the Commission's Executive Secretary, a position in which he had served for 32 years. The Commission adopted the following resolution in honor of Mr. DeMouly:

29. The legislative members of the Commission serve at the pleasure of the appointing power, the Senate Committee on Rules and the Speaker of the Assembly, respectively. Gov't Code § 8281.

30. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

31. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 90 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

CALIFORNIA LAW REVISION COMMISSION**RESOLUTION IN HONOR OF***John H. DeMouilly*

The California Law Revision Commission takes the occasion of the retirement of JOHN H. DEMOULLY as its Executive Secretary to honor his career in public service to the Commission and the State of California.

JOHN H. DEMOULLY became Executive Secretary of the Commission in August 1959, and directed its activities for the following 32 years. During that time he prepared or supervised the preparation of over 200 recommendations to the California Legislature, enjoying an unparalleled enactment rate in excess of 95%. His tenure is marked by nearly 15,000 statute sections added, amended, or repealed on recommendation of the Commission.

The Commission's remarkable legislative accomplishments under JOHN H. DEMOULLY's direction include:

- Evidence Code • Probate Code • Tort Claims Act
- Eminent Domain Law • Enforcement of Judgments Law
- Durable Power of Attorney for Health Care • Marketable Record Title Act • Family Code, in progress at the time of retirement • Comprehensive statutes governing arbitration, real property leases, counterclaims, cross-complaints, and joinder of causes of action, additur and remittitur, survival of actions, suit by or against unincorporated associations, rescission of contracts, powers of appointment, rule against perpetuities, liquidated damages, powers of attorney, community property, and other matters

The singular record of JOHN H. DEMOULLY's achievements reflects the energy, intellect, creativity, wisdom, political acuity, public spirit, long hours, perseverance, and plain hard work he has devoted to the Commission. The members and staff of the California Law Revision Commission take pride in the high standards and outstanding reputation he has helped create and maintain for the Commission, and are pleased to honor his long and distinguished professional career.

This Resolution adopted by the California Law Revision Commission at its Meeting in Sacramento, July 25, 1991.

Effective August 1, 1991, Nathaniel Sterling, the Commission's Assistant Executive Secretary, was elevated to the position of Executive Secretary. Stan Ulrich, Commission Staff Counsel, assumed the position of Assistant Executive Secretary.

In August 1991, Pamela K. Mishey was appointed to the Commission's legal staff.

As of December 1, 1991, the staff of the Commission is:

Legal

Nathaniel Sterling
Executive Secretary

Robert J. Murphy III
Staff Counsel

Stan Ulrich
Assistant Executive Secretary

Pamela K. Mishey
Staff Attorney

Administrative-Secretarial

Stephen F. Zimmerman
Administrative Assistant

Victoria V. Matias
Composing Technician

During 1991, Michael Cavanaugh, a student at Santa Clara University Law School, was employed as a student legal assistant.

**Legislative History of Recommendations
Submitted to 1990 Legislative Session**

The Commission recommended five bills and one concurrent resolution for enactment at the 1991 legislative session. All five bills were enacted and the concurrent resolution was adopted.

Omnibus Probate Bill

Senate Bill 271, which became Chapter XXXX of the Statutes of 1991, was introduced by Senator Kopp to effectuate eight Commission recommendations relating to probate law and procedure and to make a number of technical and minor substantive revisions.³² See *Recommendation Relating to Debts That Are Contingent, Disputed, or Not Due*, 20 Cal. L. Revision Comm'n Reports 2707 (1990); *Recommendation Relating to Remedies of Creditor Where Personal Representative Fails to Give Notice*, 20 Cal. L. Revision Comm'n Reports 2719 (1990); *Recommendation Relating to Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)*, 20 Cal. L. Revision Comm'n Reports 2729 (1990); *Recommendation*

32. Senate Bill 271 also contains legislation sponsored by the California State Bar. Only sections in the bill for which there is an official Commission Comment effectuate Commission recommendations.

Relating to Disposition of Small Estate Without Probate, 20 Cal. L. Revision Comm'n Reports 2737 (1990); *Recommendation Relating to Right of Surviving Spouse to Dispose of Community Property*, 20 Cal. L. Revision Comm'n Reports 2769 (1990); *Recommendation Relating to Access to Decedent's Safe Deposit Box*, 20 Cal. L. Revision Comm'n Reports 2859 (1990); *Recommendation Relating to Gifts in View of Impending Death*, 20 Cal. L. Revision Comm'n Reports 2869 (1990); *Recommendation Relating to TOD Beneficiary Designation for Vehicles and Certain Other State-Registered Property*, 20 Cal. L. Revision Comm'n Reports 2883 (1990); see also *Comments to Other Provisions of 1991 General Probate Bill*, 20 Cal. L. Revision Comm'n Reports 2907 (1990).

Senate Bill 271 was enacted after several amendments were made to the bill. For new and revised Comments reflecting amendments made in the legislative process, see *Report of the California Law Revision Commission on Chapter XXXX of the Statutes of 1991 (Senate Bill 271) (Omnibus Probate Bill)*, 21 Cal. L. Revision Comm'n Reports XXXX (1991), which is printed as Appendix 7 to this Report.

Urgency Probate Bill

Senate Bill 896, which became Chapter 82 of the Statutes of 1991, was introduced by Senator Mello to make a number of technical corrections in the new Probate Code (1990 Cal. Stat. ch. 79) and restore some legislation that was chaptered out in the 1990 session before the new code's July 1, 1991, operative date. See *Comments to 1991 Probate Urgency Clean-up Bill*, 20 Cal. L. Revision Comm'n Reports 2909 (1990).

Senate Bill 896 was enacted after several amendments were made to the bill. For new and revised Comments reflecting amendments made in the legislative process see *Report of the California Law Revision Commission on Chapter 82 of the Statutes of 1991 (Senate Bill 896) (Urgency Probate Bill)*, 21 Cal. L. Revision Comm'n Reports XXXX (1991), which is printed as Appendix 5 to this Report.

Uniform Statutory Rule Against Perpetuities

Assembly Bill 1577, which became Chapter 156 of the Statutes of 1991, was introduced by Assembly Member Sher to effectuate the Commission's *Recommendation Relating to Uniform Statutory Rule Against Perpetuities*, 20 Cal. L. Revision Comm'n Reports 2501 (1990), and *Recommendation Relating to Application of Marketable*

Title Statute to Executory Interests, 21 Cal. L. Revision Comm'n Reports XXXX (1990), which is printed as Appendix 3 to this Report.

Assembly Bill 1577 was enacted after the bill was amended. For a revised Comment reflecting the amendment made in the legislative process see *Report of the California Law Revision Commission on Chapter 156 of the Statutes of 1991 (Assembly Bill 1577) (Uniform Statutory Rule Against Perpetuities)*, 21 Cal. L. Revision Comm'n Reports XXXX (1991), which is printed as Appendix 6 to this Report.

Commercial Real Property Leases

Senate Bill 256, which became Chapter 67 of the Statutes of 1991, was introduced by Senator Beverly to effectuate the Commission's *Recommendation Relating to Remedies for Breach of Assignment or Sublease Covenant*, 20 Cal. L. Revision Comm'n Reports 2405 (1990), and *Recommendation Relating to Use Restrictions*, 20 Cal. L. Revision Comm'n Reports 2421 (1990).

Senate Bill 256 was enacted after amendments were made to the bill. For new and revised Comments reflecting amendments made in the legislative process see *Report of the California Law Revision Commission on Chapter 67 of the Statutes of 1991 (Senate Bill 256) (Commercial Real Property Leases)*, 21 Cal. L. Revision Comm'n Reports XXXX (1991), which is printed as Appendix 4 to this Report.

Durable Power of Attorney for Health Care

Assembly Bill 793, which became Chapter XXXX of the Statutes of 1991, was introduced by Assembly Member Polanco to effectuate the Commission's *Recommendation Relating to Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care*, 20 Cal. L. Revision Comm'n Reports 2601 (1990). The bill was enacted as introduced.

Resolution Regarding Topics for Study

Senate Concurrent Resolution 4, introduced by Senator Lockyer and adopted as Resolution Chapter 33 of the Statutes of 1991, continues the Commission's authority to study 26 topics previously authorized for study.

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 prepared³³ and has the following to report:

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

(2) No decision of the United States Supreme Court holding a state statute unconstitutional has been found.

(3) No decision of the California Supreme Court holding a state statute repealed by implication has been found.³⁴

(4) One decision of the California Supreme Court held a state statute unconstitutional.³⁵

In *Raven v. Deukmejian*³⁶ the court found that Section 3 of Proposition 115 (approved June 5, 1990) providing that certain enumerated criminal defendant's rights would be construed to provide no greater protection to the defendant than is set out in the United States Constitution, amounted to a qualitative revision of the California Constitution and thus could not be accomplished by the initiative process. The court found that Section 3 violated California Constitution, Article XVIII, Sections 1 and 2, which establish the exclusive methods by which the state constitution may be amended.

33. This study has been carried through 53 Cal. 3d 1179 (Advance Sheet No. 20, July 25, 1991) and 111 S. Ct. 2923 (Advance Sheet No. 18, July 15, 1991).

34. One decision of the California Supreme Court found a state statute to contain an implied exception. In *People v. Pieters*, 52 Cal. 3d 894, 802 P.2d 420, 276 Cal. Rptr. 918 (1991), the court held that a prior version of Penal Code Section 1170.2(g) impliedly included an exception for violations of Health and Safety Code Section 11370.4. This implied exception has been expressly included in the current, revised version of Penal Code Section 1170.2(g).

35. One decision of the California Supreme Court imposed constitutional limitations upon the application of a state statute. In *Tapia v. Superior Court of Tulare County*, 53 Cal. 3d 282, 807 P.2d 434, 279 Cal. Rptr. 592 (1990), the court held that retroactive application of those provisions of Proposition 115 that changed the legal consequences of behavior would be unconstitutional under Article I, Section 10, of the U.S. Constitution and Article I, Section 9, of the California Constitution.

One decision of the California Supreme Court held that a state statute was preempted by federal law. In *Carpenters S. Cal. Admin. Corp. v. El Capitan Dev. Co.*, 53 Cal. 3d 1041, 000 P.2d 000, 000 Cal. Rptr. 000 (1991), the court held that Civil Code Section 3111 was preempted by the Employment Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 *et seq.*), which provides a comprehensive federal statutory scheme with an expressly and broadly stated preemption provision (29 U.S.C. § 1144(a)).

36. 52 Cal. 3d 336, 801 P.2d 1077, 276 Cal. Rptr. 326 (1990).

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 provision referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent it has been held unconstitutional and has not been amended or repealed.

APPENDIX 1

CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics the topics listed below.³⁷ 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 assignment, subletting, 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; expanded 1988 Cal Stat. res. ch. 81.)

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

37. For additional matters authorized for Commission study, see notes 17 and 18 *supra*.

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.)

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. 65. 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 liquidated 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

Recommendation	Action by Legislature
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
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

Recommendation	Action by Legislature
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
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

Recommendation	Action by Legislature
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
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; 1972 Cal. Stat. ch. 888
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

Recommendation	Action by Legislature
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
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.

Recommendation	Action by Legislature
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.
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

Recommendation	Action by Legislature
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.
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

Recommendation	Action by Legislature
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 Writ 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
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

Recommendation	Action by Legislature
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. 177
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
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

Recommendation	Action by Legislature
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 1427 (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
138. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)	Enacted. 1981 Cal. Stat. ch. 511

Recommendation	Action by Legislature
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), 17 Cal. L. Revision Comm'n Reports 863 (1984)	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> , 17 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

Recommendation	Action by Legislature
163. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)	Enacted. 1984 Cal. Stat. ch. 1661
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. See 1989 Cal. Stat. ch. 544 (intestate succession) (item 227 <i>infra</i>); 1990 Cal. Stat. ch. 710 (statutory will) (item 240 <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

Recommendation	Action by Legislature
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
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), 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

Recommendation	Action by Legislature
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
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

Recommendation	Action by Legislature
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
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

Recommendation	Action by Legislature
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
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)	Enacted except for portion relating to compensation of attorneys. 1990 Cal. Stat. ch. 79

Recommendation	Action by Legislature
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); 20 Cal. L. Revision Comm'n Reports 507 (1990)	Enacted in part. 1989 Cal. Stat. ch. 544; Balance enacted. 1990 Cal. Stat. ch. 140
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> , 20 Cal. L. Revision Comm'n Reports 237-242 (1990)	Enacted. 1989 Cal. Stat. ch. 544
233. <i>Bonds of Guardians and Conservators</i> , 20 Cal. L. Revision Comm'n Reports 235 (1990)	Enacted. 1989 Cal. Stat. ch. 544
234. <i>Commercial Real Property Leases</i> , 20 Cal. L. Revision Comm'n Reports 251 (1990)	Enacted. 1989 Cal. Stat. ch. 982
235. <i>Trustees' Fees</i> , 20 Cal. L. Revision Comm'n Reports 279 (1990)	Enacted. 1990 Cal. Stat. ch. 79
236. <i>Springing Powers of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 405 (1990)	Enacted. 1990 Cal. Stat. ch. 986
237. <i>Uniform Statutory Form Powers of Attorney Act</i> , 20 Cal. L. Revision Comm'n Reports 415 (1990)	Enacted. 1990 Cal. Stat. ch. 986
238. <i>Disposition of Small Estate by Public Administrator</i> , 20 Cal. L. Revision Comm'n Reports 529 (1990)	Enacted. 1990 Cal. Stat. ch. 324
239. <i>Court-Authorized Medical Treatment</i> , 20 Cal. L. Revision Comm'n Reports 537 (1990)	Enacted. 1990 Cal. Stat. ch. 710
240. <i>Survival Requirement for Beneficiary of Statutory Will</i> , 20 Cal. L. Revision Comm'n Reports 549 (1990)	Enacted. 1990 Cal. Stat. ch. 710
241. <i>Execution or Modification of Lease Without Court Order</i> , 20 Cal. L. Revision Comm'n Reports 557 (1990)	Enacted. 1990 Cal. Stat. ch. 710

Recommendation	Action by Legislature
242. <i>Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding</i> , 20 Cal. L. Revision Comm'n Reports 565 (1990)	Enacted. 1990 Cal. Stat. ch. 710
243. <i>Repeal of Probate Code Section 6402.5 (In-Law Inheritance)</i> , 20 Cal. L. Revision Comm'n Reports 571 (1990)	Not enacted.
244. <i>Access to Decedent's Safe Deposit Box</i> , 20 Cal. L. Revision Comm'n Reports 597 (1990)	Not enacted.
245. <i>Priority of Conservator or Guardian for Appointment as Administrator</i> , 20 Cal. L. Revision Comm'n Reports 607 (1990)	Enacted. 1990 Cal. Stat. ch. 710
246. <i>New Probate Code</i> , 20 Cal. L. Revision Comm'n Reports 1001 (1990)	Enacted. 1990 Cal. Stat. ch. 79
247. <i>Notice in Probate Where Address Unknown</i> , 20 Cal. L. Revision Comm'n Reports 2245 (1990)	Enacted. 1990 Cal. Stat. ch. 710
248. <i>Jurisdiction of Superior Court in Trust Matters</i> , 20 Cal. L. Revision Comm'n Reports 2253 (1990)	Enacted. 1990 Cal. Stat. ch. 710
249. <i>Uniform Management of Institutional Funds Act</i> , 20 Cal. L. Revision Comm'n Reports 2265 (1990)	Enacted. 1990 Cal. Stat. ch. 1307
250. <i>Remedies for Breach of Assignment or Sublease Covenant</i> , 20 Cal. L. Revision Comm'n Reports 2405 (1990)	Enacted. 1991 Cal. Stat. ch. 67
251. <i>Use Restrictions</i> , 20 Cal. L. Revision Comm'n Reports 2421 (1990)	Enacted. 1991 Cal. Stat. ch. 67
252. <i>Uniform Statutory Rule Against Perpetuities</i> , 20 Cal. L. Revision Comm'n Reports 2501 (1990)	Enacted. 1991 Cal. Stat. ch. 156
253. <i>Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care</i> , 20 Cal. L. Revision Comm'n Reports 2601 (1990).	Enacted. 1991 Cal. Stat. ch. XXX

Recommendation	Action by Legislature
254. <i>Debts That Are Contingent, Disputed, or Not Due</i> , 20 Cal. L. Revision Comm'n Reports 2707 (1990)	Enacted. 1991 Cal. Stat. ch. XXX
255. <i>Remedies of Creditor Where Personal Representative Fails to Give Notice</i> , 20 Cal. L. Revision Comm'n Reports 2719 (1990)	Enacted. 1991 Cal. Stat. ch. XXX
256. <i>Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)</i> , 20 Cal. L. Revision Comm'n Reports 2729 (1990)	Enacted. 1991 Cal. Stat. ch. XXX
257. <i>Disposition of Small Estate Without Probate</i> , 20 Cal. L. Revision Comm'n Reports 2737 (1990)	Enacted. 1991 Cal. Stat. ch. XXX
258. <i>Right of Surviving Spouse to Dispose of Community Property</i> , 20 Cal. L. Revision Comm'n Reports 2769 (1990)	Enacted. 1991 Cal. Stat. ch. XXX
259. <i>Access to Decedent's Safe Deposit Box</i> , 20 Cal. L. Revision Comm'n Reports 2859 (1990)	Enacted. 1991 Cal. Stat. ch. XXX
260. <i>Gifts in View of Impending Death</i> , 20 Cal. L. Revision Comm'n Reports 2869 (1990)	Enacted. 1991 Cal. Stat. ch. XXX
261. <i>TOD Beneficiary Designation for Vehicles and Certain Other State-Registered Property</i> , 20 Cal. L. Revision Comm'n Reports 2883 (1990)	Enacted. 1991 Cal. Stat. ch. XXX
262. <i>Application of Marketable Title Statute to Executory Interests</i> , 21 Cal. L. Revision Comm'n Reports 51 (1990)	Enacted. 1991 Cal. Stat. ch. 156

APPENDIX 3

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

Recommendation

relating to

**Application of Marketable Title Statute
to Executory Interests**

January 1991

**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 Application of Marketable Title Statute to Executory Interests*, 21 Cal. L. Revision Comm'n Reports 51 (1992).

STATE OF CALIFORNIA

PETE WILSON, Governor

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ANN E. STODDEN

January 10, 1991

To: **The Honorable Pete Wilson**
Governor of California, and
The Legislature of California

This tentative recommendation proposes revising the marketable title statute to treat executory interests affecting the use of real property in the same manner as powers of termination. This would have the effect of terminating executory interests of record if a notice of intent to preserve the interest is not recorded for a 30-year period.

This tentative recommendation was prepared pursuant to Resolution Chapter 81 of the Statutes of 1988.

Respectfully submitted,

Roger Arnebergh
Chairperson

RECOMMENDATION

In a separate recommendation, the Commission proposes enactment of the Uniform Statutory Rule Against Perpetuities.¹ The Uniform Statutory Rule adopts a 90-year wait-and-see period in place of the common law period of lives in being plus 21 years. During the wait-and-see period, property dispositions that violate the common law rule are generally not invalidated or subjected to reformation. One type of future interest in real property that, in theory, could be greatly affected by the new perpetuities statute is the executory interest preceded by a fee simple determinable or the executory limitation on a fee simple.² For example, consider the situation where the owner of a home devises the property to A so long as the property is used for residential purposes, then to B.³ Under the common law rule against perpetuities, the interest of B is void because it is not

1. See *Recommendation Relating to Uniform Statutory Rule Against Perpetuities* [September 1990], 20 Cal. L. Revision Comm'n Reports 2501 (1990).

2. A variety of phrases have been used to describe this class of interests, such as executory interest subject to an unfulfilled condition precedent and executory interest preceded by a fee simple determinable. See Restatement (Second) of Property: Donative Transfers § 1.4 comment m (1983); H. Miller & M. Starr, *Current Law of California Real Estate* § 11.15, at 23-24 (2d ed. 1989); L. Simes & A. Smith, *The Law of Future Interests* §§ 191-92, 221 (2d ed. 1956); Waggoner, *Future Interests in a Nutshell* § 2.1 (1981). At common law, the fee simple interest in this situation was known as a fee simple determinable or a fee simple subject to a condition subsequent. The fee simple determinable terminated automatically on occurrence of the stated condition, whereas the fee simple subject to a condition subsequent terminated only by divestment by a person entitled to take advantage of breach of the condition. See 4 B. Witkin, *Summary of California Law Real Property* § 238, at 442-43 (9th ed. 1987). The fee simple determinable was abolished in the 1982 marketable title legislation; such an interest is now deemed to be a "fee simple subject to a restriction in the form of a condition subsequent." See Civil Code § 885.020 & Comment.

3. See Restatement (Second) of Property: Donative Transfers § 1.4 comment m, illus. 19 (1983). Another example would be a devise of land to a religious organization so long as its present religious beliefs are maintained, then to B. See Fellows, *Testing Perpetuity Reforms: A Study of Perpetuity Cases 1984-1989*, [] *Real Prop. Prob. & Tr. J.* [100-01] (forthcoming).

certain to vest (or fail) within lives in being plus 21 years.⁴ However, under the proposed Uniform Statutory Rule Against Perpetuities, an executory limitation invalid under the common law rule could last for 90 years.

Although the Commission is not aware that such executory interests are encountered with any frequency in practice, their potential existence for 90 years could act as an undesirable cloud on title. The law would be improved if certain executory interests were to be treated the same as powers of termination under the marketable title statute.⁵ A power of termination is a reversionary interest retained by the testator or transferor rather than an interest created in a devisee or transferee. A power of termination may accomplish the same purpose as the executory interest in the example given above: *O* devises the property to *A* so long as the property is used for residential purposes, but if the property ceases to be so used, *O* has the power to terminate the estate devised to *A*. The interest of *O* in this example may be transferred,⁶ and so could be held by the same person (*B*) who held the executory interest in the first example.

A power of termination under existing law is not subject to the rule against perpetuities,⁷ but the marketable title statute causes a power of termination of record to expire if a notice of intent to preserve the interest is not recorded within the preceding 30

4. The result in California is not certain, in view of the *cypres* rule in Civil Code Section 715.5. A court might reform the disposition to permit the executory interest to last for 21 years or lives in being plus 21 years.

5. See Civil Code §§ 885.010-885.070. These sections are part of a comprehensive statute concerning marketable title of real property, enacted on Commission recommendation. See *Recommendation Relating to Marketable Title of Real Property*, 16 Cal. L. Revision Comm'n Reports 401, 420 (1982), implemented by 1985 Cal. Stat. ch. 1268, § 1.

6. See Civil Code § 885.010(a) (last sentence).

7. See 4 B. Witkin, *Summary of California Law Real Property* § 397, at 586 (9th ed. 1987); Restatement (Second) of Property: Donative Transfers § 1.4 comment c (1983).

years.⁸ As defined in the marketable title statute, a power of termination is

the power to terminate a fee simple estate in real property to enforce a restriction in the form of a condition subsequent to which the fee simple estate is subject, whether the power is characterized in the instrument that creates or evidences it as a power of termination, right of entry or reentry, right of possession or repossession, reserved power of revocation, or otherwise, and includes a possibility of reverter that is deemed to be and is enforceable as a power of termination pursuant to Section 885.020.⁹

In traditional terms a power of termination is an interest retained by the transferor of real property, although the statutory definition is not specifically so limited.¹⁰

The power of termination and the executory interest restricting the use of real property are functionally equivalent. These interests operate in the same fashion on the preceding fee simple, the distinguishing characteristic being the person in whom the interest is originally created. But since both types of interest are transferable, the nature of the interest's origin does not restrict the class of persons who may ultimately hold the interest. One important difference does remain: An executory interest (but not a power of termination) is subject to the rule against perpetuities,¹¹ and, conversely, a power of termination (but not an executory

8. Civil Code § 885.030. A power of termination may also be extinguished if it becomes obsolete. See Civil Code § 885.040.

9. Civil Code § 885.010(a).

10. It should be noted that the 1872 Civil Code does not make the traditional distinctions between reversionary and executory interests, although California courts have adopted the general usage. See 4 B. Witkin, *Summary of California Law Real Property* § 335, at 534 (9th ed. 1987).

11. See Civil Code § 885.030 Comment; *Recommendation Relating to Marketable Title of Real Property*, 16 Cal. L. Revision Comm'n Reports 401, 419-20 (1982); 4 B. Witkin, *Summary of California Law Real Property* § 397, at 586 (9th ed. 1987).

interest) is subject to the 30-year marketable title recording limitations.

The Commission recommends that functionally equivalent reversionary powers of termination and executory interests be treated in the same manner under the marketable title statute by applying the 30-year recording rule to executory interests. Under this rule, an executory interest restricting the use of real property would terminate if the instrument creating the interest or a notice of intent to preserve the interest is not recorded within a 30-year period.¹² Executory interests should not be preserved for a different period than similar interests retained by a testator or grantor which may be preserved for additional 30-year periods. Treating powers of termination and executory interests in the same fashion under the marketable title statute would also apply the rules concerning expiration of an obsolete power of termination,¹³ the procedure for exercising a power of termination,¹⁴ and the effect of expiration of a power of termination.¹⁵ The proposed law would apply to existing executory interests, but provides a five-year grace period for holders of existing executory interests to record a notice of intent to preserve the interest.¹⁶

12. The traditional rule that includes executory interests within the coverage of the rule against perpetuities while excluding powers of termination retained by a transferor would not be changed. It would not be appropriate to extend the rule against perpetuities to reversionary interests at this late stage. Consistency of treatment would not justify removing the perpetuities limitations from executory interests.

13. See Civil Code § 885.040.

14. See Civil Code § 885.050.

15. See Civil Code § 885.060.

16. The grace period is the same as that provided by the 1982 legislation applicable to powers of termination. See Civil Code § 885.070; *Recommendation Relating to Marketable Title of Real Property*, 16 Cal. L. Revision Comm'n Reports 401, 421-22 (1982).

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by the following legislation:

Civil Code § 885.010 (amended). "Power of termination" defined

SECTION 1. Section 885.010 of the Civil Code is amended to read:

885.010 (a) As used in this chapter, "power:

(1) "*Power of termination*" means the power to terminate a fee simple estate in real property to enforce a restriction in the form of a condition subsequent to which the fee simple estate is subject, whether the power is characterized in the instrument that creates or evidences it as a power of termination, right of entry or reentry, right of possession or repossession, reserved power of revocation, or otherwise, and includes a possibility of reverter that is deemed to be and is enforceable as a power of termination pursuant to Section 885.020.

(2) "*Power of termination*" includes the power created in a transferee to terminate a fee simple estate in real property to enforce a restriction on the use of the real property in the form of a limitation or condition subsequent to which the fee simple estate is subject, whether the power is characterized in the instrument that creates or evidences it as an executory interest, executory limitation, or otherwise, and includes the interest known at common law as an executory interest preceded by a fee simple determinable.

(b) A power of termination is an interest in the real property.

(b)(c) For the purpose of applying this chapter to other statutes relating to powers of termination, the terms "right of reentry," "right of repossession for breach of condition subsequent," and comparable terms used in the other statutes mean "power of termination" as defined in this section.

Comment. Section 885.010 is amended to include an executory limitation on a fee simple within the scope of this chapter. The language of subdivision (a)(2) extends the definition of "power of termination" to include an executory interest created in a transferee of real property. For the purpose of this chapter, the inclusion of such executory interests extends the traditional use of the term "power of termination" beyond rights of entry and related interests that were retained by the grantor. The traditional description of an executory interest preceded by a fee simple determinable in subdivision (a)(2) makes the coverage of this provision complete. The fee simple determinable is abolished in Section 885.020. See Comment to Section 885.020.

Executory interests are also subject to the limitations provided in the statutory rule against perpetuities. See Prob. Code §§ 21202 (application of statutory rule), 21205 (90-year wait-and-see period). Thus, an executory interest that becomes invalid under the statutory rule against perpetuities may not be renewed under this chapter. Similarly, if an executory interest terminates under this chapter, it is fully terminated and does not continue for purposes of the statutory rule against perpetuities. See Section 885.060 (effect of expiration of power of termination).

Civil Code § 885.015 (amended). Application of chapter

SEC. 2. Section 885.015 of the Civil Code is amended to read:
885.015. This chapter does not apply to any of the following:

(a) A ~~reversionary interest~~ *power of termination* conditioned upon the continued production or removal of oil or gas or other minerals.

(b) A ~~reversionary interest in~~ *power of termination as to* separately owned improvements or fixtures conditioned upon the continued leasehold or possessory interest in the underlying land.

Comment. Section 885.015 is amended to refer to powers of termination, for consistency with the broadened scope of this chapter. See Section 885.010(b) ("power of termination" includes executory interest). This revision makes the exception provided in this section coextensive with the interests covered by this chapter.

Civil Code § 885.070 (amended). Application of chapter

SEC. 3. Section 885.070 of the Civil Code is amended to read:

885.070. (a) Subject to Section 880.370 (grace period for recording notice) and except as otherwise provided in this section, this chapter applies on the operative date to all powers of termination, whether executed or recorded before, on, or after the operative date.

(b) If breach of the restriction to which the fee simple estate is subject occurred before the operative date of this chapter and the power of termination is not exercised before the operative date of this chapter, the power of termination shall be exercised, or in the case of a power of termination of record, exercised of record, within the earlier of the following times:

(1) The time that would be applicable pursuant to the law in effect immediately prior to the operative date of this chapter.

(2) Five years after the operative date of this chapter.

(c) *As used in this section, "operative date" means the operative date of this chapter as enacted or, with respect to any amendment of a section of this chapter, the operative date of the amendment.*

Comment. Subdivision (c) is added to Section 885.070 to clarify the application of this section to executory interests included within the scope of this chapter by the amendment of Section 885.010. The effect is the same as the effect on powers of termination when this chapter was enacted. See 1982 Cal. Stat. ch. 1268, § 1.

REVISED COMMENT

In order to reflect the expansion of the scope of this chapter resulting from the amendment of Section 885.010, the Comment to Section 885.030 should be revised to read as follows:

Civil Code § 885.030. Expiration of power of termination

Comment. Section 885.030 provides for expiration of a power of termination after 30 years, notwithstanding a longer or indefinite period provided in the instrument reserving the power. The expiration period supplements the rule against perpetuities. The rule against perpetuities does not apply to reversionary powers of termination. See *Strong v. Shatto*, 45 Cal. App. 29, 187 P. 159 (1919); Prob. Code § 21225(g) (exclusion from statutory rule against perpetuities). Executory interests remain subject to the limitations provided in the statutory rule against perpetuities. See Comment to Section 885.010; Prob. Code §§ 21202 (application of statutory rule), 21205 (90-year wait-and-see period).

The expiration period runs from the date of recording rather than the date of creation of the power of termination because the primary purpose of Section 885.030 is to clear record title. The expiration period can be extended for up to 30 years at a time by recordation of a notice of intent to preserve the power of termination. See Section 880.310 (notice of intent to preserve interest). Recordation of a notice of intent to preserve the power of termination does not enable enforcement of a power that has expired because it has become obsolete due to changed conditions or otherwise. See Sections 880.310 (notice of intent to preserve interest), 885.040 (obsolete power of termination), & Comments.

For the effect of expiration of a power of termination pursuant to this section, see Section 885.060 (effect of expiration). This section does not affect conservation easements pursuant to Sections 815-816. See Section 880.240 (interests excepted from title) & Comment. See also Section 885.015 (exceptions from chapter) & Comment.

APPENDIX 4

**REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER 67 OF THE STATUTES OF 1991
(SENATE BILL 256)**

Chapter 67 of the Statutes of 1991 was introduced as Senate Bill 256 by Senator Robert G. Beverly on recommendation of the California Law Revision Commission. Comments to the sections in Chapter 67 are set out in the Commission's *Recommendations Relating to Commercial Real Property Leases*, 20 Cal. L. Revision Comm'n Reports 2401 (1990). These Comments remain applicable to Chapter 67, except to the extent they are replaced or supplemented by the revised and new Comments set out below which reflect amendments to the bill made during the legislative process.

Civil Code § 1995.300. Remedies Subject to Express Provision in Lease and Applicable Defenses

Comment. Subdivision (a) of Section 1995.300 codifies the general rule that the parties to a contract may negotiate the remedies to be applied in case of a breach of the contract. This rule is of course 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 general rule that a party may waive the party's remedies for breach either expressly or by conduct.

Civil Code § 1995.320. Landlord's Remedies for Tenant's Breach

Comment. Section 1995.320 treats a restriction on transfer as a covenant, violation of which is a breach of the lease. A transfer in violation of the restriction is voidable, not void, and the landlord may waive the landlord's remedies for breach either expressly or by conduct. Section 1995.300 (remedies subject to express provisions in lease and applicable defenses). This principle applies to a sublease as well as an assignment. Section 1995.020(e) ("transfer" defined).

Section 1995.320 makes clear the landlord may seek contract damages caused by the wrongful transfer in addition to termination of the lease. This is a specific application of Section 1951.2 (damages in connection with lease termination).

Section 1995.320 also permits the landlord to waive the termination remedy and still collect contract damages for wrongful transfer. This resolves a matter that was unclear under prior law, consistent with the general principle that a landlord may leave a lease in effect and recover damages for breach of a covenant. See Coskran, *Assignment and Sublease Restrictions: The Tribulations of Leasehold Transfers*, 22 Loy. L.A.L. Rev. 405, 495-98 (1989).

Other remedies available to the landlord for the tenant's breach include unlawful detainer, declaratory relief, and injunctive relief. For remedies against the assignee or subtenant under a wrongful transfer, see Section 1995.330 (application of remedies to assignee or subtenant).

APPENDIX 5

**REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER 82 OF THE STATUTES OF 1991
(SENATE BILL 896)**

Chapter 82 of the Statutes of 1991 was introduced as Senate Bill 896 by Senator Henry Mello on recommendation of the California Law Revision Commission. Comments to the sections in Chapter 82 are set out in the Commission's *Recommendations Relating to Probate Law*, 20 Cal. L. Revision Comm'n Reports 2701, 2909-14 (1990). These Comments remain applicable to Chapter 82, except to the extent they are replaced or supplemented by the revised and new Comments set out below which reflect amendments to the bill made during the legislative process.

Prob. Code § 1203 (technical amendment). Order shortening time

Comment. Subdivision (a) of Section 1203 is amended to make clear that the general rule permitting shortening of time applies unless the general rule is made inapplicable by a provision to that effect in a particular statute. This is a technical, nonsubstantive change.

Prob. Code § 2629 (technical amendment). Compelling filing of account

Comment. Subdivision (c) of Section 2629 is amended to correct a drafting error by changing "personal representative" to "guardian or conservator."

Prob. Code § 7622 (amended). Manner of Administration; Compensation of public administrator

Comment. Section 7622 is amended to add the second sentence to subdivision (b). This restores the substance of a portion of the first sentence of subdivision (b) of former Section 7622 of the repealed Probate Code.

The reference in subdivision (b) to the "same compensation" as is granted by this division to personal representatives generally, and attorneys for personal representatives generally, includes allowances of compensation. See Part 7 (commencing with Section 10800) (compensation of personal representative and estate attorney), particularly Chapter 2 (commencing with Section 10830) (allowance of compensation by court).

Prob. Code § 8547 (unchanged). Compensation of special administrator and attorney for special administrator

Comment. Section 8547 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79, § 14) was amended by 1990 Cal. Stat. ch. 710, § 22. The section as amended continues Section 8547 of the repealed Probate Code without substantive change.

Under subdivision (d), compensation of an attorney for extraordinary services to a special administrator is made on the same basis as compensation for extraordinary services to a general personal representative. This includes services by a paralegal performing the extraordinary services under the direction and supervision of an attorney. See Section 10811 (additional compensation for extraordinary services).

Prob. Code § 10811 (added). Additional compensation for extraordinary services

Comment. Section 10811 is new. It continues the substance of the last portion of the first sentence, and all of the second and third sentences, of former Section 910 of the repealed Probate Code.

Prob. Code § 11623 (amended). Distribution under Independent Administration of Estates Act

Comment. Section 11623 is amended to replace the former language "[n]otwithstanding any other provision of this chapter" with the language "[n]otwithstanding Section 11601." This makes clear that the provisions of Section 11623 allowing reduced notice (notice under Section 1220 instead of Section 11601) control over the notice provisions of Section 11601. Other provisions of this chapter do apply to proceedings under this section, including those relating to opposing the petition (Section 11602), contents of court order (Section 11603), requirements for distribution to a person other than an estate beneficiary (Section 11604), binding effect of order (Section 11605), time for petition (Section 11620), requirement of bond (Section 11622), and payment of costs (Section 11624).

APPENDIX 6

**REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER 156 OF THE STATUTES OF 1991
(ASSEMBLY BILL 1577)**

Chapter 156 of the Statutes of 1991 was introduced as Assembly Bill 1577 by Assembly Member Byron Sher on recommendation of the California Law Revision Commission. Comments to the sections in Chapter 156 are set out in the Commission's *Recommendation Relating to Uniform Statutory Rule Against Perpetuities*, 20 Cal. L. Revision Comm'n Reports 2501 (1990). These Comments remain applicable to Chapter 156, except for the revised Comment set out below which reflects an amendment to the bill made in the Assembly.

Prob. Code § 21209 (added). Construction of "later of" language in perpetuity saving clause

Comment. Subdivision (a) of Section 21209 is the same in substance as Section 1(e) of the Uniform Statutory Rule Against Perpetuities. This section is intended to invalidate a two-pronged perpetuity saving clause to the extent that it attempts to employ a period of time extending beyond the traditional perpetuities period of lives in being plus 21 years. The effect of this rule is that there is no advantage to be gained by inserting such a "later of" clause in an instrument. A standard perpetuity saving clause in use before enactment of USRAP continues to be appropriate. Consequently, instruments should not be redrafted in an attempt to apply a "later of" 90 years or lives-in-being-plus-21-years test. This section also prevents the loss of grandfathered status under the federal generation-skipping transfer tax involving exercise of a nongeneral power of appointment under a pre-1986 irrevocable trust. See Temp. Treas. Reg. § 26.2601-1(b)(1)(v)(B)(2) (1988) (as proposed to be amended); see also Appendix to *Recommendation Relating to Uniform Statutory Rule Against Perpetuities*, 20 Cal. L. Revision Comm'n Reports 2501, 2577-79 (1990); Unif. Prob. Code § 2-901(e) comment (9th ed. 1990).

Subdivision (b) makes clear that subdivision (a) applies only prospectively.

APPENDIX 7

**REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER 000 OF THE STATUTES OF 1991
(SENATE BILL 271)**

Chapter 000 of the Statutes of 1991 was introduced as Senate Bill 271 by Senator Quentin L. Kopp on recommendation of the California Law Revision Commission. Comments to the sections in Chapter 000 are set out in the following portions of the Commission's *Recommendations Relating to Probate Law*, 20 Cal. L. Revision Comm'n Reports 2701 (1990):

- Debts That Are Contingent, Disputed, or Not Due (pp. 2707-18)
- Remedies of Creditor Where Personal Representative Fails to Give Notice (pp. 2719-27)
- Repeal of Civil Code Section 704 (Passage of Ownership of U. S. Bonds on Death) (pp. 2729-35)
- Disposition of Small Estate Without Probate (pp. 2737-67)
- Right of Surviving Spouse to Dispose of Community Property (pp. 2769-84)
- Access to Decedent's Safe Deposit Box (pp. 2859-67)
- Gifts in View of Impending Death (pp. 2869-82)
- TOD Beneficiary Designation for Vehicles and Certain Other State-Registered Property (pp. 2883-2906)
- Comments to Other Provisions of 1991 General Probate Bill (pp. 2907-08)

These Comments remain applicable to Chapter 000, except to the extent they are replaced by the revised comments set out below which reflect amendments to the bill made during the legislative process.

Health & Safety Code § 18080.2 (added). Ownership of manufactured home, mobilehome, commercial coach, truck camper, or floating home in beneficiary form

Comment. Section 18080.2 is new. Subdivisions (a), (b), and (c) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). The language of Section 18080.2 is conformed to the usage in this article. See, e.g., Health & Safety Code § 18080. See also Health & Safety Code § 18102.2; Veh. Code §§ 4150.7, 5910.5, 9852.7, 9916.5.

Health & Safety Code § 18102.2 (added). Transfer of manufactured home, mobilehome, commercial coach, truck camper, or floating home owned in beneficiary form

Comment. Section 18102.2 is new. Subdivisions (a) through (d) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). Subdivision (e) is drawn from Health and Safety Code Section 18102(b) and Vehicle Code Sections 5910(b) and 9916(b). Subdivision (f) is drawn from Health and Safety Code Section 18100.5(a)(4). Subdivision (g) is drawn from Probate Code Section 5304. Subdivision (h) is comparable to Probate Code Section 5705 (gift in view of impending death) and Vehicle Code Sections 5910.5(h) and 9916.5(h). Subdivision (j) is drawn from Vehicle Code Section 5910(c). See also Health & Safety Code § 18080.2; Veh. Code §§ 4150.7, 5910.5, 9852.7, 9916.5.

Prob. Code § 331 (added). Access to decedent's safe deposit box

Comment. Section 331 is new. It permits a person who has a key to a decedent's safe deposit box to gain immediate access in order to remove the decedent's wills, trust instruments, and instructions for disposition of the decedent's remains, and to inventory the contents of the box. If no other directions have been given by the decedent, the right to control the disposition of the decedent's remains devolves, in order, on the surviving spouse, children, parents, other kindred, and the public administrator. Health & Safety Code § 7100.

If the person seeking access does not have a key to the safe deposit box and is not the public administrator, the person must obtain letters from the court to gain access to the box. Concerning the authority of the public administrator, see Section 7603.

Subdivision (e) requires the person given access to deliver the wills to the clerk of the superior court and mail or deliver a copy to the person named in the will as executor or beneficiary "as provided in Section 8200." Section 8200 requires the custodian to deliver the will to the clerk of the superior court in the county in which the estate of the decedent may be administered, and to mail a copy of the will to the person named in the will as executor, if the person's whereabouts is known to the custodian, or if not, to a person named in the will as beneficiary, if the person's whereabouts is known to the custodian. For the county in which the estate of the decedent may be administered, see Sections 7051 (for California domiciliary, county of domicile), 7052 (nondomiciliary). See also Sections 40 ("financial

institution" defined), 52 ("letters" defined), 58 ("personal representative" defined), 88 ("will" includes a codicil).

Veh. Code § 4150.7 (added). Ownership of vehicle in beneficiary form

Comment. Section 4150.7 is new. Subdivisions (a), (b), and (c) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 5910.5, 9852.7, 9916.5

Veh. Code § 5910.5 (added). Transfer of vehicle owned in beneficiary form

Comment. Section 5910.5 is new. Subdivisions (a) through (d) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). Subdivision (e) is drawn from Health and Safety Code Section 18102(b) and Vehicle Code Sections 5910(b) and 9916(b). Subdivision (g) is drawn from Probate Code Section 5304. Subdivision (h) is comparable to Health and Safety Code Section 18102.2(h), Probate Code Section 5705 (gift in view of impending death), and Vehicle Code Section 9916.5(h). Subdivision (j) is drawn from Vehicle Code Section 5910(c). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 4150.7, 9852.7, 9916.5.

Veh. Code § 9852.7 (added). Ownership of vessel in beneficiary form

Comment. Section 9852.7 is new. Subdivisions (a), (b), and (c) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 4150.7, 5910.5, 9916.5

Veh. Code § 9916.5 (added). Transfer of vehicle owned in beneficiary form

Comment. Section 9916.5 is new. Subdivisions (a) through (d) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). Subdivision (e) is drawn from Health and Safety Code Section 18102(b) and Vehicle Code Sections 5910(b) and 9916(b). Subdivision (g) is drawn from Probate Code Section 5304. Subdivision (h) is comparable to Health and Safety Code Section 18102.2(h), Probate Code Section 5705 (gift in view of impending death), and Vehicle Code Section 5910.5(h). Subdivision (j) is drawn from Vehicle Code Section 5910(c). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 4150.7, 5910.5, 9852.7, 9916.5.

APPENDIX 8

**REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION ON
CORRECTED PROBATE CODE COMMENTS**

The following Comments replace the corresponding Comments printed in the Commission's *Recommendation Proposing New Probate Code* [December 1989], 20 Cal. L. Revision Comm'n Reports 1001 (1990). This action is necessary to correct errors in the earlier Comments.

Prob. Code § 281. Disclaimer irrevocable and binding

Comment. Section 281 continues Section 281 of the repealed Probate Code without change. This section makes clear the effect of a disclaimer on creditors of the beneficiary. See also Section 283 (disclaimer not a fraudulent transfer). The binding effect of a disclaimer has no effect on the passing of the disclaimed interest pursuant to Section 282. As to interests created before January 1, 1984, see Section 287. After December 31, 1983, an interest that would otherwise be taken by a beneficiary may be disclaimed only as provided in this part. See Section 288. As to the application of any amendments made after that date, see Section 3. A disclaimer effective under federal law is effective as a disclaimer under this part. See Section 295.

Background on Section 281 of Repealed Code

Section 281 was added by 1983 Cal. Stat. ch. 17 § 2. The section restated the first sentence of former Probate Code Section 190.5 (repealed by 1983 Cal. Stat. ch. 17 § 1) without substantive change. For background on the provisions of this part, see the Comment to this part under the part heading.

Prob. Code § 282. Effect of disclaimer

Comment. Section 282 continues Section 282 of the repealed Probate Code without substantive change, except that subdivision (b)(1) is revised to refer to other instruments for conformity with Part 6 (commencing with Section 240). The introductory clause of subdivision (b) continues the substance of 1984 Cal. Stat. ch. 892, § 50.

The introductory clause of subdivision (a) makes clear that a condition of survival is not a contingency otherwise provided in the will, disapproving dictum in *Estate of Murphy*, 92 Cal. App. 3d 413, 426, 154 Cal. Rptr. 859 (1979).

Clause (2) of the first sentence of subdivision (a) makes clear that a disclaimer has the effect of accelerating the possession and enjoyment of subsequent interests. This provision is drawn from Section 3 of the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978) and Section 3 of the Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act (1978). The pertinent portion of the Comment to Section 3 of the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act explains the provision as follows:

Acceleration of Future Interests: If a life estate or other future interest is disclaimed, the problem is raised of whether succeeding interests or estates accelerate in possession or enjoyment or whether the disclaimed interest must be marshalled to await the actual happening of the contingency. Section 3 provides that remainder interests are accelerated, the second clause specifically stating that any future interest which is to take effect in possession or enjoyment after the termination of the estate or interest disclaimed, takes effect as if the disclaimant had predeceased the event which determines that the taker has become finally ascertained and his interest indefeasibly vested. Thus, unless the decedent or donor of the power has otherwise provided, if T leaves his estate in trust to pay the income to his son S for life, remainder to his son's children who survive him, and S disclaims with two children then living, the remainder in the children accelerates; the trust terminates and the children receive possession and enjoyment, even though the son may subsequently have other children or one or more of the living children may die during their father's lifetime. The will or instrument of transfer may be drafted to avoid acceleration if desired."

Paragraph (1) of subdivision (b) is designed to prevent an heir from disclaiming property for the purpose of increasing the share of his or her line at the expense of other lines of the decedent's descendants. For example, suppose the decedent has two children: The disclaimant (C-1) is living and has two children (GC-1 and GC-2, the decedent's grandchildren). The decedent's other child (C-2) has predeceased the decedent leaving one child (GC-3). But for the disclaimer, C-1's share is one-half and GC-3 takes the other half. See Sections 240, 245. See also Section 6402. If the disclaimant (C-1) is treated as having predeceased the decedent as provided in subdivision (a) of Section 282 and the rule of Sections 240 and 245 is applied, the estate would be divided at the grandchildren's generation, with GC-1, GC-2, and GC-3 each taking one-third. Paragraph (1) of subdivision (b) precludes the

disclaimer from reducing the estate to which GC-3 would otherwise be entitled were the disclaimer not exercised. Paragraph (1) of subdivision (b) changes the rule concerning manner of distribution to children of the disclaimant as enunciated in *Estate of Bryant*, 149 Cal. App. 3d 323, 335, 196 Cal. Rptr. 856 (1983).

Paragraph (2) of subdivision (b) makes clear that the rule governing advancements and the rule governing charging a debt against an intestate share apply notwithstanding a disclaimer.

As to the construction of provisions drawn from uniform acts, see Section 2.

As to interests created before January 1, 1984, see Section 287. After December 31, 1983, an interest that would otherwise be taken by a beneficiary may be disclaimed only as provided in this part. See Section 288. As to the application of any amendments made after that date, see Section 3. A disclaimer effective under federal law is effective as a disclaimer under this part. See Section 295.

Background on Section 282 of Repealed Code

Section 282 was added by 1983 Cal. Stat. ch. 17 § 2 and amended by 1983 Cal. Stat. ch. 842 § 23, 1984 Cal. Stat. ch. 892 § 17, and 1987 Cal. Stat. ch. 923 § 25. The section superseded former Probate Code Section 190.6 (repealed by 1983 Cal. Stat. ch. 17 § 1). The 1983 amendment added subdivision (b). The 1984 amendment broadened paragraph (1) of subdivision (b) by deleting the former limitation in that paragraph to disclaimers of "an interest created by intestate succession" and by applying the paragraph to situations where the division is made under any "other provision of a will or trust." See *Communication of Law Revision Commission Concerning Assembly Bill 2290*, 18 Cal. L. Revision Comm'n Reports 77, 84 (1986). The 1987 amendment revised the cross-reference in subdivision (b)(1). For background on the provisions of this part, see the Comment to this part under the part heading.

Prob. Code § 20114.5. Excess retirement accumulations

Comment. Section 20114.5 continues Section 20114.5 of the repealed Probate Code without substantive change. This section specifies the manner of proration of the 15 percent tax on excess retirement accumulations imposed by the Tax Reform Act of 1986, Pub. L. No. 99-514, § 1133(a). This chapter does not apply to persons interested in the estate of a decedent who died before January 1, 1987. Prior law continues to apply where the decedent died before January 1, 1987. See Section 20101. As to the application of any amendments made after that date, see Section 3.

Background on Section 20114.5 of Repealed Code

Section 20114.5 was a new provision added by 1987 Cal. Stat. ch. 128 § 20 and amended by 1987 Cal. Stat. ch. 923 § 100.5. It was also amended by 1989 Cal. Stat. ch. 544 § 18 to correct references to the Internal Revenue Code. For background on Section 20114.5,

see Communication from the California Law Revision Commission Concerning Assembly Bill 362, 19 Cal. L. Revision Comm'n Reports 541, 543 (1988); see also Communication from the California Law Revision Commission Concerning Assembly Bill 158, 20 Cal. L. Revision Comm'n Reports 235, 242 (1990).

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Mortgages to Secure Future Advances

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Time Within Which Motion for New Trial May Be Made

Notice to Shareholders of Sale of Corporate Assets

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Taking Possession and Passage of Title in Eminent Domain Proceedings [out of
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 Inter Vivos Marital Property Rights in Property Acquired While Domiciled
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VOLUME 4 (1963)

1962 Annual Report
 1963 Annual Report
 1964 Annual Report
 Recommendation and Study Relating to Condemnation Law and Procedure:
 Number 4 — Discovery in Eminent Domain Proceedings [The first three
 pamphlets (unnumbered) in Volume 3 also deal with the subject of
 condemnation law and procedure.]
 Recommendations Relating to Sovereign Immunity:
 Number 1 — Tort Liability of Public Entities and Public Employees
 Number 2 — Claims, Actions and Judgments Against Public Entities and Public
 Employees
 Number 3 — Insurance Coverage for Public Entities and Public Employees
 Number 4 — Defense of Public Employees
 Number 5 — Liability of Public Entities for Ownership and Operation of
 Motor Vehicles
 Number 6 — Workmen's Compensation Benefits for Persons Assisting Law
 Enforcement or Fire Control Officers
 Number 7 — Amendments and Repeals of Inconsistent Special Statutes [out of
 print]
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 (Article VIII. Hearsay Evidence) [out of print]

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- Article IV (Witnesses)
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- Evidence Code with Official Comments [out of print]
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 - Abandonment or Termination of a Lease
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 - Suit By or Against An Unincorporated Association
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Tentative Recommendations Relating to Condemnation Law and Procedure:

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 Liquidated Damages

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Annual Report (December 1979) includes the following recommendations:

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Confessions of Judgment

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Assignments for the Benefit of Creditors

Vacation of Public Streets, Highways, and Service Easements

Quiet Title Actions

Agreements for Entry of Paternity and Support Judgments

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Guardianship-Conservatorship Law with Official Comments**Recommendation Relating to:**

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State Tax Liens

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Part II

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Revision of the Guardianship-Conservatorship Law includes the following recommendations

Appointment of Successor Guardian or Conservator

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Annual Report (December 1981) includes the following recommendation:

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Annual Report (December 1982) includes the following recommendations:

Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage

Creditors' Remedies includes the following recommendations:

Amount Secured by Attachment

Execution of Writs by Registered Process Servers

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Dismissal for Lack of Prosecution

Conforming Changes to the Bond and Undertaking Law

Notice of Rejection of Late Claim Against Public Entity

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 Disclaimer of Testamentary and Other Interests
 1982 Creditors' Remedies Legislation [out of print]
 Tentative Recommendation Relating to Wills and Intestate Succession

VOLUME 17 (1984)

[Out of Print]

Annual Report (December 1983) includes the following recommendations:

Effect of Death of Support Obligor
 Dismissal for Lack of Prosecution
 Severance of Joint Tenancy
 Effect of Quiet Title and Partition Judgments
 Dormant Mineral Rights

Creditors' Remedies includes the following recommendations:

Levy on Joint Deposit Accounts
 Issuance of Earnings Withholding Orders by Registered Process Servers
 Protection of Declared Homestead After Owner's Death
 Jurisdiction of Condominium Assessment
 Lien Enforcement
 Technical Amendments

Rights Among Cotenants in Possession and Out of Possession of Real Property

Recommendation Relating to:

Liability of Marital Property for Debts
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Independent Administration of Decedent's Estates
 Distribution of Estates Without Administration
 Execution of Witnessed Wills
 Simultaneous Deaths
 Notice of Will
 Garnishment of Amounts Payable to Trust Beneficiary
 Bonds for Personal Representatives
 Revision of Wills and Intestate Succession Law
 Recording Affidavit of Death

Statutes of Limitation for Felonies
 Uniform Transfers to Minors Act

VOLUME 18 (1986)

[Out of Print]

Annual Report (March 1985) includes the following recommendations:

- Provision for Support if Support Obligor Dies
- Transfer Without Probate of Certain Property Registered by the State
- Dividing Jointly Owned Property Upon Marriage Dissolution

Annual Report (December 1985) includes the following recommendations:

- Protection of Mediation Communications
- Recording Severance of Joint Tenancy
- Abandoned Easements

Distribution Under a Will or Trust

Effect of Adoption or Out of Wedlock Birth on Rights at Death

Durable Powers of Attorney

Litigation Expenses in Family Law Proceedings

Civil Code Sections 4800.1 and 4800.2

Annual Report (December 1986) includes the following recommendations:

Notice in Guardianship and Conservatorship Proceedings

Preliminary Provisions and Definitions of the Probate Code

Technical Revisions in the Trust Law

Recommendation Proposing the Trust Law

Recommendations Relating to Probate Law includes the following recommendations:

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Selected 1986 Trust and Probate Legislation With Official Comments [out of print]

VOLUME 19 (1988)

Recommendations Relating to Probate Law includes the following recommendations:

Supervised Administration of Decedent's Estate

Independent Administration of Estates Act

Creditor Claims Against Decedent's Estate

Notice in Probate Proceedings

Annual Report (December 1987) includes the following recommendations:

Marital Deduction Gifts

Estates of Missing Persons

The Uniform Dormant Mineral Interests Act

Recommendations Relating to Probate Law includes the following recommendations:

Public Guardians and Administrators

Inventory and Appraisal

Opening Estate Administration

Abatement

Accounts

Litigation Involving Decedents

Rules of Procedure in Probate

Distribution and Discharge

Nondomiciliary Decedents
Interest and Income During Administration
Annual Report (December 1988) includes the following recommendation:
Creditors' Remedies includes the following recommendations:
Revival of Junior Liens Where Execution Sale Set Aside
Time for Setting Sale Aside
Enforcement of Judgment Lien on Transferred Property After Death of
Transferor-Debtor

VOLUME 20 (1990)

Recommendations Relating to Probate Law includes the following recommendations:

No Contest Clauses
120-Hour Survival Requirement
Hiring and Paying Attorneys, Advisors and Others
Compensation of Personal Representative
Multiple-Party Accounts in Financial Institutions
Notice to Creditors in Probate Proceedings

Annual Report (December 1989) includes the following recommendations:

Commercial Lease Law: Assignment and Sublease
Trustees' Fees

Recommendation Relating to Powers of Attorney includes the following
recommendations:

Springing Powers of Attorney
Uniform Statutory Form Power of Attorney

Recommendations Relating to Probate Law includes the following recommendations:

Notice to Creditors in Estate Administration
Disposition of Small Estate by Public Administrator
Court-Authorized Medical Treatment
Survival Requirement for Beneficiary of Statutory Will
Execution or Modification of Lease Without Court Order
Limitation Period for Action Against Surety in Guardianship or Conservatorship
Proceeding

Repeal of Probate Code Section 6402.5 (In-Law Inheritance)

Access to Decedent's Safe Deposit Box

Priority of Conservator or Guardian for Appointment as Administrator

Recommendation Proposing the New Probate Code [Note: The price of this 996 page
softcover publication is \$35.00. California residents add \$2.54 sales tax.]

Revised and Supplemental Comments to the New Probate Code

Annual Report (December 1990) includes the following recommendations:

Notice in Probate Where Address Unknown
Jurisdiction of Superior Court in Trust Matters
Uniform Management of Institutional Funds Act
Discovery After Judicial Arbitration

Recommendations Relating to Commercial Real Property Leases includes the
following recommendations:

Remedies for Breach of Assignment or Sublease Covenant
Use Restrictions

Recommendation Relating to Uniform Statutory Rule Against Perpetuities
Recommendations Relating to Powers of Attorney includes the following
recommendations:

Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care
Recognition of Agent's Authority Under Statutory Form Power of Attorney

Recommendations Relating to Probate Law includes the following recommendations:

1991 Probate Urgency Clean-Up Bill

Debts That Are Contingent, Disputed, or Not Due

Remedies of Creditor Where Personal Representative Fails to Give Notice

Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)

Disposition of Small Estate Without Probate

Right of Surviving Spouse to Dispose of Community Property

Litigation Involving Decedents

Compensation in Guardianship and Conservatorship Proceedings

Recognition of Trustees' Powers

Access to Decedent's Safe Deposit Box

Gifts in View of Impending Death

TOD Registration of Vehicles and Certain Other State Registered Property

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[Volume expected to be available in September 1993]

Annual Report (December 1991) includes the following recommendation:

Application of Marketable Title Statute to Executory Interests