

8/20/75

Memorandum 75-58

Subject: Schedule for Consideration of Topics

I believe that it is useful each year to review the topics on the Commission's agenda and to set goals to be accomplished during the next few years. The establishment of priorities permits the staff to give priority to those topics the Commission wishes to be given priority and permits us to inform interested persons and organizations as to when a recommendation on a particular topic is likely to be produced.

I further believe that the goals set should be ambitious and, at the same time, reasonably possible to achieve. With this in mind, the staff has prepared a suggested schedule for the production of recommendations on various topics on the Commission's agenda of topics. The topics on the Commission's current agenda are set out as Exhibit II. The suggested schedule for the production of recommendations is set out as Exhibit III.

The staff recommends that the Commission adopt the schedule set out as Exhibit III as its statement of goals for the next few years. The goals will be reviewed next year. With respect to Exhibit III, the following observations are made:

(1) The items listed in the 1976 legislative program will need to be revised to reflect decisions made at the October meeting as to whether recommendations on those subjects will be submitted to the 1976 session. Moreover, it is not unlikely that work on some of the items will not be completed in time to submit the recommendation to the 1976 session. If this occurs, the recommendations would be submitted to the 1977 session.

(2) We believe that a top priority should be given to the Nonprofit Corporation Law study. It appears that the new General Corporation Law

will be enacted by the current legislative session and will become operative on January 1, 1977. As you know, Section 119 of the Corporations Code makes the existing General Corporation Law applicable to nonprofit corporations unless there is a special provision applicable to the corporation inconsistent with some provision of the General Corporation Law, in which case the special provision prevails. Section 16 of the proposed new General Corporation Law retains the prior law by providing as follows:

SEC. 16. Section 119 of the Corporations Code as in effect immediately prior to the effective date of this act, to the extent that it makes applicable the General Corporation Law to private corporations organized under other laws, shall continue in effect notwithstanding its repeal by the provisions hereof but it shall refer to the provisions of Division 1 of Title 1 of the Corporations Code as in effect immediately prior to the effective date of this act, unless and until the provisions of any other statute permitting the incorporation of private corporations shall be amended to incorporate by reference in such other statute specific sections or portions of Division 1 of Title 1 of the Corporations Code as amended hereby. All references in any such other statute to any sections or portions of the General Corporation Law shall, until such amendment, continue to be references to Division 1 of Title 1 of the Corporations Code as in effect immediately prior to the effective date of this act.

The net effect is that the practitioner will have to retain the obsolete volume or volumes so that he can determine the law that applies to nonprofit corporations. To minimize the time during which this will be required, the staff believes that the top priority should be given to producing the new Nonprofit Corporation Law.

(3) The study of Revisions of the Evidence Code should prove to be an interesting and worthwhile project. Professor Friedenthal is well on his way toward completing the background study. The problems are severable and we believe that they can be worked into our meeting

schedule so that we can complete work on this project for the 1977 session.

(4) The other items listed for the 1977 session are relatively minor in terms of staff and Commission time but are matters we believe should be worked into our meeting schedule if possible. In connection with the study of unlawful detainer, see Exhibit I. If the Commission also wishes to study abandonment (see Exhibit I), we would add that item to the 1977 legislative program.

(5) The recommendation on Discovery scheduled for submission in 1978 should not require a substantial amount of staff or Commission time. When Professor Friedenthal has finished the background study on evidence, the Commission should consider whether it wishes to retain him to prepare a background study on discovery.

(6) When we have completed work on the Nonprofit Corporation Law, Mr. Sterling would like to work on the Marketable Title Act topic. We do not consider this to be an easy topic, but we can get some assistance (I believe) from law professors who are interested in this field of law. Some time during 1976, we should consider whether we should retain an expert consultant on this topic. I believe that significant improvements can be made in the law in this area.

(7) We have listed various topics for the 1979 session. We plan to commence work on the Adoption, Child Custody, Guardianship, and Related Matters study (Mr. Murphy) during 1976 and to continue work on Enforcement of Judgments (Mr. Ulrich) on a nonpriority but fairly regular basis during the next few years. The National Conference of Commissioners on Uniform State Laws is working on a uniform class action statute and it appears

desirable to defer work on this topic until they have produced at least a rough draft. After we have completed work on the Marketable Title Act, Mr. Sterling would be available to work on the inverse condemnation procedural provisions study.

Respectfully submitted,

John H. DeMouly
Executive Secretary

*Tishman Realty & Construction Co., Inc.*

WEST COAST HEADQUARTERS

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B-1 CONTRACTOR'S LICENSE NO. 170730

May 22, 1975

John H. DeMouilly, Esq.
Executive Secretary
California Law Revision Commission
Stanford University
Stanford, California

Re: California Law Revision Commission - Proposed
Topics for June 26-27 Meeting

Dear John:

Thank you for the Agenda for the June 26-27 Meeting of the Commission.

Naturally I am still interested in whether or not, as part of your 1975 Legislative Program, you have obtained someone to "carry" the Eminent Domain Bill (even if, necessarily, the matter might have to be introduced in the 1976 Legislature).

Additionally, you will recall that several topics from the recent past were carried over by the Commission at the time that the Tenant's Abandoned Property measure was enacted by the Legislature. Only one of them seems to be of importance, namely, the "Definition of Abandonment". Inasmuch as the Commission has invested considerable time and effort into the matter, it would seem a shame not to finish the job sometime in the near future.

Finally, a matter has recently come to my attention which may be of some additional significance with regard to the practical application of Section 1951.2 of the Civil Code. Although Section 1952 provides, in pertinent part, that unlawful detainer proceedings do not affect lessor's right to bring action for relief under Section 1951.2 et. seq. and that nothing contained in Section 1951.2 affects the provisions of the Civil Code relating to unlawful detainer, several attorneys have questioned me as to whether or not it is possible to recover "Section 1951.2 damages" in an unlawful detainer action. Although unlawful detainer is, by its very nature, considered to be a summary remedy, the summariness of it is primarily for the benefit of the landlord:

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Tishman Realty & Construction Co., Inc.

John H. DeMouilly, Esq.

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under such circumstances, it would seem a shame if the landlord were precluded from electing to try the entire surrounding circumstances at one fell-swoop, namely, the question of expectancy damages under 1951.2-a-3 at the same time as he tries the question of the right to possession. The question that has been raised by independent third parties in our profession is as to whether such a "all in one" judicial disposition of the matter is precluded by the fact that the Code of Civil Procedure Section 1174 refers only to "rent" as the subject matter of a judgment (in addition to possession) unless the defendant is guilty of "malice" (in which latter event plaintiff may be awarded "... either damages and rent found due or punitive damages ...").

I am sure that the intent of both the Commission and the Legislature is to avoid multiplicity of actions and that if plaintiff wishes, in the unlawful detainer action, to recover only rent until the date of judgment (assuming that the defendant is still in possession as of that date) he can do so upon a summary basis. If the plaintiff chooses to, in effect, proceed on a plenary basis there is no reason why he should not be able to so elect. The most striking example of such a choice would be one in which the defendant-tenant moves out of the demised premises after the filing of the unlawful detainer action, thereby leaving the plaintiff-landlord with an "empty" lawsuit for the balance of rent to the date of departure unless the plaintiff can proceed to compel the defendant-tenant to try the expectancy damage questions which are posed by Civil Code Section 1951.2.

If it is convenient to the Commission, I would appreciate the opportunity to appear and explain further the practical circumstances which will, I hope, lead the Commission to further consideration of the aforementioned landlord-tenant matters. Because I will be on vacation at the time of your September, 1975 meeting, either this coming June 26-27 or your October 9-11 meetings would be convenient for me.

With best personal regards, I am

Cordially,

TISHMAN REALTY & CONSTRUCTION CO. INC.

By


RONALD P. DENITZ

Assistant General Counsel

RPD/svh

August 1975

EXHIBIT II

STUDIES ON CURRENT AGENDA OF LAW REVISION COMMISSION

<u>STUDY</u>	<u>STUDY STATUS</u>
23 - Partition Procedure	1976 leg. program
26 - Escheat; Unclaimed Property	Recommendation enacted 1975
30 - Child Custody, Adoption, and Related Matters	Background studies on child custody and adoption prepared
36 - Condemnation	1975 leg. program
39 - Creditors' Remedies	Recommendations enacted 1971, 1973, and 1974. Additional recommendations 1975 and 1976 leg. program; study on enforcement of judgments in progress
47 - Oral Modification of Contracts	One recommendation enacted 1975; additional study required
52 - Sovereign Immunity	Recommendations enacted; continuing study required
63 - Evidence Code	Recommendations enacted; work on minor recommendations in progress; continuing study required; study of federal rules undertaken
65 - Inverse Condemnation	Recommendations enacted; general study published; staff study on procedure will be prepared
67 - Unincorporated Associations	Recommendations enacted; further study may be required
70 - Arbitration	Recommendations enacted; further study may be required; State Bar studying
72 - Liquidated Damages	Recommendation drafted 1976 leg. program; further study required
77 - Nonprofit Corporations	Under active consideration by staff
78 - Landlord-Tenant Relations	Recommendations enacted; additional study may be required
79 - Parol Evidence Rule	Study deferred
80 - Prejudgment Interest in Civil Actions	Study deferred
81 - Out-of-State Trusts	Under active consideration
82 - Class Actions	Authorized 1975
83 - Offers of Compromise	Authorized 1975
84 - Discovery in Civil Cases	Authorized 1975
85 - Possibilities of Reverter and Powers of Termination	Authorized 1975
86 - Marketable Title Act	Authorized 1975

EXHIBIT III

1976 LEGISLATIVE PROGRAM

1. Partition (bill already introduced and will be set for hearing in January 1976; recommendation published; now working on amendments to bill) (see Memorandum 75-60).
2. Claim and Delivery Statute (technical amendment already approved for printing)
3. Wage Garnishment Procedure (recommendation being printed for 1976 session; preprint bill introduced, need to review in light of action by Legislature on recommendation on wage garnishment exemptions) (see Memorandum 75-66).
4. Admissibility of Duplicates (tentative recommendation distributed for comment; comments will be reviewed at October meeting) (see Memorandum 75-63).
5. Admissibility of Business Records (recommendation to 1975 session; proposed legislation held in Assembly Judiciary Committee; revised recommendation to be prepared) (see Memorandum 75-64).
6. Revision of the Attachment Law (tentative recommendation distributed for comment; comments will be reviewed at October meeting) (see Memorandum 75-67).
7. Relocation Assistance by Private Condemnors (tentative recommendation distributed for comment; comments will be reviewed at October meeting) (see Memorandum 75-73).
8. Transfer of Out-of-State Trusts to California (working on tentative recommendation) (see Memorandum 75-65).
9. Undertaking in Actions Against Public Entities and Public Employees (tentative recommendation will be considered at October meeting) (see Memorandum 75-74).
10. Claim Presentation Requirement in Inverse Condemnation Actions (tentative recommendation will be considered at October meeting) (see Memorandum 75-75).

11. Liquidated Damages (recommendation approved to print; need to revise recommendation before it is printed) (see Memorandum 75-61).
12. Oral Modification of Contracts (recommendation to 1975 session; proposed legislation held in Assembly Judiciary Committee; revised recommendation to be prepared) (see Memorandum 75-62).
13. Condemnation for Byroads and Utility Purposes (tentative recommendation distributed for comment; comments will be reviewed at October meeting) (see Memorandum 75-72).

1977 LEGISLATIVE PROGRAM

1. Revisions of the Evidence Code
(Study of Federal Rules of Evidence and Needed Conforming Changes in California Evidence Code)
2. Nonprofit Corporations Law
3. Offers of Compromise
4. Unlawful Detainer Proceedings
5. Technical Conforming Changes--Eminent Domain (new acts adopted 1975 and 1976 that are inconsistent with or overlap or duplicate provisions of comprehensive eminent domain law)

1978 LEGISLATIVE PROGRAM

1. Discovery in Civil Actions
2. Marketable Title Act (includes Possibilities of Reverter and Powers of Termination)

1979 LEGISLATIVE PROGRAM

1. Class Actions
2. Enforcement of Judgments
3. Inverse Condemnation Procedural Provisions
4. Adoption, Child Custody, Guardianship, and Related Matters