

## Memorandum 2012-39

**2012 Legislative Program (Status Report)**

---

The attached table summarizes the final status of the Commission's 2012 legislative program.

As can be seen, this year's program was very successful. All Commission recommendations that were considered by the Legislature in 2012 have been enacted into law.

As discussed below, the Legislature also enacted Assembly Bill 1624 (Gatto). That bill implements a Commission recommendation that had previously been considered by the Legislature, but not enacted. It is discussed below.

AB 1624 (GATTO) — OWNERSHIP OF AMOUNTS  
WITHDRAWN FROM JOINT ACCOUNT

In 2004, the Commission issued a recommendation on *Ownership of Amounts Withdrawn from Joint Account*, 34 Cal. L. Revision Comm'n Reports 199 (2004). The Commission summarized the purpose of that recommendation as follows:

The Law Revision Commission recommends that the California Multiple-Party Accounts Law be revised to make clear that ownership of funds withdrawn from a joint account is based on the proportionate contributions of the parties to the account. This would reverse the rule of *Lee v. Yang*, 111 Cal. App. 4th 481, 3 Cal. Rptr. 3d 819 (2003), holding that a party who withdraws funds from a joint account owns the funds regardless of their source. The Commission further recommends clarification of the existing rule that withdrawal of sums on deposit in a joint account severs the right of survivorship in the amounts withdrawn to the extent of the ownership interest of the withdrawing party. The proposed revisions would not affect the law relating to spousal rights in a joint account, which are governed by a separate provision.

*Id.* at 201.

---

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

In 2005, Assembly Member (now Senator) Tom Harman introduced legislation (AB 69) to implement the Commission's recommendation. That bill was approved by the Assembly but died in the Senate Committee on Judiciary. In 2011, Senator Harman re-introduced his legislation, as SB 273. Again, the bill died in the Senate Committee on Judiciary.

This year, Assembly Member Gatto introduced AB 1624, which also contained the Commission's recommended reforms. The bill was later amended and enacted. See 2012 Cal. Stat. ch. 235.

A key concern that had been raised in connection with the bill involves the following situation: A joint account is used to facilitate someone assisting a senior with financial matters. The money in the joint account is deposited by and belongs to the senior, but the assistant is able to withdraw funds to spend on the senior's behalf (e.g., to pay routine bills or buy groceries). In such a situation, if the assistant does not keep careful records, that person could eventually face liability for the withdrawn funds (because the assistant did not deposit the funds and therefore had no ownership interest in them). For example, after the senior's death, the senior's heirs might demand that the assistant account for or repay all of the withdrawn funds.

AB 1624 was amended to address that concern, by adding the following limitation (which was not part of the Commission's recommendation):

Only a living party, or a conservator, guardian, or agent acting on behalf of a living party, shall be permitted to make a claim to recover the living party's ownership interest in an excess withdrawal.... A court may, at its discretion, and in the interest of justice, reduce any recovery under this section to reflect funds withdrawn and applied for the benefit of the claiming party.

That language doesn't entirely cure the problem, but it does limit it. Under that language, living parties could demand an accounting from the assistant, but the heirs or estate of a deceased party could not.

Despite that change, the bill is still largely in accord with the Commission's recommendation. It effectuates all of the Commission-recommended revisions verbatim. Moreover, legislative analyses of the bill make clear that the Legislature understood AB 1624 to be an implementation of the Commission's recommendation. See Senate Committee on the Judiciary Analysis of AB 1624 (July 5, 2012); Assembly Floor Analysis of AB 1624 (Aug. 10, 2012).

Consequently, the Commission's recommendation, including its Comments on the revised sections, provide relevant history for those portions of the bill that were enacted on the Commission's recommendation. For that reason, the staff will provide the Commission's recommendation and Comments to legal publishers, as it routinely does whenever any legislation implements a Commission recommendation.

However, to avoid any confusion as to which revisions were recommended by the Commission, the staff recommends that the Commission approve a revised Comment for Probate Code Section 5301, as follows:

**Comment.** Subdivision (a) of Section 5301 is amended to avoid the implication that the net contribution rule is used only to determine the ownership interests of the parties in sums remaining on deposit. See Section 5150 ("sums on deposit" defined). The net contribution rule is used also to determine whether a party has withdrawn from the account an amount in excess of the party's ownership interest. The amendment reverses the holding of *Lee v. Yang*, 111 Cal. App. 4th 481, 3 Cal. Rptr. 3d 819 (2003) (withdrawing party owns funds withdrawn from joint account regardless of source of funds). In the absence of proof otherwise, the net contribution to an account of each of the parties having a present right of withdrawal is deemed to be an equal amount. Section 5134 ("net contribution" defined).

The revision would make clear that the Comment only refers to the revision that the Commission recommended, in subdivision (a) of Section 5301. Our Comment would remain silent as to other changes to that section that were made by the Legislature. That is appropriate, because the Commission has not studied or taken a position on the specific issues addressed by the added language.

Respectfully submitted,

Brian Hebert  
Executive Director

# Status of 2012 Commission Legislative Program

As of October 2, 2012

		AB 805	AB 806	AB 1529	AB 2690	ACR 98					
<b>Introduced Last Amended</b>		2/17/11	2/17/11	1/23/12	2/27/12	2/2/12					
		6/11/12	1/4/12	3/21/12	8/14/12	4/12/12					
<b>First House</b>	Policy Committee	4/6/11	4/6/11	3/20/12	5/1/12	4/10/12					
	Second Committee	4/26/11	4/26/11	5/8/12	–	4/25/12					
	Passed House	5/2/11	5/2/11	5/14/12	5/14/12	4/30/12					
<b>Second House</b>	Policy Committee	1/10/12	1/10/12	6/19/12	7/3/12	6/12/12					
	Second Committee	6/19/12	6/19/12	7/3/12	–	6/25/12					
	Passed House	7/2/12	7/2/12	8/23/12	8/27/12	8/20/12					
<b>Concurrence</b>		8/6/12	8/6/12	–	8/29/12	8/22/12					
<b>Governor</b>	Received Approved	8/10/12	8/10/12	8/31/12	9/11/12	–					
		8/17/12	8/17/12	9/23/12	9/29/12	–					
<b>Secretary of State</b>	Date Chapter #	8/17/12	8/17/12	9/23/12	9/29/12	9/4/12					
		180	181	470	759	108					

**Bill List:** AB 805 (Torres): Statutory Clarification and Simplification of CID Law  
 AB 806 (Torres): Statutory Clarification and Simplification of CID Law (Conforming Revisions)  
 AB 1529 (Dickinson): Trial Court Restructuring  
 AB 2690 (Committee on Judiciary): Statutory Cross-References to "Tort Claims Act"  
 ACR 98 (Wagner): Resolution of Authority

Also of Interest:  
 AB 1624 (Gatto): Ownership of Amounts Withdrawn from Joint Account

KEY  
*Italics:* Future or speculative  
 "–": Not applicable  
 \*: Double referral, not fiscal  
 [date]: Deadline