

Admin.

April 11, 2019

Memorandum 2019-26

Minutes of Meeting on April 4, 2019 (Draft)

The California Law Revision Commission¹ held a meeting on April 4, 2019. A draft of Minutes for that meeting is attached for Commissioners to review.

The attached draft will be deemed final after it is approved by a vote of the Commission. When voting, the Commission may make specific changes to the Minutes. If so, those changes will be memorialized in the Minutes for the meeting at which the vote occurred.

Respectfully submitted,

Brian Hebert
Executive Director

1. 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). 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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

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DRAFT MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
APRIL 4, 2019
Sacramento

A meeting of the California Law Revision Commission was held in Sacramento on April 4, 2019.

Commission:

- Present:* Jane McAllister, Chairperson
Victor King, Vice-Chairperson
Thomas Hallinan
Susan Duncan Lee
Crystal Miller-O'Brien
- Absent:* Assembly Member Ed Chau
Senator Richard D. Roth
Diane F. Boyer-Vine, Legislative Counsel

Staff:

- Present:* Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Kristin Burford, Staff Counsel
Steve Cohen, Staff Counsel
Antonio Carrejo, Law Student Extern
Alexxis Frost, Law Student Extern

Other Persons:

- Rick Brausch, Department of Toxic Substances Control
Mason Brawley, Executive Committee of the Trusts and Estates Section, California
Lawyers Association
Catherine Cavanaugh, Department of Water Resources
Allan Davis, Department of Water Resources

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APPROVAL OF ACTIONS TAKEN

2 Unless otherwise indicated, the Commission decisions noted in these Minutes
3 were approved by all members present at the meeting. If a member who was
4 present at the meeting voted against a particular decision, abstained from voting,
5 or was not present when the decision was made, that fact will be noted below.

6

MINUTES

7 The Commission considered Memorandum 2019-8, presenting draft Minutes
8 for the February 7, 2019, meeting.

9 The Commission approved the Minutes without change.

10

ADMINISTRATIVE MATTERS

11 **Report of Executive Director**

12 The Executive Director reported on the following matters:

- 13 • Commissioner Olga Mack had her appointment withdrawn by the
14 Governor. To minimize any quorum problems that might result
15 from vacancies, the Commission decided to change the date of its
16 December 6, 2019, meeting to November 21, 2019.
- 17 • Video live-streaming of Commission meetings might be feasible if
18 the meetings are held in the State Capitol and the Legislature is
19 willing to provide assistance at an affordable cost. The
20 Commission directed the staff to make inquiries to the Legislature.
21 If the process is affordable, the Commission decided to hold all
22 future meetings in the Capitol to accommodate the practice.
- 23 • The closed session planned for the April meeting was postponed
24 until the May 30, 2019, meeting.

1 **Commissioner Suggestions**

2 The Commission decided that the staff should not use overnight delivery to
3 send hard copies of meeting materials to Commissioners shortly before a
4 meeting. Instead, the staff will email notice to Commissioners indicating that
5 hard copy will not be mailed and that Commissioners will need to prepare their
6 own copies for the meeting.

7 **2019 LEGISLATIVE PROGRAM**

8 The Commission considered Memorandum 2019-15, discussing the
9 Commission's 2019 Legislative Program. No Commission decisions were
10 required or made.

11 **STUDY E-200 — RECODIFICATION OF TOXIC SUBSTANCE STATUTES**

12 **Cumulative Draft**

13 The Commission considered Memorandum 2019-22 and its First Supplement,
14 presenting a cumulative draft of the material that the Commission has
15 considered to date, along with proposed changes to that material.

16 The Commission made the following decisions:

- 17 • The name of proposed Division 45 should be changed to
18 "Hazardous Substance Response."
- 19 • The definition of "hazardous substance" in proposed Section 68075
20 should be revised as described on page 2 of the First Supplement.
- 21 • Proposed Article 4, presented on page 3 of the First Supplement,
22 should be added to Chapter 1 of the recodification.

23 *(Commissioner Miller-O'Brien was not present when these decisions were made.)*

24 **Part 2, Chapter 2**

25 The Commission considered Memorandum 2019-23, which presents a draft of
26 proposed Chapter 2 of Part 2 of Division 45 of the Health and Safety Code.

27 The Commission approved a change to the organization of proposed Division
28 45, as described on page 3 of the memorandum.

29 The Commission also authorized the staff to make the following kinds of
30 changes as a matter of routine, without seeking Commission approval of each
31 change:

- 1 • Language will be replaced with defined terms where doing so
2 would not cause any change in the law and would not appear to
3 cause confusion. (*Commissioner Miller-O'Brien was not present when*
4 *this decision was made.*)
- 5 • Citations to federal law and the “federal act” will be standardized
6 as described on page 5 of the memorandum. (*Commissioner Miller-*
7 *O'Brien was not present when this decision was made.*)
- 8 • Repetition of singular and plural forms of the same word will be
9 eliminated, if such a change would not appear to cause confusion.
10 (*Commissioner Miller-O'Brien was not present when this decision was*
11 *made.*)
- 12 • Potentially erroneous or problematic cross-references will be
13 addressed as described on pages 5 and 6 of the memorandum.

14 STUDY EM-560 — EMINENT DOMAIN: PRECONDEMNATION ACTIVITIES

15 The Commission considered Memorandum 2019-20, discussing whether a
16 property owner should be able to receive compensation from a court deposit
17 under Code of Civil Procedure Section 1245.030 for harms resulting from
18 precondemnation activity, while that activity is still ongoing (“interim
19 compensation”).

20 The Commission decided that interim compensation should not be permitted
21 and directed the staff to prepare draft language to make that point expressly in
22 the precondemnation statute. The staff will also prepare a Comment that makes
23 clear that the law does not preclude informal arrangements to cure or mitigate
24 harms before precondemnation activities are complete.

25 STUDY G-400 — CALIFORNIA PUBLIC RECORDS ACT CLEAN-UP

26 **Conforming Revisions**

27 The Commission considered Memorandum 2019-24, concerning preparation
28 of the conforming revisions for the proposed recodification of the California
29 Public Records Act (“CPRA”). The Commission made the decisions described
30 below.

31 *Section 3 of Article I of the California Constitution*

32 For the reasons discussed at pages 2-4 of Memorandum 2019-24, a
33 conforming revision of Section 3 of Article I of the California Constitution does
34 not appear necessary.

1 *Insurance Code Section 12921.2*

2 Insurance Code Section 12921.2 should be amended as follows:

3 **Ins. Code § 12921.2 (amended). Inspection and copying of public**
4 **records of department and commissioner**

5 SEC. ____. Section 12921.2 of the Insurance Code is amended to
6 read:

7 12921.2. All public records of the department and the
8 commissioner subject to disclosure under ~~Chapter 3.5 (commencing~~
9 ~~with Section 6250) of Division 7~~ Division 10 (commencing with
10 Section 7920.000) of Title 1 of the Government Code shall be
11 available for inspection and copying pursuant to those provisions
12 at the offices of the department in the City and County of San
13 Francisco, in the City of Los Angeles, and in the City of
14 Sacramento. Adequate copy facilities for this purpose shall be made
15 available. Notwithstanding any other provision of law, a person
16 requesting copies of these records shall receive the copies from
17 employees of the department and the fee charged for the copies
18 shall not exceed the actual cost of producing the copies.
19 ~~Notwithstanding Section 6256 of the Government Code, any~~ Any
20 public record submitted to the department as computer data on an
21 electronic medium shall, in addition to any other formats, be made
22 available to the public pursuant to this section through an
23 electronic medium.

24 The accompanying Comment should explain that the cross-reference to
25 Government Code Section 6256 is obsolete due to the repeal of that section and
26 the enactment of Government Code Section 6253.9. There is no need for a Note
27 specifically soliciting input on this proposed revision.

28 *Public Resources Code Section 5096.513*

29 Public Resources Code Section 5096.513 should be amended as follows:

30 **Pub. Res. Code § 5096.513 (amended). Disclosure of information**
31 **by acquisition agency before public hearing on authorizing**
32 **major acquisition of conservation lands**

33 SEC. ____. Section 5096.513 of the Public Resources Code is
34 amended to read:

35 5096.513. Not less than 30 calendar days prior to holding a
36 public hearing for the purpose of authorizing a major acquisition of
37 conservation lands, an acquisition agency shall make available for
38 public review information, except information that is exempt from
39 being disclosed pursuant to the California Public Records Act
40 (~~Chapter 3.5 (commencing with Section 6250) of Division 7~~ Division
41 10 (commencing with Section 7920.000)) of Title 1 of the

1 Government Code) ~~all of~~, that includes, but is not limited to, all of
2 the following:

3 (a) A copy of the independent appraisal review prepared
4 pursuant to Section 5096.512.

5 (b) A summary of the basis for the recommendation of approval
6 for the major acquisition of the land made by the acquisition
7 agency.

8 (c) Any relevant environmental studies, documents, or other
9 information.

10 The tentative recommendation should include a Note specifically soliciting input
11 on the proposed grammatical correction.

12 **Part 6. Other Exemptions From Disclosure**

13 The Commission considered Memorandum 2019-25, discussing how to
14 recodify Article 2 of the CPRA (Gov't Code §§ 6275-6276.48), which is sometimes
15 known as the "CPRA Index."

16 First, the Commission discussed whether to move all of the CPRA
17 exemptions into the recodified CPRA (see Memorandum 2019-25, pp. 5-6). None
18 of the Commissioners supported that approach.

19 Next, the Commission discussed whether to retain the current format of the
20 CPRA Index. In particular, the Commission considered whether to switch to a
21 subject matter categorization approach (see Memorandum 2019-25, pp. 6-8 &
22 attached "Partial Draft of 'Part 6. Other Exemptions From Disclosure' of
23 Proposed New Division 10 of Title 1 of the Government Code").

24 For purposes of a tentative recommendation, the Commission decided to (1)
25 retain the current format of the CPRA Index and (2) solicit comment on that
26 approach.

27 (*Commissioners Hallinan and Lee voted to use the subject matter categorization*
28 *approach.*)

29 STUDY J-1405.3 — TRIAL COURT RESTRUCTURING CLEAN-UP:

30 MARSHALS

31 The Commission considered Memorandum 2019-21, which presents a draft of
32 a tentative recommendation on *Trial Court Restructuring Clean-Up: Obsolete*
33 *References to Marshals*.

34 The Commission decided to add the following amendment to that draft:

1 **Gov't Code § 26625.3 (amended). Court Security Oversight**
2 **Committee**

3 SEC. _____. Section 26625.3 of the Government Code is amended
4 to read:

5 26625.3. There is a Court Security Oversight Committee
6 consisting of five superior court judges appointed by the presiding
7 judge. The duties of the committee shall be those prescribed by this
8 article, and include, but are not limited to, the following:

9 (a) To approve all transfers out of and into the court security
10 bureau.

11 (b) To approve staffing levels and the recommended budget
12 prior to submission to the Judicial Council.

13 (c) To approve security measures and plans prepared by the
14 sheriff, through the court security bureau commander.

15 (d) Notwithstanding any other provisions of law, the sheriff
16 shall provide bailiffing, court security, and prisoner holding in the
17 Superior Court of Contra Costa County.

18 **Comment.** Section 26625.6 is amended to delete an obsolete
19 phrase. The practice of submitting a court security budget plan to
20 the Judicial Council has been discontinued.

21 The Commission further decided to revise the last sentence of the “Summary
22 of Tentative Recommendation” as shown in underscore below:

23 This recommendation was prepared pursuant to Government
24 Code ~~Section~~ Sections 8298 and 71674 and Resolution Chapter 158
25 of the Statutes of 2018.

26 In addition, the following paragraph should be added at the end of footnote
27 36:

28 The Commission also proposes another revision of the sheriff-
29 marshal consolidation statute for Contra Costa County. See
30 proposed amendment of Gov't Code § 26625.3 & Comment *infra*.
31 This amendment would delete an obsolete reference to a
32 discontinued practice. The amendment falls within the
33 Commission's general authority to “recommend revisions to
34 correct technical or minor substantive defects in the statutes of the
35 state” Gov't Code § 8298.

36 Subject to the revisions described above, the Commission approved the draft
37 attached to Memorandum 2019-21 as a tentative recommendation, to be posted
38 to the Commission's website and widely circulated for comment.

1 STUDY L-3032.1 — REVOCABLE TRANSFER ON DEATH DEED: FOLLOW-UP STUDY

2 The Commission considered Memorandum 2019-16 and its First through
3 Fourth Supplements, Memorandum 2019-17 and its First and Second
4 Supplements, and Memorandum 2019-18, all relating to the Commission’s study
5 of revocable transfer on death deeds (“RTODD”). The Commission made the
6 decisions described below.

7 **Execution of Instrument**

8 Probate Code Section 5624 should be revised as shown on pages 2 and 3 of
9 the First Supplement to Memorandum 2019-16.

10 No change should be made to existing law regarding execution of an RTODD
11 by an attorney-in-fact, on behalf of a principal.

12 Comment language should be added to make clear that the statutory RTODD
13 forms are proper notwithstanding any inconsistency between those forms and
14 the general law governing acknowledgment. (*Commissioner Miller-O’Brien voted*
15 *against this decision.*)

16 **Conflicting Dispositive Instruments and Forms of Title**

17 Probate Code Section 5660 should be revised as shown on page 2 of the
18 Second Supplement to Memorandum 2019-16.

19 No change should be made to existing law regarding the effect of an RTODD
20 on property that is titled as joint tenancy.

21 **Burdens on Title to Property Transferred by RTODD**

22 No change should be made to existing law regarding the effect of a lis
23 pendens recorded within 120 days after a transferor’s death, under Probate Code
24 Section 5694(a).

25 Section 5652 should be revised to provide that property transferred by
26 RTODD is subject to any limitation on the transferor’s interest that is recorded
27 within 120 days after a transferor’s death. (*Commissioner Hallinan was not present*
28 *for this decision.*)

29 **Mobilehomes**

30 The “Common Questions” in Probate Code Section 5642(b) should be revised
31 to provide guidance on the effect of an RTODD on a mobilehome, consistent
32 with the analysis of that issue in Memorandum 2019-17. (*Commissioner Hallinan*
33 *was not present for this decision.*)

1 **Medi-Cal Estate Recovery**

2 No change should be made to Probate Code Section 5654(b). (*Commissioner*
3 *Hallinan was not present for this decision.*)

4 **Standing of Beneficiary to Contest Revocation of RTODD**

5 The law should be revised to provide that a beneficiary of a revoked RTODD
6 should have standing, after the transferor's death, to contest the validity of the
7 revocation. The question of whether a successful contest of a revocation revives
8 the revoked RTODD should be left to judicial discretion. The law should not be
9 revised to make the remedies provided in Probate Code Section 5690 exclusive.
10 (*Commissioner Hallinan was not present for these decisions.*)

11 **Beneficiary as Interested Person Generally**

12 No change should be made to Probate Code Section 48. (*Commissioner*
13 *Hallinan was not present for this decision.*)

14 **Bankruptcy**

15 No change should be made to existing law regarding the status of property
16 received by RTODD during a bankruptcy proceeding in which the beneficiary is
17 the debtor.

18 **Signature by Amanuensis**

19 The "Common Questions" in Probate Code Section 5642(b) should be revised
20 to provide guidance along the following lines:

21 IF I AM UNABLE TO SIGN THE TOD DEED, MAY I ASK
22 SOMEONE ELSE TO SIGN MY NAME FOR ME? Yes. However, if
23 the person who signs for you would benefit from the transfer of
24 your property, there is a chance that the transfer under this deed
25 will fail. You should consult an attorney before taking that step.

26 **STUDY T-100 — TECHNICAL AND MINOR SUBSTANTIVE CORRECTIONS**

27 The Commission considered Memorandum 2019-19, discussing potentially
28 obsolete provisions in the California Salmon Marketing and Development Act.
29

1 The Commission directed the staff to make inquiries with interested
2 administrative and legislative staff as to whether deletion of the obsolete
3 provisions would be problematic. The staff will report the results of those
4 inquiries to the Commission.

APPROVED AS SUBMITTED

Date

APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)

Chairperson

Executive Director