Memorandum 2019-26

Minutes of Meeting on April 4, 2019 (Draft)

The California Law Revision Commission\(^1\) 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

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\(^1\) 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.
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
Approval of Actions Taken

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

Minutes

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

The Commission approved the Minutes without change.

Administrative Matters

Report of Executive Director

The Executive Director reported on the following matters:

• Commissioner Olga Mack had her appointment withdrawn by the Governor. To minimize any quorum problems that might result from vacancies, the Commission decided to change the date of its December 6, 2019, meeting to November 21, 2019.

• Video live-streaming of Commission meetings might be feasible if the meetings are held in the State Capitol and the Legislature is willing to provide assistance at an affordable cost. The Commission directed the staff to make inquiries to the Legislature. If the process is affordable, the Commission decided to hold all future meetings in the Capitol to accommodate the practice.

• The closed session planned for the April meeting was postponed until the May 30, 2019, meeting.
Commissioner Suggestions

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

2019 Legislative Program

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

Study E-200 — Recodification of Toxic Substance Statutes

Cumulative Draft

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

The Commission made the following decisions:

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

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

Part 2, Chapter 2

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

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

The Commission also authorized the staff to make the following kinds of changes as a matter of routine, without seeking Commission approval of each change:
• Language will be replaced with defined terms where doing so
would not cause any change in the law and would not appear to
cause confusion. (Commissioner Miller-O’Brien was not present when
this decision was made.)
• Citations to federal law and the “federal act” will be standardized
as described on page 5 of the memorandum. (Commissioner Miller-
O’Brien was not present when this decision was made.)
• Repetition of singular and plural forms of the same word will be
eliminated, if such a change would not appear to cause confusion.
(Commissioner Miller-O’Brien was not present when this decision was
made.)
• Potentially erroneous or problematic cross-references will be
addressed as described on pages 5 and 6 of the memorandum.

STUDY EM-560 — EMINENT DOMAIN: PRECONDEMNATION ACTIVITIES

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

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

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

Conforming Revisions

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

Section 3 of Article I of the California Constitution

For the reasons discussed at pages 2-4 of Memorandum 2019-24, a
conforming revision of Section 3 of Article I of the California Constitution does
not appear necessary.
Insurance Code Section 12921.2

Insurance Code Section 12921.2 should be amended as follows:

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

SEC. ___. Section 12921.2 of the Insurance Code is amended to read:

12921.2. All public records of the department and the commissioner subject to disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code shall be available for inspection and copying pursuant to those provisions at the offices of the department in the City and County of San Francisco, in the City of Los Angeles, and in the City of Sacramento. Adequate copy facilities for this purpose shall be made available. Notwithstanding any other provision of law, a person requesting copies of these records shall receive the copies from employees of the department and the fee charged for the copies shall not exceed the actual cost of producing the copies.

Notwithstanding Section 6256 of the Government Code, any public record submitted to the department as computer data on an electronic medium shall, in addition to any other formats, be made available to the public pursuant to this section through an electronic medium.

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

Public Resources Code Section 5096.513

Public Resources Code Section 5096.513 should be amended as follows:


SEC. ___. Section 5096.513 of the Public Resources Code is amended to read:

5096.513. Not less than 30 calendar days prior to holding a public hearing for the purpose of authorizing a major acquisition of conservation lands, an acquisition agency shall make available for public review information, except information that is exempt from being disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 Division 10 (commencing with Section 7920.000) of Title 1 of the
Government Code) all of, that includes, but is not limited to, all of the following:

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

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

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

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

**Part 6. Other Exemptions From Disclosure**

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

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

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

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

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

**STUDY J-1405.3 — TRIAL COURT RESTRUCTURING CLEAN-UP: MARSHALS**

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

The Commission decided to add the following amendment to that draft:
Gov’t Code § 26625.3 (amended). Court Security Oversight Committee
SEC. ____. Section 26625.3 of the Government Code is amended to read:
26625.3. There is a Court Security Oversight Committee consisting of five superior court judges appointed by the presiding judge. The duties of the committee shall be those prescribed by this article, and include, but are not limited to, the following:
(a) To approve all transfers out of and into the court security bureau.
(b) To approve staffing levels and the recommended budget prior to submission to the Judicial Council.
(c) To approve security measures and plans prepared by the sheriff, through the court security bureau commander.
(d) Notwithstanding any other provisions of law, the sheriff shall provide bailiffing, court security, and prisoner holding in the Superior Court of Contra Costa County.

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

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

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

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

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

Subject to the revisions described above, the Commission approved the draft attached to Memorandum 2019-21 as a tentative recommendation, to be posted to the Commission’s website and widely circulated for comment.
STUDY L-3032.1 — REVOCABLE TRANSFER ON DEATH DEED: FOLLOW-UP STUDY

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

Execution of Instrument

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

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

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

Conflicting Dispositive Instruments and Forms of Title

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

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

Burdens on Title to Property Transferred by RTODD

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

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

Mobilehomes

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

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

Standing of Beneficiary to Contest Revocation of RTODD

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

Beneficiary as Interested Person Generally

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

Bankruptcy

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

Signature by Amanuensis

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

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

STUDY T-100 — TECHNICAL AND MINOR SUBSTANTIVE CORRECTIONS

The Commission considered Memorandum 2019-19, discussing potentially obsolete provisions in the California Salmon Marketing and Development Act.
The Commission directed the staff to make inquiries with interested administrative and legislative staff as to whether deletion of the obsolete provisions would be problematic. The staff will report the results of those inquiries to the Commission.

☐ APPROVED AS SUBMITTED

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

_________________________________________ Date

_________________________________________ Chairperson

_________________________________________ Executive Director