

Admin.

July 17, 2020

Memorandum 2020-32

Minutes of Meeting on July 9, 2020 (Draft)

The California Law Revision Commission¹ held a meeting on July 9, 2020, by teleconference. 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.

DRAFT MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
July 9, 2020

A meeting of the California Law Revision Commission was held on July 9, 2020. Consistent with Executive Orders N-25-20 and N-29-20, the meeting was held as an online video webinar.

Only those members of the public who identified themselves for the purpose of inclusion in the Minutes are listed as attendees.

Commission:

Present: Victor King, Chairperson
Crystal Miller-O'Brien, Vice-Chairperson
David A. Carrillo
Ana Cubas
Jane McAllister
Richard Rubin
Richard Simpson

Absent: Diane Boyer-Vine, Legislative Counsel
Assembly Member Ed Chau
Senator Richard D. Roth

Staff: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Kristin Burford, Staff Counsel

Other Persons:

Carrie Barnecut, Nugent Square
Chris Conley, American Civil Liberties Union of Northern California
Dan Hazel, Circle R Ranch
Marjorie Murray, Center for California Homeowner Association Law
Elaine Roberts Musser
Andrea O'Toole
Aniko Sherry, International Consultant
David Zeponi, Executive Council of Homeowners

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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 2020-22, presenting draft Minutes for the May 21, 2020, meeting.

The Commission approved the Minutes without change.

(Commissioner McAllister was not present when this decision was made.)

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director briefed the Commission on two matters:

(1) The State Budget for 2020-21.

(2) Staff investigation of the possibility of using the *California Style Manual* when preparing Commission materials.

Commissioner Suggestions

No suggestions were made.

1 **Meeting Schedule**

2 The Commission considered Memorandum 2020-23, presenting a proposed
3 meeting schedule for 2020.

4 The Commission approved the proposed schedule, with the understanding
5 that it will be revisited if circumstances change so as to permit in-person
6 meetings.

7 *(Commissioner McAllister was not present when this decision was made.)*

8 **Closed Session**

9 The Commission met in closed session to discuss an employment matter,
10 pursuant to Government Code Section 11126(a).

11 The session was purely informational. No Commission action was required or
12 taken.

13 **2020 LEGISLATIVE PROGRAM**

14 The Commission considered Memorandum 2020-24, discussing the
15 Commission's 2020 Legislative Program.

16 This was a purely informational memorandum. No Commission action was
17 required or taken.

18 **STUDY G-300 — STATE AND LOCAL AGENCY ACCESS TO CUSTOMER INFORMATION**
19 **FROM COMMUNICATION SERVICE PROVIDERS**

20 The Commission considered Memorandum 2020-31, discussing government
21 access to customer information from communication service providers.

22 **Service Provider Liability**

23 For the purposes of preparing a tentative recommendation, the Commission
24 approved a revision of Penal Code Section 1546.4(d), along the following lines:

25 1546.4. ...

26 ~~(d)(1) A California or foreign corporation service provider, and~~
27 ~~its officers, employees, and agents, are not subject to any cause of~~
28 ~~action for providing records, information, facilities, or assistance in~~
29 ~~accordance with the terms of a warrant, court order, statutory~~
30 ~~authorization, emergency certification, or wiretap order issued~~
31 ~~pursuant to this chapter.~~

32 (2) Nothing in this subdivision affects any liability of a service
33 provider for an act that is not compelled by the terms of a warrant.

1 court order, statutory authorization, emergency certification, or
2 wiretap order issued pursuant to this chapter.

3 **Comment.** Subdivision (d) of Section 1546.4 is amended to
4 make clear that it applies to any service provider and not just one
5 that is formed as a corporation.

6 **Special Master**

7 For the purposes of preparing a tentative recommendation, the Commission
8 approved a revision of Penal Code Section 1524 to make clear that, for the
9 purposes of Section 1524(c), records prepared or held by an electronic
10 communication service provider on behalf of a customer are deemed to be
11 “within the possession or control” of the customer.

12 STUDY J-1405.4 — STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING 13 (PART 6): REGIONAL JUSTICE FACILITIES ACTS

14 The Commission considered Memorandum 2020-28, which presents a draft of
15 a tentative recommendation proposing to repeal the San Joaquin County
16 Regional Justice Facility Financing Act (Gov’t Code §§ 26290-26293.4), the
17 Orange County Regional Justice Facilities Act (Gov’t Code §§ 26295-26298.58),
18 and the County Regional Justice Facilities Financing Act (Gov’t Code §§ 26299-
19 26299.083) as obsolete. The Commission approved that draft as a tentative
20 recommendation, to be posted to its website and circulated for comment.

21 *(Commissioner Miller-O’Brien was not present when this decision was made.)*

22 STUDY J-1406 — STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING 23 (PART 7): GOVERNMENT CODE SECTION 70219

24 The Commission considered Memorandum 2020-29, which presents a draft of
25 a tentative recommendation proposing to repeal Government Code Section 70219
26 as obsolete. The Commission approved that draft as a tentative recommendation,
27 to be posted to its website and circulated for comment.

28 *(Commissioner Miller-O’Brien was not present when this decision was made.)*

1 STUDY L-3032.5 — STOCK COOPERATIVES AND THE
2 UNIFORM TOD SECURITY REGISTRATION ACT

3 The Commission considered Memorandum 2020-30, discussing adaptation of
4 the Uniform TOD Security Registration Act (Probate Code Sections 5500-5512) to
5 allow a nonprobate transfer of an owner's interest in a stock cooperative.

6 For the purposes of preparing a tentative recommendation, the Commission
7 approved the inclusion of a provision along the following lines (with brackets
8 indicating language that would be contingent on the placement of the provision):

9 § [____]. **Restriction on transferred property**

10 [____]. (a) A separate interest in a stock cooperative that is
11 transferred pursuant to [this part] remains subject to any limitation
12 on the transferor's interest that was enforceable against the separate
13 interest at the time of the transferor's death, including, but not
14 limited to, a restriction on occupancy, an option to purchase the
15 membership on the transferor's death, a limitation on the transfer
16 value in a limited equity housing cooperative, a lien, an
17 encumbrance, an easement, or a lease. The holder of those rights
18 may enforce them against the separate interest notwithstanding its
19 transfer pursuant to [this part].

20 (b) Except as provided in subdivision (c), property may be
21 transferred pursuant to [this part] even if the beneficiary is not
22 eligible, under the governing documents of the stock cooperative,
23 to occupy the transferred property.

24 (c) If a separate interest is registered in beneficiary form
25 pursuant to [this part] and the stock cooperative exercises an option
26 to purchase the separate interest on the owner's death, the result is
27 as follows:

28 (1) The separate interest is transferred to the stock cooperative
29 rather than the beneficiary.

30 (2) The purchase price is paid to the beneficiary. Unless the law
31 or the governing documents of the stock cooperative provide
32 otherwise, the purchase price is the fair market value of the
33 separate interest, less the amount of any liens or encumbrances on
34 the property at the time of the owner's death and any amount that
35 the decedent owed the stock cooperative.

36 **Comment.** Subdivision (a) of Section [____] provides that a
37 separate interest that is transferred pursuant to [this part] remains
38 subject to any interests or limitations that were enforceable against
39 it at the time of the transferor's death. For a comparable provision,
40 see Section 5652(b) (revocable transfer on death deed).

41 Subdivision (b) provides that a separate interest may be
42 transferred to a beneficiary who is not eligible to occupy the
43 separate interest (e.g., the beneficiary is too young to reside in an

1 age-restricted community). Such ineligibility does not affect the
2 beneficiary's ability to transfer the property to another person.

3 Subdivision (c) addresses the effect of registration in beneficiary
4 form when a stock cooperative exercises an option to purchase the
5 registered property on the owner's death. Paragraph (2) of that
6 subdivision makes clear that the price paid to purchase a separate
7 interest may be limited by law or the governing documents of the
8 stock cooperative. For example, in a limited equity housing
9 cooperative, the amount paid will be based on a specified transfer
10 value, rather than fair market value. See Civ. Code § 817.

11 STUDY X-100 — EMERGENCY-RELATED REFORMS

12 The Commission considered Memorandum 2020-25 (expansion of
13 Commission study authority), Memorandum 2020-26 (pending sunset dates) and
14 Memorandum 2020-27 and its First, Second, and Third Supplements
15 (teleconference meetings in common interest developments). The Commission's
16 decisions on those topics are set out below.

17 **Commission Study Authority**

18 The Commission decided that each Commissioner may provide the staff with
19 a list of emergency-related topics that should perhaps be authorized for
20 Commission study. The lists may include topics drawn from pages 7 and 8 of
21 Memorandum 2020-25, but are not limited to those topics. The staff will present
22 all of the Commissioner suggestions in a memorandum that will be considered at
23 the August 13, 2020 meeting. The Commission will then decide whether to
24 request legislative authorization to study any of those topics.

25 **Pending Sunset Dates**

26 The Commission approved the draft attached to Memorandum 2020-26 as a
27 final report, subject to the following decisions:

- 28 • The staff will make changes to the draft to reflect recently enacted
29 budget legislation.
- 30 • The Chair will review those changes.

31 **Teleconference Meetings in Common Interest Developments**

32 The Commission decided to develop a proposal that would make it easier for
33 common interest developments to conduct meetings by teleconference during an
34 emergency. The proposal would also include rules to preserve members' existing
35 rights to observe and participate in the meeting. In its work on this topic, the

- 1 Commission will consider the specific proposals that have been made to date,
- 2 which are discussed in Memorandum 2020-27 and its First, Second, and Third
- 3 Supplements.

☐ APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Director