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**MINUTES OF MEETING**  
**CALIFORNIA LAW REVISION COMMISSION**  
**JUNE 6, 2003**  
**BURBANK**

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A meeting of the California Law Revision Commission was held in Burbank on June 6, 2003.

**Commission:**

*Present:* David Huebner, Chairperson  
Frank Kaplan, Vice Chairperson  
Joyce G. Cook  
Desiree Icaza Kellogg  
Edmund L. Regalia

*Absent:* Diane F. Boyer-Vine, Legislative Counsel  
Ellen Corbett, Assembly Member  
Bill Morrow, Senate Member  
William E. Weinberger

**Staff:** Nathaniel Sterling, Executive Secretary  
Brian Hebert, Assistant Executive Secretary  
Barbara S. Gaal, Staff Counsel

**Consultants:** Gerald F. Uelmen, Criminal Procedure Under Trial Court  
Unification

**Other Persons:**

Skip Daum, Community Associations Institute, Sacramento  
Lloyd Dix, California Association of Collectors, Los Angeles  
Elizabeth A. Huber, State Bar Business Law Section, Consumer Financial Services  
Committee, El Segundo  
Milt Johns, Leisure World, Laguna Woods  
Terence Nunan, State Bar Trusts and Estates Section, Los Angeles  
S. Guy Puccio, Executive Council of Homeowners, Inc., Sacramento  
Norma J. Walker, The Vineyards Community Association, Bakersfield

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MINUTES OF MARCH 7, 2003, COMMISSION MEETING

The Commission approved the Minutes of the March 7, 2003, Commission meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

**Election of Officers**

The Commission considered Memorandum 2003-21, relating to election of officers. The Commission elected Frank Kaplan as Chairperson to succeed David Huebner, and William E. Weinberger as Vice Chairperson to succeed Frank Kaplan. Their terms of office are one year, commencing September 1, 2003.

**Conflict of Interest Code**

The Commission considered Memorandum 2003-9, relating to the Commission’s conflict of interest code. The Commission decided to make no change in its current conflict of interest code.

**Report of Executive Secretary**

*Budget*

The Executive Secretary reported that the budget committees in both houses of the Legislature have approved a general fund budget appropriation for the Commission for the 2003-04 fiscal year in the amount of \$550,000 (plus \$15,000 reimbursements). The budget is currently being considered by the Conference Committee. After adoption by the Legislature, the budget will go to the Governor for approval. The Executive Secretary will alert Commission members when this occurs. The Chairperson requested Commission members to inform the

Executive Secretary of their contacts in the Governor's office, and requested the Executive Secretary to provide Commission members information for use in budget discussions with the Governor's office.

*Personnel*

The Executive Secretary reported that Lynne Urman, one of the Commission's staff counsel, has resigned her position, effective at the end of June 2003. Commission members expressed appreciation for the quality of her work and regret at the loss. The Commission adopted a motion that the Commission values her work and encourages her to continue with the Commission.

*Meeting Schedule*

The Commission set its next meeting for September 18-19, 2003, in Los Angeles. The Commission also identified the following times and places for possible future meetings, subject to budgetary developments, etc. Commission members should hold these dates on their calendars for the eventuality that a Commission meeting could be scheduled accordingly.

<b>September 2003</b>	<b>Los Angeles</b>
Sept. 18 (Thur.)	10:00 am – 5:00 pm
Sept. 19 (Fri.)	9:00 am – 4:00 pm
<b>November 2003</b>	<b>Los Angeles</b>
Nov. 20 (Thur.)	10:00 am – 5:00 pm
Nov. 21 (Fri.)	9:00 am – 4:00 pm
<b>February 2004</b>	<b>Sacramento</b>
Feb. 19 (Thur.)	10:00 am – 5:00 pm
Feb. 20 (Fri.)	9:00 am – 4:00 pm
<b>April 2004</b>	<b>Sacramento</b>
Apr. 15 (Thur.)	10:00 am – 5:00 pm
Apr. 16 (Fri.)	9:00 am – 4:00 pm
<b>June 2004</b>	<b>Sacramento</b>
June 24 (Thur.)	10:00 am – 5:00 pm
June 25 (Fri.)	9:00 am – 4:00 pm
<b>September 2004</b>	<b>Los Angeles</b>
Sept. 9 (Thur.)	10:00 am – 5:00 pm
Sept. 10 (Fri.)	9:00 am – 4:00 pm

**November 2004**

Nov. 18 (Thur.)

Nov. 19 (Fri.)

**Los Angeles**

10:00 am – 5:00 pm

9:00 am – 4:00 pm

The Commission may want to revisit at some point the concept of more frequent one day meetings, and the concept of a Thursday evening/Friday combination depending on workload. The Executive Secretary should bring this matter back to the Commission at the end of this year if it appears that efficiencies could be realized by such a shift.

**LEGISLATIVE PROGRAM**

The Commission considered Memorandum 2003-10, relating to the Commission's 2003 legislative program.

The staff orally updated the chart attached to the memorandum with the information that AB 182, SB 79, SB 113, and SCR 4 are set for hearing in the Judiciary Committee of the second house on June 10, and AB 512 is set for hearing on June 16.

The Commission also took the following actions on the legislative program.

**AB 182 (Harman) — Exemptions from Enforcement of Judgments**

The Commission ratified the bill amendments and Comments relating to publishing cost of living adjustments, as set out at pages 2-4 of the memorandum.

**AB 286 (Dutra) — Double Liability Problem in Home Improvement Contracts**

The Commission decided to sponsor AB 286 as implementing the Commission's recommendation on the matter if the bill is amended to incorporate a lien cap along the lines set out at pages 8-9 of the memorandum.

**AB 512 (Bates) — Procedural Fairness in CID Rulemaking and Decisionmaking**

See entry in these Minutes under Study H-851.

**SB 113 (Ackerman) — Stay of Mechanic's Lien Enforcement Pending Arbitration**

The Commission ratified the bill amendments and Comments reinstating the Commission's 2000 recommendation, as set out at page 6 of the memorandum,

and rescinded the previous decision to print an updated version of the revised 2002 recommendation.

#### STUDY B-400 – FINANCIAL PRIVACY

The Commission commenced, but did not complete, consideration of Memorandum 2003-19 and its First Supplement, relating to financial privacy. The Commission made the following decisions with respect to the matters considered.

##### **State Regulatory Authority**

The Commission tentatively approved the general approach of naming a state regulatory authority to ensure that governing California law remains consistent with federal law with respect to terminology, definitions, and the like. Thus general provisions governing scope of coverage of the California law — “financial institution” and “nonpublic personal information” — would remain parallel with federal law as proposed in the memorandum.

The Commission deferred decision on what agency or agencies should be designated as the state regulatory authority, pending reaction from the Office of Privacy Protection.

##### **Attorneys and Others in a Confidential Relationship**

The Commission approved the approach of having the state regulatory authority make a determination whether confidentiality provisions applicable to a particular profession are sufficiently strong that state financial privacy law should be inapplicable. The draft statute set out in the memorandum should be revised to make clear that the determination made by the state regulatory authority is a formal determination.

The staff should further investigate the question whether a state law of this character would be (1) consistent with the Gramm-Leach-Bliley Act, and (2) free of preemption by the Gramm-Leach-Bliley Act. Assuming that the state law is determined to be free of federal preemption, would members of an exempted profession nonetheless remain subject to the requirements of the Gramm-Leach-Bliley Act?

### **Opt In v. Opt Out**

The Commission accepted the staff's proposal to defer policy decisions on the opt in/opt out issue pending collection of further information, such as the empirical information expected to be collected in the Treasury Department's report on the Gramm-Leach-Bliley Act.

Meanwhile, the framework of the federal system, with terminology and definitions of concepts such as "affiliate", "joint marketing agreement", and transactional exemptions, should be replicated in state law. The statute drafts set out in the memorandum should make clear that state regulations must remain consistent with the federal definitions.

### **Conforming Revisions**

The Commission noted potential problems with conflicting California statutes. For example, the laws governing recorded abstracts of judgment provide for recordation of a judgment debtor's social security number and driver's license number. The interrelation of this and other statutes with the financial privacy statute needs to be worked out.

The staff indicated it is currently engaged in research to identify and resolve potential conflict problems. Ms. Huber of the State Bar's Consumer Financial Services Committee has offered the assistance of that committee in identifying relevant statutes. This task needs to be done regardless of whether legislation recommended by the Commission, or SB 1 (Speier), or some other measure is ultimately enacted.

### **Next Steps**

The staff will commence the process of assembling a comprehensive financial privacy statute out of the various parts considered by the Commission to date, combined with staff proposals on other issues. For the next Commission meeting, the staff will present for Commission resolution issues not previously considered by the Commission that need to be resolved before the Commission will be in a position to promulgate a tentative recommendation to circulate for public comment.

In the meantime the staff will continue to monitor developments at the state and federal levels. If significant action occurs that would affect the basic direction of the project, the staff will adjust accordingly and present for Commission

consideration a revised scope and direction for the project, and for the Commission's report to the Legislature on the matter.

STUDY H-851 – PROCEDURAL FAIRNESS IN CID RULEMAKING AND  
DECISIONMAKING

The Commission considered Memorandum 2003-23 and the First Supplement to Memorandum 2003-18, relating to procedural fairness in common interest development rulemaking and architectural review. The memoranda discussed Assembly Bill 512 (Bates), which would implement the Commission's recommendation on *Common Interest Development Law: Procedural Fairness in Association Rulemaking and Decisionmaking* (December 2002).

The Commission made the following decisions and directed the staff to work with Assembly Member Bates, where necessary, to implement them:

**General Issues**

*Ratification of Prior Amendment*

The Commission ratified the change to proposed Section 1357.150(c) that was made in the April 30, 2003 amendment of AB 512.

*Optional Safe Harbor Procedures*

The existing approach of providing optional safe harbor procedures, rather than mandatory procedures, should be preserved.

*Nonresidential Developments*

Civil Code Section 1373 should be amended to exempt nonresidential developments from application of the bill:

~~1373. Sections 1356, 1365, 1365.5, 1366.1, and 1368, and subdivision (b) of Section 1363, and subdivision (b) of Section 1366 are not applicable to common interest developments that are expressly zoned as industrial developments and limited in use to industrial purposes or expressly zoned as commercial developments and limited in use to commercial purposes. (a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by its declaration:~~

~~(1) Section 1356.~~

~~(2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of Part 4 of Division 2 of the Civil Code.~~

(3) Subdivision (b) of Section 1363.

(4) Section 1365.

(5) Section 1365.5.

(6) Subdivision (b) of Section 1366.

(7) Section 1366.1.

(8) Section 1368.

(9) Article 2 (commencing with Section 1378.010) of Chapter 10 of Title 6 of Part 4 of Division 2 of the Civil Code.

(10) Article 3 (commencing with Section 1378.050) of Chapter 10 of Title 6 of Part 4 of Division 2 of the Civil Code.

(b) The Legislature finds that those—~~forementioned~~ the provisions listed in subdivision (a) may be are appropriate to protect purchasers in residential common interest developments, however, the provisions are may not be necessary to protect purchasers in commercial or industrial developments since the application of those provisions results could result in unnecessary burdens and costs for these types of developments.

**Comment.** Section 1373 is amended to exempt exclusively industrial and exclusively commercial common interest developments from application of the specified provisions governing rulemaking and association review of proposed alterations of a member's separate interest property.

*Method of Notice Delivery*

Proposed Civil Code Section 1350.7 should be amended as follows:

1350.7. (a) This section applies to delivery of a document to the extent the section is made applicable by another provision of this title.

(b) A document shall be delivered by one or more of the following methods:

(1) Personal delivery.

(2) First class mail, postage prepaid, addressed to a member at the address last shown on the books of the association or otherwise provided by the member. Delivery is deemed to be complete on the fifth day after deposit into the United States Mail.

(3) E-mail, facsimile, or other electronic means, if the sender and recipient have recipient has agreed to that method of delivery. A ~~provision of the governing documents providing for electronic delivery does not constitute agreement by a member of an association to that form of delivery.~~ If a document is delivered by electronic means, delivery is complete at the time of transmission.

(4) By publication in a periodical that is circulated primarily to members of the association.



(5) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

(6) Any other method of delivery, provided that the recipient has agreed to that method of delivery.

(c) A document may be included in or delivered with a billing statement, newsletter, or other document that is delivered by one of the methods provided in subdivision (b).

(d) For the purposes of this section, a provision of the governing documents providing for a particular method of delivery does not constitute agreement by a member of the association to that method of delivery.

## **Rulemaking Issues**

### *Scope of Operating Rule Provisions*

Proposed Civil Code Section 1357.110 should be amended as follows:

1357.110. This article applies only to an operating rule relating to any of the following subjects:

(a) Use of the common area or of an exclusive use common area.

(b) Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest.

(c) Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties.

(d) Assessment collection procedures.

1357.120. This article does not apply to the following actions by the board of directors of an association:

(a) A decision in a specific case that is not intended to apply generally.

(b) A decision setting the amount of a regular or special assessment.

(c) A rule change that is required by law, if the board of directors has no discretion as to the substantive effect of the rule change.

(d) Issuance of a document that merely repeats existing law or the governing documents.

(e) A decision regarding maintenance of the common area.

The staff should work with the interested groups to develop Comment language clarifying the meaning of Section 1357.110(b).

*Member Initiated Rulemaking*

The Commission decided against providing a formal mechanism for member initiation of rulemaking.

*Seller Disclosure of Governing Documents*

The Commission decided against requiring that the homeowners association, rather than the seller, provide the association's governing documents to a prospective buyer of a separate interest within a common interest development.

*Member Access to Association Records*

Civil Code Section 1363(f) should be amended as follows:

(f) Members of the association shall have access to association records, including accounting books and records and membership lists, in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. The members of the association shall have the same access to the operating rules of the association as they have to the accounting books and records of the association.

*Transitional Provision*

Proposed Civil Code Section 1357.180 should be amended as follows:

1357.180. (a) This article applies to a rule change made commenced on or after January 1, 2004.

(b) Nothing in this article affects the validity of a rule change made commenced before January 1, 2004.

(c) For the purposes of this section, a rule change is commenced when the board of directors of the association takes its first official action leading to adoption of the rule change.

**Architectural Review Issues**

*Preemption of Governing Documents*

Proposed Civil Code Section 1378.050 should be amended as follows:

1378.050. This Notwithstanding any contrary provision of an association's governing documents, this article provides a fair and reasonable procedure that an association may use in reviewing a member's proposed alteration of a separate interest, an exclusive use common area, or part of the common area. Use of the procedure is not mandatory.

*Preapproved Alterations and Emergency Repairs*

Proposed Civil Code Section 1378.010 should be amended as follows:

1378.010. (a) If an association's governing documents require that an owner of a separate interest obtain association approval before altering a separate interest, exclusive use common area, or part of the common area, this article governs the association's decisionmaking process.

(b) An association may, by operating rule, pre-approve specific types of alterations. A pre-approved alteration is not subject to review under this article.

(c) A repair is not subject to review under this article if the board of directors of the association determines that an immediate repair is necessary to protect public health or safety or to prevent further property damage, and the repair would not significantly alter the original design of the property.

**Comment.** Subdivision (a) of Section 1378.010 provides that this article only applies to an alteration if association approval of such an alteration is required under the association's governing documents. For example, if the governing documents do not require association approval of new construction by the developer, this article would not apply to such construction.

Subdivision (b) permits an association board to pre-approve specific types of alterations, which would not be subject to individualized review. For example, an operating rule might pre-approve a list of exterior house paint colors. A member who wishes to paint a house one of the approved colors could do so without seeking any further association approval. An operating rule pre-approving specific types of alterations must satisfy the general standards for validity of an operating rule, including consistency with the governing documents. See Section 1357.130.

Subdivision (c) provides an exception for emergency repairs on approval of the board of directors. To make a determination under this subdivision, the board could call an emergency meeting (see Section 1363.05(h)) or could delegate decisionmaking authority to a single member of the board, a committee, or an agent (see Corp. Code § 7210 (delegation of management authority)).

See also Sections 1351(a) ("association" defined), 1351(b) ("common area" defined), 1351(i) ("exclusive use common area" defined), 1351(j) ("governing documents" defined), 1351(l) ("separate interest" defined), 1360 (modification of separate interest contained within building).

*Procedural Streamlining and Expanded Notice of Decision*

Proposed Civil Code Sections 1378.070 and 1378.090 should be amended as follows:

1378.070. (a) An association member who proposes to alter a separate interest shall submit a written application to the reviewing body. The application shall be in the form specified by the association. An incomplete application may be returned to the applicant with an explanation of why the application is incomplete. No further action is required on an application that is returned as incomplete.

(b) Within 30 days after receipt of the application, the reviewing body shall deliver notice of the application to the following persons:

(1) ~~If the proposed alteration would affect the common area, to all members.~~

~~(2) If the association delivers a newsletter, billing statement, or other document to all members at least once a month, to all members.~~

~~(3) If the proposed alteration would not affect the common area and the association does not deliver a newsletter, billing statement, or other document to all members at least once a month, only alter separate interest or exclusive use common area property, to members owning separate interests within 500 300 feet of, or located within the same building as, the separate interest property that is the subject of the proposed alteration and to members having a right to use any exclusive use common area property that is the subject of the proposed alteration.~~

~~(2) If the proposed alteration would alter common area property other than exclusive use common area property, to all members.~~

(c) The notice shall include the address or location of the separate interest, exclusive use common area, or part of the common area, that is the subject of the application, a description of the proposed alteration adequate to inform other members of its nature, and the date after which the reviewing body may make its decision.

(d) Not less than ~~20~~ 15 days nor more than ~~45~~ 30 days after delivery of the notice of the application, the reviewing body shall deliver a written decision to the applicant and to any participating member. If the reviewing body does not deliver a written decision to the applicant within ~~45~~ 30 days after delivery of the notice of application, the application is deemed disapproved on the ~~45th~~ 30th day.

(e) A written decision approving a proposed alteration of a separate interest, exclusive use common area, or part of the common area, shall state include an explanation of the reason for the decision, a description of the procedure for appealing the decision, and a statement indicating whether the reviewing body received any comments opposing the alteration.

1378.090. (a) An applicant or participating member may appeal the approval or disapproval of a proposed alteration of a separate interest, exclusive use common area, or part of the common area, to the board of directors of the association. The appeal shall be in writing and shall be delivered to the board of directors within ~~30~~ 15 days after the reviewing body's decision is delivered or the proposed alteration is deemed disapproved.

(b) ~~Within 30 days after receipt of a timely request for appeal,~~ At least 15 days before hearing the appeal, the board of directors shall deliver notice of the appeal to the following persons:

(1) If the proposed alteration would affect the common area, to all members.

~~(2) If the association delivers a newsletter, billing statement, or other document to all members at least once a month, to all members.~~

~~(3) If the proposed alteration would not affect the common area and the association does not deliver a newsletter, billing statement, or other document to all members at least once a month, only alter separate interest or exclusive use common area property, to members owning separate interests within 500 300 feet of, or located within the same building as, the separate interest property that is the subject of the proposed alteration and to members having a right to use any exclusive use common area property that is the subject of the proposed alteration.~~

~~(2) If the proposed alteration would alter common area property other than exclusive use common area property, to all members.~~

(c) The notice of appeal shall state the time and place where the appeal will be heard.

(d) ~~Within 45 days after notice of the appeal is delivered,~~ receipt of a timely appeal the board of directors shall meet and review de novo the proposed alteration that is the subject of the appeal. Any association member may testify at the appeal and may submit written materials in support of or in opposition to the proposed alteration.

(e) Within 15 days after hearing the appeal, the board of directors shall deliver its decision to the applicant and, if the appeal

is by a person other than the applicant, to that person. The decision shall be in writing and shall include a statement explaining the basis for the decision, including reference to facts, standards, or provisions of the governing documents that support the decision.

#### *Grounds For Appeal*

The grounds for appealing an architectural review decision to the board of directors should not be specifically limited.

#### **Matters Deferred for Later Study**

The following subjects require further Commission study:

- The extent to which members of a homeowners association should be entitled to use association-funded media in promoting reversal of a rule change under Proposed Section 1357.170.
- Whether member access to association records should extend to association contracts with third party vendors and to the “operating rules” of third party vendors.

#### **Remaining Issues**

Matters discussed in the memoranda but not decided by the Commission will be addressed by the staff, in consultation with the Chair of the Commission and Assembly Member Bates.

#### STUDY J-111 – STATUTE OF LIMITATIONS FOR LEGAL MALPRACTICE

The Commission considered Memorandum 2003-14 and its First Supplement, concerning input from the State Bar on the statute of limitations for legal malpractice. The Commission decided to continue investigating that area. The staff should solicit comments from a broad spectrum of interested parties, including insurers.

#### STUDY M-1330 – CRIMINAL PROCEDURE UNDER TRIAL COURT UNIFICATION

The Commission considered Memorandum 2003-13, discussing public comment on the tentative recommendation on *Criminal Procedure Under Trial Court Unification* (November 2002). The Commission decided to defer action on the tentative recommendation until it could review the results of the Judicial

**Council survey of attorney perceptions of peer review in the appellate division of the superior court.**

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary