
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
JANUARY 21, 2005
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on January 21, 2005.

Commission:

Present: William E. Weinberger, Chairperson
Edmund L. Regalia, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Frank Kaplan

Absent: Bill Morrow, Senate Member

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

Consultants: None

Other Persons:

Sandra Bonato, Executive Council of Homeowners, San Jose
Hugh Bowen, Assembly Housing Committee, Sacramento
Jerry L. Bowles, Capitola
Oliver Burford, Executive Council of Homeowners, San Jose
William D. Collette, Rocklin
Karen Conlon, California Association of Community Managers, Irvine
Maxine Costa, Rancho Cordova
Skip Daum, Community Associations Institute, Sacramento
Edward Dodge, Sacramento
Denise Duncan, Mattos & Associates, Sacramento
Sandra Duval, Lumber Association of California and Nevada, Sacramento
Lisa Engel, Assembly Housing Committee, Sacramento
John Garvic, Executive Council of Homeowners, Sacramento
Beth Grimm, Concord
John Handel, California Association of Community Managers, Irvine
Kara Hatfield, Senate Committee on Judiciary, Sacramento
Jake Henshaw, Garrett News Service, Sacramento
Carole Hochstatter, Bakersfield
Steve Hughes, Roseville
Steven Ingram, Consumer Attorneys of California, Sacramento
Joe Klinger, Government Strategies, Inc., Sacramento

Dan E. Kocal, California Association of Community Managers, Granite Bay
Matt Laird, Bakersfield
Stephen F. Lambert, San Diego
Milena Marsico, San Mateo
Pat March, Rocklin
Kerry Mazzoni, Government Strategies, Inc., Sacramento
Lakesha McGhee, Sacramento Bee, Sacramento
Eva McLain, Rocklin
Gretel McLane, Lincoln
Patrick McLane, Lincoln
Todd Minor, Sacramento
Beate M. Morrow, Rocklin
Kenneth E. Morrow, Rocklin
Marjorie Murray, CID Bill of Rights Coalition, Sacramento
Dick Nash, Building Industry Credit Association, Los Angeles
Karen Raasch, AARP, Sacramento
Larry Robinson, Rocklin
Janet Shaban, Sacramento
Lloyd Smith, Gold River News, Gold River
Norm Widman, Lumber Association of California, San Diego
Kathleen Willoughby, Sacramento

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MINUTES OF NOVEMBER 19, 2004, COMMISSION MEETING

1 The Commission approved the Minutes of the November 19, 2004,
2 Commission meeting as submitted by the staff, subject to the following
3 corrections:

4 On page 5, line 3, the phrase “native american” should be capitalized.

5 On page 11, line 2, the word “great” should be “greater”.

ADMINISTRATIVE MATTERS

1 **Meeting Schedule**

2 The Commission decided to expand the March meeting to a day and a half in
3 order to cover its backlog of materials. The March meeting will be:

4	March 2005	Sacramento
5	Mar. 17 (Thur.)	2:00 pm – 5:00 pm
6	Mar. 18 (Fri.)	9:00 am – 4:30 pm

7 The Commission discussed dates for a possible 50th anniversary reunion of
8 Commission and staff members. The Commission felt that a Wednesday evening
9 function preceding the Thursday Commission meeting in May or July would
10 work best in terms of enabling attendance of invited legislative and other guests
11 who have been involved with the Commission's work.

12 **Recording of Meetings**

13 The Commission considered Memorandum 2005-7 and its First Supplement,
14 discussing the Commission's practice of recording its meetings for the purpose of
15 preparing the Minutes. The Commission made the following decisions:

- 16 (1) The Commission will record its meetings digitally.
- 17 (2) The digital recording files will be retained for 30 days and then
18 erased. See Gov't Code § 11124.1(b).
- 19 (3) Prior to erasure, a person may listen to the recording files on
20 equipment in the Commission's offices. See Gov't Code §
21 11124.1(b).
- 22 (4) Prior to erasure, a person may obtain a copy of the recording files
23 by paying a small fee to cover the cost of reproduction. Copies will
24 be provided on compact disk.

25 The Commission authorized the staff to use law student resources, on a low
26 priority basis, to research the extent to which existing law should be modernized
27 to reflect the development of new recording media.

28 **Report of Executive Secretary**

29 *Commission Personnel*

30 There have been no new appointments to fill the vacancies on the
31 Commission. The Governor's appointments staff has indicated that the
32 appointment process is in progress.

1 The Commission has several law students working on projects this semester.
2 We have hired a third year Boalt Hall student (Inna Efimchik) and a second year
3 UC Davis student (Rebecca Hardaway) on a part time basis; a second year Boalt
4 Hall student (Sara Poster) is working for academic credit as a part time extern
5 with the Commission. Several McGeorge students in Clark Kelso's law revision
6 seminar are working on Commission projects under Professor Kelso's direction.

7 *Commission Budget*

8 The Commission has been exempted from the unallocated reduction enacted
9 as part of the 2004 budget act.

10 The Governor's budget for 2005 would fund the Commission's operations at
11 their current level. This level is adequate to enable the Commission to maintain a
12 solid program of law reform, but it does not enable the more productive and
13 cost-effective operation that would be possible if the Commission were funded
14 for an additional half-time administrative assistant and one or two additional
15 attorneys.

16 The Executive Secretary brought to the Commission's attention Budget Letter
17 04-38, which directs state advisory bodies to exercise prudence to limit the
18 number of meeting held throughout the year to only those deemed absolutely
19 necessary. The Commission is in compliance with this directive.

20 *Reproduction of Comments*

21 The Commission provisionally approved the following policy on
22 reproduction of comments:

23 A written communication to the Commission that is relevant to
24 matters currently under consideration may be attached as an
25 exhibit to a staff memorandum. A communication that is off-topic,
26 defamatory, obscene, invasive of personal privacy or
27 confidentiality, or that is otherwise inappropriate for republication
28 will not be reproduced as an exhibit unless it is redacted to
29 eliminate the inappropriate material. Any redaction shall be clearly
30 indicated. A communication that is not reproduced as an exhibit
31 may be summarized in a staff memorandum.

32 The policy will be placed on the agenda for the next Commission meeting and
33 presented for formal approval at that time.

LEGISLATIVE PROGRAM

1 The Commission considered Memorandum 2005-1, relating to the
2 Commission's 2005 legislative program. The Commission approved proposed
3 legislation to correct AB 3081 chaptering out problems, attached as an Exhibit to
4 the memorandum.

STUDY H-821 – MECHANICS LIEN LAW

5 The Commission considered Memorandum 2005-4 and material distributed at
6 the meeting (attached to the First Supplement to Memorandum 2005-4), relating
7 to mechanics lien law. The Commission made the following decisions on issues
8 raised in the memorandum.

9 **Direct Contractor**

10 The draft should continue to use the term "direct contractor" for a person that
11 has a direct contractual relationship with the owner. The definition of the term
12 should make clear that a "direct contractor" may include a material supplier,
13 engineer, or other person that contracts directly with the owner.

14 **Change Orders**

15 The tentative recommendation draft should eliminate the 5% change order
16 notification requirement, but should flag the change and specifically request
17 comment on it.

18 The staff should review the draft to ensure that provisions relating to contract
19 changes are not limited to change orders.

20 **Preliminary Notice**

21 Existing Section 3097(b), requiring all persons who have a direct contractual
22 relationship with the owner to give preliminary notice to the construction lender,
23 should be revised to eliminate the introductory language excepting "the
24 contractor" from this requirement.

25 **Acceptance by Public Entity**

26 The provision of existing law that deals with acceptance by a public entity as
27 a condition for completion should be flagged in the tentative recommendation
28 for further public comment on whether the provision is useful.

1 **Notice of Completion**

2 The tentative recommendation should provide that a notice of completion
3 based on cessation of labor is ineffective if labor recommences, and should solicit
4 comment on the workability of the provision.

5 **Notice of Recordation of Notice of Completion**

6 The preliminary notice to the property owner should be adjusted to recognize
7 the proposed change in law that would require the property owner to provide a
8 copy of a notice of completion to potential lien claimants.

9 **Waiver and Release**

10 The staff should make an effort to clarify and simplify the waiver and release
11 forms.

12 **Expungement of False Claim of Lien**

13 The expungement process should not be made subject to small claims
14 jurisdiction. The filing of a notice of nonresponsibility should not be made a
15 specific ground for expungement. A provision should be added to require a court
16 determination on the expungement petition not later than 75 days after its filing.
17 The contents of the petition should include more detail concerning the facts on
18 which the petition is based.

19 **Contractor's License Bond**

20 The tentative recommendation should not include a provision extending the
21 contractor's license bond to cover damages for a false claim of lien.

22 **Time for Recordation of Claim of Lien**

23 The time for recordation of a claim of lien differs from the time for filing a
24 notice to withhold funds and the time for making a claim against a payment
25 bond. The staff should investigate the possibility of harmonizing these
26 provisions.

27 **Notice of Recordation of Claim of Lien**

28 The staff should check the operation of Government Code Section 27297.5,
29 which provides for notice to the property owner of lien recordation. The statute
30 should cross-reference this provision.

1 STUDY H-853 – STATE ASSISTANCE TO COMMON INTEREST DEVELOPMENTS

2 The Commission considered Memorandum 2005-2, its First, Second, and
3 Third Supplements, and material distributed at the meeting (attached to the
4 Fourth Supplement). The memorandum and its supplements discuss public
5 comment on the Commission’s tentative recommendation on *State Assistance to*
6 *Common Interest Developments* (September 2004).

7 The Commission directed the staff to prepare a revised draft of the proposed
8 law, consistent with staff recommendations in the memoranda and the following
9 specific decisions:

10 **Operational Costs**

11 The staff will gather additional data on the cost to the state to process a
12 consumer complaint, as well as data on the number of complaints that are likely
13 to be received by the proposed Bureau.

14 In light of any data collected, the staff will analyze whether the per-unit fee to
15 fund the Bureau’s operations should be reduced and whether it would be
16 appropriate to add a fee for filing a formal request for Bureau mediation or law
17 enforcement action. If a filing fee is included in the proposed law, the fee amount
18 should be affordable to a person with a low income.

19 **Enforcement Jurisdiction**

20 The proposed law will make clear that the Bureau would not be authorized to
21 enforce a homeowner’s obligation to pay an assessment.

22 The proposed law will explain the distinction between a violation of law
23 (which would be subject to the Bureau’s enforcement authority) and a violation
24 of an association’s governing documents (which would not be subject to Bureau
25 enforcement). The explanation will include illustrative examples.

26 **Precedent Decisions**

27 The proposed law will encourage the Bureau to adopt precedent decisions
28 under Government Code Section 11425.60, in order to provide guidance on
29 matters that the Bureau has adjudicated.

30 **Mediation and Enforcement**

31 The proposed law will incorporate existing law that protects the
32 confidentiality of statements made in mediation.

1 Bureau personnel involved in a mediation will be prohibited from
2 participating in an enforcement action arising from the same dispute.

3 **Exhaustion of Administrative Remedies**

4 The Commission is undecided on whether a person should or should not be
5 required to exhaust the Bureau's law enforcement process before filing a civil
6 action in court on a claim that falls within the Bureau's law enforcement
7 jurisdiction. The staff will prepare alternative drafts, setting out each option.

8 **Judicial Review of Administrative Decision**

9 The proposed law will make clear that a decision on an administrative appeal
10 of a Bureau citation would be subject to judicial review by writ of administrative
11 mandamus.

12 **Annual Reporting**

13 The proposed law will require that the Bureau prepare an annual report to
14 the Legislature that provides empirical data on the nature and volume of its
15 workload and recommends any changes to CID law that the Bureau finds to be
16 necessary.

17 The Bureau would also be required to prepare and make available to the
18 public an annual descriptive summary of changes in CID law.

19 **Intended Recipients of Assistance**

20 The proposed law will make clear that the Bureau's services would be
21 provided to any interested person, including both homeowners and those who
22 act as agents of community associations.

23 **Informational Hearing**

24 The Assembly Committee on Housing and Community Development has
25 scheduled an informational hearing on the concepts underlying the proposed
26 law. It is currently scheduled for March 9, 2005, from 9:00 a.m. to noon, in Room
27 126 of the State Capitol.

28 The staff will provide the committee with background material, including a
29 revised draft of the proposed law. The background material will specifically
30 request legislative guidance on whether the punitive remedies provided in the
31 proposed law are appropriate.

STUDY J-103 – ORAL ARGUMENT IN CIVIL PROCEDURE

1 The Commission considered Memorandum 2005-5, relating to oral argument
2 in civil procedure. The Commission directed the staff to convert the material in
3 the memorandum into a tentative recommendation to be circulated for public
4 comment, subject to the following decisions.

5 (1) Proposed Section 1044(b)(2) should be expanded to include summary
6 adjudication.

7 (2) Proposed Section 1044(b)(3) should be limited to a general demurrer.

8 (3) Proposed Section 1044(b)(8) should be recast to use terminology other than
9 forum nonconveniens.

10 (4) Proposed Section 1044(b)(13) should refer to a motion or order to show
11 cause for injunctive relief, rather than an action for injunctive relief.

12 (5) Additional paragraphs should be added to proposed Section 1044(b) to
13 include a motion for class certification, referral of a matter to arbitration, and
14 appointment of a referee or appraiser.

15 (6) An additional paragraph should be added to proposed Section 1044(c) to
16 the effect that oral argument must be allowed on any procedure that would
17 involve determination of an issue in the case by a nonjudicial officer.

18 The staff should particularly seek comment on the tentative recommendation
19 from the larger local bar associations and from the judiciary, as well as from
20 persons and organizations on the Commission's regular civil procedure mailing
21 list.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary