A meeting of the California Law Revision Commission was held in Sacramento on January 25, 2007.

Commission:

Present:  David Huebner, Chairperson  
Sidney Greathouse, Vice Chairperson  
Noreen Evans, Assembly Member  
Pamela L. Hemminger  
Frank Kaplan  
Susan Duncan Lee  
Edmund L. Regalia  
William E. Weinberger

Absent:  Diane F. Boyer-Vine, Legislative Counsel  
Ellen Corbett, Senate Member

Staff:  Brian Hebert, Executive Secretary  
Barbara S. Gaal, Chief Deputy Counsel  
Catherine Bidart, Staff Counsel  
Steve Cohen, Staff Counsel

Consultants:  None

Other Persons:  
Sam Abdulaziz, various construction trade associations  
Eddie Bernacchi, Politico Group  
Oliver Burford, Executive Council of Homeowners  
Frank Collard, Southern California Rock Products Association  
Gerald Desmond, Association of California Surety Companies  
Ken Dunham, Lumber Association of California and Nevada  
Joe Klinger, Government Strategies, Inc. (for ECHO)  
Aaron Maguire, California Department of Justice  
David L. Mandel, Senior Legal Hotline  
C.D. Michel, Trutanich & Michel, LLP  
Marjorie Murray, California Alliance for Retired Americans  
Dick Nash, Building Industry Credit Association  
H. Paul Payne, National Rifle Association
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Charles Philipps, Association of California Surety Companies, Surety & Fidelity Association of America
Mark Rice, Associated General Contractors
J. David Sackman, California State Council of Laborers, Legislative Department
Mary Pat Toups, Laguna Woods
Gerald H. Upholt, California Rifle and Pistol Association
Norm Widman, Lumber Association of California and Nevada
Ed Worley, National Rifle Association

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MINUTES OF DECEMBER 8, 2006, COMMISSION MEETING

The Commission approved the Minutes of the December 8, 2006, Commission meeting as submitted by the staff, subject to the following correction:

On page 2, line 20, the date “December 8, 2007” was changed to “December 8, 2006.”

ADMINISTRATIVE MATTERS

Report of Executive Secretary

Personnel

On January 17, 2007, Senator Ellen Corbett was appointed to serve as the Commission’s Senate member.

Barbara Gaal was promoted to serve as Chief Deputy Counsel on January 11, 2007. Catherine Bidart began work for the Commission as Staff Counsel on January 2, 2007.

Budget

The Governor’s proposed budget for 2007-08 would provide full funding for the Commission at the current staff level.
LEGAL PROGRAM

The Commission considered Memorandum 2007-1, providing a report on the Commission’s 2007 legislative program. The Commission made the following decisions:

Resolution of Authority

A provision deleting authority to study alternative dispute resolution will not be included in the resolution.

Revocable Transfer on Death (TOD) Deeds

The staff will work with the Assembly and Senate Committees on the Judiciary and any interested parties to develop more informative consumer advisory language for possible inclusion on the proposed statutory forms. The staff will present the language for Commission review at the March 2007 meeting.

The Commission approved the staff recommendations on the issues raised by Valerie Merritt.

Technical and Minor Substantive Statutory Corrections

The proposed amendment of Civil Code Section 1812.515 will not be included in legislation implementing the Commission’s recommendation on Technical and Minor Substantive Statutory Corrections, 35 Cal. L. Revision Comm’n Reports 219 (2006). The staff will look for another vehicle for that proposed change.

STUDY H-821 — MECHANICS LIEN LAW

The Commission considered pages 37 to 90 of Memorandum 2006-48 and its Third and Fourth Supplements, concerning the tentative recommendation on Mechanics Lien Law (June 2006). The Commission adopted the staff recommendations made in those materials, subject to the following decisions:

General Notice Issues

The Commission directed the staff to revise proposed Civil Code Section 7106 to make clear that the listed addresses for notice are alternatives and that none of the subdivisions state an exclusive rule.
Preliminary Notice Issues

Prerequisite to Payment Bond

The Commission directed the staff to revise proposed Civil Code Section 7200 to make clear that proposed Civil Code Section 7612 provides an exception to the provision stating that preliminary notice is a necessary prerequisite to the validity of a claim against a payment bond.

Generic Statement in Preliminary Notice

The Commission directed the staff to revise proposed Civil Code Section 7204 to promote the phrase “Even though you have paid your contractor in full” to the top of the generic statement included in a preliminary notice.

Coverage of Preliminary Notice

The Commission directed the staff to revise proposed Civil Code Section 7208(b) to make clear that it governs the form of the preliminary notice and does not expand the number of persons entitled to receive preliminary notice.

Mechanics Lien Issues

Damage Action for Fraudulent Lien Claim

The Commission deleted proposed Civil Code Section 7426 from the proposed law.

Amount of Lien Recovery by Contractor

The Commission revised proposed Civil Code Section 7434 as follows:

7434. A direct contractor or a subcontractor may enforce a lien only for the amount due pursuant to the contractor’s contract after deducting all lien claims of other claimants for labor, service, equipment, and material provided and embraced within the contractor.

Payment to Assignee as Ground for Lien Release Petition

The Commission directed the staff to determine whether proposed Civil Code Section 7480(a)(3) should expressly reference payment in full to a claimant’s assignee as a ground for a lien release petition.
Release of Lien After Order Granting Lien Release Petition

The Commission directed the staff to analyze whether the proposed law should delay the release of a lien claim following an order granting a lien release petition in order to allow the claimant time to seek appellate relief. The staff should examine other areas of law in which an expedited appeal procedure has been implemented, as well as time requirements for seeking appellate relief.

STUDY H-855 — STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

The Commission considered pages 1 through 6 of Memorandum 2007-4, and related parts of the First and Second Supplements. The remainder of the memorandum and its supplements will be considered at a later meeting.

The Commission made the following changes to the proposed law:

Election Rules

The Commission decided to add a note following proposed Civil Code Section 4630, to invite public comment on the advantages and disadvantages of allowing an election rule to be expressed in any type of governing document, rather than requiring that an election rule be adopted as an operating rule.

Election Inspector

Proposed Civil Code Section 4635(b) was revised to include the following language: “Except as provided in subdivision (c), a member of the association may serve as election inspector.”

The Commission decided to revise the Comment to proposed Section 4635 to make clear that the limitation on the selection of an association employee or contractor to serve as election inspector has no effect on the ability of an association to contract with a person to serve as election inspector.

Secret Ballot Procedure

The Commission revised proposed Section 4640 to limit its application to “elections regarding assessments legally requiring a vote, election and removal of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property.”

Cumulative Voting

The Commission replaced proposed Civil Code Section 4640(f) with language along the following lines:
Cumulative voting may be used in an election, to the extent provided in the governing documents. Notwithstanding Section 7615 of the Corporations Code, in an association that permits cumulative voting, cumulative voting shall be used if any member requests that it be used, in writing, before ballot materials for the election are distributed.

STUDY J-506 — CIVIL DISCOVERY IMPROVEMENTS

The Commission considered Memorandum 2007-2, discussing whether to clarify the provision on subpoenaing personal records of a consumer (Code Civ. Proc. § 1985.3). As recommended, the Commission decided not to study this matter further.

Commissioner Weinberger raised the possibility of examining whether the codes have been properly conformed to reflect the creation of limited liability companies (LLCs) and limited liability partnerships (LLPs). The Commission decided to consider this point when it reviews its topics and priorities in the fall.

STUDY M-300 — NONSUBSTANTIVE REORGANIZATION OF DEADLY WEAPON STATUTES

The Commission considered Memorandum 2007-5, relating to nonsubstantive reorganization of the statutes governing deadly weapons.

The following persons made oral comments at the meeting: C.D. Michel of Trutanich & Michel, LLP (representing the National Rifle Association, the California Rifle & Pistol Association, and the California Association of Firearms Retailers), Aaron Maguire (representing the California Department of Justice), Gerald Upholt (representing the California Rifle & Pistol Association), and Ed Worley (representing the National Rifle Association). Mr. Michel provided two publications:


The Commission made the following decisions:

Type of Weapons

The Commission’s study will encompass all types of deadly weapons, not just firearms.
Relevant Code Sections

The Commission did not make a preliminary decision on which statutes to include in its study. The staff should explore this matter further and then make a recommendation as to the proper scope of the study.

Criminal Sentencing Enhancement Provisions

The Commission discussed the criminal sentencing enhancement provisions (Penal Code §§ 12021.5-12022.95) that are located within Title 2 of Part 4 of the Penal Code. In reorganizing the statutes governing deadly weapons, the Commission will try to leave the criminal sentencing enhancement provisions in place rather than relocating them.

Nonsubstantive Reform

In conducting this study, the Commission will strictly adhere to the principle of keeping substantive changes to an absolute minimum. If a substantive change is unavoidable, it will be flagged in the Commission’s report. Ideally, the Commission will not propose any substantive changes at all.

Uncodified Provision

The Commission’s proposal will include an uncodified provision stating that the legislation is not intended to make any substantive change in the law. If an exception is made, the exception will be specified in that provision.