
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
JANUARY 25, 2007
SACRAMENTO

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

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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1 MINUTES OF DECEMBER 8, 2006, COMMISSION MEETING

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

4 On page 2, line 20, the date “December 8, 2007” was changed to “December 8,
5 2006.”

6 ADMINISTRATIVE MATTERS

7 **Report of Executive Secretary**

8 *Personnel*

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

11 Barbara Gaal was promoted to serve as Chief Deputy Counsel on January 11,
12 2007. Catherine Bidart began work for the Commission as Staff Counsel on
13 January 2, 2007.

14 *Budget*

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

1 LEGISLATIVE PROGRAM

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

5 **Resolution of Authority**

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

8 **Revocable Transfer on Death (TOD) Deeds**

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

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

16 **Technical and Minor Substantive Statutory Corrections**

17 The proposed amendment of Civil Code Section 1812.515 will not be included
18 in legislation implementing the Commission's recommendation on *Technical and*
19 *Minor Substantive Statutory Corrections*, 35 Cal. L. Revision Comm'n Reports 219
20 (2006). The staff will look for another vehicle for that proposed change.

21 STUDY H-821 — MECHANICS LIEN LAW

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

26 **General Notice Issues**

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

1 **Preliminary Notice Issues**

2 *Prerequisite to Payment Bond*

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

7 *Generic Statement in Preliminary Notice*

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

11 *Coverage of Preliminary Notice*

12 The Commission directed the staff to revise proposed Civil Code Section
13 7208(b) to make clear that it governs the form of the preliminary notice and does
14 not expand the number of persons entitled to receive preliminary notice.

15 **Mechanics Lien Issues**

16 *Damage Action for Fraudulent Lien Claim*

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

19 *Amount of Lien Recovery by Contractor*

20 The Commission revised proposed Civil Code Section 7434 as follows:

21 7434. A direct contractor or a subcontractor may enforce a lien
22 only for the amount due pursuant to ~~the~~ that contractor’s contract
23 after deducting all lien claims of other claimants for labor, service,
24 equipment, and material provided and embraced within ~~the~~ that
25 contract.

26 *Payment to Assignee as Ground for Lien Release Petition*

27 The Commission directed the staff to determine whether proposed Civil Code
28 Section 7480(a)(3) should expressly reference payment in full to a claimant’s
29 assignee as a ground for a lien release petition.

1 *Release of Lien After Order Granting Lien Release Petition*

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

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

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

11 The Commission made the following changes to the proposed law:

12 **Election Rules**

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

17 **Election Inspector**

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

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

25 **Secret Ballot Procedure**

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

30 **Cumulative Voting**

31 The Commission replaced proposed Civil Code Section 4640(f) with language
32 along the following lines:

1 Cumulative voting may be used in an election, to the extent
2 provided in the governing documents. Notwithstanding Section
3 7615 of the Corporations Code, in an association that permits
4 cumulative voting, cumulative voting shall be used if any member
5 requests that it be used, in writing, before ballot materials for the
6 election are distributed.

7 STUDY J-506 — CIVIL DISCOVERY IMPROVEMENTS

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

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

16 STUDY M-300 — NONSUBSTANTIVE REORGANIZATION
17 OF DEADLY WEAPON STATUTES

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

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

- 27 • California Rifle & Pistol Association, Summary of California Gun
28 Laws & Basic Safety Rules (34th ed. 2006).
- 29 • J. Machtinger, How to Own a Gun & Stay Out of Jail (2005).

30 The Commission made the following decisions:

31 **Type of Weapons**

32 The Commission's study will encompass all types of deadly weapons, not just
33 firearms.

1 **Relevant Code Sections**

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

5 **Criminal Sentencing Enhancement Provisions**

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

11 **Nonsubstantive Reform**

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

16 **Uncodified Provision**

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

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary