
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
MARCH 1, 2007
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on March 1, 2007.

Commission:

Present: David Huebner, Chairperson
Sidney Greathouse, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Pamela L. Hemminger
Frank Kaplan
Susan Duncan Lee
Edmund L. Regalia
William E. Weinberger

Absent: Ellen Corbett, Senate Member
Noreen Evans, Assembly Member

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

Consultants: Nathaniel Sterling

Other Persons:

Michelle Carey, Office of Assembly Member Chuck DeVore
Frank Collard, Southern California Rock Products Association (Calcima)
Gerald Desmond, Association of California Surety Companies
Ken Grossbart, Abdulaziz, Grossbart & Rudman
Neil F. Horton, State Bar Trusts and Estates Section
Charlotte Ito, State Bar Trusts and Estates Section
Joe Klinger, Government Strategies, Inc., for ECHO
Shirley Kovar, State Bar Trusts and Estates Section
David L. Mandel, Senior Legal Hotline
Dick Nash, Building Industry Credit Association
Charles Philipps, Association of California Surety Companies, Surety & Fidelity
Association of America
J. Philipps, Los Angeles

1 **AB 1126 (Eng) — Time Limits for Discovery in an Unlawful Detainer Case**

2 In the bill and in the December 19, 2006, preprint version of the Commission’s
3 recommendation, the amendment of Code of Civil Procedure Section 2033.250
4 should be revised as shown in boldface italics below:

5 2033.250. (a) Within 30 days after service of requests for
6 admission, ~~or in unlawful detainer actions within five days after~~
7 ~~service of requests for admission,~~ the party to whom the requests
8 are directed shall serve the original of the response to them on the
9 requesting party, and a copy of the response on all other parties
10 who have appeared, unless on motion of the requesting party the
11 court has shortened the time for response, or unless on motion of
12 the responding party the court has extended the time for response.
13 In unlawful detainer actions,

14 (b) Notwithstanding subdivision (a), in an unlawful detainer
15 action *or other proceeding under Chapter 4 (commencing with*
16 *Section 1159) of Title 3 of Part 3,* the party to whom the request is
17 directed shall have at least five days from the date of service to
18 respond, unless on motion of the requesting party the court has
19 shortened the time for response, or unless on motion of the
20 responding party the court has extended the time for response.

21 This revision merely corrects an accidental omission; it is consistent with the
22 existing content of the Comment and the preliminary part.

23 **STUDY H-821 — MECHANICS LIEN LAW**

24 The Commission considered Memorandum 2007-8 and its First Supplement,
25 concerning the tentative recommendation on *Mechanics Lien Law* (June 2006). The
26 Commission adopted the staff recommendations made in those materials, subject
27 to the following decisions:

28 **Owner’s Demand for Stop Payment Notice**

29 The Commission made no change to Civil Code Section 7520.

30 **Content of Stop Payment Notice**

31 The staff will research the purpose of the provision in existing Civil Code
32 Section 3083 that requires a stop payment notice to identify the type and value of
33 future work to be provided by the claimant.

1 **Withholding by Construction Lender**

2 The Commission revised proposed Civil Code Section 7536 as follows:

3 7536. (a) Except as provided in subdivision (b), on receipt of a
4 stop payment notice a construction lender shall withhold from the
5 borrower or other person to which the lender or the owner is
6 obligated to make payments or advancement out of the
7 construction fund sufficient funds to pay the claim.

8 (b) The construction lender may, at its option, elect not to
9 withhold funds in any of the following circumstances:

10 (1) The stop payment notice is unbonded.

11 (2) A The stop payment notice is given by a claimant other than
12 a direct contractor, and a payment bond is recorded before the
13 lender is given ~~the first~~ any stop payment notice. ~~This paragraph~~
14 ~~does not apply to a bonded stop payment notice given by a direct~~
15 ~~contractor.~~

16 **Enforcement of Stop Payment Notice**

17 The Commission made no change to proposed Civil Code Section 7550 or its
18 Comment.

19 STUDY L-637 — REVISION OF NO CONTEST CLAUSE STATUTE

20 The Commission considered Memorandum 2007-7, presenting the results of a
21 practitioner survey on whether there are problems with existing no contest
22 clause law that would justify a significant change in the law.

23 The Commission directed the staff to prepare a draft tentative
24 recommendation that would (1) make minor simplifying changes to the existing
25 statute, (2) exempt indirect contests from the enforcement of a no contest clause,
26 (3) eliminate the existing procedure for declaratory relief on the scope of
27 application of a no contest clause, and (4) create a probable cause exception for
28 all contests.

29 The staff will prepare a memorandum that discusses related legal and policy
30 questions (including limitations on retroactive application of any reform) and
31 reports on experience under the fee shifting statute that reportedly applies to
32 contests in Florida.

2 The Commission considered Memorandum 2007-6 and its First Supplement,
3 concerning the Commission’s recommendation on *Revocable Transfer on Death*
4 *(TOD) Deed* (October 2006). The Commission made the following decisions:

5 **Statutory Form**

6 The Commission approved the general “question and answer” approach used
7 by the staff in drafting the proposed revisions to the statutory form revocable
8 TOD deed (proposed Probate Code Section 5642).

9 The proposed language on failed gifts was revised to read as follows:

10 **WHAT IF A BENEFICIARY DIES BEFORE I DO?** The
11 property will transfer according to the general rules governing
12 failed gifts. See Prob. Code §§ 21110-21111.

13 The staff has discretion to make additional nonsubstantive changes to the
14 proposed language, as may be necessary to address concerns raised by legislative
15 committee consultants.

16 **Competing Dispositive Instruments**

17 The staff will revise the narrative part of the recommendation and the
18 Comment to proposed Probate Code Section 5660 to reflect the operation of that
19 section in the unlikely event that a transferor records a will that purports to
20 dispose of the same property as a recorded revocable TOD deed.

21 **Application of Proposed Law**

22 A number of substantive limitations on the *effect* of a revocable TOD deed
23 were recast as limitations on the scope of *application* of the proposed law, along
24 the following lines:

25 **§ 5614. Revocable transfer on death deed**

26 5614. (a) “Revocable transfer on death deed” means an
27 instrument that (1) makes a donative transfer of real property
28 under this part to a named beneficiary, (2) operates on the
29 transferor’s death, and (3) remains revocable until the transferor’s
30 death.

31 (b) “Revocable transfer on death deed” does not include an
32 instrument that purports to transfer less than all of the transferor’s
33 interest in the property or that purports to be irrevocable.

34 (c) A revocable transfer on death deed may also be known as a
35 “revocable TOD deed.”

1 **Comment.** ... An instrument that is not a revocable transfer on
2 death deed is not governed by this part. See Sections 5600(a)
3 (application of part), 5602 (other forms of transfer).

4 **§ 5630. Revocability**

5 5630. ~~(a)~~ A transferor who has testamentary capacity may
6 revoke a revocable transfer on death deed at any time.

7 ~~(b) Revocation of a revocable transfer on death deed is effective~~
8 ~~notwithstanding a provision in the deed that purports to make the~~
9 ~~deed irrevocable.~~

10 **§ 5652. Effect at death**

11 5652. (a) A revocable transfer on death deed transfers all of the
12 transferor's interest in the property to the beneficiary on the
13 transferor's death. ~~A revocable transfer on death deed that purports~~
14 ~~to transfer less than all of the transferor's interest in the property is~~
15 ~~void, and the instrument does not transfer the property on the~~
16 ~~transferor's death.~~

17 (b) A revocable transfer on death deed may condition the
18 beneficiary's right to the property on an intervening life estate, but
19 may not otherwise create a future interest in a beneficiary.

20 (c) Property is transferred by a revocable transfer on death deed
21 subject to any limitation on the transferor's interest that is of record
22 at the transferor's death, including, but not limited to, a lien,
23 encumbrance, easement, lease, or other instrument affecting the
24 transferor's interest, whether recorded before or after recordation
25 of the revocable transfer on death deed. The holder of rights under
26 that instrument may enforce those rights against the property
27 notwithstanding its transfer by the revocable transfer on death
28 deed.

29 (d) Notwithstanding a contrary provision in the deed, a
30 revocable transfer on death deed transfers the property without
31 covenant or warranty of title.

32 **Minor Technical Revisions**

33 The staff will make minor technical revisions to address drafting problems
34 described in the First Supplement.

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

_____ Date

_____ Chairperson

_____ Executive Secretary