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
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MINUTES OF JANUARY 25, 2007, COMMISSION MEETING

The Commission approved the Minutes of the January 25, 2007, Commission meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

Assembly Resolution
The Commission recessed to observe the presentation of an Assembly Resolution honoring Nathaniel Sterling for his service on the staff of the Law Revision Commission.

Report of Executive Secretary
The Executive Secretary recognized the Commission’s secretary, Victoria Matias, for over 26 years of service.

LEGISLATIVE PROGRAM

The Commission considered Memorandum 2007-3, relating to the Commission’s 2007 legislative program. The Commission made the following decisions:

AB 250 (Devore) — Revocable Transfer on Death Deed
See “Study L-3032 — Revocable Transfer on Death Deed,” below.
AB 1126 (Eng) — Time Limits for Discovery in an Unlawful Detainer Case

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

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

In unlawful detainer actions,

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

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

STUDY H-821 — MECHANICS LIEN LAW

The Commission considered Memorandum 2007-8 and its First Supplement, 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:

Owner’s Demand for Stop Payment Notice

The Commission made no change to Civil Code Section 7520.

Content of Stop Payment Notice

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

The Commission revised proposed Civil Code Section 7536 as follows:

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

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

(1) The stop payment notice is unbonded.

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

Enforcement of Stop Payment Notice

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

STUDY L-637 — REVISION OF NO CONTEST CLAUSE STATUTE

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

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

The staff will prepare a memorandum that discusses related legal and policy questions (including limitations on retroactive application of any reform) and reports on experience under the fee shifting statute that reportedly applies to contests in Florida.
The Commission considered Memorandum 2007-6 and its First Supplement, concerning the Commission’s recommendation on *Revocable Transfer on Death (TOD) Deed* (October 2006). The Commission made the following decisions:

**Statutory Form**

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

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

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

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

**Competing Dispositive Instruments**

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

**Application of Proposed Law**

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

§ 5614. Revocable transfer on death deed

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

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

(c) A revocable transfer on death deed may also be known as a “revocable TOD deed.”
Comment. ... An instrument that is not a revocable transfer on death deed is not governed by this part. See Sections 5600(a) (application of part), 5602 (other forms of transfer).

§ 5630. Revocability

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

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

§ 5652. Effect at death

5652. (a) A revocable transfer on death deed transfers all of the transferor’s interest in the property to the beneficiary on the transferor’s death. A revocable transfer on death deed that purports to transfer less than all of the transferor’s interest in the property is void, and the instrument does not transfer the property on the transferor’s death.

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

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

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

Minor Technical Revisions

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

☐ APPROVED AS SUBMITTED

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

________________________________________ Date

________________________________________ Chairperson

________________________________________ Executive Secretary