A meeting of the California Law Revision Commission was held in Burbank on October 29, 2008.

Commission:

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

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

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

Consultants: None

Other Persons:

David Baer, Executive Committee, State Bar Trusts and Estates Section
Kevin Bayley, Disability Rights of California
Jason Davis, Trutanich & Michel LLP
Neil I. Horton, Executive Committee, State Bar Trusts and Estates Section
Lindsay Nichols, Legal Community Against Violence
John Quirk, Glendale
Bob Sheppard, Walnut House Cooperative, Berkeley
MINUTES OF SEPTEMBER 3, 2008, COMMISSION MEETING

The Commission approved the Minutes of the September 3, 2008, Commission meeting as submitted by the staff.

RATIFICATION OF ACTIONS TAKEN AT SEPTEMBER 3, 2008, MEETING

The Commission ratified the actions taken by the Commission, acting as a subcommittee, at the September 3, 2008, meeting.

ADMINISTRATIVE MATTERS

Meeting Schedule

The Commission considered Memorandum 2008-37, relating to the Commission’s meeting schedule.

The Commission shortened the December 2008 meeting to a single day. The meeting will be held on December 11, 2008, in Burbank.

The Commission also changed the date of the June 2009 meeting. The meeting will be held on June 17, 2008, in Sacramento.

New Topics and Priorities

The Commission considered Memorandum 2008-40 and its First Supplement, relating to new topics and priorities. Consistent with its traditional priorities, the Commission made the following decisions regarding work in the remainder of 2008 and 2009:

The highest priority will be placed on completing work on legislative assignments with deadlines: donative transfer restrictions, deadly weapons, and...
the attorney-client privilege after the client’s death. In addition, the Commission will continue its work on a legislative assignment without a stated deadline, trial court restructuring, as staff resources permit.

The Commission decided to continue its work on common interest development law, a currently active topic. In addition to its ongoing work on statutory clarification and simplification of CID law, the Commission authorized three new CID law topics: (1) simplified governance procedures in small associations, (2) the application of the Davis-Stirling Common Interest Development Act to entirely nonresidential associations, and (3) other miscellaneous issues relating to the application of the Davis-Stirling Act (including the application of the Davis-Stirling Act to stock cooperatives).

The Commission also authorized work on a new study, the removal of an executor on the ground that the executor is a “disqualified person” under Probate Code Section 21350.

Finally, the Commission directed the staff to make inquiries regarding other possible study topics and report back to the Commission at its December meeting. The staff will inquire about: (1) the extent to which there may be legal impediments to the electronic submission of information to state agencies, (2) whether the application of the Marketable Title Act to unrecorded options is causing significant problems, and (3) whether there are any new legislative priorities for the Commission’s work.

In the next resolution regarding the Commission’s Calendar of Topics, one topic should be dropped: offers of compromise.

Report of Executive Secretary

The Executive Secretary reported that Commissioner Edmund Regalia had resigned his position on the Commission. The staff will prepare a statement recognizing Commissioner Regalia for his service to the State of California. The statement will be published in the Commission’s next annual report. A draft of the statement will be submitted for Commission approval as part of the draft annual report.

The Executive Secretary also reported that the Governor has appointed retired Justice John Zebrowski to fill a vacant position on the Commission.

Finally, the Executive Secretary reported that the Commission’s office space in Palo Alto has been successfully consolidated, resulting in significant budget
savings. A possible change to the Commission’s Sacramento office space is being contemplated.

**LEGISLATIVE PROGRAM**

The Commission considered Memorandum 2008-44, reporting on the Commission’s 2008 legislative program. With respect to the possible 2009 legislative program, the Commission made the following decisions:

- If possible, legislation implementing the Commission’s recommendation on *Technical and Minor Substantive Statutory Corrections: References to Recording Technology*, 37 Cal. L. Revision Comm’n Reports 211 (2007), should be introduced in 2009.
- The staff will make inquiries to determine whether there would be any objection to the 2009 introduction of legislation to implement the Commission’s recommendation on *Mechanics Lien Law* (Feb. 2008). The legislation would be based on the enrolled version of SB 1691 (Lowenthal), with the operative date changed to January 1, 2011.
- The Commission will not seek the reenactment of the no contest clause provisions repealed by SB 1264 (Harman), 2008 Cal. Stat. ch. 174.

**STUDY K-350 — ATTORNEY-CLIENT PRIVILEGE AFTER CLIENT’S DEATH**

The Commission considered Memoranda 2008-45 and 2008-46, discussing how to clarify recent amendments to Probate Code Section 12252, and the duration of a deceased client’s privilege held by a personal representative. The Commission also considered a draft tentative recommendation, attached to Memorandum 2008-46.

The Commission approved the draft tentative recommendation for circulation, with two changes: (1) The Comment to Evidence Code Section 953 should be revised to make clear that the privilege survives during a cause of action commenced, continued, or defended by a personal representative. (2) The discussion of *Moeller v. Superior Court* (16 Cal. 4th 1124, 947 P.2d 279, 69 Cal. Rptr. 2d 317 (1997)) should be reviewed to make sure that it does not overstate the practical effect of that case.
STUDY L-622 – DONATIVE TRANSFER RESTRICTIONS

The Commission considered Memorandum 2008-47 and its First Supplement, presenting a staff draft of a recommendation on Donative Transfer Restrictions.

The Commission approved the draft as its final recommendation, subject to one change. The proposed definition of “dependent adult” will read as follows:

“Dependent adult” means a person who, at the time of executing the instrument at issue under this part, was 18 years old or older and satisfied one or both of the following conditions:

(a) The person was unable to provide properly for the person’s personal needs for physical health, food, clothing, or shelter.

(b) The person was substantially unable to manage the person’s own financial resources or resist fraud or undue influence. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

The narrative “preliminary part” of the recommendation will be revised to reflect that change and explain the basis for that approach. If unanticipated issues arise in preparing the final text of the recommendation, the staff will consult with the Commission’s Chair for guidance.

STUDY M-300 – NONSUBSTANTIVE REORGANIZATION OF DEADLY WEAPON STATUTES

The Commission considered Memoranda 2008-48, 2008-49, 2008-50, 2008-51, 2008-52, and 2008-53, relating to nonsubstantive reorganization of the deadly weapon statutes. The drafts and staff recommendations are acceptable, subject to the following revisions:

Proposed Penal Code § 12003. Severability of provisions

The three cross-references to Section 16850 in proposed Penal Code Section 12003 should be replaced with cross-references to Section 16580.

Proposed Penal Code § 26520. Exception for infrequent sale, lease, or transfer of firearms

Proposed Penal Code Section 26520 should be revised along the following lines:

26520. (a) Section 26500 does not include the infrequent sale, lease, or transfer of firearms, as defined in Section 16730.

(b) As used in this section, “infrequent” has the meaning provided in Section 16730.
Comment. Section 26520 continues former Section 12070(b)(4) without substantive change. See Section 16520 (“firearm”).

Leadline for Proposed Penal Code § 26815

The leadline for proposed Penal Code Section 26815 should be revised to read: “Waiting period and other delivery restrictions.”

Proposed Penal Code § 26850. Safe handling demonstration with handgun

Subdivision (b)(3) of proposed Penal Code Section 26850 should be revised to refer to Section 26859, instead of Section 26869.

Leadline for Proposed Penal Code § 27540

The leadline for proposed Penal Code Section 27540 should be revised to read: “Waiting period and other delivery restrictions.”

Proposed Penal Code § 27860. Exception for sale, delivery, loan, or transfer by person other than law enforcement representative to nonprofit historical society, museum, or institutional collection

Proposed Penal Code Section 27860 should be revised as follows:

27860. Section 27545 does not apply to the sale, delivery, loan, or transfer of a firearm made by any person other than a representative of an authorized law enforcement agency to any public or private nonprofit historical society, museum, or institutional collection, if all of the following conditions are met:

(a) The entity receiving the firearm is open to the public.

(b) The firearm is deactivated or rendered inoperable prior to delivery.

(c) The firearm is not of a type prohibited from being sold, delivered, or transferred to the public.

(d) Prior to delivery, the entity receiving the firearm submits a written statement to the person selling, loaning, or transferring the firearm stating that the firearm will not be restored to operating condition, and will either remain with that entity, or if subsequently disposed of, will be transferred in accordance with the applicable provisions listed in Section 16575 and, if applicable, with [Section 12801].

(e) If title to a handgun is being transferred to the public or private nonprofit historical society, museum, or institutional collection, then the designated representative of that entity shall, within 30 days of taking possession of that handgun, forward by prepaid mail or deliver in person to the Department of Justice, a single report signed by both parties to the transaction, which includes all of the following information:
(1) Information identifying the person representing the public or private historical society, museum, or institutional collection.

(2) Information on how title was obtained and from whom.

(3) A description of the firearm in question.

(4) A copy of the written statement referred to in subdivision (d).

(e) (f) The report forms that are to be completed pursuant to this section shall be provided by the Department of Justice.

(g) In the event of a change in the status of the designated representative, the entity shall notify the department of a new representative within 30 days.

Comment. Section 27860 continues former Section 12078(a)(8) without substantive change, as that provision applied to former Section 12072(d).
See Sections 16520 (“firearm”), 16640 (“handgun”).

Proposed Penal Code § 27900. Exception for infrequent sale or transfer of firearm, other than handgun, at auction or similar event conducted by nonprofit mutual or public benefit corporation

Proposed Penal Code Section 27900 should be revised along the following lines:

27900. (a) Section 27545 does not apply to the infrequent sale or transfer, as defined in Section 16730, of a firearm other than a handgun at an auction or similar event conducted by a nonprofit mutual or public benefit corporation organized pursuant to the Corporations Code.

(b) As used in this section, “infrequent” has the meaning provided in Section 16730.

Comment. Section 27900 continues the first paragraph of former Section 12078(g)(1) without substantive change.
See Sections 16520 (“firearm”), 16640 (“handgun”).

Proposed Penal Code § 28200. “Purchase,” “purchaser,” “sale,” and “seller”

Proposed Penal Code Section 28200 should be revised to state the definitions of “purchase,” “purchaser,” and “sale,” instead of incorporating those definitions by reference:

28200. As used in this article,

(a) “Purchase,” “purchaser,” and “sale” have the same meanings as in Section 28150 “Purchase” means the purchase, loan, or transfer of a firearm.

(b) “Purchaser” means the purchaser or transferee of a firearm or the person being loaned a firearm.

(c) “Sale” means the sale, loan, or transfer of a firearm.
(d) “Seller” means, if the transaction is being conducted pursuant to Chapter 5 (commencing with Section 28050), the person selling, loaning, or transferring the firearm.

Comment. Section 28200 continues former Section 12076(l) without substantive change.

Proposed Penal Code § 28225. Fee to be charged by dealer

Penal Code Section 12076(e), which would be continued in proposed Penal Code Section 28225, contains erroneous cross-references to Family Code Section 6385. See Memorandum 2008-49, Attachment pp. 113-14. Lindsay Nichols of the Legal Community Against Violence reported that the erroneous cross-references should be replaced with cross-references to Family Code Section 6380. She explained that the cross-references to Family Code Section 6385 used to be correct, but became incorrect due to the enactment of Senate Bill 1627 in 2002 (2002 Cal. Stat. ch. 265).

The staff should check into this situation. If it is clear that Family Code Section 6385 is the correct cross-reference, then proposed Penal Code Section 28225 should be revised to make that correction and the situation should be noted in the preliminary part of the Commission’s report. If there is any question about the correct cross-reference, the issue should be included on the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

☐ APPROVED AS SUBMITTED

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