
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 19, 2009
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on February 19, 2009.

Commission:

Present: Pamela L. Hemminger, Chairperson
Frank Kaplan
Susan Duncan Lee
William E. Weinberger
Justice John Zebrowski

Absent: Diane Boyer-Vine, Legislative Counsel
Ellen Corbett, Senate Member
Noreen Evans, Assembly Member
Sidney Greathouse

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

Consultants: None

Other Persons:

Oliver Burford, Executive Council of Homeowners
Skip Daum, Community Associations Institute
Kerry Mazzoni, Executive Council of Homeowners
Lindsay Nichols, Legal Community Against Violence
Bob Sheppard, Walnut House Cooperative
Curtis C. Sproul, State Bar Real Property Law Section
Ed Worley, National Rifle Association of America

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1 MINUTES OF DECEMBER 11, 2008, COMMISSION MEETING

2 The Commission approved the Minutes of the December 11, 2008,
3 Commission meeting as submitted by the staff.

4 ADMINISTRATIVE MATTERS

5 **Report of Executive Secretary**

6 The Executive Secretary reported on the following administrative matters:

- 7 • The state budget approved by the Legislature does not make any
8 change to the Commission’s budget for 2009-2010. However, the
9 staff is affected by the mandatory furlough imposed by executive
10 order of the Governor.
- 11 • Senator Ellen Corbett introduced a Senate resolution honoring
12 retired Commissioner Edmund Regalia for his many years of
13 public service.

14 LEGISLATIVE PROGRAM

15 The Commission considered Memorandum 2009-1 and its First Supplement,
16 reporting on the Commission’s 2009 legislative program. In connection with that
17 report, the Commission made the following decisions:

18 **AB 176 (Silva) — References to Recording Technology**

19 The Commission approved the decisions made in drafting the bill language
20 for Assembly Bill 176 (Silva), which would implement the Commission’s
21 recommendation on *Technical and Minor Substantive Statutory Corrections:
22 References to Recording Technology*, 37 Cal. L. Revision Comm’n Reports 211 (2007).

1 **SB 189 (Lowenthal) — Mechanics Lien Law**

2 The Commission approved the decisions made in drafting the bill language
3 for Senate Bill 189 (Lowenthal), which would implement the Commission's
4 recommendation on *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527
5 (2007).

6 Specifically, the Commission approved adding proposed Civil Code Section
7 8609, to read as follows:

8 8609. Any provision in a payment bond attempting by contract
9 to shorten the period prescribed in Section 337 of the Code of Civil
10 Procedure for the commencement of an action on the bond shall not
11 be valid under either of the following circumstances:

12 (a) If the provision attempts to limit the time for commencement
13 of an action on the bond to a shorter period than six months from
14 the completion of any work of improvement.

15 (b) As applied to any action brought by a claimant, unless the
16 bond is recorded before the work of improvement is commenced.

17 The staff will draft Comment language for that provision and present it for
18 review at a future meeting.

19 STUDY H-855 — STATUTORY CLARIFICATION AND SIMPLIFICATION OF
20 COMMON INTEREST DEVELOPMENT LAW

21 The Commission considered Memorandum 2009-12 and its First Supplement,
22 providing a status report on the continuing review of the Commission's proposal
23 relating to recodification of statutory common interest development law.

24 The Commission's proposal is currently being reviewed by a committee of
25 the Real Property Law Section of the State Bar. Curtis C. Sproul appeared as a
26 representative of the committee. He indicated that the committee should
27 complete its review and submit its report to the Commission by March 31, 2009.

28 The staff emphasized that any interested person or group is welcome to
29 submit additional comments on the proposed law. All such comments will be
30 considered by the Commission in deciding whether to make adjustments to its
31 proposal.

1 STUDY H-857 — COMMON INTEREST DEVELOPMENT LAW: SMALL ASSOCIATIONS

2 The Commission considered Memorandum 2009-14 and its First and Second
3 Supplements, introducing the study of the application of the Davis-Stirling
4 Common Interest Development Act to small associations.

5 The Commission directed the staff to prepare draft legislation on member
6 elections in small associations, for consideration at a future meeting. In doing so,
7 the staff will define “small association” as a common interest development
8 containing 50 or fewer separate interests.

9 The staff will continue to solicit input on this study topic from interested
10 persons.

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

12 The Commission considered Memorandum 2009-3 and its First Supplement,
13 discussing comments on the tentative recommendation on *Attorney-Client*
14 *Privilege After Client’s Death* (October 2008). After considering the comments, the
15 Commission adopted the tentative recommendation as its final recommendation.

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

17 The Commission considered Memorandum 2009-2, presenting a staff draft
18 recommendation on *Revision of No Contest Clause Statute: Conforming Revisions*.
19 The Commission approved the staff draft as its final recommendation.

20 STUDY M-300 — NONSUBSTANTIVE REORGANIZATION OF
21 DEADLY WEAPON STATUTES

22 The Commission considered Memorandum 2009-4, Memorandum 2009-5,
23 Memorandum 2009-6, Memorandum 2009-7, Memorandum 2009-8,
24 Memorandum 2009-9, Memorandum 2009-10, Memorandum 2009-11, and
25 Memorandum 2009-15, relating to nonsubstantive reorganization of the deadly
26 weapon statutes.

27 The Commission made the following decisions:

28 **Assault Weapons and .50 BMG Rifles (Memorandum 2009-4)**

29 Because the provisions defining “assault weapon” would be located in the
30 chapter on assault weapons and .50 BMG rifles, the provisions defining “.50
31 BMG cartridge” and “.50 BMG rifle” should also be located in that chapter. They

1 should be proposed Penal Code Sections 30525 and 30530, respectively. Proposed
2 Penal Code Sections 16100 and 16110 should be converted into guidepost
3 provisions.

4 As discussed at pages 20-21 of the attachment to Memorandum 2009-4, the
5 definition of "SKS rifle" should be moved to proposed Penal Code Section 30710.
6 Proposed Penal Code Section 17220 should be converted into a guidepost
7 provision.

8 Proposed Penal Code Section 30900(a) should be revised as follows:

9 30900. (a) Any person who lawfully ~~possesses~~ possessed an
10 assault weapon, as defined in former Section 12276, prior to June 1,
11 1989, shall register the firearm by January 1, 1991, and any person
12 who lawfully possessed an assault weapon prior to the date it was
13 specified as an assault weapon pursuant to former Section 12276.5
14 shall register the firearm within 90 days with the Department of
15 Justice pursuant to those procedures that the department may
16 establish.

17

18 Like the existing provisions they would continue, proposed Penal Code
19 Sections 30655 and 30935 would apply to a transfer by bequest or intestate
20 succession, but not to other types of at-death transfers. A few other deadly
21 weapons provisions are similar. The possibility of extending these provisions to
22 all types of at-death transfers should be added to the Commission's list of
23 "Minor Clean-up Issues for Possible Future Legislative Attention."

24 Subject to the revisions discussed above and the revisions described in
25 Memorandum 2009-15, the draft attached to Memorandum 2009-4 and the staff
26 recommendations in that draft are acceptable to the Commission for purposes of
27 a tentative recommendation.

28 **Body Armor and Handguns (Memorandum 2009-5)**

29 On behalf of the Legal Community Against Violence, Lindsay Nichols
30 suggested that the definition of "unconventional pistol" be moved into the article
31 on unconventional pistols. The Commission discussed this suggestion, but did
32 not see any compelling reason to move the definition of "unconventional pistol."
33 The Commission decided to leave it with the other definitions, as proposed Penal
34 Code Section 17270.

35 Ms. Nichols further suggested that the leadline for proposed Penal Code
36 Section 31655 be revised as follows: "Preparation and duration of handgun safety
37 certificates." The Commission agreed with that suggestion.

1 Subject to this revision and the revisions described in Memorandum 2009-15,
2 the draft attached to Memorandum 2009-5 and the staff recommendations in that
3 draft are acceptable to the Commission for purposes of a tentative
4 recommendation.

5 **Large-Capacity Magazines, Machineguns, and Multiburst Trigger Activators**
6 **(Memorandum 2009-6)**

7 Ms. Nichols suggested that the definition of “machinegun” be moved into the
8 chapter on machineguns. The Commission discussed this suggestion, but did not
9 see any compelling reason to move the definition of “machinegun.” The
10 Commission decided to leave it with the other definitions, as proposed Penal
11 Code Section 16880.

12 Ms. Nichols also expressed concern regarding the Staff Note on proposed
13 Penal Code Section 32315, which raises the possibility of clarifying the language
14 in Penal Code Section 12079 sometime in the future. She had no objection to that
15 general concept, but did object to the specific language suggested in the Staff
16 Note. In light of her comments, the Commission decided to include the
17 possibility of clarification in its list of “Minor Clean-up Issues for Possible Future
18 Legislative Attention.” However, the list should not refer to the Staff Note. That
19 will avoid drawing attention to the language suggested there, which may not be
20 the best means of providing clarification.

21 Subject to this revision and the revisions described in Memorandum 2009-15,
22 the draft attached to Memorandum 2009-6 and the staff recommendations in that
23 draft are acceptable to the Commission for purposes of a tentative
24 recommendation.

25 **Short-Barreled Rifles and Short-Barreled Shotguns, Silencers, and Zip Guns**
26 **(Memorandum 2009-7)**

27 The draft attached to Memorandum 2009-7 and the staff recommendations in
28 that draft are acceptable to the Commission for purposes of a tentative
29 recommendation.

30 **Firearm in Custody of Court or Law Enforcement Agency or Similar Situation**
31 **(Memorandum 2009-8)**

32 As discussed at page 11 of the attachment to Memorandum 2009-8, the
33 substance of proposed Penal Code Section 33900 should be relocated to “Division
34 6. Sale, Lease, or Transfer of Firearms.” It should become proposed Penal Code
35 Section 26590.

1 Subject to this revision and the revisions described in Memorandum 2009-15,
2 the draft attached to Memorandum 2009-8 and the staff recommendations in that
3 draft are acceptable to the Commission for purposes of a tentative
4 recommendation.

5 **Miscellaneous Duties of the Department of Justice (Memorandum 2009-9)**

6 Subject to the revision described in Memorandum 2009-15, the draft attached
7 to Memorandum 2009-9 and the staff recommendations in that draft are
8 acceptable to the Commission for purposes of a tentative recommendation.

9 **Staff Draft Tentative Recommendation (Without Conforming Revisions)**
10 **(Memorandum 2009-10)**

11 The draft attached to Memorandum 2009-10 should be modified to
12 incorporate the material from Memorandum 2009-4, Memorandum 2009-5,
13 Memorandum 2009-6, Memorandum 2009-7, Memorandum 2009-8, and
14 Memorandum 2009-9, with the revisions described in Memorandum 2009-15 and
15 the other revisions discussed above.

16 Subject to these modifications, the Commission approved the draft attached
17 to Memorandum 2009-10 as a tentative recommendation, to be posted to the
18 Commission's website and circulated for comment.

19 **Staff Draft Tentative Recommendation (Conforming Revisions Only)**
20 **(Memorandum 2009-11)**

21 The draft attached to Memorandum 2009-11 should be revised as described in
22 Memorandum 2009-15.

23 Subject to that revision, the Commission approved the draft attached to
24 Memorandum 2009-11 as a separate tentative recommendation, to be posted to
25 the Commission's website and circulated for comment.

26 **Distribution of Tentative Recommendations**

27 The Commission discussed the distribution list shown at pages 10-11 of
28 Memorandum 2009-15. The staff should contact Commissioner Lee regarding
29 some possible additions to that list.

30 **Double-checking of Tentative Recommendations**

31 The Commission directed the staff to double-check the tentative
32 recommendations while they are being circulated for comment. The Commission

- 1 also encourages other persons to review the tentative recommendations carefully
- 2 and provide input on any necessary corrections.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary