
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
APRIL 23, 2009
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on April 23, 2009.

Commission:

Present: Pamela L. Hemminger, Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Sidney Greathouse
Frank Kaplan
Hon. John Zebrowski

Absent: Susan Duncan Lee, Vice-Chairperson
Ellen Corbett, Senate Member
Noreen Evans, Assembly Member
William E. Weinberger

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

Consultants: None

Other Persons:

David W. Baer, Executive Committee, State Bar Trusts and Estates Section
Oliver Burford, Executive Council of Homeowners
Skip Daum, Community Associations Institute
Kerry Mazzoni, Executive Council of Homeowners, Government Strategies
Marjorie Murray, Congress of California Seniors
Elaine Roberts Musser
Dick Pruess, Community Associations Institute, California Legislative Action Committee
Sean Rashkis, Disability Rights California
Bob Sheppard, Walnut House Cooperative

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MINUTES OF FEBRUARY 19, 2009, COMMISSION MEETING

1 The Commission approved the Minutes of the February 19, 2009, Commission
2 meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

3 **Meeting Schedule**

4 The Commission considered Memorandum 2009-13, relating to the
5 Commission’s meeting schedule.

6 The Commission changed the location of its August 2009 and October 2009
7 meetings to Sacramento. The staff will attempt to obtain free meeting space for
8 the December 2009 meeting.

9 The date of the June 2009 meeting was changed to a date, to be determined
10 later, in the week of June 8-12, 2009.

11 **Report of Executive Secretary**

12 The Executive Secretary noted that staff counsel Steve Cohen recently
13 married an employee of Disabilities Rights California. To avoid any appearance
14 of a conflict of interest, Mr. Cohen will not be assigned to work on studies in
15 which Disabilities Rights California is an active participant.

LEGISLATIVE PROGRAM

16 The Commission considered Memorandum 2009-16 and its First Supplement,
17 reporting on the Commission’s 2009 legislative program.

1 The First Supplement discussed Senate Bill 105 (Harman), which would
2 implement the Commission’s recommendation on *Donative Transfer Restrictions*,
3 38 Cal. L. Revision Comm’n Reports 107 (2008). The Commission decided against
4 recommending the amendment to the definition of “care custodian” discussed at
5 page 5 of the supplement, but would not oppose such an amendment if the
6 Legislature chose to make it.

7 STUDY H-403 — MARKETABLE RECORD TITLE: UNEXERCISED OPTION

8 The Commission considered Memorandum 2009-21, introducing a study of
9 the expiration of record notice of an option to purchase real property.

10 The Commission directed the staff to prepare a draft tentative
11 recommendation to implement the proposal presented in the memorandum,
12 with one issue flagged for further discussion: When should a recorded notice of
13 an option expire, if the notice does not indicate the expiration date of the option?

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

16 The Commission considered Memorandum 2009-17, which discusses the
17 status of the effort to review and revise the proposal on statutory clarification
18 and simplification of CID law, with input from the Real Property Law Section of
19 the State Bar and other interested persons and groups.

20 In revising the proposed law, the Commission will proceed as follows:

- 21 (1) Noncontroversial substantive improvements will be retained.
- 22 (2) Changes in wording that are necessary to clarify unclear language
23 in existing law will be retained.
- 24 (3) Improvements to the structural organization of the Davis-Stirling
25 Common Interest Development Act will be retained.
- 26 (4) The attempt to integrate applicable elements of the Corporations
27 Code into the Davis-Stirling Common Interest Development Act
28 will be abandoned. Where appropriate, cross-references to
29 relevant provisions of the Corporations Code may be added to the
30 proposed law, in statutory or Comment language.
- 31 (5) The general attempt to make the language of existing law simpler
32 and easier to understand will be abandoned. But see (2) above.

33 The staff will meet with the Real Property Law Section Working Group to
34 explain those decisions and to discuss how the Working Group can offer

1 assistance. As the staff completes the revision of discrete portions of the
2 proposed law, those portions will be presented to the Commission and the public
3 for review and comment.

4 STUDY H-856 — COMMON INTEREST DEVELOPMENT LAW:
5 NONRESIDENTIAL ASSOCIATIONS

6 The Commission considered Memorandum 2009-18 and its First Supplement,
7 discussing nonresidential common interest developments. The Commission
8 adopted the staff recommendations made in those materials.

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

11 The Commission considered Memorandum 2009-19 and its First, Second,
12 Third, and Fourth Supplements, discussing a staff draft of a tentative
13 recommendation on member elections in small associations.

14 The Commission decided to table the study. That decision will be revisited in
15 connection with the Commission's next memorandum on New Topics and
16 Priorities.

17 STUDIES J-1404 & J-1450 — STATUTES MADE OBSOLETE
18 BY TRIAL COURT RESTRUCTURING: PART 5

19 The Commission considered Memorandum 2009-20, discussing further work
20 relating to statutes made obsolete by trial court restructuring. For purposes of
21 preparing a tentative recommendation later this year, the Commission made the
22 following decisions:

23 **Definitions for Purposes of TCEPGA (Gov't Code § 71601)**

24 The Commission approved technical revisions to Government Code Section
25 71601, as shown on page 5 of Memorandum 2009-20.

26 **Existing Statutes Governing Writ Jurisdiction (Code Civ. Proc. §§ 1068, 1085,**
27 **1103)**

28 Code of Civil Procedure Section 1068 should be amended as follows:

1 **Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ**
2 **of review**

3 1068. (a) A writ of review may be granted by any court when an
4 inferior tribunal, board, or officer, exercising judicial functions, has
5 exceeded the jurisdiction of ~~such~~ that tribunal, board, or officer,
6 and there is no appeal, nor, in the judgment of the court, any plain,
7 speedy, and adequate remedy.

8 (b) The appellate division of the superior court may grant a writ
9 of review directed to the superior court in a limited civil case
10 subject to the appellate jurisdiction of the appellate division, or in a
11 misdemeanor or infraction case subject to the appellate jurisdiction
12 of the appellate division. Where the appellate division grants a writ
13 of review directed to the superior court, the superior court is an
14 inferior tribunal for purposes of this chapter.

15 **Comment.** Subdivision (b) of Section 1068 is amended to more
16 closely track the language of Article VI, Section 10, of the California
17 Constitution. This is not a substantive change.

18 The amendment helps clarify the treatment of a small claims
19 case. An appeal from a judgment in a small claims case is not
20 within the jurisdiction of the appellate division. Rather, such an
21 appeal consists of a new hearing before a judicial officer other than
22 the judicial officer who heard the action in the small claims
23 division. See Section 116.770(a). Because the appellate division
24 lacks jurisdiction of a small claims appeal, the appellate division
25 also lacks authority to review a judgment or a prejudgment ruling
26 in a small claims case by way of extraordinary writ. See Cal. Const.
27 art. VI, § 10.

28 Section 1068 is also amended to make a stylistic revision.

29 Code of Civil Procedure Section 1085 should be amended as follows:

30 **Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ**
31 **of mandate**

32 1085. (a) A writ of mandate may be issued by any court to any
33 inferior tribunal, corporation, board, or person, to compel the
34 performance of an act which the law specially enjoins, as a duty
35 resulting from an office, trust, or station, or to compel the
36 admission of a party to the use and enjoyment of a right or office to
37 which the party is entitled, and from which the party is unlawfully
38 precluded by ~~such~~ that inferior tribunal, corporation, board, or
39 person.

40 (b) The appellate division of the superior court may grant a writ
41 of mandate directed to the superior court in a limited civil case
42 subject to the appellate jurisdiction of the appellate division, or in a
43 misdemeanor or infraction case subject to the appellate jurisdiction
44 of the appellate division. Where the appellate division grants a writ
45 of ~~review~~ mandate directed to the superior court, the superior court
46 is an inferior tribunal for purposes of this chapter.

1 **Comment.** The first sentence of subdivision (b) of Section 1085
2 is amended to more closely track the language of Article VI, Section
3 10, of the California Constitution. This is not a substantive change.

4 The amendment helps clarify the treatment of a small claims
5 case. An appeal from a judgment in a small claims case is not
6 within the jurisdiction of the appellate division. Rather, such an
7 appeal consists of a new hearing before a judicial officer other than
8 the judicial officer who heard the action in the small claims
9 division. See Section 116.770(a). Because the appellate division
10 lacks jurisdiction of a small claims appeal, the appellate division
11 also lacks authority to review a judgment or a prejudgment ruling
12 in a small claims case by way of extraordinary writ. See Cal. Const.
13 art. VI, § 10.

14 The second sentence of subdivision (b) is amended to refer to a
15 writ of mandate instead of a writ of review.

16 Section 1085 is also amended to make a stylistic revision.

17 Code of Civil Procedure Section 1103 should be amended as follows:

18 **Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ**
19 **of prohibition**

20 1103. (a) A writ of prohibition may be issued by any court to an
21 inferior tribunal or to a corporation, board, or person, in all cases
22 where there is not a plain, speedy, and adequate remedy in the
23 ordinary course of law. It is issued upon the verified petition of the
24 person beneficially interested.

25 (b) The appellate division of the superior court may grant a writ
26 of prohibition directed to the superior court in a limited civil case
27 subject to the appellate jurisdiction of the appellate division, or in a
28 misdemeanor or infraction case subject to the appellate jurisdiction
29 of the appellate division. Where the appellate division grants a writ
30 of ~~review~~ prohibition directed to the superior court, the superior
31 court is an inferior tribunal for purposes of this chapter.

32 **Comment.** The first sentence of subdivision (b) of Section 1103
33 is amended to more closely track the language of Article VI, Section
34 10, of the California Constitution. This is not a substantive change.

35 The amendment helps clarify the treatment of a small claims
36 case. An appeal from a judgment in a small claims case is not
37 within the jurisdiction of the appellate division. Rather, such an
38 appeal consists of a new hearing before a judicial officer other than
39 the judicial officer who heard the action in the small claims
40 division. See Section 116.770(a). Because the appellate division
41 lacks jurisdiction of a small claims appeal, the appellate division
42 also lacks authority to review a judgment or a prejudgment ruling
43 in a small claims case by way of extraordinary writ. See Cal. Const.
44 art. VI, § 10.

45 The second sentence of subdivision (b) is amended to refer to a
46 writ of prohibition instead of a writ of review.

1 **New Provisions Relating to Writ Jurisdiction in a Small Claims Case**

2 The Commission considered whether to propose new provisions relating to
3 writ jurisdiction in a small claims case, as discussed on pages 10-13 of
4 Memorandum 2009-20. The Commission decided not to make any such proposal
5 at this time. The staff should alert the Commission if it becomes appropriate to
6 revisit this matter.

7 **Appellate Jurisdiction of Bail Forfeiture**

8 The Commission decided to postpone further work to clarify appellate
9 jurisdiction of bail forfeiture until the Judicial Council has explored internal
10 options on the matter.

11 **Bank Accounts (Gov't Code §§ 53679, 71381)**

12 The Commission approved the amendment of Government Code Section
13 53679 shown on pages 16-17 of Memorandum 2009-20.

14 The Commission also approved the amendment of Government Code Section
15 71381 shown on page 18 of the memorandum, but the staff should revise the
16 headline such that it will be appropriate after the amendment is made.

17 **Municipal Court Marshals (Penal Code § 13510)**

18 The Commission approved the amendment of Penal Code Section 13510
19 shown on pages 18-20 of Memorandum 2009-20.

20 **STUDY L-623 — PRESUMPTIVELY DISQUALIFIED BENEFICIARIES**

21 The Commission considered Memorandum 2009-22 and its First and Second
22 Supplements, introducing a study of presumptively disqualified beneficiaries.

23 The Commission will wait to receive input from the Executive Committee of
24 the Trusts and Estates Section of the State Bar, and other interested persons and
25 groups, before taking further action on this study.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary