A meeting of the California Law Revision Commission was held in Sacramento on October 22, 2009.

Commission:

Present: Susan Duncan Lee, Chairperson
Justice John Zebrowski (ret.), Vice-Chairperson
Diane Boyer-Vine, Legislative Counsel
Sidney Greathouse
Ali Jahangiri
William E. Weinberger

Absent: Ellen Corbett, Senate Member
Noreen Evans, Assembly Member
Pamela L. Hemminger
Frank Kaplan

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

Consultants: None

Other Persons:
Kerry Mazzoni, Executive Council of Homeowners
Elaine Roberts Musser
Dick Pruess, Community Associations Institute
Nichole Rapier, University of California Davis Law School student
Minutes of August 28, 2009, Commission Meeting

The Commission approved the Minutes of the August 28, 2009, Commission meeting, with the following corrections:

- On page 5, line 22, add “1363.05.”
- On page 5, after line 25, add “Civil Code Sections 1363.810-1363.850, 1367.6, and 1369.510-1369.590, relating to dispute resolution.”
- On page 5, line 26: change “(d)-(f)” to “(d)-(e).”

Administrative Matters

Report of Executive Secretary

Personnel

There is no action yet by the Governor on the two Commission seats that expired on October 1, 2009. The current incumbents may hold over for up to 60 days.

The Executive Secretary recognized University of California Davis Law School student Nichole Rapier. Ms. Rapier is serving as an extern during the Fall 2009 semester.

Budget

The Executive Secretary reported that it has become necessary to reduce personnel costs slightly in order to remain within the Commission’s 2009-2010 budget. That will be accomplished through a voluntary reduction in staff hours.
Meeting Schedule

The Commission considered Memorandum 2009-37, relating to the Commission’s meeting schedule. The Commission decided against making any change to the starting time of the December 2009 meeting.

New Topics and Priorities

The Commission considered Memorandum 2009-38 and its First and Second Supplements, relating to new topics and priorities. The Commission made the following decisions:

Ability of Personal Representative To Purchase Estate Property at Auction

This topic should be referred to the State Bar Trusts and Estates Section for consideration.

Sanctions Under Code of Civil Procedure Section 128.6

This topic should be referred to the Office of Legislative Counsel for possible inclusion in the next maintenance of the codes bill.

Statutory References to the “Tort Claims Act”

This topic should be referred to the Office of Legislative Counsel for possible inclusion in the next maintenance of the codes bill.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Legislative Counsel reported that the California Commission on Uniform State Laws plans to formally request that the Law Revision Commission study this uniform act. The Law Revision Commission will consider that request next fall, in connection with next year’s memorandum on new topics and priorities.

Program of Work for 2010

The Commission approved the work program recommended at pages 39-44 of Memorandum 2009-38, which is consistent with the Commission’s traditional scheme of priorities. That program can be summarized as follows:

• Manage the Commission’s legislative program for 2010, including the major bill on mechanics liens and perhaps the major bill on deadly weapons.
• Continue to work on trial court restructuring.
• Begin to work on the study of charter schools and the Government Claims Act.
• Continue to work on the recodification of the Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”).
• Continue to work on application of the Davis-Stirling Act to a nonresidential common interest development (“CID”).
• If time permits, begin to work on miscellaneous other areas of CID law in which the application of the Davis-Stirling Act appears inappropriate or unclear.
• If staff resources are available, recommence work on civil discovery.
• Seek guidance from the judiciary committees regarding evidence law, and perhaps proceed with some issues if that appears advisable and staff resources permit.
• After Nathaniel Sterling completes his background study, commence work on creditors’ rights against nonprobate assets and application of family protection provisions to nonprobate transfers.
• If David Gould completes his background study on assignments for the benefit of creditors, review his report and determine whether further work on this topic is warranted.
• Possibly recommence work on presumptively disqualified fiduciaries after the fate of SB 105 (Harman) becomes clear.
• If staff resources permit, possibly work on (1) the study of venue in a civil case, (2) the California State Sheriffs’ Association’s suggestions regarding electronic transmission of a creditor’s instructions to a sheriff or marshal, or (3) correction of obsolete cross-references to former subdivision (d) of Code of Civil Procedure Section 116.780.

Resolution of Authority

The Commission will not seek introduction of a new resolution of authority until 2011.

The Commission deferred decision on whether to take the following steps in its next resolution of authority:

(1) Seek removal of the Commission’s authority to study special assessments for public improvements.
(2) Request authority to study discovery conducted in California for purposes of a criminal case pending in another state.

The staff should raise these issues in next fall’s memorandum on new topics and priorities.
LEGISLATIVE PROGRAM

The Commission considered Memorandum 2009-39, reporting generally on the status of the Commission’s 2009 legislative program. No action was required or taken.


The Commission considered a number of stakeholder group concerns about SB 189. For each concern, the Commission decided whether it would assent to a proposed revision to address the concern. The staff will communicate those decisions to Senator Lowenthal so that he can decide whether to make any of the proposed revisions.

The Commission assented to the following revisions:

(1) Delete proposed Civil Code Section 8004, which would define “commencement” of a work of improvement.

(2) Delete proposed Civil Code Section 8026(b), which would create a rebuttable presumption that materials delivered to a work of improvement are used in the work of improvement.

(3) Revert to existing law governing notarization of mechanics lien documents before recordation of those documents, as proposed at pages 11-13 of Memorandum 2009-45.

(4) In proposed Civil Code Section 8150, which defines completion of a private work of improvement, replace “substantial completion” with “actual completion.”

(5) Replace proposed language requiring notice to an owner when recording a lien claim with new language that would continue the similar provisions of 2009 Cal. Stat. ch. 109 (AB 457 (Monning)).

(6) Replace proposed language relating to recordation of a lis pendens after commencement of an enforcement action, with new language that would continue the similar provisions of 2009 Cal. Stat. ch. 109 (AB 457 (Monning)).

(7) Revise proposed Civil Code Section 8204, which relates to the time to give preliminary notice to more closely track the language used in existing law, as proposed at pages 31-32 of Memorandum 2009-45.

(8) Revise proposed Civil Code Section 8480 to eliminate proposed new grounds for summary removal of an invalid lien claim. The existing ground (based on expiration of time to file an enforcement action) would be preserved.
(9) Make stylistic changes to proposed Civil Code Sections 8600 and 8602, which relate to private work payment and performance bonds, as proposed at pages 20-21 of Memorandum 2009-45.

(10) Delete proposed Public Contract Code Section 42240, which would allow a public entity to record a notice of completion for a part of a public work in specified circumstances.

(11) In proposed Public Contract Code Section 45040, which relates to a public work performance bond, replace “the beneficiary” with “any obligee named in the bond.”

(Note that Commissioner William Weinberger recused himself from participation in the discussion of item (10) above.)

The Commission did not assent to make any change to proposed Civil Code Section 8608 or proposed Public Contract Code Section 45090, which would specify who may make a claim against a payment bond.

**STUDY H-403 — MARKETABLE RECORD TITLE: NOTICE OF OPTION**

The Commission considered Memorandum 2009-43 discussing public comment on the tentative recommendation on Marketable Record Title: Notice of Option. The Commission approved the tentative recommendation as its final recommendation. The staff will make any stylistic changes to the tentative recommendation that are required in order to convert that report into a final recommendation, subject to review and approval of those changes by the Chair.

The Commission decided against expanding the scope of this study.

**STUDY H-855 — COMMON INTEREST DEVELOPMENT LAW: STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW**

The Commission considered Memorandum 2009-44 and its First Supplement, discussing public comments on the staff draft that was attached to Memorandum 2009-33 (which was considered and provisionally approved by the Commission at its August 28, 2009, meeting).

The Commission decided to make the following changes to that draft:

**Proposed Civ. Code § 4035. Notice to Association**

The Commission revised proposed Section 4035 to expressly authorize the use of certified mail:

4035. If a provision of this part requires that a document be “delivered to the association,” the document shall be delivered by
first-class mail, postage prepaid, or by certified mail, to the person
designated in the annual policy notice (Section 5310) to receive
documents on behalf of the association. If no person has been
designated to receive documents, the document shall be delivered
to the president or secretary of the association.

Proposed Civ. Code § 4040. Individual Notice Delivery

The Commission revised proposed Section 4040(a) to remove a reference to
“personal delivery” of notice:

4040. (a) If a provision of this part requires “individual notice,”
the notice shall be delivered to the person to be notified by one of
the following methods:
(1) Personal delivery.
(2) First-class mail, postage prepaid, addressed to the person at
the address last shown on the books of the association or otherwise
provided by the person.
(3) E-mail, facsimile, or other electronic means, if the person
has agreed to that method of delivery.

Proposed Civ. Code § 4045. General Notice Delivery

The Commission revised proposed Section 4045 to remove a reference to
Internet posting and to clarify the procedure used to request that “general
notices” be sent by “individual notice” delivery methods:

4045. (a) If a provision of this part requires “general notice,” the
notice shall be provided by one or more of the following methods:
(1) Any method provided for delivery of an individual notice
(Section 4040).
(2) Inclusion in a billing statement, newsletter, or other
document that is delivered by one of the methods provided in this
section.
(3) Posting in a location that is accessible to all members,
including on an Internet website, if the location has been
designated in the annual policy notice (Section 5310) for the posting
of general notices by the association.
(4) Publication in a periodical that is circulated primarily to
members of the association.
(5) If the association broadcasts television programming for the
purpose of distributing information on association business to its
members, by inclusion in the programming.
(b) Notwithstanding subdivision (a), if a member requests to
receive general notices by individual delivery, a general notice all
general notices to that member shall be delivered pursuant to
Section 4040. The option provided in this subdivision shall be
described in the annual policy notice (Section 5310).
Proposed Civ. Code § 4060. Minimum Font Size in Member Notices

The Commission added proposed Section 4060 to generalize existing minimum font size requirements:

4060. In any notice, ballot, report, or other writing that the association is required to prepare and deliver to a member pursuant to this part, the text shall be printed in a 12 point font or larger.

Proposed Civ. Code § 4365. Member Referendum on Operating Rule Change

The staff will analyze whether the Corporations Code provisions referenced in proposed Section 4365 are in conflict with member election requirements, and will report its findings at a future Commission meeting.

Proposed Civ. Code § 4920. Board Meeting Notice

The Commission revised proposed Section 4920 to remove subdivision (b), which was then added as new proposed Section 4923:

4920. (a) Unless the time and place of meeting is fixed by the governing documents, or unless the governing documents provide for a longer period of notice, members shall be given notice of the time and place of a board meeting, except for an emergency meeting held pursuant to Section 4923, at least four days prior to the meeting. Notice shall be given by general delivery (Section 4045). The notice shall contain the agenda for the meeting.

(b) An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by this section.

(e) If the association is organized as a nonprofit mutual benefit corporation, notice of a board meeting is also governed by Section 7211 of the Corporations Code.

4923. An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by Section 4920.
Proposed Civ. Code § 5115. Ballots

The Commission added a new subdivision to proposed Section 5115 to require that the text of a proposed amendment of a governing document be included in the ballot when voting to approve such an amendment:

5115....
(e) In an election to approve an amendment of the governing documents, the ballot shall include the text of the proposed amendment.

Proposed Civ. Code § 5200. Record Inspection

A note will be added after proposed Section 5200, inviting comment on whether the provision authorizing inspection of the association’s general ledger should be expanded to also provide for inspection of “the accompanying journal.”

Proposed Civ. Code § 5250. Records To Be Retained

A note will be added after proposed Section 5250, inviting comment on whether there are any other record types that should be listed in the section.

Proposed Civ. Code § 5255. Record Retention Periods

A note will be added after proposed Section 5255, inviting comment on whether the retention periods provided in that section should be changed or eliminated.


The Commission deleted language that would have permitted distribution of a summary of the review of the association’s financial statement. As under existing law, an association would be required to distribute the full review document, rather than a summary.

The Commission also revised proposed Sections 5300, 5305, and 5310, to make clear that the deadlines in those sections apply to delivery of the indicated reports, as well as their preparation.

The Commission revised proposed Section 5320 to restore the existing requirement that notice of availability of a full report be printed in a boldface font.
Proposed Civ. Code § 5900. Internal Dispute Resolution

The Commission deleted proposed Section 5900(c), which would have exempted two types of board decisions from the application of the internal dispute resolution process.

Inconsistent Terminology

The staff will analyze the draft to determine whether the terminology used in existing law could be made more consistent, without introducing unintended changes in meaning.

Technical Corrections

The Commission approved the staff recommendations regarding technical corrections made at pages 32-35 of Memorandum 2009-44.

Legislation Enacted in 2009


In the list at the top of page 6 of the First Supplement, “§ 27540(f)” should be replaced with “§ 27540(f)-twice.”

Subject to that correction, the Commission approved all of the revisions recommended in Memorandum 2009-41 and its First Supplement. The staff should incorporate those revisions into the final printed version of the Commission’s recommendation, and into the bill to implement that recommendation.

Statutory References to Former Law

The Commission considered Memorandum 2009-42, relating to provisions proposed by the Commission that would refer to a former law. Commissioner Boyer-Vine reported that the revisions recommended in that memorandum are acceptable to the Office of Legislative Counsel.

The Commission approved all of those revisions. The staff should incorporate them into the final printed version of the Commission’s recommendation, and into the bill to implement that recommendation.
Corrections of 6/24/09 Pre-Print Report

The Commission considered Memorandum 2009-46, relating to corrections of the 6/24/09 pre-print report on Nonsubstantive Reorganization of Deadly Weapon Statutes. The Commission approved all of the corrections noted in that memorandum. The staff should incorporate those revisions into the final printed version of the Commission’s recommendation, and into the bill to implement that recommendation.

Further Revisions

The staff reported that it has not yet checked for new legislation that affects the conforming revisions in the 6/24/09 pre-print report. Further revisions of the Commission’s report may be necessary to reflect such legislation. The staff will keep the Commission posted on this matter, and discuss it with the Chair and Vice-Chair between Commission meetings if needed.

In addition, Commissioner Boyer-Vine noted that bills are still pending in ongoing extraordinary sessions of the Legislature. If any of those bills are enacted and revise one or more provisions that are included in the Commission’s report, the staff should inform the Commission and make recommendations on how to proceed.

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

Date
Chairperson
Executive Secretary