
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
AUGUST 19, 2010
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on August 19, 2010.

Commission:

Present: Susan Duncan Lee, Chairperson
Mark Dundee
Sidney Greathouse
Pamela L. Hemminger
Stephen Murphy

Absent: Ellen Corbett, Senate Member
Noreen Evans, Assembly Member
Diane Boyer-Vine, Legislative Counsel
Ali Jahangiri
Justice John Zebrowski (ret.), Vice-Chairperson

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:

Darren M. Bevan, Community Associations Institute
Skip Daum, Community Associations Institute
Brent Kocal, Kocal Properties, Inc.
Kerry Mazzoni, Executive Council of Homeowners
Duncan R. McPherson
Eric Miller
Robert Miller
Marjorie Murray, California Alliance for Retired Americans
Craig Stevens, MarWest Real Estate
Jeffrey G. Wagner

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MINUTES OF JUNE 15, 2010, COMMISSION MEETING

1 The Commission approved the Minutes of the June 15, 2010, Commission
2 meeting as submitted by the staff.

RATIFICATION OF PROVISIONAL DECISIONS MADE AT JUNE 15, 2010, MEETING

3 The Commission ratified the provisional decisions made by a subcommittee
4 of the Commission at the June 15, 2010, meeting.

ADMINISTRATIVE MATTERS

5 **Election of Officers**

6 The Commission considered Memorandum 2010-20, relating to the election of
7 Commission officers. The Commission elected Justice John Zebrowski (ret.) as
8 Chairperson and Stephen Murphy as Vice Chairperson, for the term commencing
9 September 1, 2010, and ending August 31, 2011.

10 **Meeting Schedule**

11 The Commission considered Memorandum 2010-28, relating to the
12 Commission’s meeting schedule.

13 The Commission authorized the Executive Secretary to make arrangements
14 for the October 14, 2010, meeting to be held at U.C. Davis School of Law, if
15 feasible.

16 The date of the December 2010 meeting was changed to Wednesday,
17 December 15, 2010. Commissioners should also reserve Thursday, December 16,

1 2010, for a possible second meeting date. A decision on whether to hold a second
2 day of meetings will be made at the October 2010 meeting.

3 The Commission approved the following meeting schedule for 2011:

4	February 2011	Sacramento
5	Feb. 10 (Thur.)	10:00 am – 4:00 pm
6	April 2011	Sacramento
7	April 14 (Thur.)	10:00 am – 4:00 pm
8	June 2011	Sacramento
9	June 9 (Thur.)	10:00 am – 4:00 pm
10	August 2011	Sacramento
11	Aug. 11 (Thur.)	10:00 am – 4:00 pm
12	October 2011	Sacramento
13	Oct. 13 (Thur.)	10:00 am – 4:00 pm
14	December 2011	Burbank
15	Dec. 16 (Fri.)	10:00 am – 4:00 pm

16 Note that Memorandum 2010-28 erroneously listed December 16, 2011 as
17 falling on a Thursday. That date falls on a Friday, as indicated above.

18 **Report of Executive Secretary**

19 The Executive Secretary welcomed two new Commissioners, Mark Dundee
20 and Stephen Murphy.

21 The Executive Secretary reported that the relocation of the Sacramento-area
22 office to the U.C. Davis School of Law had been completed.

LEGISLATIVE PROGRAM

23 The Commission considered Memorandum 2010-30, reporting generally on
24 the Commission's 2010 legislative program. No Commission decisions were
25 required or made in connection with that memorandum.

26 The Commission also considered Memorandum 2010-31 and its First
27 Supplement, reporting on the status of Senate Bill 105 (Harman), relating to
28 *Donative Transfer Restrictions*, 38 Cal. L. Revision Comm'n Reports 107 (2008).

29 The Commission also considered Memorandum 2010-32 and its First
30 Supplement, reporting on the status of Senate Bill 189 (Lowenthal), relating to
31 *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007).

1 Finally, the Commission considered Memorandum 2010-33, reporting on the
2 status of Senate Bills 1080 (Committee on Public Safety), and 1115 (Committee on
3 Public Safety) relating to *Nonsubstantive Reorganization of Deadly Weapon Statutes*,
4 38 Cal. L. Revision Comm'n Reports 217 (2009).

5 The Commission assented to the amendments described in the memoranda
6 indicated above and approved the Comment revisions recommended by the
7 staff.

8 STUDY G-200 — CHARTER SCHOOLS AND THE GOVERNMENT CLAIMS ACT

9 The Commission considered Memorandum 2010-35, discussing the treatment
10 of charter schools in other jurisdictions. No Commission decisions were required
11 or made in connection with that memorandum.

12 The Commission recognized Megan Glanville and Patrick Maloney, both U.C.
13 Davis School of Law students, who provided research assistance in support of
14 the memorandum.

15 The Commission also recognized visiting fellow Cindy Dole, who has had
16 primary staff responsibility for this study, to date. Ms. Dole has been working for
17 the Commission under a one year volunteer fellowship. Her work for the
18 Commission on this study has been excellent and is greatly appreciated.

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

20 The Commission considered Memorandum 2010-29 and its First, Second, and
21 Third Supplements, and Memorandum 2010-36, presenting and discussing
22 public comments on the tentative recommendation on *Statutory Clarification and*
23 *Simplification of CID Law* (Feb. 2010).

24 All statutory references in the following discussion are to the Civil Code.

25 The Commission made the following decisions, for eventual incorporation
26 into a final recommendation:

27 **General Drafting Issues**

28 *New Chapter*

29 The proposed law will include a new chapter, as recommended on pages 5
30 through 7 of Memorandum 2010-29. Necessary conforming revisions will also be
31 made.

1 *New Definitions*

2 The Commission will consider specific proposals for new definitions in a
3 future memorandum.

4 *References to “Article” or “Chapter”*

5 Cross-references to “articles” and “chapters” will be retained.

6 *Reference to “Part”*

7 Proposed Section 4000 will be revised to authorize use of “Act” as a
8 shorthand reference for the entirety of the Davis-Stirling Common Interest
9 Development Act, in provisions contained within the Act. See Memorandum
10 2010-29, pp. 10-11. Throughout the Act, references to “this part” will be replaced
11 with references to “this Act.”

12 *Descriptive Glosses*

13 As a general practice, descriptive phrases will not be added to cross-
14 references in the proposed law.

15 *Numerical Parentheticals*

16 Some existing provisions include a reference to a general rule of construction,
17 followed by a parenthetical containing the relevant section number (e.g., “the
18 board shall deliver individual notice (Section 4040)”). Those references will be
19 revised throughout the proposed law to avoid the use of parentheses (e.g., “the
20 board shall deliver individual notice pursuant to Section 4040”).

21 Parenthetical references to section numbers will not be added after the use of
22 a defined term.

23 *Accounting Issues*

24 The narrative “preliminary part” of the proposed law will not include a
25 statement of the Commission’s intention to study CID accounting issues as a
26 separate study.

27 **Preliminary Provisions**

28 Commission decisions to make changes to the “preliminary provisions” of the
29 proposed law are described below.

30 *Proposed § 4010. Continuation of Prior Law*

31 Section 4010 was deleted from the proposed law.

1 *Proposed § 4015. Exemption of Development Without Common Area*

2 Proposed Section 4015 was revised as follows:

3 4015. Nothing in this ~~part~~ Act may be construed to apply to a
4 real property development wherein there that does not exist a
5 contain common area as defined in Section 4095. This section is
6 declaratory of existing law.

7 *Proposed § 4020. Construction of Zoning Ordinance*

8 Proposed Section 4020 was revised as follows:

9 4020. Unless a contrary intent is clearly expressed, a local
10 zoning ordinance is construed to treat like structures, lots, parcels,
11 areas, or spaces in like manner regardless of ~~whether the common~~
12 ~~interest development is a community apartment project,~~
13 ~~condominium project, planned development, or stock cooperative~~
14 the form of the common interest development.

15 *Proposed § 4030. Application of Act*

16 Proposed Section 4030 was revised as follows:

17 4030. (a) This ~~title~~ Act applies and a common interest
18 development is created whenever a separate interest coupled with
19 an interest in the common area or membership in the association is,
20 or has been, conveyed, provided all of the following are recorded:

21 ~~(1)~~ (a) A declaration.

22 ~~(2)~~ (b) A condominium plan, if any exists.

23 ~~(3)~~ (c) A final map or parcel map, if Division 2 (commencing
24 with Section 66410) of Title 7 of the Government Code requires the
25 recording of either a final map or parcel map for the common
26 interest development.

27 ~~(b) Notwithstanding subdivision (a), this part governs a stock~~
28 ~~cooperative that has not recorded a declaration.~~

29 *Mailing List Requests*

30 The Commission will draft language to provide a procedure for submitting a
31 change of address or requesting a special notice delivery option (e.g., delivery to
32 two addresses, delivery of general notices by individual delivery methods). That
33 issue will be addressed in a future memorandum, in connection with record
34 maintenance issues.

35 *Proposed § 4035. Notice to Association*

36 Proposed Section 4035 was revised as follows:

37 4035. (a) If a provision of this ~~part~~ Act requires that a document
38 be delivered to an association, the document shall be delivered ~~by~~

1 ~~first-class mail, postage prepaid, or by certified mail~~, to the person
2 designated in the annual policy statement, prepared pursuant to
3 Section 5310, to receive documents on behalf of the association. If
4 no person has been designated to receive documents, the document
5 shall be delivered to the president or secretary of the association.

6 (b) A document delivered pursuant to this section may be
7 delivered by any of the following methods:

8 (1) First-class mail, postage prepaid, registered or certified mail,
9 express mail, or overnight delivery by an express service carrier.

10 (2) By e-mail, facsimile, or other electronic means, if the
11 association has assented to that method of delivery.

12 (3) By personal delivery, if the association has assented to that
13 method of delivery. If the association accepts a document by
14 personal delivery, it shall provide a written receipt acknowledging
15 delivery of the document.

16 *Proposed § 4040. Individual Delivery*

17 Proposed Section 4040 was revised as follows:

18 4040. (a) If a provision of this ~~part~~ Act requires that an
19 association deliver a document by “individual delivery” or
20 “individual notice,” the notice document shall be delivered to the
21 member to be notified by one of the following methods:

22 (1) First-class mail, postage prepaid, registered or certified mail,
23 express mail, or overnight delivery by an express service carrier.
24 The document shall be addressed to the member recipient at the
25 address last shown on the books of the association or otherwise
26 provided by the member.

27 (2) E-mail, facsimile, or other electronic means, if the recipient
28 has ~~agreed~~ assented, in writing, to that method of delivery. The
29 agreement obtained by the association shall be consistent with the
30 conditions for obtaining consumer consent described in Section 20
31 of the Corporations Code assent may be revoked, in writing, by the
32 recipient.

33 (b) A member may request that a notice to that member be sent
34 to up to two different addresses. If a member has requested,
35 pursuant to Section [], that individual notices relating to that
36 member’s separate interest be mailed to two different addresses, a
37 document delivered under this section shall be delivered to both
38 specified addresses.

39 (c) For the purposes of this section, an unrecorded provision of
40 the governing documents providing for a particular method of
41 delivery does not constitute agreement by a member to that
42 method of delivery.

43 The blank in proposed Section 4040(b) will be filled after the Commission has
44 drafted language providing a procedure for making address changes and special
45 mailing requests, as discussed above.

1 *Proposed § 4045. General Notice*

2 Proposed Section 4045 was revised as follows:

3 4045. (a) If a provision of this ~~part~~ Act requires “general
4 delivery” or “general notice,” the ~~notice~~ document shall be
5 provided by one or more of the following methods:

6 (1) Any method provided for delivery of an individual notice
7 (~~Section 4040~~), pursuant to Section 4040.

8 (2) Inclusion in a billing statement, newsletter, or other
9 document that is delivered by one of the methods provided in this
10 section.

11 (3) Posting the printed document in a prominent location that is
12 accessible to all members, if the location has been designated for
13 the posting of general notices by the association in the annual
14 policy statement, prepared pursuant to Section 5310.

15 (~~4) Publication in a periodical that is circulated primarily to~~
16 ~~members of the association.~~

17 (~~5) If the association broadcasts television programming for the~~
18 ~~purpose of distributing information on association business to its~~
19 ~~members, by inclusion in the programming.~~

20 (b) Notwithstanding subdivision (a), if a member requests to
21 receive general notices by individual delivery, all general notices to
22 that member, given under this section, shall be delivered pursuant
23 to Section 4040. The option provided in this subdivision shall be
24 described in the annual policy statement, prepared pursuant to
25 Section 5310.

26 **Comment.** Section 4045 is new. It specifies acceptable methods
27 for delivery of a notice to the membership generally, as
28 distinguished from a notice that is to be delivered to a specific
29 member. See Section 4040 (individual notice). Nothing in this
30 section prevents an association from using supplemental notice
31 methods, such as posting on an Internet website, so long as one or
32 more methods authorized by this section are also used.

33 Subdivision (b) reserves the right of any member, on request, to
34 receive general notices by the delivery methods provided for
35 delivery of an individual notice. Thus, in an association that posts
36 general notices ~~to its website~~ on a notice board in a prominent
37 location pursuant to subdivision (a)(3), individual members would
38 still have the right, on request, to receive those notices by mail.

39 See also Section 4160 (“member”).

40 *Proposed § 4060. Minimum Font Size*

41 The Commission deleted proposed Section 4060. Existing font size limitations
42 will be restored in the provisions that would continue existing Sections 1365(d)
43 and 1365.1(a).

1 *Proposed § 4065. Approval by Majority of Members*

2 Proposed Section 4065 was revised as follows:

3 4065. If a provision of this ~~part~~ Act requires that an action be
4 approved by a majority of all members, the action shall be
5 approved or ratified by an affirmative vote of ~~members~~
6 ~~representing more than 50 percent of the total voting power of the~~
7 ~~association~~ a majority of the votes entitled to be cast.

8 *Proposed § 4070. Approved by Majority of Quorum*

9 Proposed Section 4070 was revised as follows:

10 4070. If a provision of this ~~part~~ Act requires that an action be
11 approved by a majority of a quorum of the members, the action
12 shall be approved or ratified by an affirmative vote of ~~members~~
13 ~~representing more than 50 percent of the votes cast in an election at~~
14 ~~which a quorum is achieved~~ a majority of the votes represented
15 and voting at a duly held meeting at which a quorum is present
16 (which affirmative votes also constitute a majority of the required
17 quorum).

18 A future memorandum will discuss the definition of “quorum” and the
19 concept of “voting power.”

20 STUDY H-856 — NONRESIDENTIAL ASSOCIATIONS

21 The Commission considered Memorandum 2010-37, discussing CIDs that are
22 limited to commercial or industrial uses.

23 The Commission instructed the staff to prepare a draft tentative
24 recommendation, for consideration at the next meeting.

25 The draft should not address existing definitional ambiguities involving
26 “mixed use” developments. Nor should it address the most recent comments
27 submitted by the “stakeholder group.” Those comments will be considered along
28 with other public comments, after circulation of the tentative recommendation.

29 The drafting issues raised in Memorandum 2010-37 will be addressed in the
30 draft tentative recommendation, with appropriate discussion in the
31 accompanying memorandum. The Commission will then decide whether to
32 accept the staff’s proposed resolution of those issues, with or without changes,
33 for the purposes of the tentative recommendation.

1 STUDY J-1451 — TRIAL COURT RESTRUCTURING: RIGHTS AND RESPONSIBILITIES OF
2 THE COUNTY AS COMPARED TO THE SUPERIOR COURT

3 The Commission considered Memorandum 2010-34 and its First Supplement,
4 discussing input received and a staff draft of a tentative recommendation.

5 The Commission approved the draft for circulation as a tentative
6 recommendation, subject to the following changes:

7 **Gov't Code § 68083 (added). Collection of fees by court**

8 SEC. ____. Section 68083 of the Government Code is added, to
9 read:

10 68083. Each salaried officer of a superior court shall charge,
11 collect, and promptly deposit the fees allowed in each case, as
12 provided by law. No salaried officer who collects fees pursuant to
13 ~~this section~~ shall be required to accept coin in payment of those
14 fees.

15 **Comment.** Section 68083 continues material formerly located in
16 Section 24350, with revisions to reflect (1) the unification of the
17 municipal and superior courts pursuant to former Section 5(e) of
18 Article VI of the California Constitution, and (2) the enactment of
19 the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch.
20 850 (see generally Sections 77000-77655). See, e.g., Sections 77003
21 ("court operations" defined), 77200 (state funding of "court
22 operations").

23 The state and certain other governmental entities are generally
24 exempt from payment of court fees. See Gov't Code § 70633(c)
25 ("[n]o fee shall be charged by the clerk for service to any
26 municipality or county in the state, to the state government, nor to
27 the United States of America or any of its officers acting in his or
28 her official capacity," subject to narrow exceptions provided in
29 Section 70633(b)); see also Gov't Code § 6103 (prohibiting state and
30 its officers, and other specified public entities and officers, from
31 paying fees for filing document or performance of official service,
32 with specified exceptions).

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary