
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
AUGUST 11, 2011
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on August 11, 2011.

Commission:

Present: Justice John Zebrowski (ret.), Chairperson
Diane Boyer-Vine, Legislative Counsel
Damian D. Capozzola
Pamela L. Hemminger
Sidney Greathouse
Susan Duncan Lee

Absent: Roger Dickinson, Assembly Member
Tom Harman, Senate Member

Staff: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Steve Cohen, Staff Counsel

Consultants: None

Other Persons:

David Beales
Darren Bevan, Community Associations Institute-CLAC
Jana Ellerman, State Bar Trusts and Estates Section Executive Committee
Lindsey Scott-Florez, Senate Office of Research
Alex Graves, Alzheimer's Association
Jacquelyn Paige, AARP Executive Council
Daniel Pone, Judicial Council
Elizabeth Zirker, Disability Rights California

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MINUTES OF JUNE 9, 2011, COMMISSION MEETING

1 The Commission approved the Minutes of the June 9, 2011, Commission
2 meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

3 **Report of Executive Director**

4 The Executive Secretary reported on the following matters:

- 5 (1) Commissioner John Zebrowski was recognized for his service as
6 the Commission’s 2010-2011 Chair.
- 7 (2) The appointment of Commissioner Mark Dundee expired
8 pursuant to Government Code Section 1774(c)(2).
- 9 (3) The appointment of Commissioner Stephen Murphy was
10 withdrawn.
- 11 (4) Commissioners should reserve November 29, 2011, as the date for
12 a possible extra Commission meeting, to be scheduled if necessary.

13 The Commission made the following decisions:

- 14 (1) Consideration of Memoranda 2011-26 and 2011-27 was postponed
15 until a further meeting.
- 16 (2) The annual “New Topics and Priorities” memorandum should be
17 presented at the December meeting, not in October.

LEGISLATIVE PROGRAM

18 The Commission considered Memorandum 2011-28, reporting on the
19 Commission’s 2011 legislative program. No Commission action was required or
20 taken.

1 STUDY H-856 — COMMERCIAL AND INDUSTRIAL
2 COMMON INTEREST DEVELOPMENTS

3 The Commission considered Memorandum 2011-21, from page 15 through its
4 conclusion, and Memorandum 2011-30, presenting comment on the tentative
5 recommendation on *Commercial and Industrial Common Interest Developments* (Feb.
6 2011).

7 The Commission adopted all the staff recommendations in those materials,
8 subject to the following decisions:

9 *Attorney’s Fees in Enforcement Actions*

10 The Commission deleted proposed Civil Code Section 6856(c) from the
11 proposed law.

12 *Operating Rules*

13 The Commission added Article 5 to Chapter 3 (commencing with Section
14 6600) of the proposed law, as follows:

15 ARTICLE 5. OPERATING RULES

16 6630. For the purposes of this article, “operating rule” means a
17 regulation adopted by the board that applies generally to the
18 management and operation of the common interest development or
19 the conduct of the business and affairs of the association.

20 6632. An operating rule is valid and enforceable only if all of the
21 following requirements are satisfied:

22 (a) The rule is in writing.

23 (b) The rule is within the authority of the board conferred by
24 law or by the declaration, articles of incorporation or association, or
25 bylaws of the association.

26 (c) The rule is not inconsistent with governing law and the
27 declaration, articles of incorporation or association, and bylaws of
28 the association.

29 (d) The rule is reasonable, and is adopted, amended, or repealed
30 in good faith.

31 *Reference to Discontinued Provision*

32 The Commission decided against adding a provision to the proposed law to
33 address the effect of an existing governing document provision that references a
34 formerly applicable provision of the Davis-Stirling Common Interest
35 Development Act.

1 *“Governing Document”*

2 The Commission noted, as a possible future study topic, revision of the
3 statutory definition of “governing documents” to include a master declaration,
4 ground lease, and reciprocal easement agreement.

5 *Amendment of Declaration*

6 The Commission revised the Comment to proposed Civil Code Section 6616
7 as follows:

8 **Comment.** With respect to a commercial or industrial common
9 interest development, Section 6616 continues the first sentence of
10 Section 1355(b) without change, except as indicated below.

11

12 For the procedure to amend a declaration, see Section 6620.

13 For further information, see Section 6500 Comment.

14 See also Section 6546 (“declaration”).

15 *Prospectivity of Proposed Law*

16 The Commission revised proposed Civil Code Section 6505 and its Comment
17 as follows:

18 6505. Nothing in the act that added this part shall be construed
19 to invalidate a document prepared or action taken before January 1,
20 2014, if the document or action was proper under the law
21 governing common interest developments at the time that the
22 document was prepared or the action was taken. For the purposes
23 of this section, “document” does not include a governing
24 document.

25 **Comment.** Section 6505 is new. It makes clear that any changes
26 to former law made by enactment of this act shall not be construed
27 to retroactively invalidate documents prepared or actions taken
28 prior to the operative date of the act.

29 The term “documents” is used to describe notices, forms, and
30 other procedural or transactional instruments. It is not meant to
31 include the governing documents of the association. Governing
32 documents must conform to the law. See Section 6600.

33 *Preliminary Part of Tentative Recommendation*

34 The Commission directed the staff to add language to the preliminary part of
35 the tentative recommendation to acknowledge that some business property
36 owners may not have greater sophistication or greater access to professional
37 resources than residential property owners.

1 STUDY H-858 — COMMERCIAL AND INDUSTRIAL SUBDIVISIONS

2 The Commission considered Memorandum 2011-29, and its First Supplement,
3 introducing a new study of the exemptions provided in Business and Professions
4 Code Section 11010.3 and Civil Code Section 1373.

5 The Commission directed the staff to prepare a draft tentative
6 recommendation, based on the statutory language set out on pages 4-7 of the
7 First Supplement, with one change: the 30-day periods referenced in proposed
8 Business and Professions Code Section 11002(b)(3) and Civil Code Section
9 1373.5(b)(3) were changed to 60-day periods. The Comments to those provisions
10 were revised to refer to a similar time period in Civil Code Section 51.3(d).

11 STUDY J-1452 — TRIAL COURT RESTRUCTURING:
12 WRIT JURISDICTION IN A SMALL CLAIMS CASE

13 The Commission considered Memorandum 2011-23 and its First and Second
14 Supplements. The Commission approved the draft attached to the memorandum
15 as a final recommendation, for printing and submission to the Legislature. The
16 Commission expressed its appreciation to the Civil and Small Claims Advisory
17 Committee of the Judicial Council for its cooperation and assistance with this
18 study.

19 STUDY L-750 — UNIFORM ADULT GUARDIANSHIP AND
20 PROTECTIVE PROCEEDINGS JURISDICTION ACT

21 The Commission considered Memorandum 2011-31 and its First Supplement,
22 relating to the Uniform Adult Guardianship and Protective Proceedings
23 Jurisdiction Act (“UAGPPJA”). Representatives of AARP (Jacquelyn Paige), the
24 Alzheimer’s Association (Alex Graves), Disability Rights California (Elizabeth
25 Zirker) and the State Bar Trusts and Estates Section (Jana Ellerman) participated
26 in the discussion.

27 The discussion focused primarily on UAGPPJA’s transfer procedure (Article
28 3). The Commission tentatively decided that if it proposes a version of UAGPPJA
29 for adoption in California, its version should expressly state that after a
30 proceeding relating to an incapacitated adult is transferred to California, the
31 proceeding is henceforth subject to California law and will be treated as a
32 California conservatorship. The Commission extensively discussed whether any

1 special rules should apply to relitigation of capacity or the choice of conservator,
2 such as requiring proof of incapacity, instead of placing the burden on the
3 conservatee to prove capacity. The Commission did not resolve this matter, nor
4 did it resolve any of the other issues raised in the memorandum and supplement.

5 The Commission expressed interest in having a representative of the Uniform
6 Law Commission come explain to the Commission how UAGPPJA is supposed
7 to work. The Commission also asked the staff to examine how other states have
8 addressed relitigation of capacity and the choice of conservator in their versions
9 of UAGPPJA. In addition, the Commission encouraged stakeholders and other
10 interested persons to submit input on this issue, and on the other issues raised in
11 the memorandum and supplement.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Director