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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
DECEMBER 13, 2012  
SAN DIEGO

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A meeting of the California Law Revision Commission was held in San Diego on December 13, 2012.

**Commission:**

*Present:* Xochitl Carrion, Chairperson  
Damian Capozzola, Vice-Chairperson  
Judge Patricia Cowett (ret.)  
Taras Kihiczak  
Susan Duncan Lee

*Absent:* Diane Boyer-Vine, Legislative Counsel  
Roger Dickinson, Assembly Member  
Victor King  
Crystal Miller-O'Brien  
Vacant, Senate Member

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

**Consultants:** None

**Other Persons:**

Joyce Cook, Former Chair of the California Law Revision Commission  
Eric Fish, Uniform Law Commission  
Alex Graves, Alzheimer's Association  
Clark Keith Taylor  
Pamela Voit, Community Associations Institute-CLAC  
Jennifer Wilkerson, State Bar Trusts and Estates Section, Executive Committee



1 **2012-2013 Annual Report**

2 The Commission considered Memorandum 2012-46, presenting a staff draft  
3 of the Commission's 2012-13 Annual Report. The Commission approved the staff  
4 draft for publication, subject to the following changes:

- 5 • The Commission added the appendix of Commissioner  
6 biographical information that is attached to the memorandum and  
7 discussed on pages 3-4 of the memorandum.
- 8 • The Commission authorized the staff to make editorial changes  
9 necessary to correctly reflect the Commission's decisions at the  
10 December 2012 meeting.

11 STUDY D-356 — THIRD DECENNIAL REVIEW OF EXEMPTIONS FROM  
12 ENFORCEMENT OF MONEY JUDGMENTS

13 The Commission considered Memorandum 2012-47, presenting a staff draft  
14 of a recommendation on *Third Decennial Review of Exemptions from Enforcement of*  
15 *Money Judgments*. The Commission approved the staff draft for publication as a  
16 final recommendation.

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

19 The Commission considered Memorandum 2012-49 and its First Supplement,  
20 presenting a staff draft of a final recommendation on *Statutory Clarification and*  
21 *Simplification of CID Law: Clean-Up Legislation*. The Commission approved the  
22 staff draft as a final recommendation, for publication and submission to the  
23 Legislature.

24 The Commission did not decide whether to recommend any change to the  
25 wording of Civil Code Section 4205. That issue will be considered further at a  
26 future meeting.

27 STUDY H-858 — COMMERCIAL AND INDUSTRIAL SUBDIVISIONS

28 The Commission considered Memorandum 2012-48 and its First, Second,  
29 Third, and Fourth Supplements, presenting a staff draft recommendation on  
30 *Nonresidential Subdivisions*. The Commission did not approve the staff draft as a  
31 final recommendation. Instead, the staff will prepare a memorandum discussing

1 the issues raised in the memorandum and its supplements, for consideration at a  
2 future meeting.

3 The Commission provided the following guidance to the staff, for use in  
4 preparing the next memorandum in this study:

- 5 • The Commission reaffirmed its intention that the proposed law  
6 should have no effect on a common interest development or  
7 subdivision that permits *any* residential use by its owners.
- 8 • The proposed law should not contain or imply a presumption that  
9 a common interest development or subdivision is nonresidential.
- 10 • The memorandum should discuss defining “residential use” for  
11 the purposes of the proposed law.
- 12 • The memorandum should include a brief summary of the  
13 Commission’s process in conducting this study.

14 STUDY L-750 — UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS  
15 JURISDICTION ACT

16 The Commission considered Memorandum 2012-50 and its First and Second  
17 Supplements, as well as Memorandum 2012-51 and pages 16-36 of Memorandum  
18 2012-43, relating to the Uniform Adult Guardianship and Protective Proceedings  
19 Jurisdiction Act (“UAGPPJA”). Eric Fish of the Uniform Law Commission  
20 (“ULC”) made a short presentation about UAGPPJA and responded to  
21 numerous questions from Commission members, the staff, and others in  
22 attendance.

23 The discussion was productive and the Commission is grateful to Mr. Fish for  
24 traveling to and attending the meeting, to the ULC for facilitating Mr. Fish’s  
25 participation, and to the stakeholders who were present.

26 For purposes of preparing a discussion draft, the Commission made the  
27 following decisions:

28 **General Provisions (UAGPPJA Article 1)**

29 *Definition of “State” (UAGPPJA § 102(14))*

30 The staff should further investigate the potential consequences of UAGPPJA’s  
31 definition of “State,” which includes not only California and its 49 sister states,  
32 but also “the District of Columbia, Puerto Rico, the United States Virgin Islands,  
33 a federally recognized Indian tribe, or any territory or insular possession subject  
34 to the jurisdiction of the United States.”

1 *Involuntary Commitment*

2 California's version of UAGPPJA should not apply to an LPS conservatorship  
3 or other type of involuntary commitment.

4 *Developmentally Disabled Adult*

5 California's version of UAGPPJA should not apply to a developmentally  
6 disabled adult. The preliminary part (narrative explanation) of the Commission's  
7 report should make clear that this limitation is meant to ensure that each  
8 developmentally disabled adult residing in California is evaluated pursuant to  
9 California law and receives the full range of benefits and services available under  
10 California law.

11 The documentation required under California's version of UAGPPJA should  
12 include a checkbox or similar feature that will permit a court to readily  
13 determine whether a conservatee or proposed conservatee is developmentally  
14 disabled.

15 **Jurisdiction (UAGPPJA Article 2)**

16 *Emergency Appointment (UAGPPJA §§ 201(a), 204(a)(1) & (b))*

17 Instead of using UAGPPJA's definition of "emergency" and its procedure for  
18 making an emergency appointment, the discussion draft should rely on  
19 California's existing procedure for appointment of a temporary conservator (see  
20 the approach used by the TEXCOM working group in Memorandum 2012-36,  
21 Exhibit pp. 24-41).

22 *Jurisdiction Declined by Reason of Conduct (UAGPPJA § 207)*

23 The Commission did not specify a list of relevant factors or otherwise attempt  
24 to define the term "unjustifiable conduct."

25 **Transfer (UAGPPJA Article 3)**

26 *Ineligible Conservator (UAGPPJA § 302(d)(2))*

27 The Commission discussed but did not resolve how to transfer a  
28 conservatorship (or similar arrangement by another name) to California under  
29 UAGPPJA when the existing out-of-state conservator is "ineligible" for  
30 appointment in California. It might be appropriate to differentiate between the  
31 following situations: (1) under the laws of the transferring state, the existing  
32 conservator is not authorized to take action beyond the borders of that state, and

1 (2) under California law, the existing conservator would not be permitted to  
2 serve as conservator.

3 *Court Investigator*

4 When a conservatorship (or similar arrangement by another name) is  
5 transferred to California under UAGPPJA, a bifurcated investigation process  
6 should be used:

7 (1) Before the court issues a provisional order accepting the transfer  
8 (UAGPPJA § 302(d)), the court would have to gather sufficient  
9 information for the judge to resolve threshold jurisdictional issues  
10 such as whether the out-of-state conservator would have authority  
11 to act in California and would be eligible to serve in that capacity  
12 under California law. This initial investigation would not  
13 necessarily have to be conducted by a court investigator; the court  
14 should have flexibility to determine which personnel to use for  
15 this purpose. The scope of this initial investigation would be  
16 limited because the conservatee might not yet be in California,  
17 making it difficult and costly to conduct a more thorough  
18 investigation, particularly one by a person who is qualified as a  
19 court investigator under California law.

20 (2) After the court issues a final order accepting a transfer (UAGPPJA  
21 § 302(e)), a court investigator would have to conduct an  
22 investigation similar to the investigation for establishing a new  
23 conservatorship in California. It might be possible to use some  
24 resources from the out-of-state conservatorship in this process. The  
25 court would be required to consider the results of this  
26 investigation at the same time that it determines whether the  
27 conservatorship “needs to be modified to conform to the law of  
28 this state” as specified in UAGPPJA § 302(f). The court  
29 investigator’s fee would be paid in the same manner as if the  
30 conservatorship was originally established in California. The time  
31 for the next periodic review would be calculated from the date  
32 when the court considers the results of this investigation.

33 *Notice (UAGPPJA §§ 301(b), 302(b))*

34 California’s version of UAGPPJA should require notice of a hearing on a  
35 transfer petition, not notice of the petition itself (see the approach used by the  
36 TEXCOM working group in Memorandum 2012-36, Exhibit pp. 24-41). Although  
37 the petitioner would have to notice a hearing, the court could place the matter on  
38 the consent calendar if no one objects to the petition.

1 *Compliance with California Law When a Conservatorship Is Transferred to California*  
2 *(UAGPPJA § 302 Comment)*

3 At an earlier meeting, the Commission decided that California’s version of  
4 UAGPPJA should expressly state that after a conservatorship (or similar  
5 arrangement by another name) is transferred to California, “the proceeding is  
6 henceforth subject to California law and will be treated as a California  
7 conservatorship.” Minutes (Aug. 2011), p. 5. Consistent with that prior decision,  
8 the Commission concluded that its Comment to UAGPPJA Section 302 should  
9 expressly note that if a conservatorship is transferred to California and the  
10 conservator wishes to exercise the powers specified in Probate Code Section  
11 2356.5 (conservatee with dementia), the requirements of that section must be  
12 satisfied. See Memorandum 2012-43, p. 21. The Commission did not resolve  
13 whether the Comment to Section 302 should also expressly mention any other  
14 important California requirements.

15 *Elimination or Reduction of Conservator Powers that are Inconsistent with California*  
16 *Law (UAGPPJA § 302(f))*

17 California’s version of UAGPPJA or an accompanying Commission Comment  
18 should expressly state that when a conservatorship (or similar arrangement by  
19 another name) is transferred to California, the court may eliminate or reduce any  
20 conservator powers that are inconsistent with California law (see Memorandum  
21 2012-43, p. 21).

22 *Educational Materials and Oath*

23 The proposed legislation should make clear that when a conservatorship (or  
24 similar arrangement by another name) is transferred to California, the  
25 conservator must receive the same educational materials as other California  
26 conservators and take the same oath as other California conservators (see  
27 Memorandum 2012-43, pp. 21-22).

28 *Effective Date of Transfer (UAGPPJA § 302(e))*

29 California’s version of UAGPPJA should expressly state that a transfer to  
30 California does not become effective, and the conservator cannot begin to  
31 function here as such, until the California court enters a final order accepting the  
32 transfer (UAGPPJA Section 302(e)).

1 *Transfer of a Conservatorship From California to Another State (UAGPPJA § 301)*

2 California's version of UAGPPJA should make explicit that when a  
3 conservatorship is being transferred from California to another state, the  
4 conservator must continue to comply with California law until the California  
5 court supervising the conservatorship issues a final order confirming the transfer  
6 and terminating the California proceeding (see Memorandum 2012-43, p. 18).

7 **Registration (UAGPPJA Article 4)**

8 *Effect of Registration*

9 California's version of UAGPPJA should only require an out-of-state  
10 conservator to register the conservatorship in one county within the state; it  
11 should not be necessary to register in every county in which the conservator  
12 seeks to act.

APPROVED AS SUBMITTED

\_\_\_\_\_ Date

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

\_\_\_\_\_ Chairperson

\_\_\_\_\_ Executive Secretary