A meeting of the California Law Revision Commission was held in Burbank on December 7, 2018.

Commission:

Present: Jane McAllister, Chairperson
Thomas Hallinan
Susan Duncan Lee
Olga Mack
Crystal Miller-O’Brien

Absent: Assembly Member Ed Chau
Senator Richard D. Roth
Diane F. Boyer-Vine, Legislative Counsel
Victor King, Vice-Chairperson

Staff:

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

Other Persons:

John Andersen, Executive Committee of the Trusts and Estates Section, California Lawyers Association
Sandra Levin, Council of California County Law Librarians
Charles Martel, Judicial Council of California
Paul Siman
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APPROVAL OF ACTIONS TAKEN

Unless otherwise indicated, the Commission decisions noted in these Minutes were approved by all members present at the meeting. If a member who was present at the meeting voted against a particular decision, abstained from voting, or was not present when the decision was made, that fact will be noted below.

MINUTES

The Commission considered Memorandum 2018-55, presenting draft Minutes for the October 11, 2018 meeting and proposing a revision to the Minutes for the August 17, 2018 meeting.

The Commission approved the Minutes for the October meeting without change and approved the revision of the Minutes for the August meeting. (Commissioner Miller-O’Brien was not present for these decisions.)

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director had nothing to report.

Commissioner Suggestions

No Commissioner suggestions were made.
Annual Report


The Commission approved the report for publication and distribution to the Legislature and the Governor, subject to the following decisions:

• Under the heading “Recommendations to the 2019 Legislature” on pages 3 and 10, the report should include the Commission’s 2017 recommendation on Homestead Exemption: Dwelling.

• The report should incorporate the conforming revisions described in the memorandum.

New Topics and Priorities

The Commission considered Memorandum 2018-57 and its First Supplement, discussing the status of the Commission’s current program of work, the new topics suggestions received in 2018, and work priorities for 2019.

The Commission heard comments from Mr. Paul Siman. Individual commissioners offered to provide referrals to Mr. Siman to persons who might be able to assist him.

The Commission made the following decisions:

• The Commission accepted the staff-recommended 2019 work priorities listed on page 50 of the memorandum.

• The Commission will carry over the suggested study topic regarding “Paid Sick Leave,” discussed on pages 43-45 of the memorandum.

STUDY E-200 — RECODIFICATION OF TOXIC SUBSTANCE STATUTES

The Commission considered Memorandum 2018-69 and its First Supplement, discussing organizational issues.

The Commission decided to place the recodified law in a new division located between Divisions 39 and 101. The staff will use three heading levels (Part, Chapter, and Article) in the new Division.

(Commissioner Mack was not present when those decisions were made.)
STUDY G-400 — CALIFORNIA PUBLIC RECORDS ACT CLEAN-UP

Updated Version of Tentative Outline (Memorandum 2018-64)

The Commission considered Memorandum 2018-64, which presents an updated version of the Commission’s tentative outline for recodification of the California Public Records Act (“CPRA”).

The Commission decided that newly enacted Government Code Section 6270.6 (requiring each independent special district to maintain an Internet website) should be recodified in “Chapter 15. Public Entity Spending, Finances, and Oversight” of “Part 5. Specific Types of Public Records” of proposed new “Division 10. Access to Public Records,” as suggested by the staff.

The Commission approved the updated outline attached to Memorandum 2018-64.

(Commissioner Miller-O’Brien was not present for these decisions.)

Cumulative Draft (Memorandum 2018-65)

The Commission considered Memorandum 2018-65, which presents a cumulative draft of the CPRA recodification that incorporates legislation enacted in 2018.

For purposes of a tentative recommendation, the Commission approved the cumulative draft attached to Memorandum 2018-65.

(Commissioner Miller-O’Brien was not present for this decision.)

Part 5, Chapters 6-13 (Memorandum 2018-66)

The Commission considered Memorandum 2018-66, presenting a draft of Chapters 6-13 of Part 5 of proposed new Division 10 of Title 1 of the Government Code. The Commission made the following decisions relating to that draft:

- Chapter 6 should be renamed “Historically or Culturally Significant Matters,” as shown in the draft attached to Memorandum 2018-66.

  (Commissioner Miller-O’Brien was not present for this decision.)

- Proposed Government Code Section 7927.105(a) (recodifying the definition of “patron use record” in existing Government Code Section 6267) is acceptable for purposes of a tentative recommendation.

  (Commissioner Miller-O’Brien was not present for this decision.)

- Proposed Government Code Section 7927.205 (recodifying existing Government Code Section 6254.25, with revisions to update the
cross-reference to Government Code Section 11126) is acceptable for purposes of a tentative recommendation. The staff should add this cross-reference correction to the list of “Corrected Cross-References” at the end of the Commission’s proposed recodification. When the staff prepares the conforming revisions and repeals for the CPRA recodification, it should include a technical amendment of Section 11126, along the lines discussed at pages 11-16 of Memorandum 2017-50.

- Proposed Government Code Section 7927.300(a) (recodifying the definition of “computer software” in existing Government Code Section 6254.9) is acceptable for purposes of a tentative recommendation.

- The Comment to proposed Government Code Section 7927.700 (personnel, medical, and similarly private files) should refer to the Health Insurance Portability and Accountability Act (Pub. Law 104-191 or “HIPAA”) and the Public Safety Officers Procedural Bill of Rights Act (Gov’t Code §§ 3300-3312 or “POBAR”). The Commission welcomes further suggestions regarding bodies of law to mention in the Comment to proposed Section 7927.700 or any of the other Comments in its proposed CPRA recodification.

- Subject to the above decisions, the draft of Chapters 6-9 of Part 5 is acceptable for purposes of a tentative recommendation.

STUDY J-1405 — STATUTES MADE OBSOLETE
BY TRIAL COURT Restructuring: PART 6

The Commission considered Memorandum 2018-63 and its First Supplement, relating to court facilities. For purposes of a tentative recommendation, the Commission made the decisions reported below.

Articles 1-8 of the Trial Court Facilities Act (Gov’t Code §§ 70301-70403)

In general, it appears premature to attempt to update Articles 1-8 of the Trial Court Facilities Act to remove material made obsolete by trial court restructuring (see Memorandum 2018-63, pp. 6-9). The Commission might revisit this matter in the future, if a stakeholder informs the Commission that the matter is ripe for attention, or it otherwise appears ready for reform.

References to the Administrative Office of the Courts in the Trial Court Facilities Act (Gov’t Code §§ 70303, 70321, 70357, 70361, 70362, 70363, 70374, 70379, 70392, 70394)

Some or all of the references to the Administrative Office of the Courts (“AOC”) in the Trial Court Facilities Act might be obsolete, but the Judicial Council’s decision to rename the AOC is unrelated to trial court restructuring.
The Judicial Council appears better-suited to address this matter than the Commission.

**Task Force on County Law Libraries (Gov’t Code § 70394)**

The tentative recommendation on court facilities should propose to repeal Government Code Section 70394, which established a task force on county law libraries that no longer exists. The narrative portion of the tentative recommendation should include language along the lines suggested by the Council of California Law Librarians (see First Supplement to Memorandum 2018-63, Exhibit p. 4), but not necessarily the exact language that the Council suggests.

**Provisions that Cross-Refer to Government Code Section 68073 (Gov’t Code §§ 77201, 77201.3, 77655)**

The previously-approved amendment of Government Code Section 77655 should be modified to fix the outdated cross-reference to Government Code Section 68073, like so:

**§ 77655 (amended). Inadmissibility of task force findings**

SEC. ____. Section 77655 of the Government Code is amended to read:

77655. Notwithstanding any other provision of law, including Section 68073 70311, the findings of the task force Task Force on Court Facilities created by Section 48 of Chapter 850 of the Statutes of 1997 shall not be considered or entered into evidence in any action brought by trial courts to compel a county to provide facilities that the trial court contends are necessary and suitable.

**Comment.** Section 77655 is amended to make it read clearly as a stand-alone section and reflect the renumbering of former Section 68073 (see 2002 Cal. Stat. ch. 1082, § 3). This is not a substantive change.

Government Code Section 77201.3 should also be amended to fix an outdated cross-reference to Section 68073:

**§ 77201.3 (amended). County remittances commencing on July 1, 2006**

SEC. ____. Section 77201.3 of the Government Code is amended to read:

77201.3…

(e) Nothing in this section is intended to relieve a county of the responsibility to provide necessary and suitable court facilities pursuant to Section 68073 70311.
Comment. Section 77201.3 is amended to reflect the renumbering of former Section 68073 (see 2002 Cal. Stat. ch. 1082, § 3). This is not a substantive change.

Because Government Code Section 77201 only applied until June 30, 1998, and Section 68073 was not renumbered until January 1, 2003, it appears inappropriate to amend Section 77201 to reflect the renumbering of Section 68073.

“Article 3. State Finance Provisions” of Chapter 13 of Title 8 (Gov’t Code §§ 77200-77212)

Aside from the amendment of Section 77201.3 discussed above, the tentative recommendation on court facilities should not propose any revisions to “Article 3. State Finance Provisions” of Chapter 13 of Title 8 of the Government Code. The research on court facilities appears to be complete and the staff should prepare a draft of the tentative recommendation for the Commission to review.

STUDY L-3032.1 — REVOCABLE TRANSFER ON DEATH DEED: FOLLOW-UP STUDY

The Commission considered Memorandum 2018-58, Memorandum 2018-59, and the First and Second Supplements to Memorandum 2018-59, discussing the Revocable Transfer on Death Deed (“RTODD”). The Commission made the following decisions:

- The RTODD statute should include a procedure along the lines of the language set out on pages 5 and 6 of Memorandum 2018-58. The RTODD beneficiary will bear the cost of proceeding under the proposed procedure.
- The law should allow an RTODD beneficiary to elect to return RTODD property to the decedent’s estate for use in paying the obligations of the estate. The staff will investigate whether existing law already provides this option. The Commission asks for input on that point from the Executive Committee of the Trusts and Estates Section of the California Lawyers Association (“TEXCOM”).
- Probate Code Section 5674(b) should be revised to delete the language on net income and interest.
- The law should expressly exclude stock cooperatives from the definition of “real property” in Probate Code Section 5610 (which governs the kinds of property that can be transferred by RTODD).
• The Commission will conduct a separate study of whether existing law allowing the transfer of securities by TOD registration could be adapted to provide a means of transferring an ownership interest in a stock cooperative.

• Planned developments and community apartment projects should be included in the definition of “real property” in Probate Code Section 5610.

• The Commission will conduct a separate study of how to resolve a conflict between an at-death transfer of real property and an enforceable restriction that requires third-party approval of any transfer of the property. The study will include consideration of a reform that would validate the transfer of title in such a situation, but restrict the transferee’s occupation of the property unless it is approved by the third-party. The study will include an analysis of whether retroactive application of such a rule would unconstitutionally violate vested property rights or impair the obligations of contracts. The study will not be limited to RTODDs.

• The Commission postponed making a decision on whether an RTODD should be able to transfer property to a trust.

• The law should permit an RTODD to be used to transfer property to a public entity.

• Government Code Section 27281 should be revised to allow recordation of an RTODD that transfers property to a public entity. However, the transfer should not be effective until the public entity’s acceptance of the transfer is also recorded.

• The law should permit an RTODD to be used to transfer property to a nonprofit corporation.

• If the transfer of property to a nonprofit corporation by RTODD fails, the property should be returned to the transferor’s probate estate for the application of cy pres.

• TEXCOM was asked to provide input on whether existing time limits on the disclaimer of a testamentary gift would cause any problems for the operation of an RTODD (in light of the fact that there could be a significant delay between a transferor’s death and the discovery of an RTODD).

STUDY L-4100 — NONPROBATE TRANSFERS: CREDITOR CLAIMS
AND FAMILY PROTECTIONS

The Commission considered Memorandum 2018-60, presenting a draft tentative recommendation to clarify the liability rule in Probate Code Sections 13550 and 13551, which imposes liability on a surviving spouse for a decedent’s debts. The draft would also make a conforming change to Civil Code Section 682.1.
The Commission approved the draft as a tentative recommendation to be circulated for public comment.

**STUDY L-4130 — DISPOSITION OF ESTATE WITHOUT ADMINISTRATION**

The Commission considered Memorandum 2018-61 and Memorandum 2018-62, discussing the liability of a person who takes property under existing procedures for the disposition of a decedent’s estate without administration (the “successor”). The Commission made the following decisions:

- The “property return provisions” should be supplemented with a provision along the lines set out on page 3 of Memorandum 2018-61, with the changes listed below.
- Subdivision (a) of the provision should include the successor’s “inaction.”
- Subdivision (b) of the provision should not include a reference to waste.
- Subdivision (d) of the provision should permit the personal representative to petition the court.
- The Commission asked the Executive Committee of the Trusts and Estates Section of the California Lawyers Association (“TEXCOM”) for input on whether there is an existing procedure on petitioning the court that could be incorporated by reference in subdivision (d) of the provision.
- The conforming revisions shown on pages 7 and 8 of Memorandum 2018-61 should be made. The staff will determine whether any other conforming revisions are required. If such revisions are straightforward, they should be incorporated into a draft tentative recommendation. If they are more complex or present a policy question, they should be brought back to the Commission in a future memorandum.
- In the statutes that govern disposition of a small estate and disposition of real property of small value, the “property return provisions” should not apply to creditor claims.
- Instead, those statutes should be revised to include a provision along the lines of the provision set out on pages 4 and 5 of Memorandum 2018-62. The successor will bear the cost of proceeding under the proposed procedure.
- The law should allow the successor to elect to return property to the decedent’s estate for use in paying the obligations of the estate. The staff will investigate whether existing law already provides this option. The Commission requests input from TEXCOM on that point.
• The Commission requests input from TEXCOM on whether the property return provision applicable to property received by a surviving spouse (Probate Code Section 13562) has any application to creditor claims.

STUDY R-100 — FISH AND GAME LAW

The Commission considered Memorandum 2018-67 and its First Supplement, presenting a draft tentative recommendation that would recodify the Fish and Game Code in a proposed Fish and Wildlife Code. The Commission approved the draft for circulation as a tentative recommendation, with one change. The public review and comment period should one year in length, rather than six months.

The Commission also considered Memorandum 2018-68, discussing revisions in other codes that would need to be made to conform to the proposed recodification of the Fish and Game Code. A draft tentative recommendation setting out those conforming revisions will be presented at a future meeting.