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APPROVED MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
NOVEMBER 21, 2019
Sacramento

A meeting of the California Law Revision Commission was held in Sacramento on November 21, 2019.

Commission:

Present: Victor King, Chairperson
Crystal Miller-O'Brien, Vice-Chairperson
Diane F. Boyer-Vine, Legislative Counsel
David A. Carrillo
Ana Cubas
Jane McAllister
Richard Rubin
Richard Simpson

Absent: Assembly Member Ed Chau
Senator Richard D. Roth

Staff:

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

Other Persons:

Mason Brawley, Executive Committee, Trusts and Estates Section, California Lawyers Association
Jenny Treis, County of Santa Clara

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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 2019-53, presenting draft Minutes for the September 26, 2019, meeting.

The Commission approved the Minutes without change.

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director provided the following information:

- A brief overview of the nature of the Commission’s work, its quorum and voting practices, and the method by which it selects or is assigned topics for study.
- A brief overview of the new Committee on Revision of the Penal Code, which will be formed on January 1, 2020.

In connection with this discussion, the Commission decided to revise Section 210 of its *Handbook of Practices and Procedures* to make clear that the hiring of attorneys for the new Committee need not be approved by the Commission.

Commissioner Suggestions

No Commissioner suggestions were made.

Annual Report

The Commission considered Memorandum 2019-54, presenting a staff draft of (1) the body of the Commission’s 2019-2020 Annual Report, and (2) the appendix that contains Commissioner biographies.

The Commission approved the report for publication and distribution to the Legislature and the Governor, subject to the changes described below.

1 *Contingent Text*

2 The contingent text, which is shown in the draft report with a gray
3 background, will be adjusted to conform to the following points:

4 (1) The Commission will seek introduction of legislation in 2020 to
5 implement the following recommendations:

- 6 • *Revocable Transfer on Death Deeds: Follow-up Study* (Nov. 2019)
- 7 • *California Public Records Act Clean-Up* (Nov. 2019)
- 8 • *California Public Records Act Clean-Up: Conforming Revisions*
9 (Nov. 2019)

10 (2) The Commission will not seek introduction of legislation in 2020 to
11 implement the following recommendation:

- 12 • *Nonprobate Transfers: Liability of a Surviving Spouse Under Probate*
13 *Code Sections 13550 and 13551* (Nov. 2019)

14 (3) In 2020, the Commission will work on the following topics:

- 15 • Disposition of an estate without administration
- 16 • State and local agency access to customer information from
17 communications service providers

18 *Commissioner Biographies*

19 The Commissioner biography appendix will be revised to reflect input that
20 was provided at the meeting.

21 STUDY E-200 — RECODIFICATION OF TOXIC SUBSTANCE STATUTES

22 The Commission considered Memoranda 2019-59, 2019-60, and 2019-61,
23 relating to the Commission’s study on recodification of toxic substance statutes.

24 The Commission approved the proposed consent items discussed on pages 4-
25 7 of Memorandum 2019-59. The Commission directed the staff to handle each
26 item as recommended in the memorandum.

27 The Commission approved the draft legislation attached to Memoranda 2019-
28 59 and 2019-60 for inclusion in a tentative recommendation.

29 No Commission action was required or taken in connection with
30 Memorandum 2019-61.

1 STUDY EM-560 — EMINENT DOMAIN: PRE-CONDEMNATION ACTIVITIES

2 The Commission considered Memorandum 2019-50 and its First and Second
3 Supplements, relating to the statutory procedure for compensation of a property
4 owner in connection with precondemnation activity.

5 The Commission decided to revise some language that it had previously
6 decided to add to Code of Civil Procedure Section 1245.060(c). The revisions are
7 shown in strikeout and underscore below:

8 In a proceeding under this subdivision, the owner has the
9 ~~option of obtaining~~ right to a jury trial, unless waived, on the
10 amount of compensation for actual damage to or substantial
11 interference with the possession or use of the property.

12 The Commission decided not to propose any revisions of the
13 precondemnation statute to address the issue of “interim compensation” (i.e.,
14 compensation for harms that result from precondemnation activity, while that
15 activity is still ongoing). This reversed an earlier decision. See Minutes (April
16 2019), p. 4.

17 STUDY G-400 — CALIFORNIA PUBLIC RECORDS ACT CLEAN-UP

18 **Proposed Recodification**

19 The Commission considered Memorandum 2019-57, which presents a draft of
20 a final recommendation on recodification of the California Public Records Act
21 (“CPRA”). The Commission also considered the First Supplement to
22 Memorandum 2019-57, which presents and analyzes a letter from the County of
23 Santa Clara. Jenny Treis provided oral testimony on the county’s behalf. After
24 discussion, the Commission approved the draft attached to Memorandum 2019-
25 57 as a final recommendation, for publication and submission to the Legislature.

26 **Conforming Revisions**

27 The Commission considered Memorandum 2019-58 and its First Supplement,
28 which together present a draft of a final recommendation on conforming
29 revisions for the Commission’s proposed recodification of the CPRA. The staff
30 suggested revising that draft to (1) correct a typographical error in the last
31 sentence of Business and Professions Code Section 9882.6(b)(2) (“These expenses
32 may be paid out of ...”), and (2) mention that correction in the accompanying

1 Comment. Subject to the suggested revisions, the Commission approved the
2 draft as a final recommendation, for publication and submission to the
3 Legislature.

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

5 The Commission considered Memorandum 2019-55 and its First Supplement,
6 which presented (1) a staff draft recommendation on revocable transfer on death
7 deeds (“RTODD”), and (2) public comment. The Commission made the
8 following decisions:

- 9 • The proposed witnessing requirement should be included in the
10 proposed law.
- 11 • The existing notarization requirement should be included in the
12 proposed law.
- 13 • The proposed requirement that an RTODD beneficiary provide
14 notice to heirs on the death of the transferor should be included in
15 the proposed law. (*Commissioner King voted against this decision.*)
- 16 • The notice should refer to the time limit for contesting an RTODD.
- 17 • There should be a statutory form for the required notice.
- 18 • The proposed treatment of multiple beneficiaries with respect to
19 the notice requirement was approved.
- 20 • The proposed requirement that an RTODD beneficiary publish
21 notice on the death of the transferor should not be included in the
22 proposed law (*Commissioner Miller-O’Brien voted no on this decision.*)
- 23 • A provision should be added to make clear that changes in the
24 proposed law have no retroactive application.
- 25 • As proposed in the draft, new Probate Code Section 5676 should
26 be renumbered as Section 5677.
- 27 • The staff will research whether the phrase “just prior to death” has
28 a clear enough meaning to use in Probate Code Section 5660. If not,
29 the staff will draft clearer language to use in that provision.
- 30 • The Commission approved the staff’s recommendation that there
31 be no change to the proposed Comment to Probate Code Section
32 5672.
- 33 • Where new language is required to implement a decision listed
34 above, the staff will draft the language and submit it to the Chair
35 for approval.
- 36

- 1 Subject to those decisions, the Commission approved the draft as a final
- 2 recommendation, for publication and submission to the Legislature.