

March 5, 1976

<u>Time</u>	<u>Place</u>
March 11 - 7:00 p.m. - 10:00 p.m.	Hyatt House Hotel at Los
March 12 - 9:00 a.m. - 5:00 p.m.	Angeles International Airport
March 13 - 9:00 a.m. - 12:00 noon	6225 West Century Boulevard, Rm 1262 Los Angeles, CA 90045

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

March 11-13, 1976

March 11

1. Administrative Matters

2. 1976 Legislative Program

Status of Legislative Program

Oral Report at Meeting

Admissibility of Duplicates (AB 2580)

Memorandum 76-29 (sent 3/1/76)

Oral Modification of Contracts (AB 2581)

Memorandum 76-31 (enclosed)

Liquidated Damages (AB 3169)

Memorandum 76-30 (enclosed)

3. Study 78.50 - Landlord-Tenant Relations (Unlawful Detainer Proceedings)

Memorandum 76-23 (sent 3/1/76)

4. Study 39.100 - Sister State Judgments

Memorandum 76-32 (enclosed)

March 12 and 13

5. Study 77 - Nonprofit Corporations

New Business Corporations Law (sent to you for January 1976 meeting)(bring to March meeting)

March 5, 1976

77.70 - Voting of Memberships

Memorandum 76-20 (sent 2/9/76)

77.80 - Members Derivative Action

Memorandum 76-19 (sent 1/30/76)

77.90 - Amendment of Articles

Memorandum 76-27 (sent 3/1/76)

77.150 - Records and Reports

77.160 - Rights of Inspection

77.170 - Service of Process

Memorandum 76-26 (sent 3/1/76)

77.180 - Involuntary Dissolution

77.190 - Voluntary Dissolution

Memorandum 76-28 (sent 3/4/76)

6. Study 63.50 - Evidence (Admissibility of Business Records)

Memorandum 76-13 (sent 1/23/76)

Note: We will review the proposed legislation starting on page 11 of the staff draft of the recommendation; after the March meeting, the preliminary portion and statute will be revised to reflect decisions made at the March meeting and presented for review by the Commission prior to sending the tentative recommendation out for comment.

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

MARCH 11, 12, AND 13, 1976

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on March 11, 12, and 13, 1976.

Present: John N. McLaurin, Chairman
Howard R. Williams, Vice Chairman
John J. Balluff
John D. Miller

Absent: Robert S. Stevens, Member of Senate
Alister McAlister, Member of Assembly
Marc Sandstrom
Thomas E. Stanton, Jr.
George H. Murphy, ex officio

Members of Staff Present:

John H. DeMouilly	Nathaniel Sterling
Stan G. Ulrich	Robert J. Murphy III

The following persons were present as observers on days indicated:

March 11

Ronald P. Denitz, Tishman Realty & Construction, Los Angeles
J. A. Dreifus, attorney, Los Angeles
Edward I. Pollock, California Trial Lawyers Ass'n, Los Angeles

March 12

W. A. Hutchins, California State Automobile Ass'n, San Francisco
A. S. Kaufer, attorney, Los Angeles
R. H. Nida, Automobile Club of So. California, Los Angeles
H. L. Stern, State Bar Committee on Corporations, Los Angeles

March 13

W. A. Hutchins, California State Automobile Ass'n, San Francisco
R. H. Nida, Automobile Club of So. California, Los Angeles
R. Robison, Automobile Club of So. California, Los Angeles

ADMINISTRATIVE MATTERS

Minutes of February 26-28, 1976, Meeting

The Executive Secretary reported that the short time between the February and March meetings did not provide sufficient time for the staff to prepare the Minutes for the February 1976 meeting. The Minutes for the February 1976 meeting will be submitted for approval at the April 1976 meeting.

Schedule for Future Meetings

The following is the schedule for future meetings.

April

April 22 - 7:00 p.m. - 10:00 p.m.	San Francisco
April 23 - 9:00 a.m. - 5:00 p.m.	
April 24 - 9:00 a.m. - 12:00 noon	

May

May 13 - 7:00 p.m. - 10:00 p.m.	Los Angeles
May 14 - 9:00 a.m. - 5:00 p.m.	
May 15 - 9:00 a.m. - 12:00 noon	

June

June 17 - 7:00 p.m. - 10:00 p.m.	San Francisco
June 18 - 9:00 a.m. - 5:00 p.m.	
June 19 - 9:00 a.m. - 12:00 noon	

July

July 8 - 7:00 p.m. - 10:00 p.m.	Los Angeles
July 9 - 9:00 a.m. - 5:00 p.m.	

1976 Legislative Program

The Executive Secretary made an oral report, summarized below, concerning the 1976 legislative program.

Enacted

AB 2583 - Operative Date of Eminent Domain Law (Ch. 22)

Sent to Floor in Second House

AB 1671 - Partition of Real and Personal Property

Passed First House
(tentatively set for hearing March 23)

AB 2581 - Modification of Contracts

The Commission considered various suggestions in connection with this bill. See these Minutes, infra.

ACR 130 - Continues Authority to Study Topics

Sent to Floor in First House

AB 2761 - Relocation Assistance

The Commission considered various suggestions in connection with this bill. See these Minutes, infra.

AB 2855 - Transfer to California of Out-of-State Trusts

AB 2864 - Revision of Attachment Law

The Commission considered various suggestions in connection with this bill. See these Minutes, infra.

AB 2895 - Claim and Delivery Statute--Turnover Orders

Heard but Rereferred to Assembly Committee on Finance and Insurance

AB 2847 - Undertakings for Costs

The Commission considered various suggestions in connection with this bill. See these Minutes, infra.

Heard and Put Over for Second Hearing by Committee

AB 2582 - Byroads and Utility Easements (set for April 5 tentatively)

The Commission considered various suggestions in connection with this bill. See these Minutes, infra.

Set for Hearing in First Committee
(tentatively set for April 5)

AB 2580 - Admissibility of Duplicates

The Commission considered various suggestions in connection with this bill. See these Minutes, infra.

AB 3128 - Service of Process on Unincorporated Associations

AB 3169 - Liquidated Damages

The Commission considered various suggestions in connection with this bill. See these Minutes, infra.

Minutes
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STUDY 36.60 - CONDEMNATION (RELOCATION ASSISTANCE)

The Executive Secretary reported that AB 2761, introduced to effectuate the Commission's recommendation relating to relocation assistance, has been amended to make the amendments adopted by the Commission at its January 15-17, 1976, meeting and to provide that the "guidelines adopted by the Commission of Housing and Community Development pursuant to Section 7268" of the Government Code be followed. A copy of the amended bill will be provided to each Commissioner as soon as available.

STUDY 36.60 - CONDEMNATION (CONDEMNATION BY PRIVATE PERSONS)

The Executive Secretary reported that Assembly Bill 2582, introduced to effectuate the Commission's recommendation relating to byroads and utility easements, had been heard by the Assembly Judiciary Committee. The Committee did not report the bill out. The Executive Secretary and Assemblyman McAlister concluded that the bill should be amended to delete the requirement that a resolution be obtained from the local legislative body as a condition for maintaining an eminent domain action since this portion of the bill troubled some members of the Committee.

The Commission reviewed the bill as amended in Assembly February 23, 1976, and discussed whether the bill in amended form should no longer be recommended by the Commission. A motion that the Commission support the bill, as amended, failed to pass. The vote on the motion was two for and two against. The Commission, recognizing that a short quorum was present, requested that this matter be placed on the agenda for the April 1976 meeting so that the matter can be considered when a greater number of Commissioners are present. The two members voting against the amended bill noted that they had not supported the recommendation from the beginning and, hence, could not support the amended bill. Accordingly, it was felt that action on whether to withdraw Commission support for the amended bill was a matter that should be deferred to the April 1976 meeting.

Minutes
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STUDY 39.100 - ENFORCEMENT OF SISTER STATE JUDGMENTS

The Commission considered Memorandum 76-32 relating to amending the law concerning the enforcement of sister state judgments (Code Civ. Proc. §§ 1710.10-1710.65) and made the following decisions:

Recovery of Interest on Sister State Judgment Between Initial Entry and Entry in California

The enforcement of sister state judgments law should be amended to provide that the judgment creditor may assert in his application for entry in California the applicable rate of interest on the judgment under the law of the sister state, citing the statute, and the total amount of such interest. If the judgment debtor wishes to dispute the rate or amount stated in the application, he may do so by means of the motion to vacate provided in Section 1710.40.

Recovery of California Filing Fee

Section 1710.25 should be amended to provide that the amount of the judgment as entered in California shall include the fee for filing the application.

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STUDY 39.160 - REVISION OF ATTACHMENT LAW

The Executive Secretary reported that the Assembly Judiciary Committee had favorably reported Assembly Bill 2864 but had amended the bill to delete the change proposed by the Commission relating to liability for wrongful attachment. The Commission had proposed to broaden the protection against liability for wrongful attachment to provide protection where the creditor levies on property of a third person acting reasonably and in good faith. The Assembly Judiciary Committee was unwilling to approve this amendment, and it was deleted from the bill before it was approved by the Committee. The Commission approved the bill as amended by the Assembly Judiciary Committee.

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STUDY 47 - ORAL MODIFICATION OF CONTRACTS

The Commission considered Memorandum 76-31 to which were attached extracts from the Minutes of the Northern and Southern Sections of the State Bar Committee on Administration of Justice disapproving the recommendation relating to oral modification of contracts.

The Commission concluded that an examination of the reasons given for the disapproval of the recommendation reveals that there is a failure of the State Bar Committee to appreciate that the Commission has made a substantial change in its prior recommendation. The Commission now recommends, consistent with the Commercial Code provision enacted in 1975, that a written contract can be modified orally unless the contract contains a provision requiring modifications to be in writing, provided that the statute of frauds must be satisfied if the contract as modified is within the statute of frauds.

The Commission directed the Executive Secretary to send a copy of the printed recommendation to the State Bar Committee with a letter noting that it is substantially different in substance than the recommendation disapproved by the State Bar early in 1975.

STUDY 52.80 - UNDERTAKINGS FOR COSTS

Mr. Edward I. Pollock, representing the California Trial Lawyers Association, appeared before the Commission to express opposition to certain aspects of the Commission's Recommendation Relating to Undertakings for Costs and the legislation introduced by Assemblyman McAlister to effectuate that recommendation (AB 2847).

With respect to cost bonds generally, Mr. Pollock made the following points:

- (1) There has been no statistical study made to demonstrate the need for the various cost bond statutes.
- (2) Cost bonds are regressive.
- (3) They discriminate against the middle class, because indigent plaintiffs may be exempted from the cost bond requirement while nonindigents may not be.

With respect to the nonresident plaintiff (Code Civ. Proc. § 1030), Mr. Pollock objected on the following additional grounds:

- (1) Modern enforcement of sister-state judgments have minimized the problem of collection of costs by the successful defendant.
- (2) No cost bond is required in federal court.
- (3) Because, under the Commission's recommendation, a cost bond may be required in all cases except where there is no reasonable possibility that the defendant will prevail, plaintiffs with meritorious claims will be denied access to the courts.

With respect to medical malpractice actions (Code Civ. Proc. § 1029.6), Mr. Pollock objected on the additional ground that the cost bond requirement protects one class of society to the detriment of the public.

Mr. Pollock acknowledged that, with respect to the vexatious litigant in propria persona, there is a genuine problem, and stated that his association had no objection to the cost bond requirement in that instance.

STUDY 63.60 - EVIDENCE (DUPLICATES)

The Commission considered Memorandum 76-29, which noted that the State Bar Board of Governors disapproves the proposal on admissibility of duplicates unless the same is amended to require notice of intention to introduce the duplicate.

After considerable discussion, the Commission decided to stand on its original recommendation which proposed enactment in California of a provision that is the same in substance as the comparable provision of the federal rules of evidence. The requirement that a notice of intention to offer the duplicate in evidence be given in every case was considered by the Commission to be a potential trap to the unwary lawyer who may fail to give the notice, for example, in a case where both parties are well aware of the content of the writing itself through discovery proceedings. Whether a pretrial notice should have been given is a factor that can be considered by the court in determining whether "in the circumstances it would be unfair to admit the duplicate in lieu of the writing itself." Accordingly, the Commission determined not to amend Section 1581 to require that a notice of intention to offer the duplicate be given as a condition to admission of the duplicate.

STUDY 72 - LIQUIDATED DAMAGES

The Commission considered Memorandum 76-30 relating to some comments received on the liquidated damages recommendation (AB 3169). The Commission made the following decisions.

Civil Code § 1671(c)(1). Substantially inferior bargaining position

The Comment to this portion of Section 1671 should be changed to state that the standard of substantially inferior bargaining position refers to cases involving contracts of adhesion.

Civil Code § 1675(c). Five-percent standard in residential property sales

The Commission decided to leave to legislative decision the specific percentage of the purchase price of residential real property that is to be presumed reasonable.

Civil Code § 1676(b) and (c). Contract to purchase nonresidential real property

The staff should communicate with the State Bar Committee concerning the purpose of subdivisions (b) and (c) of Section 1676 in response to the Committee's suggestion that these subdivisions be eliminated.

Govt. Code §§ 14376, 53069.85; Sts. & Hwys. § 5254.5. Liquidated damages provisions in public contracts

The language proposed to be added to Government Code Sections 14376 and 53069.85 should be deleted and the substance of the following should be added:

Such sum is valid as liquidated damages unless manifestly unreasonable under the circumstances existing at the time the contract was made.

A similar change should be made in Streets and Highways Code Section 5254.5.

STUDY 77.70 - NONPROFIT CORPORATIONS (VOTING OF MEMBERSHIPS)

The Commission considered Memorandum 76-20 relating to voting of memberships in nonprofit corporations. The Commission also heard a presentation by Mr. Alvin Kaufer concerning various aspects of nonprofit corporation elections; Mr. Kaufer's views with respect to large nonprofit corporations are summarized below:

- (1) Members should have a reasonable means of getting nominated as candidates for directors.
- (2) Once nominated, the candidates should have some means of communicating with other members at the expense of the corporation.
- (3) Voting by proxy in election of directors should be precluded.
- (4) Cumulative voting for directors should be required.

The Commission determined that members should have a reasonable means of getting their names on the ballot and referred the matter to the staff for development. The Commission also determined that, at a minimum, nominees should be entitled to have information comparable to any information distributed by management, to be given to members at corporate expense, and referred this to the staff for development.

The Commission directed the staff to give some consideration to including among the voting provisions a section comparable to Section 702 (voting of shares held by administrator, guardian, receiver, minor).

The Commission also made the following determinations with respect to the draft statute attached to Memorandum 76-20:

§ 5124. Business corporation

This section was tentatively approved. After the use of the term "business corporation" in the statute is fully developed, consideration should be given to expanding it to apply to all corporations other than those organized under the nonprofit corporation law.

§ 5129. Proxy

This section was tentatively approved.

§ 5130. Vote

This section should be considered in light of the provisions relating to voting by directors as well as voting by members.

§ 5263. Bylaws relating to voting rights

The Commission took no action on this section but determined to reconsider the section in light of whatever action it takes on members' voting rights generally. The reconsideration should present the Commission with at least four alternatives for subdivision (b):

- (1) Restricting the subdivision to adverse effects on voting rights.
- (2) Permitting the articles to adopt a provision such as subdivision (b).
- (3) Limiting the subdivision to affected classes.
- (4) Omitting subdivision (b) altogether.

§ 5700. Voting rights and manner of voting

This section was tentatively approved, with the reference to "ballot" in subdivision (b) tied to meetings of members and with the clarification that, absent a reasonable means of voting in the articles or bylaws, the general provisions relating to meetings and consents prevail.

§ 5701. Record date for determining members

This section should be relocated among the general provisions of the non-profit corporation law. It should be replaced by a provision that a nonprofit corporation may permit persons who become members after the record date to vote and may preclude persons who are no longer members after the record date from voting.

§ 5702. Voting of membership held by partnership, association, family, or other group

This section was deleted. Voting by a partnership, association, family, or other group should be governed by Section 5704.

§ 5703. Voting of membership held by corporation

This section was tentatively approved. Expansion of the term "business corporation" to include such entities as co-ops should be considered.

§ 5704. Voting of membership held by two or more persons

This section was tentatively approved.

§ 5705. Proxies

This section should be revised to provide a maximum three-year limitation on the duration of a proxy unless the proxy is coupled with an interest. Proxies are revocable at will at any time within their effective term unless coupled with an interest.

§ 5706. Voting agreements

This section was tentatively approved with the insertion of a limitation on the duration of a voting agreement to 10 years with an option of renewal for 10 years. The staff was also directed to ascertain from the State Bar Committee on Corporations the meaning of the phrase "or as the parties may agree," and to delete the phrase if there is no satisfactory explanation.

§ 5707. Inspectors of election

This section was tentatively approved with instructions for editorial improvement by elimination of plurals and further subdivision.

§ 5708. Cumulative voting

Cumulative voting should be required in any election of directors in which there are three or more positions to be filled.

§ 5709. Contested elections or appointments

This section was tentatively approved with instructions to editorially further subdivide and tabulate its provisions. The staff was directed to research the question whether it is necessary to provide the court with continuing jurisdiction and to put something either in the section or the Comment.

Corporations Code § 9601 (repealed)

This repealer was tentatively approved.

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STUDY 77.80 - NONPROFIT CORPORATIONS

(MEMBERS' DERIVATIVE ACTIONS)

The Commission considered Memorandum 76-19 and the attached staff draft of Chapter 8 relating to members' derivative actions. The Commission made the following decisions:

§ 5801. Allegations of complaint

This section should be redrafted as substantive rather than procedural provisions. The staff should redraft the motion provision of subdivision (b) to make it clearer. The reference to "material" evidence in subdivision (b) should be deleted. Paragraph (3) of subdivision (b) should refer to the "alleged wrongdoing" rather than the "wrongdoing of which the plaintiff complains."

§ 5802. Court approval for discontinuation of action

This section should read:

An action brought pursuant to this chapter shall not be dismissed, discontinued, compromised, or settled without the approval of the court.

§ 5803. Security for defendant's expenses

Subdivision (b) should provide that the motion shall be "made" rather than "based" on the stated grounds. Subdivision (d) should be revised to permit rather than require the court to admit oral testimony and the reference to "material" evidence should be deleted. Subdivision (h) should be expanded to make clear that recourse may be had to the undertaking when the action terminates in favor of the beneficiary of

the undertaking. The staff should also reexamine this provision to determine why it distinguishes between the corporation and the moving party.

§ 5804. Action brought by the lesser of 50 members or 10 percent of members

This provision should be brought back for Commission consideration in the revised draft, the Commission being evenly divided (2-2) on its inclusion.

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STUDY 77.90 - NONPROFIT CORPORATIONS (AMENDMENT OF ARTICLES)

The Commission considered Memorandum 76-27 relating to amendment of articles of incorporation of nonprofit corporations. The Commission made the following determinations with respect to the draft statute attached to the memorandum.

§ 5050. Correction of instruments

This section was tentatively approved after editorial revisions relating to recurrence of the term "any."

§ 5051. Contents of certificate of correction

This section was tentatively approved.

§ 5052. Execution of certificate of correction

This section was tentatively approved.

§ 5053. Limitations on certificate of correction

This section was tentatively approved; the staff should review the need for subdivision (b).

§ 5054. Effective time of corrected instrument unaffected by filing certificate of correction

This section was tentatively approved.

§ 5055. Rights and liabilities affected by filing certificate of correction

This section was tentatively approved after the imperative mood was changed to the indicative mood.

§ 5151. Approved by (or approval of) the board

This section was tentatively approved after deletion of the material in the Comment relating to the required vote and to written consents.

§ 5173. Officers' certificate

This section was tentatively approved. It should be tabulated for clarity.

§ 5193. Verified

This section was tentatively approved. It should be phrased in the singular.

§ 5251. Permitted contents of articles

This section should be restructured so that subdivisions (a) and (b) are reversed. Subdivision (a) should be revised to provide that the listed provisions are not effective unless expressly stated in the articles. Subdivision (a)(4) should be replaced by a general reference to any other statutory requirement. Subdivision (b) should be examined to ascertain whether it covers all subjects, including dissolution. The Comment should cross-reference sections referred to in subdivision (b), both directions.

§ 5910. Permissible amendments of articles

This section was tentatively approved.

§ 5911. Amendments to delete first directors and initial agent

This section was tentatively approved with the substitution of "initial directors" for "first directors."

§ 5912. Extension of corporate existence

This section was tentatively approved.

§ 5913. Amendment of articles of charitable corporation

This section was deferred pending receipt by the Commission of additional information relating to subdivision (c).

§ 5920. Vote required in articles

This section was tentatively approved. It should be reorganized for clarity.

§ 5921. Adoption of amendments before members admitted

The staff was directed to give further consideration to whether this section is necessary, particularly in light of the general rule that, where there are no members of a nonprofit corporation, the board takes any action required of members.

§ 5922. Adoption of amendments after members admitted

This section should be revised to incorporate the following changes:
(1) Subdivision (a) should be divided into two sentences; (2) reference should be made to "members entitled to vote"; (3) the vote requirement in subdivision (b) should be a majority of the votes cast, provided that the majority is not less than two-thirds of a quorum for a meeting.

§ 5923. Adoption of amendments deleting first directors and initial agent

This section was tentatively approved after changing "first" to "initial" directors and rephrasing the plural in the singular.

§ 5924. Adoption of amendments by policymaking committee

This section was tentatively approved. Language should be added to reconcile the section with Section 5920 (larger vote required in the articles), and

the staff was instructed to inquire of the State Bar Committee on Corporations whether any members of the committee have any knowledge of the origin of this provision and the problems it attempts to cure.

§ 5925. When class vote required

This section was tentatively approved. The vote required should be the same as that required for amendments generally.

§ 5930. Certificate of amendment

This section was tentatively approved. The staff was directed to research the case law relating to failure of the nonprofit corporation to file the certificate of amendment and the effect of such failure on the rights of third parties and on the internal affairs of the corporation. The results of the research should be reflected in the Comment. The staff was also instructed to write to the State Bar Committee on Corporations to ascertain whether they consider this to be a problem and, if so, how they have resolved the problem.

§ 5931. Contents of certificate of amendment

This section was tentatively approved. Changes should be made to reflect prior decisions relating to the vote required.

§ 5932. Certificate of amendment to establish wording of amendment

This section was tentatively approved.

§ 5933. Effect of filing certificate of amendment

This section was tentatively approved after revising subdivision (a) to read:

(a) Upon filing the certificate of amendment, the articles are amended in accordance with the certificate.

§ 5940. Restated articles

This section was tentatively approved.

§ 5941. Contents of restated articles

This section was tentatively approved after making subdivision (a) mandatory rather than permissive.

§ 5924. Approvals required for restated articles

This section was tentatively approved.

§ 5943. Approvals required for restated articles

This section was tentatively approved. The staff was directed to research the meaning of the phrase "for all purposes" to determine whether it might affect the effective date of the articles of incorporation.

Corporations Code §§ 9303, 9305, 9306 (repealed)

The repeal of these sections was tentatively approved.

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STUDY 77.150 - NONPROFIT CORPORATIONS (RECORDS AND REPORTS)

The Commission considered Memorandum 76-26 and the attached draft of Chapter 15 relating to records and reports. The Commission considered the sections in Chapter 15 and the following decisions were made.

§ 6510. Books and records

This section should be revised as follows: The first sentence of subdivision (a)(3) should be revised to be phrased in the singular, the record should include the number of memberships held by each member. It was determined that the date of record when membership was acquired should be included even though comparable information is not required to be retained under the business corporations law because the date of record is important in determining right to vote when record date of acquisition determines right to vote. The record should indicate the class of each membership. The reference to capital certificates should be retained pending a determination whether to provide for capital certificates. A separate provision should be drafted to provide that a record of the termination of a membership, together with the date of termination, shall be retained so long such record is necessary to determine those members entitled to vote or otherwise participate in the affairs of the nonprofit corporation.

§ 6511. Information to assessor

Approved after word "at" was inserted after "available" in the third line of the section.

§ 6512. Liability for false report, record, or entry

Approved as drafted. [This section should be revised to use the singular rather than the plural.]

§ 6520. Annual report required unless waived in bylaws

This section should be limited to nonprofit corporations formed after the operative date of the new statute.

Subdivision (c) was revised to read:

(c) The annual report, if written, shall be filed with the records of the corporation. Either a copy of the annual report or a summary thereof shall be entered in the minutes of the proceedings of the annual meeting of members.

§ 6521. Annual report; financial and membership information; place where records kept

The following changes were made in this section:

(1) The words "in appropriate detail" were deleted from the introductory portion of subdivision (a).

(2) Subdivision (a)(6), requiring a statement of the address where the books, records, and minutes referred to in Section 6510 are kept, was deleted.

(3) Subdivision (a)(5) was revised to read in substance as follows:

(5) The number of members of the nonprofit corporation as of a specified date not more than 12 months prior to the date of the annual meeting.

(4) The section should be revised so that the nonprofit corporation can use the information for its most recent fiscal year ending not more than 12 months prior to the date of the annual meeting.

(5) The word "principal" in subdivision (a)(2) was changed to "major."

(6) In the second line of subdivision (b), the phrase "any report" was changed to "a report."

The Commission suggested that the State Bar Committee be asked what the meaning of "any report thereon of independent accountants" means in the provision of the General Corporation Law comparable to subdivision (b). Would "a report" be a better choice of words? Is there more than one report? The question was raised by a representative of the American Automobile Association and the Commission agreed that the meaning of the phrase "any report" is unclear.

§ 6523. Providing member with copy of annual report

The phrase "a written annual report" was substituted for "an annual report" in the introductory portion of the section.

Additional Section

A provision should be added indicating that the annual report may contain additional information.

§ 6524. Member's right to obtain information

The following matters should be taken into account in preparing a revised version of this section:

(1) A more appropriate phrase should be substituted for "five percent of the membership." The right to make the demand for information should be limited to five percent of those members entitled to vote for directors.

(2) The section should be reviewed and revised to reflect the revisions made in Section 6521 with reference to period covered by the fiscal information contained in the annual report.

(3) The nonprofit corporation should have the option to provide the fiscal information as provided by Section 6524 or to permit the member to inspect the books and records of the nonprofit corporation to obtain the information at his own expense.

(4) In substance the section should provide that a member authorized by the five percent of the voting power may make a request for fiscal information for an appropriate period ending not less than 30 days before the date of the request. The nonprofit corporation may respond to this request by permitting its records to be examined by the person making the request. If the corporation maintains its books and accounts on a periodic basis, the report should be on the basis of the latest such period and any prior periods specified in the request.

(5) Under subdivision (d), the copy of the statement is available for inspection without charge, but the nonprofit corporation may impose a reasonable charge to cover the cost of reproduction and mailing of the copy of the information to the persons requesting copies. Otherwise, the five percent of members requesting the report will each request a copy of the report and such request will be made at the same time the request is made for the preparation of the fiscal report. The member requesting the report can, of course, reproduce copies of the report at his own expense for other members requesting the report.

(6) The relationship of Section 6524 to Section 6630 should be considered in redrafting the two sections.

§ 6525. Judicial enforcement

Subdivision (b) of this section should be revised to insert "reasonable" before "attorney's fees" and to require that the member make a demand for compliance and that the nonprofit corporation have an opportunity to comply before the sanction provided in subdivision (b) may be imposed.

The concept that the failure is willful also should be included in subdivision (b). [Perhaps the subdivision might be made not applicable where the failure is the result of mistake, inadvertence, or excusable neglect.]

§ 6526. Application of article

This section was not approved. The Commission had considerable concern about the application of this section to foreign corporations under the standard provided in this section. Action on this section was deferred until the provisions relating to foreign nonprofit corporations are considered.

Article 3. Statement Identifying Corporate Officers and Offices;
Designation of Agent for Service

The Commission discussed this article generally. The following general policy decisions were adopted:

(1) The statement need be filed only every three years and not more frequently even though there is a change in the information required to be contained in the statement.

(2) The statement should contain only the information concerning the officers and address of the principal executive office. The statement should not contain the authorized number of directors, information concerning names and addresses of directors, or statement of principal activity.

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STUDY 78.50 - LESSOR-LESSEE RELATIONS
(UNLAWFUL DETAINER PROCEEDINGS)

The Commission considered Memorandum 76-23, the attached staff draft of a recommendation relating to damages in actions for breach of lease, and an oral summary by the staff of a letter dated March 9, 1976, from Thomas W. Pulliam, Jr., Director of Litigation for the San Francisco Neighborhood Legal Assistance Foundation.

In response to Mr. Pulliam's suggestions, the Commission made the following decisions:

1. Proposed Civil Code Section 1952.3 should be limited to apply only to actions commenced as unlawful detainer actions and should not apply to forcible entry or forcible detainer cases.

2. The second sentence of subdivision (a) of proposed Section 1952.3 should be redrafted to make clear that before the damages specified in Section 1951.2 may be recovered, all of the conditions of Section 1951.2 must be met.

The Commission suggested several other changes in drafting. As thus redrafted, proposed Section 1952.3 would read:

1952.3. (a) If the lessor brings a proceeding under the provisions of Chapter 4 (commencing with Section 4159, of Title 3 of Part 3 of the Code of Civil Procedure) an unlawful detainer proceeding and possession of the premises is no longer in issue because of surrender of possession by the defendant before trial, it may proceed as an ordinary civil action. The lessor may obtain the relief authorized by Section 1951.2 and any other relief to which he may be is entitled, including, where applicable, relief authorized by Section 1951.2. The defendant may establish all claims and defenses authorized by law seek any affirmative relief, and assert all defenses, to which he is entitled.

(b) If the lessor seeks the damages authorized by paragraph (3) of subdivision (a) of Section 1951.2, the lessor shall first amend the complaint pursuant to Section 472 or 473 of the Code of Civil Procedure to state a claim for such relief.

The Commission also suggested that the Comment to proposed Section 1952.3 be revised to include:

1. A statement that the lessor may obtain relief under Section 1951.2 only if the conditions of that section are met.
2. A statement that the codification of the rule that the tenant's surrender of possession converts an unlawful detainer proceeding to an ordinary action for damages does not affect the application of the rule to forcible entry or forcible detainer cases.

The Commission directed the staff to revise the recommendation in accordance with the foregoing, and to bring it before the Commission at a future meeting for approval for distribution for comment.

APPROVED

Date

Chairman

Executive Secretary