

MEETING SCHEDULE

The following schedule for future meetings was adopted.

<u>November - December 1979</u>	<u>Place</u>
November 30 (Friday) - 10:00 a.m. - 5:00 p.m.	Los Angeles
December 1 (Saturday) - 9:00 a.m. - 12:00 noon	
 <u>January 1980</u>	
January 17 (Thursday) - 7:00 p.m. - 10:00 p.m.	San Francisco
January 18 (Friday) - 9:00 a.m. - 4:00 p.m.	
 <u>February 1980</u>	
February 15 (Friday) - 7:00 p.m. - 10:00 p.m.	San Francisco
February 16 (Saturday) - 9:00 a.m. - 12:00 noon	
 <u>March 1980</u>	
March 13 (Thursday) - 7:00 p.m. - 10:00 p.m.	Los Angeles
March 14 (Friday) - 9:00 a.m. - 4:00 p.m.	
 <u>April 1980</u>	
April 11 (Friday) - 7:00 p.m. - 10:00 p.m.	San Francisco
April 12 (Saturday) - 9:00 a.m. - 12:00 noon	
 <u>May 1980</u>	
May 15 (Thursday) - 7:00 p.m. - 10:00 p.m.	San Francisco
May 16 (Friday) - 9:00 a.m. - 4:00 p.m.	
 <u>June 1980</u>	
June 13 (Friday) - 10:00 a.m. - 5:00 p.m.	Los Angeles
June 14 (Saturday) - 9:00 a.m. - 12:00 noon	
 <u>July 1980</u>	
July 17 (Thursday) - 7:00 p.m. - 10:00 p.m.	San Francisco
July 18 (Friday) - 9:00 a.m. - 4:00 p.m.	
 <u>August 1980</u>	
No meeting	

STAFF PROMOTION

The promotion of Robert Murphy III from Staff Counsel I to Staff Counsel II was unanimously approved.

CONTRACTS WITH EXPERT CONSULTANTS

In connection with its consideration of Memorandum 79-49, relating to the revision of real and personal property law, the Commission

discussed the making of various contracts with expert consultants. The following decisions were made.

Contract with Garrett H. Elmore. The Commission approved, and directed the Executive Secretary to execute on behalf of the Commission, a contract with Garrett H. Elmore to attend Commission meetings (when convenient to him) to provide expert advice in connection with the study of revision of the law relating to real and personal property. The contract should provide for \$50 per day for attending meetings, plus travel expense reimbursement subject to the same limitations that govern travel expense reimbursement for state employees. The total to be encumbered by the contract should be \$750.

Contract with Professor James L. Blawie. The Commission approved, and directed the Executive Secretary to execute on behalf of the Commission, a contract with Professor James L. Blawie to attend Commission meetings (when convenient to him) to provide expert advice in connection with the study of revision of the law relating to real and personal property. The contract should provide for \$50 per day for attending meetings, plus travel expense reimbursement subject to same limitations that govern travel expense reimbursement for state employees. The total to be encumbered by the contract should be \$1,500.

Contract with Professor Paul E. Basye. It was suggested that Professor Paul E. Basye, now teaching at Hastings Law School, be contacted to determine whether he would be interested in attending Commission meetings when the study of real and personal property is being considered so that he could provide the Commission with the benefit of his expertise in this field. If he is interested, a contract should be made with him to cover his travel expenses in attending Commission meetings and to provide \$50 per day compensation for attending Commission meetings. The contract should be for a maximum of \$1,500. The Commission authorized the Executive Secretary to execute the contract on behalf of the Commission. The contract should provide for the attendance of contractor at Commission meetings to provide expert advice and provide for compensation of \$50 per day of attendance at meetings and travel expense reimbursement subject to the same limitations that apply to reimbursement of travel expenses by state employees.

Contract for consultant on adverse possession. The Executive Secretary reported that he is attempting to obtain approval from the Department of Finance to transfer funds from salary savings into the category for payment of research consultants. If such transfer is approved, the Executive Secretary suggested that a priority be given to a study of the law relating to adverse possession. If the transfer is approved, the Commission requested the staff to submit its recommendation as to the consultant and the compensation to be paid for the study of the law relating to adverse possession.

PRIORITIES AND SCHEDULE OF WORK ON TOPICS

The Commission considered Memorandum 79-50 and the First Supplement to Memorandum 79-50.

The Commission approved the priorities and schedule for work set out in Memorandum 79-50. Under this decision, the following priorities were established:

(1) Top priority during the next year is to be given to finishing up work on the comprehensive enforcement of judgments recommendation.

(2) The next major study, to be undertaken during 1980, is the revision of the law relating to real and personal property.

(3) Top priority is to be given to the community property study when it is received from Professor Bruch.

(4) Work on smaller topics will be worked into the meeting agenda as staff and Commission time permits. These topics are described in more detail in Memorandum 79-50.

The Commission established the following goals for submission of recommendations on major topics:

1981 Legislative Session
Enforcement of Judgments

1982 Legislative Session
Adoption
Community Property

1983 Legislative Session
Revision of real and personal property law

Bion M. Gregory, the Legislative Counsel, reported that the California Uniform Law Commissioners and the State Bar are working on the subject of class actions. The Commission concluded that it would not be desirable to devote any Commission resources to this topic since a Commission study would be likely to duplicate the work of the Uniform Law Commissioners and the State Bar.

The Commission requested the staff to place on the meeting agenda the recommendation relating to the psychotherapist-patient privilege. Legislation to implement this recommendation was passed by the Legislature at the 1978 session but was vetoed by the Governor. Upon such review, the Commission will determine whether it should request that legislation to implement this recommendation be introduced at the 1980 session.

The Commission considered the First Supplement to Memorandum 79-50, which presented a letter from Tom Dankert concerning technical problems under the Eminent Domain Law. The Commission directed the staff to forward a copy of the letter to the State Bar Committee on Condemnation with the request that that committee give the Commission its reaction to the suggestions made by Mr. Dankert.

ANNUAL REPORT

The Commission considered Memorandum 79-47 and the attached draft of the Annual Report.

The Commission approved the draft for printing and submission to the Governor and Legislature, with the following qualifications:

(1) The draft should be revised to reflect the election of the Chairperson at the October meeting.

(2) The draft should be revised to reflect the determinations of the Commission at the November-December meeting concerning the various recommendations that will or will not be submitted to the 1980 Legislature.

The Commission approved the plan to publish the guardianship-conservatorship law pamphlet in cooperation with the California Continuing Education of the Bar.

NEW TOPICS

The Commission considered Memorandum 79-53. The Commission determined not to request that the 1980 Legislature authorize the study of any new topics.

The Commission requested the staff to forward to Assemblyman McAlister the suggestions attached to Memorandum 79-53 for consideration for possible legislation in 1980 and to advise the persons making the suggestions as to the action taken. If the suggestions are not considered by Assemblyman McAlister, the Commission will again review the suggestions when it considers the Annual Report covering 1980.

HANDBOOK OF PRACTICES AND PROCEDURES

The Commission considered Memorandum 79-48 and the attached draft of the Handbook of Practices and Procedures. The Commission approved the draft after making the following changes:

Recognition of service (page 1 of draft). The first sentence was revised to read:

The practice of the Commission is to present a plaque containing a gavel to each Chairperson shortly after election. The cost of the plaque is financed by contributions from the other members of the Commission and the legal staff.

Meetings (page 3 of draft). The Commission discussed Memorandum 79-56, (relating to scheduling meetings) and Memorandum 79-48 (relating to the Handbook of Practices and Procedures) and determined that the following policies should apply to meetings:

MEETINGS

Regular meetings ordinarily are scheduled for each month except August. Meetings ordinarily are held either in San Francisco or in Los Angeles. Meetings ordinarily are scheduled so that two meetings are held in San Francisco and then one meeting in Los Angeles.

A meeting scheduled for the equivalent of one day is scheduled as follows:

Friday - 7:00 p.m. - 10:00 p.m.
Saturday - 9:00 a.m. - 12:00 noon

A meeting scheduled for one and one-half days is scheduled as follows:

Thursday - 7:00 p.m. - 10:00 p.m.
Friday - 9:00 a.m. - 4:00 p.m.

The Chairperson is authorized to call special meetings. The Chairperson is authorized to change the date, times, and place of a previously scheduled meeting when necessary in order to improve attendance at the meeting or for other good reason. Notice of the special meeting or rescheduled meeting shall be given to all members of the Commission.

Roll call votes (page 4 of draft). The second sentence of the discussion, concerning polling absent members, was deleted.

Editorial corrections (page 5 of draft). This portion of the Handbook was revised to read in substance:

Editorial, technical, and conforming revisions. After the Commission has approved a recommendation for printing, the staff makes any necessary substantive or technical revisions in preparing the recommendation for printing where necessary to conform to the Commission's policy decisions or to correct technical defects. Members of the Commission may submit suggested editorial revisions to the staff for consideration in preparing material for publication.

Publication of Commission material in law reviews (page 11 of draft). The first sentence of the discussion, which indicates that a reasonable effort is made to distribute studies to various law reviews in a fair manner, was deleted. The small number of studies available for publication in law reviews, the nature of the studies, and the preference of the authors of the studies as to particular law reviews makes this requirement unworkable.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS (CHAPTER 7--PROPERTY
SUBJECT TO ENFORCEMENT OF MONEY JUDGMENTS AND EXEMPTIONS)

The Commission considered Memorandum 79-45 analyzing comments received concerning the exemption provisions of the tentative recommendation. The Commission adopted the staff suggestions for revision of the exemption provisions as set out in the memorandum, with the following exceptions:

§ 707.160. Retroactive application of exemptions. The Commission agreed with the policy of making exemptions applicable at the time of levy on property and having them apply retroactively to contracts made at an earlier date, but felt that it would not be desirable to provide a back-up provision in the event this policy is held unconstitutional.

§ 707.190. Loss of exemption from change in circumstances. The Commission determined to replace the provision that precludes a creditor

from levying on property previously determined to be exempt absent a showing of changed circumstances with a provision that precludes a creditor from recovering costs where the creditor levies on property previously determined to be exempt and the property is found to be exempt still.

§ 707.320. Claim of exemption. In the case of a claim of exemption for a deposit account, the Commission determined that the financial statement accompanying the claim should list all amounts held in all deposit accounts of the judgment debtor on the date of levy for purposes of applying the exemption first to the other accounts, but that the court could consider subsequent changes of circumstances requiring the exhaustion of the other deposit accounts at the time of the hearing.

§ 707.510. Exemption of motor vehicle. The Commission considered the possibility of providing a presumption for "low wholesale bluebook value" in determining the market value of a motor vehicle to ascertain whether it can be sold on execution. After discussing the problems in drafting such a presumption, the Commission requested the staff to give further study to this matter.

§ 707.520. Exemption for household furnishings, etc. The Commission determined to delete the \$500 per item exemption limit for household furnishings and the like. Although there should be no specific exemption limit, the staff was instructed to attempt to draw language to tighten the exemption standard so that only reasonably necessary items are exempted.

§ 707.530. Exemption for jewelry, heirlooms, works of art. The exemption for jewelry, artwork, heirlooms, and similar items should be cast in terms of items reasonably having such sentimental or psychological value to the judgment debtor that it would be inequitable to subject the items to enforcement of a judgment.

§ 707.550. Tools of trade. A building materials exemption should be restored as set out in the memorandum, except that the exemption should extend to materials used for improvement as well as repair of a dwelling.

§ 707.560. Exemption of deposit accounts and money. The Commission determined to restore the existing exemptions of \$1,000 for savings and loan accounts and \$1,500 for credit union accounts. In addition, there should be a \$500 exemption for a bank saving or checking account, which would be reduced by any amounts in savings and loan and credit

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union accounts. Funds in a bank savings or checking account also will be exempt to the extent traceable as exempt funds under other exemptions. The debtor will always have at least a \$500 exemption but the amount of exempt funds will be greater than \$500 only if all of the funds exempt are traceable to other exemptions. For example, if \$400 in the account is exempt under other exemptions, \$500 will be exempt. If \$700 is exempt under other exemptions, \$700 will be exempt.

The prison inmate's trust account exemption was increased to \$1,000. The staff should investigate the source of funds in such accounts to make sure that proceeds of criminal activities are not included in the accounts.

§ 707.630. Exemption of damages for wrongful death. The staff was directed to give further thought to the question whether damages for wrongful death payable to the judgment debtor as a dependent of the decedent should be exempt in the amount necessary to support the spouse and dependents of the judgment debtor as well as in the amount necessary to support the judgment debtor.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS
(HOMESTEAD EXEMPTION)

The Commission considered Memorandum 79-52 and the attached letter distributed at the meeting by Mr. Aros, relating to the homestead exemption. The Commission discussed the problem of the exemption available for joint debtors (other than married persons), and concluded that each joint debtor should have the full amount of the dwelling exemption and should not be required to split the exemption where they share the same dwelling; i.e., there can be more than one dwelling exemption per dwelling.

After extensive discussion of the \$40,000 dwelling exemption and the restriction of proceeds to purchase of another dwelling, the Commission concluded that the exemption was not sufficiently high to protect the dwelling from sale and that the proceeds exemption would not be sufficiently high to permit purchase of another dwelling. The Commission requested the staff to draft an alternative scheme whereby a dwelling could not be sold unless the debtor's equity in the dwelling exceeded \$100,000, and to limit the exempt proceeds to \$7,500. This would provide protection for the debtor while residing in the dwelling but would permit the creditor to be paid when the debtor moved.

WESTERN CENTER ON LAW AND POVERTY, INC. October 26, 1979
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October 25, 1979

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Dear Commissioner:

After careful study of the Commission's proposal to eliminate the homestead declaration in favor of the dwellinghouse exemption, we must express our vigorous opposition.

The combination of the homestead and dwellinghouse exemptions currently provide substantially greater protection to homeowners than the reliance on the dwellinghouse exemption would offer as drafted in your memorandum.

The homestead declaration currently provides various essential protections to a debtor homeowner in an effort to preserve the right to reside in his or her home as he or she may choose. These protections include:

- 1) An absolute exemption from execution by forced sale of a certain amount in equity from all judgements not specifically enumerated in the statute: 1/
- 2) Total exemption from attachment of subsequent judgment liens. 2/
- 3) Exemption from execution of the proceeds from a voluntary sale to the extent of the value of the homestead, without limitation as to its use. 3/
- 4) Protection of these exempt amounts for 6 months and if used for the purchase of real estate within that period, the property purchased may be selected as a homestead. 4/

These provisions permit the homestead to be alienated, voluntarily or otherwise, while protecting a substantial amount in equity without restriction as to its use.

JOHN E. McDERMOTT, Executive Director

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Your proposal to reserve the homestead amount in the court for purposes of purchase of a new dwelling in the state is a substantial reduction of the protection presently available to the homeowner. Why should these funds be unavailable to the debtor for whatever purpose the debtor may choose? A very likely result in today's inflationary economy is that a subsequent home purchase using the entire homestead amount will, in a few months, appreciate in value so that a subsequent forced sale may well result in a substantial excess available to creditors. This could result in a succession of forced sales and virtually no protection of the concept of the security of one's home. It hardly does much good to purchase a new home with the protected amount if the debtor cannot afford to move into it. For many low and fixed income homeowners, this may very well be the case. The proposal to limit the availability of this money is simply an unnecessary impediment which will undoubtedly result in additional hardship to debtors who are already having their share of difficulty.

The protection of the homestead declaration and the dwelling-house exemption are not exclusive. ^{5/} Therefore, the homeowner's equity is additionally protected from judgments recorded prior to the homestead declaration (subject to the exceptions to the exemption as delineated in Section 690.31(b) of the Code of Civil Procedure). It is clear then, that the combination of these two protections is substantially greater than either one standing alone.

Due to the differences between the homestead declaration and the dwellinghouse exemption, a debtor is in a position to choose which protection best suits the debtor's needs. If the debtor anticipates frequent changes of residence and desires to keep the property unencumbered, then a homestead might be the best choice. On the other hand, if a debtor does not anticipate leaving the home but does anticipate substantial liens and encumbrances, then the dwellinghouse exemption will probably best protect the home from forced sale. It is true that the dwellinghouse exemption does not appear to protect the proceeds of a voluntary sale from recorded judgments. This is a serious shortcoming in the dwellinghouse exemption statute and the protection of the exempt amount in a voluntary sale would be a welcomed change. However, nearly everything else in the Commission's proposal works against the interests of debtors by reducing the amount of protection that they currently enjoy.

The current language requiring that a forced sale cannot be had unless there is an excess over the exempt amount and "all liens and encumbrances" is the meat of the protection that both

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statutes afford. This is what prevents creditors from executing on debtor's homes and preserves the debtor's occupancy. Why shouldn't a debtor be able to defeat the forced sale of his or her home by encumbering the property? The statutes allow it and the legislature probably contemplated it in their enactment. This language affords a real and continuing protection of the place where one lives. A home is more than an asset. Creditors recognize and live with this protection and there is no good reason to eliminate it.

Quite simply, the benefits engendered by this proposal serve only the interests of the creditors to the detriment of the debtor homeowner. There is no corresponding benefit to the homeowner as these revisions do not follow existing law in maintaining the current level of protection available to the homeowner. We are not opposed to cleaning up inconsistencies or uncertainties that may exist in the current statutes. However, we are not in favor of eliminating substantial and long standing benefits to debtors in the name of clarity. This proposal would certainly have that result. We ask that you reconsider this proposal and direct any further efforts in this regard to preserving the benefits available to debtors rather than to deprecate them.

Sincerely,



RUDOLFO C. AROS
Staff Attorney

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Footnotes:

- 1/ Cal Civil Code §§1240, 1241, 1242, 1254, 1255, 1256
- 2/ E.g. Boggs v. Dunn, 160 Cal. 283, 285-87, 116 P743, 744-5 (1911); Swearingen v. Byrne, 67 Cal. App. 3d 580, 585, 136 Cal. Rptr. 736, 789 (1977)
- 3/ Cal Civil Code §1265
- 4/ Cal Civil Code §§1265, 1265(a)
- 5/ Cal Civil Code §1259.2

STUDY F-101 - UNIFORM VETERANS' GUARDIANSHIP ACT

The Commission considered Memorandum 79-55 and the First Supplement to Memorandum 79-55. The Commission approved the draft of the recommendation attached to Memorandum 79-55 for printing and submission to the 1980 Legislature after the Comment to repealed Section 2913 was revised to read:

§ 2913 (repealed). Purchase of home or other real property for ward

Comment. Subdivision (a) of former Section 2913 is superseded by Section 2571. The limitation of subdivision (a) that real property may be purchased "only as a home" for the ward is not continued. The requirement of notice to the Veterans' Administration is continued in Section 1461.5. Subdivision (b) is not continued. Notwithstanding the omission of the second sentence of subdivision (b) (which required that title be taken in the name of the ward), it is the accepted practice in guardianship and conservatorship proceedings to take title to real property in the name of the ward or conservatee. See W. Johnstone & G. Zillgitt, California Conservatorships § 4.17, at 116 (Cal. Cont. Ed. Bar 1968).

Subdivision (c) is superseded by Sections 2463 (partition), 2500-2501 (compromises affecting real property), and 2590-2591 (independent exercise of powers).

If the special subcommittee of the State Bar Section on Trust and Probate Law makes any suggestions for revision of the recommendation, those suggestions should be brought to the attention of the Commission.

[After the meeting, the Commission was advised by Commissioner David Lee that the special subcommittee approved the recommendation.]

STUDY H-300 - REVISION OF REAL AND PERSONAL PROPERTY LAW

Summary of Background Study

Professor James L. Blawie, the Commission's consultant on this topic, prepared a background study which had been distributed to members of the Commission and others prior to the meeting. At the meeting, Professor Blawie summarized his study. The following is the substance of his summary.

The Commission hired me to take a look at the law of titles and conveyancing in California--that's that deadly future interest and property stuff you may remember from law school. There has been quite a movement in the states in the last few years in the direction of clearing up and simplifying that area of the law. The

result is not merely making the law easier to learn and use, but also lifts a heavy and expensive burden from real estate transactions and expedites the settling of estates.

The most important trend in the past few years has been toward adopting marketable title acts and subsidiary acts to cure recording problems and clear land titles. In brief, marketable title acts are now in effect in 19 states and under consideration in at least a dozen more. The effect of the acts is to pick up the old New England states pattern of cutting off imperfections in title as of a moving date in the past, typically 20 or 30 years from the time title is searched today.

The acts are particularly important in states with ancient titles--and the oldest titles in California are more than 125 years old. A cloud on title, once imposed, continues indefinitely in states without marketable title acts, until on rare occasion, someone takes the time and trouble to sue to clear title. The longer the history of titles in a state, the more titles are clouded and unmarketable, and the more land is effectively taken off the market. The marketable title act is effectively an automatic clear title action which makes most titles in a state marketable within 20 or 30 years of the time it is adopted.

By 1945, 10 states and Ontario had adopted such acts. The judicial and legislative experience with the acts is extensive. Three model acts exist. No jurisdiction which adopted an MTA has repealed it, and all printed reports are highly favorable. There is at the present time no responsible opposition to the adoption of the acts, and there appears no reason why any state should not adopt an MTA.

Certain related statutes should be adopted to simplify title law. The distinctions between estates in land and in personalty which are made in certain statutes are contrary to modern American practice and should be abolished. Contingent reversionary interests should be made subject to the Rule Against Perpetuities. The condition effect of the conditions, covenants and restrictions clause in a deed to real property should be limited to enforcement by suit for injunction and damages and forfeiture eliminated.

As to recording problems--California's look forward or New York rule as to the links in a chain of title and constructive notice thereby, is contrary to practice by title professionals in California; it is used in 10 states at most, was adopted hurriedly and without sufficient consideration by the California Supreme Court, serves no valid purpose, unsettles titles, and should be abandoned in favor of the general American practice whereby each link in the chain of recorded title is reckoned from the time a person takes title as indicated by the date of his deed, until that person loses title of record when his grantee records. I have inquired of Title Insurance and Trust Co., Valley Title Co., St. Paul Title and others as to their practice. All of them limit title search to the conventional period of time unless they are instructed to the contrary, or their first search indicates that something

may have occurred which makes advisable a search of title beyond the point where a particular title holder lost title of record.

By general accord, the present grantor-grantee method of keeping title records in recorder's offices in California is at least a half century obsolete. There is agreement among experts in recording mechanics that the present state systems will be replaced by a system featuring a central computer in the state capital or other most economical location, with key-in terminals in each county recorder's office. Land records would be searched (as at present) up to a cut-off date, perhaps 1985, and thereafter by keying in an access number to the central computer for a screen viewing or print out. This is the same system used by California title companies. Authors who write about recording systems state that the computer system should have been adopted years ago, but that each state seems to be waiting for some other state to make a start or for a federal regulation to require such a system as a method of cutting land closing costs.

The study reviews California statutes, largely parts of the Civil Code, which are not in conformity with California court decisions, state practice, or modern analysis. A change is recommended in Section 702 so that it states that title concepts relevant to real property are also relevant to personal property insofar as feasible. A modification of Section 707 is suggested to do away with the determinable interest and the possibility of reverter, leaving only the estate on condition subsequent and the power of termination. Kentucky and Virginia have such legal patterns, and they have been recommended by scholarly authors for at least 30 years without any dissent.

It is suggested that some consideration be given to allowing the adverse possession statutes to run against present and future interests during the same period, so that title by adverse possession will be cleared in the minimum statutory period. Such change would require modification of Section 826 and other statutes.

The study recommends that the present trend toward making the public record more informative be implemented in California by appropriate statutes and amendments. California makes more documents recordable than most other states. The modern trend is to make real property documents even more readily recordable. Acknowledgment as a prerequisite for recording might be abolished. Affidavits or declarations under penalty of perjury would be used to supplement the record and clear title without the need for judicial proceedings. The names and addresses of all parties to transactions would have to appear on the face of or attached to any instrument to be recorded. Several states require the printed or typewritten name and address of the notary and the attorney or other person who drafted the instrument. Several states require a statement of the marital status of the grantor. It is recommended by several authors that the street address as well as the legal description of property be stated on instruments. Several states have adopted self-indexing; under these statutes any instrument

offered for recording is required to state or have attached sufficient information to place the instrument into its chain of title. It is required that a mortgagor or grantor, for instance, state the name of the person from whom the mortgagor or grantor took title, and refer to the book and page numbers of recording and the recorder's number of the deed or paper by which the grantor, mortgagor or other transferor took title. In the states which have adopted self-indexing, wild deeds have almost disappeared and nearly all chains of title are complete back to the time the statute was adopted. In the usual pattern, most chains of title end before the searcher reaches the origin patent or deed.

These self-indexing and fully informative record statutes have been adopted by and large in the marketable title states. Freed of the necessity to maintain active records more than 20 or 30 years into the past, these states can permit themselves the luxury of maintaining land records which are really complete and informative; and even if the records are lacking in some respect, an affidavit from a person connected with the title has prima facie validity to correct the shortcoming. The present tendency in the other states is toward making it somewhat difficult to record. The marketable title states tend to prefer to make it easy to record, so that the title searcher need not go outside the recorder's office. In line with this trend, these states usually require that the exercise of a power concerning land title be recorded or be ineffective against strangers who rely on the record, and provide that only tax records be exempt from the requirement of recording to be effective against good faith strangers.

It is recommended that Civil Code Section 1106 be modified to extend the doctrine of after-acquired title to any property interest purported to be transferred by paper instrument. If I transfer property to you when I don't own it, and I later acquire it, the property is automatically yours. In its present form, which is a departure from general American practice, the statute applies the doctrine of after-acquired title only to fee interests in real property transferred by other than quitclaim deed.

It is recommended that Civil Code Section 1213.5, which clears record title of unexercised options within one year after their expiration, be extended to include simple contracts of sale, which have equal title clogging effect and are closely related in practical use.

Civil Code Section 1464 sets out the common law first rule in Spencer's Case. This rule, which requires the use of the word "assigns" in order to make successors in title subject to covenants and servitudes on the transferor's title, has been rejected in almost every American jurisdiction and survives in California only because of Section 1464. This section should be simply eliminated.

Certain technical changes are suggested as to Code of Civil Procedure Section 872.210 to make it clear that the statute refers to real and personal property partition equally.

The common law rule in Wild's Case still exists in California. It provides a complicated set of rules for dealing with the phrase "To A and his or her heirs" when it occurs in a written instrument. The rule is obsolete and serves no good purpose. It is usually abolished along with the rule in Shelley's Case, Worthier Title, and the Destructibility of Contingent Remainders. Somehow, the Rule in Wild's Case has survived to the present in California. There are several model statutes designed to eliminate the rule, and one is recommended in the study. However it is done, the rule in Wild's Case should disappear from California law without delay.

Several other suggestions for study or change are made in the study, but these largely are concerned with minor or technical points. Essentially, the desirable changes may be summed up in a few phrases--adopt a marketable title act and related reverter and curative statutes; assimilate real property and personal property statutory references as to title insofar as practicable; wipe out the condition effect of the "conditions, covenants and restrictions" in real property deeds; wipe out the determinable estate and the possibility of reverter; consider the adoption of the Uniform Simplification of Land Transfers Act which deals with many of the problems referred to; eliminate look-forward chain of title theory; adopt self-indexing and the theory of the totally informative land record; extend after-acquired title theory to any title transferred by writing; provide that the land record be cleared of expired simple land sale contracts as it now is of unexercised options; abolish the first rule in Spencer's Case; extend the rule against perpetuities to reversionary contingent interests; abolish the Rule in Wild's Case; plan to conform the land records to modern data retrieval methods in the near future.

Most of these suggestions have been proven in practice in other states over a long period of time. Every one has the approbation of writers and scholarly organizations. Not one of the suggestions has any responsible opposition. Not one of the suggestions is controversial in any fashion. Every suggestion will simplify property transfer in California and should lower the cost of land transfer dramatically.

Comments of Mr. Denitz

Mr. Denitz, Tishman West Management Corporation, made some comments on the study. His comments are summarized below.

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First, I agree with Professor James L. Blawie that technical correction should be made in the recording acts to simplify the mechanics of land transfers: such techniques as abolition of the requirement that documents be acknowledged before a notary public, making mandatory the requirement that a grantor list the party from whom he derived title, sometimes known as "self-indexing", the optional addition to grant deeds of a street address, and other such technical improvements would be of aid in the reduction of title insurance costs as well as making possible the infrequent search of records by individuals other than title companies.

Second, the law with respect to title searches should be modified, as Professor Blawie suggests, to eliminate the necessity that title companies "search forward".

Third, In moving now to the area of substantive law, I am in complete agreement with the remarks verbally made by Professor Blawie that Rights of Entry and Possibilities of Reverter (titles subject to which are commonly sometimes known as "determinable fees") should be revised so that Possibilities of Reverter and Rights of Entry are enforceable only by actions for injunction and suits for damages rather than there being any chance that a grantee might be subject to forfeiture of his estate in the land: thus Possibilities of Reverter and Rights of Entry would, in my view, be treated as covenants running with the land and, if a constitutional way can be devised, should be restricted both as to Possibilities of Reverter and Rights of Entry created in the past as well as those which might be inadvertently drafted as such in future deeds.

Fourth, in approaching the main thrust of Professor Blawie's study and the main area of study which the Commission is considering, - namely that involving whether a Marketable Title Act should be enacted in California and whether revisions should be made in the law relating to covenants and servitudes relating to land, - it is essential that the Commission as well as the Legislature have in mind (a) the increasing use of long-term land leases as a financing device and therefore as the vehicle for both commercial and residential development projects, (b) the increased importance of covenants, conditions and restrictions in Shopping Centers, jointly developed or otherwise planned unit development, and in condominium and other situations where amenities must be protected in order to satisfy the bargained-for expectations of the land owners and land occupiers, (c) the need for protection of City-required parking covenants and the preservation of utility easements in order to preserve the viability of a given real estate development project, (d) the effect, if any, which such a Marketable Title Act might have on lenders and investors who, being residents of other States, might not be familiar with the operation or results of the new law, and (e) the effect that such a new law might have on title insurance in this State of ours where "title insurance is (in practical fact) title".

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Treating briefly each of the foregoing problem areas:

(a) Ground Leasing: Most commercial building development projects are today constructed upon ground leased land and, more and more, I believe we will see single family residences as well as apartment houses "built" on ground leases, the same being both a financing device and the result of the vast increase in the cost of acquisition of fee-title itself (i.e., as costs of fee-mortgage financing and required down payments escalate, more and more "purchasers" will turn to acquisition of ground leases in order to avoid 50% down payments and the cost of repaying principal in a day and age of double-digit mortgage loan interest rates); above all, the sanctity of long-term ground leases, regardless of their restrictive nature and effect on fee-title, must be an exception to the proposed Marketable Title Act if recommended by the Commission.

(b) Covenants, Conditions and Restrictions: In the world of Shopping Centers, covenants, conditions and restrictions (in that field commonly known as Restrictions, Easements and Agreements) are essential not only for the orderly and continued operation of such a development but also are with very few exceptions a requirement imposed by the major department stores or other "anchor tenants" in order to induce such priority persons to commit themselves to tenancy in the Shopping Center project; in the world of condominium developments and other planned unit developments Covenants, Conditions and Restrictions are the cornerstone of the amenity-package (e.g., tennis courts, open space, swimming pools, saunas and roadways) without which persons would not buy a unit or lease a unit for their own occupancy. The business expectation of both commercial parties and residential parties therefore is firmly grounded in reliance upon as well as enforcement of the Covenants, Conditions and Restrictions reasonably expected, as a business matter, by such persons to remain "in place" throughout the life of their financial commitment to the project or development. Thus it is manifestly insufficient to permit only the developer to enforce Covenants, Conditions and Restrictions; rather, enforcement of such matters should properly be vested in any party who has a substantial property interest in and who derives benefit from those Covenants. Naturally, when a Covenant, Condition or Restriction becomes obsolete, remote or the subject of so-called "changed conditions" as found in the present case law of California, no one should be permitted to enforce the Covenant and some method should be found to eliminate the same of record without the necessity of a long term quiet title action.

(c) Parking Covenants and Utility Easements: In order to obtain a building permit, it is uniformly necessary in major urban areas to provide parking facilities for tenants and, in the case of developments such as hotels, visitors to the project. Frequently the design element of the project precludes the parking being located "on-site" and, happily, Building Departments such

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as those in Los Angeles will permit (under applicable Building Codes) the requisite parking, or some part thereof, to be located "off-site" (the requirement in Los Angeles being that the parking must be located not more than 750 ft. from the project). Moreover, the life of a project uniformly requires that utilities and ingress and egress be provided, sometimes across adjacent independently owned (frequently by one's self) property. In all of such cases the economic life of the project or development requires that the parking covenant, utility easement or right of ingress and egress lasts as long as the project does, without possibility of the same being affected by the operation of a Marketable Title Act (and in this connection without the necessity of someone or anyone having to monitor the calendar in order to file a continuation-notice at any point in the life of the project). The other side of the coin, however, and one which deserves some study, is the possibility of removing such covenants or easements when the project itself is removed through demolition or other permanent cessation of the need to which the covenant or easement responded in the first place.

(d) and (e) Effect on Lenders and Title Companies: I have a personal uneasiness with the prospect of the enactment of a far reaching, all encompassing "Marketable Title Act" not only because of the unknown effect which the same might have on land titles and ground lease titles possessed by my company and by other persons in the business community (including companies whom we represent as managing agent), but I am further concerned as to the reaction of Eastern lenders and other participating parties to such an evulsive change in the law of real property titles. Whether the economic life and growth of the business community would be slowed or otherwise injured is an unknown factor at this time and is a practical problem which I am sure all of us would seek to avoid. Additionally, input from various title companies should be obtained to determine whether a Marketable Title Act would speed up the title insurance process, make it easier to obtain elimination of exceptions to clear title, and cut the costs of title insurance generally.

General Approach to Be Taken by Commission

The Commission determined that this major study should be placed on the meeting agenda when time permits after the work on the enforcement of judgments statute is substantially completed. The staff is to prepare memoranda on the various matters embraced within the study so that the Commission can go into the various matters in detail and determine the policy issues presented.

Obtaining Input From Various Persons and Organizations

Letter to Deans of California Law Schools. A letter should be written to the Dean of each California law school advising that the Commission is commencing its work on this major study and indicating

that any member of the law faculty who is interested in reviewing and commenting on materials prepared in the course of the study may request that he or she be placed on a list of persons to whom such materials will be sent. The first item to be sent to the persons who ask to be placed on the list is a copy of Professor Blawie's study. The study should be sent with a request that the Commission be advised of any areas not covered in the study that should be covered.

Establishment of Special Subcommittee of State Bar Real Property Section. The Commission discussed how the State Bar should be involved in the study. The Executive Secretary reported that the State Bar plans to establish a Real Property Law Section. Noting the excellent results of the cooperative effort with the State Bar Subcommittee in developing the new guardianship-conservatorship statute, the Commission indicated its desire to establish the same type of relationship with the new State Bar Section on Real Property Law. The Executive Secretary was requested to work out the arrangements.

Establishing communications with local bar associations. It was suggested that the Executive Secretary write to the major local bar associations to determine whether the association or a committee of the association is interested in working out some type of arrangement whereby the Commission can receive comments on its tentative proposals in this field and perhaps have a continuing working arrangement with the association on the study (such as having a representative of the association attend Commission meetings when this study is under consideration).

California Association of Realtors. The California Association of Realtors should be advised that the Commission has undertaken this study and an effort should be made to obtain input from the association on a continuing basis.

California Land Title Association. An additional effort should be made to obtain continuing input from the California Land Title Association.

Additional sources of possible assistance. It was suggested that the Executive Secretary contact Professor James E. Krier, Stanford Law School, and Professor Jesse Dukeminier, UCLA School of Law, and determine whether they would be willing to review the background study and suggest possible additional areas of study and otherwise be involved in the study.