

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
MAY 16, 1980
SAN FRANCISCO

A meeting of the California Law Revision Commission was held in San Francisco on May 16, 1980.

Law Revision Commission

Present: Beatrice P. Lawson, Chairperson Thomas S. Loo
 Judith Meisels Ashmann Warren M. Stanton
 Robert J. Berton

Absent: Omer L. Rains, Senate Member George Y. Chinn
 Alister McAlister, Assembly Member Bion M. Gregory, Ex Officio
 Jean C. Love, Vice Chairperson

Staff Members Present:

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

ADMINISTRATIVE MATTERS

MINUTES OF APRIL 1980 MEETING

The Minutes of the April 11, 1980, meeting were approved without change.

SCHEDULE FOR FUTURE MEETINGS

The Commission adopted the following schedule for future meetings.

June 1980

June 13 (Friday) - 10:00 a.m. - 5:00 p.m. Los Angeles

July 1980

No meeting. (This meeting, previously scheduled, was cancelled because the Commission will be moving its office after the June meeting.)

August 1980

No meeting.

September 1980

September 5 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco
September 6 (Saturday) - 9:00 a.m. - 4:00 p.m.

October 1980

October 10 (Friday) - 10:00 a.m. - 5:00 p.m. Los Angeles

Minutes
May 16, 1980

November 1980

November 14 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco

December 1980

December 12 (Friday) - 10:00 a.m. - 5:00 p.m. Los Angeles

May 1981

May 15 (Friday) - 10:00 a.m. - 5:00 p.m. Asilomar
May 16 (Saturday) - 9:00 a.m. - 12:00 noon (Pacific Grove)

1980 LEGISLATIVE PROGRAM

The following report was made on the 1980 legislative program.

Enacted

- 1980 Cal. Stats. ch. 44--AB 1676 - Quiet Title Actions (comprehensive revision) (Commission recommended amendments made after bill introduced)
- 1980 Cal. Stats. ch. 89--AB 2119 - Veterans Guardianship Act (repeal of obsolete statute) (Commission approved savings clause added after bill introduced)
- ACR 101 - Continues Authority to Study Existing Topics (passed as recommended)

Sent to Governor

- AB 2116 - Enforcement of Liens and Judgments After Death (comprehensive revision) (passed as recommended)
- AB 2117 - Married Women as Sole Traders (repeal of obsolete statute) (passed as recommended)
- AB 2120 - Special Assessment Liens When Property Acquired for Public Use (comprehensive revision) (passed as recommended)
- AB 2184 - Probate Homestead (comprehensive statute) (passed as recommended)
- SB 1538 - Security for Costs (repeal of a number of unconstitutional statutes) (passed as recommended)
- SB 1539 - Assignments for Benefit of Creditors (repeal of unnecessary statute) (passed as recommended)

Referred to Conference Committee

- AB 2118 - Guardianship-Conservatorship (follow-up on 1979 comprehensive revision) (many amendments made after bill introduced) (Conference Committee will recommend additional technical amendment)

Sent to Floor in Second House

AB 2115 - Agreements for Entry of Paternity and Support Judgments (remedies constitutional defects in existing statute) (substantially amended after introduction)

Sent to Fiscal Committee in Second House

AB 2146 - Enforcement of Claims and Judgments Against Public Entities (comprehensive revision) (technical amendments made after bill introduced)

Passed First House

SB 1541 - State Tax Liens (consolidation of 13 statutes, eliminating 14,000 words) (set for hearing by Assembly Judiciary Committee on May 28) (many technical amendments made after bill introduced)

ACR 107 - Authorizes Study of Four New Topics (set for hearing by Senate Judiciary Committee on May 27)

AB 2121 - Valuation Evidence (comprehensive revision) (Commission approved amendments made after bill introduced) (set for hearing by Senate Judiciary Committee on June 17)

SB 1540 - Vacation of Public Streets and Service Easements (comprehensive revision) (set for hearing by Assembly Committee on Transportation at 9:00 a.m. on May 27)

Held in Committee (Dead)

SB 1542 - Interest Rate on Judgments. The Committee reported favorably another bill which provides a 10-percent interest rate (as recommended by the Commission) but continues the existing 7-percent interest rate while a case is on appeal.

Not Introduced

Psychotherapist-Patient Privilege (Assemblyman Imbrecht decided not to reintroduce this proposal)

LEASE

The Commission considered Memorandum 80-47 which reported developments in connection with the lease of office space for the Commission. The Executive Secretary reported that the Space Management Division is responsible for leasing of office space and improvements in connection with office space.

CONFLICT OF INTEREST CODE

The Commission considered Memorandum 80-45 and the First Supplement to that memorandum which provided the Commission with background information concerning the adoption of a Conflict of Interest Code. The Commissioners made various comments and indicated a desire for further information concerning the nature of the forms that they will be required to complete.

The Commission directed the staff to prepare a proposed Conflict of Interest Code for consideration and adoption at the June 1980 meeting. If possible, information concerning the nature of the forms to be completed by Commissioners also should be provided at the June meeting.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS (DEPOSIT
ACCOUNTS IN TRUST FORM)

The Commission considered Memorandum 80-43 and the attached staff draft of a Tentative Recommendation Relating to Deposit Accounts in Trust Form. The Commission was of the view that legislation to validate deposit accounts with payable on death designations would be considerably more useful than legislation to codify the Totten trust concept. The staff was requested to redraft the proposal to include provisions validating such accounts, and to give thought to how the community property interest of the depositor's spouse could be protected.

The Commission also decided that a Totten trust should be modifiable or revocable only by withdrawals from the account during the depositor's lifetime, and not by any provision in the depositor's will.

The Commission reviewed the staff draft section by section and made the following decisions:

Civil Code § 2291.20. Financial institution

It should be made clear whether the term "credit union" as used in Section 2291.20 includes a federal credit union.

Civil Code § 2292.05. Conclusive presumption of depositor's intent when deposit made in trust account

The Commission expressed some concern about possible harshness or injustice which might result from literal application of the conclusive

presumption that the depositor intends a Totten trust when the formalities of the statute are complied with. The last sentence of the Comment to Section 2292.05 ("nothing in this chapter validates any trust which would be invalid under other rules of law when the trust is created as a result of fraud, duress, or undue influence") should be revised and included in the statute. As revised, the provision should pick up the rules of law that determine whether a deed or will may be set aside. The staff should give further consideration to the circumstances under which a Totten trust could be attacked on the grounds of mistake by the depositor.

Civil Code § 2292.10. Rights not affected

The staff was requested to give further thought to the question of whether funds in a Totten trust can be used to pay debts of the depositor after the depositor's death, whether a creditor can follow the funds into the hands of the beneficiary, and whether there should be a limitation period after which the creditor could not follow the funds into the hands of the beneficiary. The staff was also requested to look at the analogous situation concerning creditors' rights against property of a deceased debtor which had been held in joint tenancy.

§ 2292.15. Joint depositors

The Comment to Section 2292.15 should indicate parenthetically the general substance of Section 852 of the Financial Code.

§ 2293.15. Revocation, termination, or modification of trust by depositor's will

Section 2293.15 should be deleted in view of the Commission's decision not to permit revocation, termination, or modification by will.

§ 2293.20. Termination of trust on death of beneficiary

It should be made clear, either by redrafting Section 2293.20 or by a statement in the Comment, that if the Totten trust includes funds of the beneficiary which are subject to a true trust and the beneficiary dies, the section does not convert such funds into funds of the depositor.

§ 2293.25. Termination of trust on death of depositor

Subdivision (c) should be deleted from Section 2293.25 in view of the Commission's decision not to permit revocation, termination, or modification by will.

STUDY D-312 - CREDITORS' REMEDIES (LIABILITY OF
PROPERTY OF MARRIED PERSONS)

The Commission considered Memorandum 80-41, which raises the issue whether a creditor can reach property in the hands of a nondebtor spouse after dissolution of marriage if the property was community property during marriage. The Commission discussed the theory on which community property is liable during marriage and whether the theory would extend to former community property after marriage. The Commission also considered the procedural problems of tracing former community property and reimbursement actions between former spouses.

After deliberation, the Commission concluded that following dissolution the property of either spouse should be liable for obligations incurred during marriage except to the extent it can be shown that the particular property sought to be applied to the judgment would not have been liable if it had been sought to be applied during marriage because it was the separate property of a nondebtor spouse. The law should be clear that earnings after dissolution are nonliable separate property but that predissolution earnings can be traced into bank accounts. If the judgment is obtained after dissolution, the person against whom enforcement is sought must be made a party to the judgment.

STUDY D-312 - CREDITORS' REMEDIES (EXEMPTIONS
AS APPLIED TO MARRIED PERSONS)

The Commission considered Memorandum 80-42 and the attached redraft of exemption provisions, raising several exemption policy issues. The Commission took the following actions on the issues raised in the memorandum.

Purchase-money judgment. The Commission deleted the provision excepting from operation of the exemption statutes judgments for the purchase price of the property sought to be applied to the judgment.

Minutes
May 16, 1980

Homestead exemption. The Commission discussed the merits and problems of its proposed homestead scheme--\$100,000 protection against sale with \$7,500 proceeds exemption--as opposed to existing law--\$45,000 protection against sale with \$45,000 proceeds exemption. The Commission was split on the desirability of the two schemes and deferred the matter for further consideration at the next meeting when more Commissioners might be present.

Time for application of exemptions. The Commission determined that exemptions should be applied at the time an exemption claim is determined, or as close to that time as possible. If before the operative date of the new law the creditor obtains a lien and seeks to subject the property to enforcement procedures pursuant to the lien, the exemptions should be applied as of the time the lien was acquired.