

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Annual Report



March 1985

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

THE CALIFORNIA LAW REVISION COMMISSION

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EDWIN K. MARZEC
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JAMES H. DAVIS
Vice Chairperson

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Member of Senate

ALISTER MCALISTER
Member of Assembly

ROGER ARNEBERGH
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STAN G. ULRICH
Staff Counsel

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EUGENIA AYALA
Word Processing Technician

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Word Processing Technician

NOTE

The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 18 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1987.

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SUMMARY OF WORK OF COMMISSION

Recommendations to 1985 Legislative Session

The California Law Revision Commission plans to submit a number of recommendations to the 1985 session of the Legislature in the fields of probate law and family law.

The probate law recommendations relate to the transfer without probate of certain state registered property, durable powers of attorney, living wills, distribution under a will or trust, and the effect of adoption or out of wedlock birth on rights at death.

The recommendations relating to family law deal with such matters as provision for support if the support obligor dies, dividing jointly owned property upon marriage dissolution, and litigation expenses in family law proceedings.

Other recommendations to the 1985 legislative session deal with protection of mediation communications, recording severance of joint tenancy, abandoned easements, and creditors' remedies.

Recommendations Enacted by 1984 Legislative Session

In 1984, 21 of 25 bills recommended by the Commission were enacted. Statutory forms for durable powers of attorney for health care and for property matters were enacted. Legislation to avoid the need for probate and to reduce the delay and expense of probate was enacted. Other bills enacted in 1984 dealt with:

- Uniform Transfers to Minors Act
- Garnishment of periodic payments from trusts
- Use of affidavit of death to clear title to real property
- Wills and intestate succession
- Spousal support
- Special appearances in family law proceedings
- Liability of earnings of stepparent for child support
- Award of family home to spouse having custody of children
- Reimbursement for educational expenses at dissolution of marriage
- Marital property transmutations
- Liability of marital property for debts
- Creditors' remedies
- Quiet title and partition judgments
- Dormant mineral rights

- Severance of joint tenancy
- Dismissal of civil actions for lack of prosecution
- Statute of limitations for felonies

Commission recommendations enacted by the 1984 session affected 377 sections of the California statutes: 169 new sections were enacted, 140 sections were amended, and 68 sections were repealed.

Commission Plans for 1985

During 1985, the Commission plans to devote its attention almost exclusively to the preparation of a new Probate Code for introduction at the 1986 legislative session.

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303
(415) 494-1335

EDWIN K. MARZEC

Chairperson

JAMES H. DAVIS

Vice Chairperson

SENATOR BARRY KEENE

ASSEMBLYMAN ALISTER McALISTER

ROGER ARNEBERGH

JOHN B. EMERSON

BION M. GREGORY

ARTHUR K. MARSHALL

DAVID ROSENBERG

ANN E. STODDEN

March 21, 1985

To: THE HONORABLE GEORGE DEUKMEJIAN
***Governor of California* and**
THE LEGISLATURE OF CALIFORNIA

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1984.

I am pleased to report that at the 1984 legislative session 21 of 25 bills introduced to implement the Commission's recommendations were enacted.

A number of members of the Legislature deserve special recognition for their assistance to the Commission:

(1) Senator Robert C. Beverly authored and secured the enactment of legislation to provide funds so that the Commission could continue its law reform work.

(2) Assembly Member Alister McAlister, who serves as the Assembly Member of the Commission, authored 13 of the Commission recommended measures enacted in 1984. The integrity, hard work, and wise counsel of Assembly Member McAlister has contributed significantly to the favorable legislative reaction to Commission recommended measures at the 1984 legislative session and to the overall success of the Commission's law reform activities during the 12 years he has served as a member of the Commission.

(3) Senator Barry Keene, the Senate Member of the Commission, introduced and obtained the enactment in 1984 of three important Commission recommended bills.

(4) Assembly Members Elihu Harris and Byron Sher each introduced two Commission recommended measures that were enacted in 1984.

(5) Assembly Members Gwen Moore and Philip Isenberg each introduced a Commission recommended measure that was enacted in 1984.

(6) Senator William Lockyer introduced a Commission recommended measure that was given interim study during 1984.

Respectfully submitted,

EDWIN K. MARZEC
Chairperson

CONTENTS

	<i>Page</i>
SUMMARY OF WORK OF COMMISSION	3
ANNUAL REPORT FOR THE YEAR 1984.....	11
Introduction.....	11
1985 Legislative Program	12
The Probate Code Study	13
Calendar of Topics for Study	14
Function and Procedure of Commission	14
Personnel of Commission.....	17
Legislative History of Recommendations Submitted to the 1984 Legislative Session.....	18
Estate Planning and Probate	18
Statutory forms for durable powers of attorney	18
Administration of decedents' estates	19
Wills and intestate succession	19
Uniform Transfers to Minors Act.....	19
Garnishment of payments from trusts	19
Affidavits of death	20
Notice of will.....	20
Simultaneous deaths	20
Execution of witnessed wills	20
Family Law	20
Liability of marital property for debts	20
Special appearance in family law proceedings.....	21
Liability of stepparent for child support	21
Awarding use of family home.....	21
Marital property presumptions.....	21
Spousal support including insurance.....	21
Reimbursement of educational expenses.....	22
Disposition of community property	22
Real Property Law.....	22
Quiet title and partition judgments	22
Dormant mineral rights	22
Rights among cotenants	23
Severance of joint tenancy	23
Creditors' Remedies	23
Dismissal for Lack of Prosecution	23

Statutes of Limitation for Felonies	23
Resolution Approving Topics for Study	24
Report on Statutes Repealed by Implication or Held Unconstitutional	24
Recommendations	25

APPENDICES

I. Calendar of Topics Authorized for Study.....	27
II. Legislative Action on Commission Recommendations (Cumulative)	29
III. Report of Assembly Committee on Judiciary on Senate Bill 1365 (Statutory Form for Durable Power of Attorney for Health Care)	45
IV. Communication of Law Revision Commission Concerning Senate Bill 1366 (Dismissal for Lack of Prosecution)	49
V. Letter Clarifying Legislative Intent of Assembly Bill 781 (Spousal Support Including Insurance)	53
VI. Communication of Law Revision Commission Concerning Assembly Bill 1460 (Liability of Marital Property for Debts)	55
VII. Report of Senate Committee on Judiciary on Assembly Bill 2270 (Administration of Decedent's Estates)	63
VIII. Communication of Law Revision Commission Concerning Assembly Bill 2274 (Marital Property Transmutations)	67
IX. Communication of Law Revision Commission Concerning Assembly Bill 2276 (Severance of Joint Tenancy)	69
X. Report of Senate Committee on Judiciary on Assembly Bill 2278 (Dormant Mineral Rights)	71
XI. Communication of Law Revision Commission Concerning Assembly Bill 2282 (Garnishment of Payments From Trusts)	73
XII. Communication of Law Revision Commission Concerning Assembly Bill 2290 (Wills and Intestate Succession)	77
XIII. Communication of Law Revision Commission Concerning Assembly Bill 2295 (Creditors' Remedies)	93

XIV. Report of Senate Committee on Judiciary on Assembly Bill 2492 (Uniform Transfers to Minors Act)	105
XV. Report of Senate Committee on Judiciary on Assembly Bill 3472 (Liability of Stepparent for Child Support)	115
XVI. Recommendation Relating to Provision for Support if Support Obligor Dies (September 1984)	119
XVII. Recommendation Relating to Transfer without Probate of Certain Property Registered by the State (November 1984)	129
XVIII. Recommendation Relating to Dividing Jointly Owned Property Upon Marriage Dissolution (November 1984)	147
PUBLICATIONS OF THE CALIFORNIA LAW REVISION COMMISSION	157

ANNUAL REPORT FOR THE YEAR 1984

INTRODUCTION

The California Law Revision Commission¹ was created in 1953 (as the permanent successor to the Code Commission) with the responsibility for a continuing substantive review of California statutory and decisional law.² The Commission studies the California law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- (1) Intensively studying complex and sometimes controversial subjects;
- (2) Identifying major policy questions for legislative attention;
- (3) Gathering the views of interested persons and organizations; and
- (4) Drafting recommended legislation for legislative consideration.

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with the technical problems in preparing background studies, working out intricate legal problems, and drafting needed legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

—A Member of the Senate appointed by the Committee on Rules.

—A Member of the Assembly appointed by the Speaker.

—Seven members appointed by the Governor with the advice and consent of the Senate.

—The Legislative Counsel who is an ex officio member.

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 23 topics.³

¹ See Gov't Code §§ 8280-8297 (statute establishing Law Revision Commission).

² See 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954 at 7 (1957).

³ See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix I *infra*.

Commission recommendations have resulted in the enactment of legislation affecting 8,641 sections of the California statutes: 3,726 sections have been added, 2,039 sections amended, and 2,876 sections repealed. Of the 183 Commission recommendations submitted to the Legislature, 166 (91%) have been enacted into law either in whole or in substantial part.⁴

The Commission's recommendations and studies are published as pamphlets and later in hardcover volumes. A list of past publications and information on where and how copies may be obtained may be found at the end of this Report.

1985 LEGISLATIVE PROGRAM

The Commission plans to recommend legislation on the following subjects to the 1985 Legislature:

- (1) Living wills.⁵
- (2) Provision for support if support obligor dies.⁶
- (3) Transfer without probate of title to vehicles, undocumented vessels, manufactured homes, mobile homes, commercial coaches, and truck campers.⁷
- (4) Dividing jointly owned property upon marriage dissolution.⁸
- (5) Creditors' remedies.⁹
- (6) Durable powers of attorney.¹⁰
- (7) Uniform Transfers to Minors Act.¹¹
- (8) Litigation expenses in family law proceedings.¹²

⁴ See list of recommendations and legislative action in Appendix II *infra*.

⁵ See *Recommendation Relating to Statutory Forms for Durable Powers of Attorney*, 17 Cal. L. Revision Comm'n Reports 701, 710, 769-71 (1984).

⁶ See *Recommendation Relating to Provision for Support if Support Obligor Dies* (September 1984), published as Appendix XVI to this Report.

⁷ See *Recommendation Relating to Transfer Without Probate of Certain Property Registered by the State* (November 1984), published as Appendix XVII to this Report.

⁸ See *Recommendation Relating to Dividing Jointly Owned Property Upon Marriage Dissolution* (November 1984), published as Appendix XVIII to this Report.

⁹ The Commission will not publish a recommendation relating to this legislation. The recommended legislation makes technical and clarifying revisions in the Enforcement of Judgments Law enacted by Chapter 1364 of the Statutes of 1982 upon recommendation of the Law Revision Commission. This recommendation is made pursuant to Resolution Chapter 45 of the Statutes of 1974.

¹⁰ See *Recommendation Relating to Durable Powers of Attorney* (January 1985). This recommendation will be separately published.

¹¹ The Commission will not publish a recommendation relating to this legislation. The recommended legislation gives a transferor of property under the Uniform Transfers to Minors Act authority to designate one or more persons as successor custodians. This recommendation is made pursuant to 1979 Cal. Stats. res. ch. 19.

¹² See *Recommendation Relating to Litigation Expenses in Family Law Proceedings* (January 1985). This recommendation will be separately published.

- (9) Distribution under a will or trust.¹³
- (10) Protection of mediation communications.¹⁴
- (11) Recording severance of joint tenancy.¹⁵
- (12) Effect of adoption or out of wedlock birth on rights at death.¹⁶
- (13) Abandoned easements.¹⁷

The Commission also recommends that the 1985 Legislature make revisions in the statute relating to the Commission.¹⁸

THE PROBATE CODE STUDY

The Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure.¹⁹ The goal is to submit an entire new Probate Code to the 1986 legislative session. During 1985, the Commission will send drafts of portions of the new code to interested persons and organizations for review and comment.

The Commission is working in close cooperation with the Estate Planning, Trust and Probate Law Section of the State Bar and the Probate and Trust Law Section of the Los Angeles County Bar Association. The views of members of the public and of lawyers, judges, court commissioners, probate referees, and

¹³ See *Recommendation Relating to Distribution Under a Will or Trust* (January 1985). This recommendation will be separately published.

¹⁴ See *Recommendation Relating to Protection of Mediation Communications* (January 1985). This recommendation will be separately published.

¹⁵ See *Recommendation Relating to Recording Severance of Joint Tenancy* (January 1985). This recommendation will be separately published.

¹⁶ See *Recommendation Relating to Effect of Adoption or Out of Wedlock Birth on Rights at Death* (January 1985). This recommendation will be separately published. The Commission also recommends the enactment of urgency legislation to provide that a stepchild or foster child is not a child for the purposes of a statutory requirement that notice be given to heirs, issue, or children unless the stepchild or foster child is an adopted child or unless the person giving the notice has actual knowledge of facts which that person reasonably believes make the stepchild or foster child a child under Section 6408 of the Probate Code.

¹⁷ See *Recommendation Relating to Abandoned Easements* (January 1985). This recommendation will be separately published.

¹⁸ The Commission recommends that:

(1) Section 8288 of the Government Code be amended to allow the employees of the Commission and members of the Commission appointed by the Governor to advocate in their official capacity the passage by the Legislature or approval by the Governor of legislation recommended by the Commission.

(2) A new provision be added to the statute relating to the Commission to provide that the office of a member of the Commission appointed by the Governor becomes vacant if the member is absent for three consecutive regular meetings of the Commission unless the member is excused from attending.

¹⁹ In 1980, the Legislature directed the Commission to make this study. 1980 Cal. Stats. res. ch. 37.

others who work in the probate law field are being sought and will be taken into account in preparing the new code. A special effort has been made to obtain the suggestions of members of the probate and trust law committees of local bar associations. The California Bankers Association has appointed a special committee to work with the Commission.

The Commission has retained the following expert consultants to assist the Commission in its study of probate law: Professor Paul E. Basye, Hastings College of the Law, Professor Gail B. Bird, Hastings College of the Law, Professor Jesse Dukeminier, U.C.L.A. Law School, Professor Susan F. French, U.C. Davis School of Law, Professor Edward C. Halbach, Jr., U.C. Berkeley Law School, and Professor Russell D. Niles, Hastings College of the Law.

CALENDAR OF TOPICS FOR STUDY

The Commission's calendar of topics is set out in Appendix I to this Report. Each of these topics has been authorized for Commission study by the Legislature.²⁰ Because of the substantial and numerous topics already on its calendar, the Commission does not at this time recommend any additional topics for inclusion on its calendar of topics.

FUNCTION AND PROCEDURE OF COMMISSION

The principal duties of the Law Revision Commission¹ are to:

(1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.

(2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,² bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.

(3) Recommend such changes in law as it deems necessary to bring the law of this state into harmony with modern conditions.³

²⁰ Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study.

¹ Gov't Code §§ 8280-8297 (statute governing Law Revision Commission).

² The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

³ See Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the Supreme Court of the United States. Gov't Code § 8290.

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.⁴

The Commission's work on a recommendation is commenced after a background study has been prepared. In some cases, the study is prepared by a member of the Commission's staff, but some of the studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration. Expert consultants are also retained to advise the Commission at meetings.

The background study is given careful consideration by the Commission and, after making its preliminary decisions on the subject, the Commission ordinarily distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to effectuate its recommendation) is published in a pamphlet.⁵ In some cases, the background study is published in the pamphlet containing the recommendation.⁶

The Commission ordinarily prepares a Comment explaining each section it recommends. These Comments are included in the Commission's report and are frequently revised by legislative

⁴ See Gov't Code § 8293. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments each 10 years and to recommend any needed revisions.

⁵ Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

⁶ Background studies may be published in law reviews. For a list of background studies published in law reviews, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971), 11 Cal. L. Revision Comm'n Reports 1008 n.5 & 1108 n.5 (1973), 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976), 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982), and 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984).

committee reports⁷ to reflect amendments⁸ made after the recommended legislation has been introduced in the Legislature. The Comment often indicates the derivation of the section and explains its purpose, its relation to other sections, and potential problems in its meaning or application. The Comments are written as if the legislation were enacted since their primary purpose is to explain the statute to those who will have occasion to use it after it is in effect. They are entitled to substantial weight in construing the statutory provisions.⁹ However, while the Commission endeavors in the Comment to explain any changes in the law made by the section, the Commission does not claim that every inconsistent case is noted in the Comment, nor can it anticipate judicial conclusions as to the significance of existing case authorities.¹⁰ Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.¹¹

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial

⁷ Special reports are adopted by legislative committees that consider bills recommended by the Commission. These reports, which are printed in the legislative journal, state that the Comments to the various sections of the bill contained in the Commission's recommendation reflect the intent of the committee in approving the bill except to the extent that new or revised Comments are set out in the committee report itself or in a report on file with the committee. For a description of the legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App.3d 877, 884, 109 Cal. Rptr. 421, 426 (1973). For an example of such a report, see Appendix III to this Report.

⁸ Many of the amendments made after the recommended legislation has been introduced are made upon recommendation of the Commission to deal with matters brought to the Commission's attention after its recommendation was printed. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

⁹ *E.g.*, *Van Arsdale v. Hollinger*, 68 Cal.2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968). See also *Milligan v. City of Laguna Beach*, 34 Cal.3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983) ("To ascertain the legislative intent, courts have resorted to many rules of construction. However, when the Legislature has stated the purpose of its enactment in unmistakable terms [*e.g.*, in official comments], we must apply the enactment in accordance with the legislative direction, and all other rules of construction must fall by the wayside. Speculation and reasoning as to legislative purpose must give way to expressed legislative purpose."). The Comments are published by both the Bancroft-Whitney Company and the West Publishing Company in their editions of the annotated codes.

¹⁰ See, *e.g.*, *Arellano v. Moreno*, 33 Cal. App.3d 877, 109 Cal. Rptr. 421 (1973).

¹¹ The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal.3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stats. ch. 227.

number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.¹² Thus, a large and representative number of interested persons are given an opportunity to study and comment upon the Commission's work before it is considered for enactment by the Legislature.¹³ The annual reports and the recommendations and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out-of-print, but others are available for purchase.¹⁴

PERSONNEL OF COMMISSION

As of December 31, 1984, the membership of the Law Revision Commission was:

	<i>Term Expires</i>
Edwin K. Marzec, Santa Monica, <i>Chairperson</i>	October 1, 1987
James H. Davis, Los Angeles, <i>Vice Chairperson</i>	October 1, 1985
Barry Keene, Benicia, <i>Senate Member</i>	*
Alister McAlister, Fremont, <i>Assembly Member</i>	*
Roger Arnebergh, Van Nuys, <i>Member</i>	October 1, 1987
John B. Emerson, Los Angeles, <i>Member</i>	October 1, 1985
Arthur K. Marshall, Los Angeles, <i>Member</i>	October 1, 1987
David Rosenberg, Davis, <i>Member</i>	October 1, 1985
Ann E. Stodden, Los Angeles, <i>Member</i>	October 1, 1987
Bion M. Gregory, Sacramento, <i>ex officio Member</i>	†

* The legislative members of the Commission serve at the pleasure of the appointing power.

† The Legislative Counsel is an *ex officio* member of the Commission.

In January 1984, Governor Deukmejian appointed Roger Arnebergh, Van Nuys, Arthur K. Marshall, Los Angeles, Edwin K. Marzec, Santa Monica, and Ann. E. Stodden, Los Angeles, to the Commission replacing Debra S. Frank, Beatrice P. Lawson, Roslyn P. Chasan, and Robert J. Berton, respectively, whose terms had expired.

¹² See Gov't Code § 8291.

¹³ For a step by step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965).

¹⁴ See "Publications of the California Law Revision Commission" *infra*.

In January 1984, James H. Davis was elected Vice Chairperson to succeed David Rosenberg who became Chairperson upon the expiration of Debra Frank's term. Their one-year terms terminated December 30, 1984.

In September 1984, Edwin K. Marzec was elected Chairperson and James H. Davis was re-elected Vice-Chairperson. Their one-year terms commence December 31, 1984.

As of December 31, 1984, the staff of the Commission was:

Legal

John H. DeMouly <i>Executive Secretary</i>	Robert J. Murphy III <i>Staff Counsel</i>
Nathaniel Sterling <i>Assistant Executive Secretary</i>	Stan G. Ulrich <i>Staff Counsel</i>
<i>Administrative-Secretarial</i>	
Juan C. Rogers <i>Administrative Assistant</i>	
Eugenia Ayala <i>Word Processing Technician</i>	Victoria V. Matias <i>Word Processing Technician</i>

During 1984, the following Stanford Law School and University of Santa Clara Law School students were employed as part-time, intermittent legal assistants: Susan M. Ahlrichs, Steven L. Levine, and Robert A. Shives, Jr.

LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1984 LEGISLATIVE SESSION

The Commission recommended 25 bills and one concurrent resolution for enactment at the 1984 session. The concurrent resolution was adopted and 21 of the bills were enacted.¹

Estate Planning and Probate

Ten bills relating to estate planning, probate, and related matters were recommended by the Commission for enactment at the 1984 session.

Statutory forms for durable powers of attorney. Senate Bills 1365 and 1367, which became Chapters 312 and 602, respectively, of the Statutes of 1984, were introduced by Senator Barry Keene to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Statutory Forms for Durable Powers of Attorney*, 17 Cal. L. Revision Comm'n Reports 701 (1984). See also *Report of Assembly Committee on Judiciary on*

¹ In addition, legislation was enacted that renumbered the Government Code Sections relating to the Law Revision Commission with a few technical revisions. 1984 Cal. Stats. ch. 1335 (Senate Bill 1891).

Senate Bill 1365, Assembly J. (May 22, 1984) at 15519, reprinted as Appendix III to this Report. The bills were enacted after amendments were made.

Administration of decedents' estates. Assembly Bill 2270, which became Chapter 451 of the Statutes of 1984, was introduced by Assembly Member Alister McAlister to effectuate three Commission recommendations. See *Recommendation Relating to Independent Administration of Decedent's Estate*, 17 Cal. L. Revision Comm'n Reports 405 (1984); *Recommendation Relating to Distribution of Estates Without Administration*, 17 Cal. L. Revision Comm'n Reports 421 (1984); *Recommendation Relating to Bonds for Personal Representatives*, 17 Cal. L. Revision Comm'n Reports 483 (1984). See also *Report of Senate Committee on Judiciary on Assembly Bill 2270*, Senate J. (June 14, 1984) at 11803, reprinted as Appendix VII to this Report. The bill was enacted after amendments were made.

Wills and intestate succession. Assembly Bill 2290, which became Chapter 892 of the Statutes of 1984, was introduced by Assembly Member McAlister to make substantive, technical, and clarifying revisions to legislation relating to wills and intestate succession enacted upon Commission recommendation at the 1983 session. See *Recommendation Relating to Revision of Wills and Intestate Succession Law*, 17 Cal. L. Revision Comm'n Reports 537 (1984). See also *Communication of Law Revision Commission Concerning Assembly Bill 2290*, reprinted as Appendix XII to this Report and noted in the Assembly Journal for July 3, 1984 at page 17814. This bill was enacted after a number of substantive, technical, and clarifying amendments were made.

Uniform Transfers to Minors Act. Assembly Bill 2492, which became Chapter 243 of the Statutes of 1984, was introduced by Assembly Member Byron Sher to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Uniform Transfers to Minors Act*, 17 Cal. L. Revision Comm'n Reports 601 (1984). See also *Report of Senate Committee on Judiciary on Assembly Bill 2492*, Senate J. (June 14, 1984) at 11794, reprinted as Appendix XIV to this Report. The bill was enacted after amendments were made.

Garnishment of payments from trusts. Assembly Bill 2282, which became Chapter 493 of the Statutes of 1984, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Garnishment of Amounts Payable to Trust Beneficiary*, 17 Cal. L. Revision Comm'n Reports 471

(1984). See also *Communication of Law Revision Commission Concerning Assembly Bill 2282*, reprinted as Appendix XI to this Report and noted in the Assembly Journal for July 3, 1984 at page 17814. The bill was enacted after amendments were made.

Affidavits of death. Assembly Bill 2255, which became Chapter 527 of the Statutes of 1984, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Recording Affidavit of Death*, 17 Cal. L. Revision Comm'n Reports 493 (1984). The bill was enacted after amendments were made.

Notice of will. Assembly Bill 2272 was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Notice of Will*, 17 Cal. L. Revision Comm'n Reports 461 (1984). The bill passed the Assembly but was defeated when it failed to receive enough favorable votes by the Senate Committee on Judiciary.

Simultaneous deaths. Assembly Bill 2288 was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Simultaneous Deaths*, 17 Cal. L. Revision Comm'n Reports 443 (1984). The bill was not enacted as it failed to receive enough favorable votes by the Assembly Committee on Judiciary.

Execution of witnessed wills. Assembly Bill 2294 was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Execution of Witnessed Wills*, 17 Cal. L. Revision Comm'n Reports 509 (1984). The bill passed the Assembly but was defeated when it failed to receive enough favorable votes by the Senate Committee on Judiciary.

Family Law

Eight bills relating to family law were recommended by the Commission for enactment at the 1984 session.

Liability of marital property for debts. Assembly Bill 1460, which became Chapter 1671 of the Statutes of 1984, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984). See also *Communication of Law Revision Commission Concerning Assembly Bill 1460*, reprinted as Appendix VI to this Report and

noted in the Assembly Journal for August 30, 1984 at 20411. This bill was enacted after amendments were made.

Special appearance in family law proceedings. Assembly Bill 2286, which became Chapter 156 of the Statutes of 1984, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Special Appearance in Family Law Proceedings*, 17 Cal. L. Revision Comm'n Reports 243 (1984). The bill was enacted as introduced.

Liability of stepparent for child support. Assembly Bill 3472, which became Chapter 249 of the Statutes of 1984, was introduced by Assembly Member Elihu Harris to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Liability of Stepparent for Child Support*, 17 Cal. L. Revision Comm'n Reports 251 (1984). See also *Report of Senate Committee on Judiciary on Assembly Bill 3472*, Senate J. (June 14, 1984) at 11806, reprinted as Appendix XV to this Report. The bill was enacted after amendments were made.

Awarding use of family home. Assembly Bill 2739, which became Chapter 463 of the Statutes of 1984, was introduced by Assembly Member Phillip Isenberg to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Awarding Temporary Use of Family Home*, 17 Cal. L. Revision Comm'n Reports 261 (1984). The bill was enacted after amendments were made.

Marital property presumptions. Assembly Bill 2274, which became Chapter 1733 of the Statutes of 1984, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984). See also *Communication of Law Revision Commission Concerning Assembly Bill 2274*, reprinted as Appendix VIII to this Report and noted in the Assembly Journal for August 30, 1984, at page 20411. The bill was enacted after amendments were made.

Spousal support including insurance. Assembly Bill 781, which became Chapter 19 of the Statutes of 1984, was introduced by Assembly Member McAlister. This bill enacted a portion of a Commission recommendation, previously introduced but not enacted, giving the court in a marital dissolution proceeding the flexibility to consider whether maintaining life insurance is appropriate in the circumstances of the particular case. See *Recommendation Relating to Effect of Death of Support*

Obligor, 17 Cal. L. Revision Comm'n Reports 897 (1984). For a legislative history of the earlier measure, see 17 Cal. L. Revision Comm'n Reports 824 (1984). As enacted, Assembly Bill 781 does not change the rule that the support order terminates when the support obligor dies. See letter to Senate Committee on Judiciary relating to Assembly Bill 781, Senate J. (February 9, 1984) at 7784, reprinted as Appendix V to this Report.

Reimbursement of educational expenses. Assembly Bill 3000, which became Chapter 1661 of the Statutes of 1984, was introduced by Assembly Member Harris to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Reimbursement of Educational Expenses*, 17 Cal. L. Revision Comm'n Reports 229 (1984). The bill was enacted after amendments were made.

Disposition of community property. Senate Bill 1392 was introduced by Senator Bill Lockyer to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Disposition of Community Property*, 17 Cal. L. Revision Comm'n Reports 269 (1984). The bill was retained in the Senate Committee on Judiciary. It was the subject of interim study by the Senate Judiciary Committee.

Real Property Law

Four bills relating to real property law and related matters were recommended by the Commission for enactment at the 1984 session.

Quiet title and partition judgments. Assembly Bill 810, which became Chapter 20 of the Statutes of 1984, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Effect of Quiet Title and Partition Judgments*, 17 Cal. L. Revision Comm'n Reports 947 (1984). The bill was enacted as introduced.

Dormant mineral rights. Assembly Bill 2278, which became Chapter 240 of the Statutes of 1984, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Dormant Mineral Rights*, 17 Cal. L. Revision Comm'n Reports 957 (1984). See also *Report of Senate Committee on Judiciary on Assembly Bill 2278*, Senate J. (June 14, 1984) at 11793, reprinted as Appendix X to this Report. The bill was enacted after amendments were made.

Rights among cotenants. Assembly Bill 2343, which became Chapter 241 of the Statutes of 1984, was introduced by Assembly Member Gwen Moore to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Rights Among Cotenants In Possession and Out of Possession of Real Property*, 17 Cal. L. Revision Comm'n Reports 1023 (1984). The bill was enacted after amendments were made.

Severance of joint tenancy. Assembly Bill 2276, which became Chapter 519 of the Statutes of 1984, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Severance of Joint Tenancy*, 17 Cal. L. Revision Comm'n Reports 941 (1984). See also *Communication of Law Revision Commission Concerning Assembly Bill 2276*, reprinted as Appendix IX to this Report and noted in the Assembly Journal for July 3, 1984, at 17814. The bill was enacted after amendments were made.

Creditors' Remedies

Assembly Bill 2295, which became Chapter 538 of the Statutes of 1984, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Creditors' Remedies*, 17 Cal. L. Revision Comm'n Reports 975 (1984). See also *Communication of Law Revision Commission Concerning Assembly Bill 2295*, reprinted as Appendix XIII to this Report and noted in the Assembly Journal for July 3, 1984, at 17814. This bill was enacted after amendments were made.

Dismissal for Lack of Prosecution

Senate Bill 1366, which became Chapter 1705 of the Statutes of 1984, was introduced by Senator Keene to effectuate the Commission's recommendation on this subject. See *Revised Recommendation Relating to Dismissal for Lack of Prosecution*, 17 Cal. L. Revision Comm'n Reports 905 (1984). See also *Communication of Law Revision Commission Concerning Senate Bill 1366*, reprinted as Appendix IV to this Report and noted in the Assembly Journal for August 30, 1984, at page 20411. The bill was enacted after amendments were made.

Statutes of Limitation for Felonies

Assembly Bill 2764, which became Chapter 1270 of the Statutes of 1984, was introduced by Assembly Member Sher to effectuate

the Commission's recommendation on this subject. See *Recommendation Relating to Statutes of Limitation for Felonies*, 17 Cal. L. Revision Comm'n Reports 301 (1984). The bill was enacted after amendments were made.

Resolution Approving Topics for Study

Assembly Concurrent Resolution 102, introduced by Assembly Member McAlister and adopted as Resolution Chapter 42 of the Statutes of 1984, continues the Commission's authority to study topics previously authorized and directs the Commission to study the new topic whether the law on injunctions and related matters should be revised.

REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 8290 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's last Annual Report was prepared¹ and has the following to report:

(1) One decision of the United States Supreme Court holding a statute of this state unconstitutional has been found.

In *Southland Corp. v. Keating*, 104 S.Ct. 852 (1984), the court held Corporations Code Section 31512 in the Franchise Investment Law unconstitutional under the Supremacy Clause of the United States Constitution because it conflicts with Section 2 of the Federal Arbitration Act. The conflict arises because Section 31512, as interpreted by the California Supreme Court in *Keating v. Superior Court*, 31 Cal.3d 584, 645 P.2d 1192, 183 Cal. Rptr. 360 (1982), requires judicial consideration of claims under the Franchise Investment Law, whereas the Federal Arbitration Act mandates the validity of a contract provision requiring arbitration.

(2) No decision of the United States Supreme Court or the California Supreme Court holding a statute of this state repealed by implication has been found.

¹ This study has been carried through 36 Cal.3d 926 (Advance Sheet No. 27, October 2, 1984) and 104 S.Ct. 3593 (Advance Sheet No. 18, July 15, 1984).

(3) No decision of the California Supreme Court holding statutes of this state unconstitutional has been found.

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized for study (see "Calendar of Topics Authorized for Study" set out as Appendix I to this Report).

Pursuant to the mandate imposed by Section 8290 of the Government Code, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent that those provisions have been held unconstitutional.

APPENDIX I

CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics the topics listed below. Each of these topics has been authorized for Commission study by the Legislature.

Creditors' remedies. Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised. (Authorized by 1983 Cal. Stats. res. ch. 40. See also 1974 Cal. Stats. res. ch. 45; 1972 Cal. Stats. res. ch. 27; 1957 Cal. Stats. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 15 (1957).)

Probate Code. Whether the California Probate Code should be revised, including but not limited to whether California should adopt, in whole or in part, the Uniform Probate Code. (Authorized by 1980 Cal. Stats. res. ch. 37.)

Real and personal property. Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon termination or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stats. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.)

Family law. Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stats. res. ch. 40. See also 1978 Cal. Stats. res. ch. 65; 16 Cal. L. Revision Comm'n Reports 2019 (1982); 14 Cal. L. Revision Comm'n Reports 22 (1978).)

Prejudgment interest. Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised. (Authorized by 1971 Cal. Stats. res. ch. 75.)

Class actions. Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).)

Offers of compromise. Whether the law relating to offers of compromise should be revised. (Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).)

Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised. (Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).)

Procedure for removal of invalid liens. Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorneys fees to the prevailing party. (Authorized by 1980 Cal. Stats. res. ch. 37.)

Special assessment liens for public improvements. Whether acts governing special assessments for public improvements should be simplified and unified. (Authorized by 1980 Cal. Stats. res. ch. 37.)

Injunctions. Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stats. res. ch. 42.)

Involuntary dismissal for lack of prosecution. Whether the law relating to involuntary dismissal for lack of prosecution should be revised. (Authorized by 1978 Cal. Stats. res. ch. 85. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).)

Statutes of limitation for felonies. Whether the law relating to statutes of limitations applicable to felonies should be revised. (Authorized by 1981 Cal. Stats. ch. 909, § 3.)

Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. (Authorized by 1979 Cal. Stats. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).)

Child custody, adoption, guardianship, and related matters. Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised. (Authorized by 1972 Cal. Stats. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stats. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 29 (1957).)

Evidence. Whether the Evidence Code should be revised. (Authorized by 1965 Cal. Stats. res. ch. 130.)

Arbitration. Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stats. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).)

Modification of contracts. Whether the law relating to modification of contracts should be revised. (Authorized by 1974 Cal. Stats. res. ch. 45. See also 1957 Cal. Stats. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 21 (1957).)

Governmental liability. Whether the law relating to sovereign or governmental immunity in California should be revised. (Authorized by 1977 Cal. Stats. res. ch. 17. See also 1957 Cal. Stats. res. ch. 202.)

Inverse condemnation. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised. (Authorized by 1971 Cal. Stats. res. ch. 74. See also 1970 Cal. Stats. res. ch. 46; 1965 Cal. Stats. res. ch. 130.)

Liquidated damages. Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised. (Authorized by 1973 Cal. Stats. res. ch. 39. See also 1969 Cal. Stats. res. ch. 224.)

Parol evidence rule. Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stats. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).)

Pleadings in civil actions. Whether the law relating to pleadings in civil actions and proceedings should be revised. (Authorized by 1980 Cal. Stats. res. ch. 37.)

APPENDIX II
LEGISLATIVE ACTION ON COMMISSION
RECOMMENDATIONS

(Cumulative)

LEGISLATIVE ACTION

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1954 at 12 (1957)	Enacted. 1955 Cal. Stats. chs. 799, 877
2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1954 at 50 (1957)	Enacted. 1955 Cal. Stats. ch. 1183
3. <i>Fish and Game Code</i> , 1 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1957 at 13 (1957); 1 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1956 at 13 (1957)	Enacted. 1957 Cal. Stats. ch. 456
4. <i>Maximum Period of Confinement in a County Jail</i> , 1 CAL. L. REVISION COMM'N REPORTS at A-1 (1957)	Enacted. 1957 Cal. Stats. ch. 139
5. <i>Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions</i> , 1 CAL. L. REVISION COMM'N REPORTS at B-1 (1957)	Enacted. 1957 Cal. Stats. ch. 540
6. <i>Taking Instructions to Jury Room</i> , 1 CAL. L. REVISION COMM'N REPORTS at C-1 (1957)	Not enacted. But see Code Civ. Proc. § 612.4, enacting substance of this recommendation.
7. <i>The Dead Man Statute</i> , 1 CAL. L. REVISION COMM'N REPORTS at D-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to EVID. CODE § 1261.
8. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 CAL. L. REVISION COMM'N REPORTS at E-1 (1957)	Enacted. 1957 Cal. Stats. ch. 490
9. <i>The Marital "For and Against" Testimonial Privilege</i> , 1 CAL. L. REVISION COMM'N REPORTS at F-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to EVID. CODE § 970.

Recommendation	Action by Legislature
10. <i>Suspension of the Absolute Power of Alienation</i> , 1 CAL. L. REVISION COMM'N REPORTS at G-1 (1957); 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 14 (1959)	Enacted. 1959 Cal. Stats. ch. 470
11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 CAL. L. REVISION COMM'N REPORTS at H-1 (1957)	Enacted. 1957 Cal. Stats. ch. 102
12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 CAL. L. REVISION COMM'N REPORTS at I-1 (1957)	Enacted. 1957 Cal. Stats. ch. 249
13. <i>Choice of Law Governing Survival of Actions</i> , 1 CAL. L. REVISION COMM'N REPORTS at J-1 (1957)	No legislation recommended.
14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 1 CAL. L. REVISION COMM'N REPORTS at K-1 (1957); 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 16 (1959)	Enacted. 1959 Cal. Stats. ch. 468
15. <i>Retention of Venue for Convenience of Witnesses</i> , 1 CAL. L. REVISION COMM'N REPORTS at L-1 (1957)	Not enacted.
16. <i>Bringing New Parties Into Civil Actions</i> , 1 CAL. L. REVISION COMM'N REPORTS at M-1 (1957)	Enacted. 1957 Cal. Stats. ch. 1498
17. <i>Grand Juries</i> , 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 20 (1959)	Enacted. 1959 Cal. Stats. ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 21 (1959)	Enacted. 1959 Cal. Stats. ch. 500
19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 29 (1959)	No legislation recommended.
20. <i>Presentation of Claims Against Public Entities</i> , 2 CAL. L. REVISION COMM'N REPORTS at A-1 (1959)	Enacted. 1959 Cal. Stats. chs. 1715, 1724, 1725, 1726, 1727, 1728; CAL. CONST., ART. XI, § 10 (1960)

Recommendation	Action by Legislature
21. <i>Right of Nonresident Aliens to Inherit</i> , 2 CAL. L. REVISION COMM'N REPORTS at B-1 (1959); 11 CAL. L. REVISION COMM'N REPORTS 421 (1973)	Enacted. 1974 Cal. Stats. ch. 425
22. <i>Mortgages to Secure Future Advances</i> , 2 CAL. L. REVISION COMM'N REPORTS at C-1 (1959)	Enacted. 1959 Cal. Stats. ch. 528
23. <i>Doctrine of Worthier Title</i> , 2 CAL. L. REVISION COMM'N REPORTS at D-1 (1959)	Enacted. 1959 Cal. Stats. ch. 122
24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 CAL. L. REVISION COMM'N REPORTS at E-1 (1959)	Not enacted. But see 1972 Cal. Stats. ch. 92, enacting substance of a portion of recommendation relating to drunk driving.
25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 CAL. L. REVISION COMM'N REPORTS at F-1 (1959)	Enacted. 1959 Cal. Stats. ch. 469
26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 CAL. L. REVISION COMM'N REPORTS at G-1 (1959)	Not enacted. But see CORP. CODE §§ 1001, 1002, enacting substance of recommendation.
27. <i>Evidence in Eminent Domain Proceedings</i> , 3 CAL. L. REVISION COMM'N REPORTS at A-1 (1961)	Not enacted. But see EVID. CODE § 810 <i>et seq.</i> enacting substance of recommendation.
28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 CAL. L. REVISION COMM'N REPORTS at B-1 (1961)	Enacted. 1961 Cal. Stats. chs. 1612, 1613
29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 CAL. L. REVISION COMM'N REPORTS at C-1 (1961)	Not enacted. But see GOVT. CODE § 7260 <i>et seq.</i> enacting substance of recommendation.
30. <i>Rescission of Contracts</i> , 3 CAL. L. REVISION COMM'N REPORTS at D-1 (1961)	Enacted. 1961 Cal. Stats. ch. 589
31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor In Juvenile Court Proceedings</i> , 3 CAL. L. REVISION COMM'N REPORTS at E-1 (1961)	Enacted. 1961 Cal. Stats. ch. 1616

Recommendation	Action by Legislature
32. <i>Survival of Actions</i> , 3 CAL. L. REVISION COMM'N REPORTS at F-1 (1961)	Enacted. 1961 Cal. Stats. ch. 657
33. <i>Arbitration</i> , 3 CAL. L. REVISION COMM'N REPORTS at G-1 (1961)	Enacted. 1961 Cal. Stats. ch. 461
34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 CAL. L. REVISION COMM'N REPORTS at H-1 (1961)	Not enacted 1961. See recommendation to 1963 session (item 39 <i>infra</i>) which was enacted.
35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 CAL. L. REVISION COMM'N REPORTS at I-1 (1961)	Enacted. 1961 Cal. Stats. ch. 636
36. <i>Notice of Alibi in Criminal Actions</i> , 3 CAL. L. REVISION COMM'N REPORTS at J-1 (1961)	Not enacted.
37. <i>Discovery in Eminent Domain Proceedings</i> , 4 CAL. L. REVISION COMM'N REPORTS 701 (1963); 8 CAL. L. REVISION COMM'N REPORTS 19 (1967)	Enacted. 1967 Cal. Stats. ch. 1104
38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 801 (1963)	Enacted. 1963 Cal. Stats., ch. 1681
39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 1001 (1963)	Enacted. 1963 Cal. Stats. ch. 1715
40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 1201 (1963)	Enacted. 1963 Cal. Stats. ch. 1682
41. <i>Defense of Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 1301 (1963)	Enacted. 1963 Cal. Stats. ch. 1683
42. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 4 CAL. L. REVISION COMM'N REPORTS 1401 (1963); 7 CAL. L. REVISION COMM'N REPORTS 401 (1965)	Enacted. 1965 Cal. Stats. ch. 1527

Recommendation	Action by Legislature
43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 CAL. L. REVISION COMM'N REPORTS 1501 (1963)	Enacted. 1963 Cal. Stats. ch. 1684
44. <i>Sovereign Immunity—Amendments and Repeals of Inconsistent Statutes</i> , 4 CAL. L. REVISION COMM'N REPORTS 1601 (1963)	Enacted. 1963 Cal. Stats. chs. 1685, 1686, 2029
45. <i>Evidence Code</i> , 7 CAL. L. REVISION COMM'N REPORTS 1 (1965)	Enacted. 1965 Cal. Stats. ch. 299
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 CAL. L. REVISION COMM'N REPORTS 401 (1965)	Enacted. 1965 Cal. Stats. ch. 653
47. <i>Evidence Code Revisions</i> , 8 CAL. L. REVISION COMM'N REPORTS 101 (1967)	Enacted in part. 1967 Cal. Stats. ch. 650. Balance enacted. 1970 Cal. Stats. ch. 69.
48. <i>Evidence—Agricultural Code Revisions</i> , 8 CAL. L. REVISION COMM'N REPORTS 201 (1967)	Enacted. 1967 Cal. Stats. ch. 262
49. <i>Evidence—Commercial Code Revisions</i> , 8 CAL. L. REVISION COMM'N REPORTS 301 (1967)	Enacted. 1967 Cal. Stats. ch. 703
50. <i>Whether Damage for Personal Injury to a Married Person Should be Separate or Community Property</i> , 8 CAL. L. REVISION COMM'N REPORTS 401 (1967); 8 CAL. L. REVISION COMM'N REPORTS 1385 (1967)	Enacted. 1968 Cal. Stats. chs. 457, 458
51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 CAL. L. REVISION COMM'N REPORTS 501 (1967)	Enacted. 1967 Cal. Stats. ch. 702
52. <i>Additur</i> , 8 CAL. L. REVISION COMM'N REPORTS 601 (1967)	Enacted. 1967 Cal. Stats. ch. 72
53. <i>Abandonment or Termination of a Lease</i> , 8 CAL. L. REVISION COMM'N REPORTS 701 (1967); 9 CAL. L. REVISION COMM'N REPORTS 401 (1969); 9 CAL. L. REVISION COMM'N REPORTS 153 (1969)	Enacted. 1970 Cal. Stats. ch. 89

Recommendation	Action by Legislature
54. <i>Good Faith Improver of Land Owned by Another</i> , 8 CAL. L. REVISION COMM'N REPORTS 801 (1967); 8 CAL. L. REVISION COMM'N REPORTS 1373 (1967)	Enacted. 1968 Cal. Stats. ch. 150
55. <i>Suit By or Against an Unincorporated Association</i> , 8 CAL. L. REVISION COMM'N REPORTS 901 (1967)	Enacted. 1967 Cal. Stats. ch. 1324
56. <i>Escheat</i> , 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967)	Enacted. 1968 Cal. Stats. chs. 247, 356
57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967)	Enacted. 1968 Cal. Stats. ch. 133
58. <i>Service of Process on Unincorporated Associations</i> , 8 CAL. L. REVISION COMM'N REPORTS 1403 (1967)	Enacted. 1968 Cal. Stats. ch. 132
59. <i>Sovereign Immunity—Statute of Limitations</i> , 9 CAL. L. REVISION COMM'N REPORTS 49 (1969); 9 CAL. L. REVISION COMM'N REPORTS 175 (1969)	Enacted. 1970 Cal. Stats. ch. 104
60. <i>Additur and Remittitur</i> , 9 CAL. L. REVISION COMM'N REPORTS 63 (1969)	Enacted. 1969 Cal. Stats. ch. 115
61. <i>Fictitious Business Names</i> , 9 CAL. L. REVISION COMM'N REPORTS 71 (1969)	Enacted. 1969 Cal. Stats. ch. 114
62. <i>Quasi-Community Property</i> , 9 CAL. L. REVISION COMM'N REPORTS 113 (1969)	Enacted. 1970 Cal. Stats. ch. 312
63. <i>Arbitration of Just Compensation</i> , 9 CAL. L. REVISION COMM'N REPORTS 123 (1969)	Enacted. 1970 Cal. Stats. ch. 417
64. <i>Revisions of Evidence Code</i> , 9 CAL. L. REVISION COMM'N REPORTS 137 (1969)	Enacted in part. 1970 Cal. Stats. ch. 69. See also 1970 Cal. Stats. chs. 1396, 1397
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 CAL. L. REVISION COMM'N REPORTS 201 (1969)	Enacted. 1969 Cal. Stats. ch. 156

Recommendation	Action by Legislature
66. <i>Powers of Appointment</i> , 9 CAL. L. REVISION COMM'N REPORTS 301 (1969)	Enacted. 1969 Cal. Stats. chs. 113, 155
67. <i>Evidence Code—Revisions of Privileges Article</i> , 9 CAL. L. REVISION COMM'N REPORTS 501 (1969)	Vetoed. But see 1970 Cal. Stats. chs. 1396, 1397
68. <i>Fictitious Business Names</i> , 9 CAL. L. REVISION COMM'N REPORTS 601 (1969)	Enacted. 1970 Cal. Stats. ch. 618
69. <i>Representation as to the Credit of Third Persons and the Statute of Frauds</i> , 9 CAL. L. REVISION COMM'N REPORTS 701 (1969)	Enacted. 1970 Cal. Stats. ch. 720
70. <i>Revisions of Governmental Liability Act</i> , 9 CAL. L. REVISION COMM'N REPORTS 801 (1969)	Enacted in part. 1970 Cal. Stats. chs. 662, 1099
71. "Vesting" of Interests Under Rule Against Perpetuities, 9 CAL. L. REVISION COMM'N REPORTS 901 (1969)	Enacted. 1970 Cal. Stats. ch. 45
72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 CAL. L. REVISION COMM'N REPORTS 501 (1971)	Enacted. 1971 Cal. Stats. chs. 244, 950. See also 1973 Cal. Stats. ch. 828
73. <i>Wage Garnishment and Related Matters</i> , 10 CAL. L. REVISION COMM'N REPORTS 701 (1971); 11 CAL. L. REVISION COMM'N REPORTS 101 (1973); 12 CAL. L. REVISION COMM'N REPORTS 901 (1974); 13 CAL. L. REVISION COMM'N REPORTS 601 (1976); 13 CAL. L. REVISION COMM'N REPORTS 1703 (1976); 14 CAL. L. REVISION COMM'N REPORTS 261 (1978)	Enacted in part. 1978 Cal. Stats. ch. 1133. See also 1979 Cal. Stats. ch. 66
74. <i>Proof of Foreign Official Records</i> , 10 CAL. L. REVISION COMM'N REPORTS 1022 (1971)	Enacted. 1970 Cal. Stats. ch. 41
75. <i>Inverse Condemnation—Insurance Coverage</i> , 10 CAL. L. REVISION COMM'N REPORTS 1051 (1971)	Enacted. 1971 Cal. Stats. ch. 140
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 CAL. L. REVISION COMM'N REPORTS 1147 (1971)	Enacted. 1971 Cal. Stats. ch. 1607

Recommendation	Action by Legislature
77. <i>Civil Arrest</i> , 11 CAL. L. REVISION COMM'N REPORTS 1 (1973)	Enacted. 1973 Cal. Stats. ch. 20
78. <i>Claim and Delivery Statute</i> , 11 CAL. L. REVISION COMM'N REPORTS 301 (1973)	Enacted. 1973 Cal. Stats. ch. 526
79. <i>Unclaimed Property</i> , 11 CAL. L. REVISION COMM'N REPORTS 401 (1973); 12 CAL. L. REVISION COMM'N REPORTS 609 (1974)	Proposed resolution enacted. 1973 Cal. Stats. res. ch. 76. Legislation enacted. 1975 Cal. Stats. ch. 25.
80. <i>Enforcement of Sister State Money Judgments</i> , 11 CAL. L. REVISION COMM'N REPORTS 451 (1973)	Enacted. 1974 Cal. Stats. ch. 211
81. <i>Prejudgment Attachment</i> , 11 CAL. L. REVISION COMM'N REPORTS 701 (1973)	Enacted. 1974 Cal. Stats. ch. 1516. See also 1975 Cal. Stats. ch. 200.
82. <i>Landlord-Tenant Relations</i> , 11 CAL. L. REVISION COMM'N REPORTS 951 (1973)	Enacted. 1974 Cal. Stats. chs. 331, 332
83. <i>Pleading</i> (technical change), 11 CAL. L. REVISION COMM'N REPORTS 1024 (1973)	Enacted. 1972 Cal. Stats. ch. 73
84. <i>Evidence—Judicial Notice</i> (technical change), 11 CAL. L. REVISION COMM'N REPORTS 1025 (1973)	Enacted. 1972 Cal. Stats. ch. 764
85. <i>Evidence—"Criminal Conduct" Exception</i> , 11 CAL. L. REVISION COMM'N REPORTS 1147 (1973)	Not enacted 1974. See recommendation to 1975 session (item 90 <i>infra</i>) which was enacted.
86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 CAL. L. REVISION COMM'N REPORTS 1163 (1973)	Enacted. 1974 Cal. Stats. ch. 227
87. <i>Liquidated Damages</i> , 11 CAL. L. REVISION COMM'N REPORTS 1201 (1973); 13 CAL. L. REVISION COMM'N REPORTS 2139 (1976); 13 CAL. L. REVISION COMM'N REPORTS 1735 (1976)	Enacted. 1977 Cal. Stats. ch. 198
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 CAL. L. REVISION COMM'N REPORTS 575 (1974)	Enacted. 1975 Cal. Stats. ch. 285
89. <i>View by Trier of Fact in a Civil Case</i> , 12 CAL. L. REVISION COMM'N REPORTS 587 (1974)	Enacted. 1975 Cal. Stats. ch. 301

Recommendation	Action by Legislature
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 CAL. L. REVISION COMM'N REPORTS 601 (1974)	Enacted. 1975 Cal. Stats. ch. 318
91. <i>Improvement Acts</i> , 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974)	Enacted. 1974 Cal. Stats. ch. 426
92. <i>The Eminent Domain Law</i> , 12 CAL. L. REVISION COMM'N REPORTS 1601 (1974)	Enacted. 1975 Cal. Stats. chs. 1239, 1240, 1275
93. <i>Eminent Domain—Conforming Changes in Special District Statutes</i> , 12 CAL. L. REVISION COMM'N REPORTS 1101 (1974); 12 CAL. L. REVISION COMM'N REPORTS 2004 (1974)	Enacted. 1975 Cal. Stats. chs. 581, 582, 584, 585, 586, 587, 1176, 1276
94. <i>Oral Modification of Written Contracts</i> , 13 CAL. L. REVISION COMM'N REPORTS 301 (1976); 13 CAL. L. REVISION COMM'N REPORTS 2129 (1976)	Enacted. 1975 Cal. Stats. ch. 7; 1976 Cal. Stats. ch. 109
95. <i>Partition of Real and Personal Property</i> , 13 CAL. L. REVISION COMM'N REPORTS 401 (1976)	Enacted. 1976 Cal. Stats. ch. 73
96. <i>Revision of the Attachment Law</i> , 13 CAL. L. REVISION COMM'N REPORTS 801 (1976)	Enacted. 1976 Cal. Stats. ch. 437
97. <i>Undertakings for Costs</i> , 13 CAL. L. REVISION COMM'N REPORTS 901 (1976)	Not enacted 1976. But see recommendation to 1979 session (item 118 <i>infra</i>) which was enacted.
98. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 CAL. L. REVISION COMM'N REPORTS 2051 (1976)	Not enacted.
99. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 CAL. L. REVISION COMM'N REPORTS 2079 (1976)	Enacted. 1976 Cal. Stats. ch. 145
100. <i>Relocation Assistance by Private Condemnors</i> , 13 CAL. L. REVISION COMM'N REPORTS 2085 (1976)	Enacted. 1976 Cal. Stats. ch. 143
101. <i>Condemnation for Byroads and Utility Easements</i> , 13 CAL. L. REVISION COMM'N REPORTS 2091 (1976)	Enacted in part (utility easements). 1976 Cal. Stats. ch. 994

Recommendation	Action by Legislature
102. <i>Transfer of Out-of-State Trusts to California</i> , 13 CAL. L. REVISION COMM'N REPORTS 2101 (1976)	Enacted. 1976 Cal. Stats. ch. 144
103. <i>Admissibility of Duplicates in Evidence</i> , 13 CAL. L. REVISION COMM'N REPORTS 2115 (1976)	Not enacted. But see 1977 Cal. Stats. ch. 708, enacting substance of recommendation in modified form.
104. <i>Service of Process on Unincorporated Associations</i> , 13 CAL. L. REVISION COMM'N REPORTS 1657 (1976)	Enacted. 1976 Cal. Stats. ch. 888
105. <i>Sister State Money Judgments</i> , 13 CAL. L. REVISION COMM'N REPORTS 1669 (1976)	Enacted. 1977 Cal. Stats. ch. 232
106. <i>Damages in Action for Breach of Lease</i> , 13 CAL. L. REVISION COMM'N REPORTS 1679 (1976)	Enacted. 1977 Cal. Stats. ch. 49
107. <i>Nonprofit Corporation Law</i> , 13 CAL. L. REVISION COMM'N REPORTS 2201 (1976)	Not enacted. Legislation on this subject, not recommended by the Commission, was enacted in 1978.
108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 CAL. L. REVISION COMM'N REPORTS 49 (1978)	Enacted. 1977 Cal. Stats. ch. 155
109. <i>Attachment Law—Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 CAL. L. REVISION COMM'N REPORTS 61 (1978)	Enacted. 1977 Cal. Stats. ch. 499
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 CAL. L. REVISION COMM'N REPORTS 83 (1978)	Enacted. 1978 Cal. Stats. ch. 286
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 CAL. L. REVISION COMM'N REPORTS 93 (1978)	Enacted. 1978 Cal. Stats. ch. 151
112. <i>Evidence of Market Value of Property</i> , 14 CAL. L. REVISION COMM'N REPORTS 105 (1978)	Enacted in part. 1978 Cal. Stats. ch. 294. Substance of remainder enacted in 1980. See item 127 <i>infra</i> .
113. <i>Psychotherapist-Patient Privilege</i> , 14 CAL. L. REVISION COMM'N REPORTS 127 (1978); 15 CAL. L. REVISION COMM'N REPORTS 1307 (1980)	Vetoed 1978.

Recommendation	Action by Legislature
114. <i>Parole Evidence Rule</i> , 14 CAL. L. REVISION COMM'N REPORTS 143 (1978)	Enacted. 1978 Cal. Stats. ch. 150
115. <i>Attachment Law—Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action,"</i> 14 CAL. L. REVISION COMM'N REPORTS 241 (1978)	Enacted. 1978 Cal. Stats. ch. 273
116. <i>Powers of Appointment</i> (technical changes), 14 CAL. L. REVISION COMM'N REPORTS 257 (1978)	Enacted. 1978 Cal. Stats. ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 CAL. L. REVISION COMM'N REPORTS 291 (1978)	Enacted. 1979 Cal. Stats. ch. 31
118. <i>Security for Costs</i> , 14 CAL. L. REVISION COMM'N REPORTS 319 (1978)	Enacted. 1980 Cal. Stats. ch. 114
119. <i>Guardianship-Conservatorship Law</i> , 14 CAL. L. REVISION COMM'N REPORTS 501 (1978); 15 CAL. L. REVISION COMM'N REPORTS 451 (1980)	Enacted. 1979 Cal. Stats. chs. 165, 726, 730
120. <i>Effect of New Bankruptcy Law on The Attachment Law</i> , 15 CAL. L. REVISION COMM'N REPORTS 1043 (1980)	Enacted. 1979 Cal. Stats. ch. 77
121. <i>Confessions of Judgment</i> , 15 CAL. L. REVISION COMM'N REPORTS 1053 (1980)	Enacted. 1979 Cal. Stats. ch. 568
122. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 CAL. L. REVISION COMM'N REPORTS 1101 (1980)	Enacted. 1980 Cal. Stats. ch. 122
123. <i>Assignments for the Benefit of Creditors</i> , 15 CAL. L. REVISION COMM'N REPORTS 1117 (1980)	Enacted. 1980 Cal. Stats. ch. 135
124. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 CAL. L. REVISION COMM'N REPORTS 1137 (1980)	Enacted. 1980 Cal. Stats. ch. 1050
125. <i>Quiet Title Actions</i> , 15 CAL. L. REVISION COMM'N REPORTS 1187 (1980)	Enacted. 1980 Cal. Stats. ch. 44

Recommendation	Action by Legislature
126. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 CAL. L. REVISION COMM'N REPORTS 1237 (1980)	Enacted. 1980 Cal. Stats. ch. 682
127. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 CAL. L. REVISION COMM'N REPORTS 301 (1980)	Enacted. 1980 Cal. Stats. ch. 381
128. <i>Probate Homestead</i> , 15 CAL. L. REVISION COMM'N REPORTS 401 (1980)	Enacted. 1980 Cal. Stats. ch. 119
129. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 CAL. L. REVISION COMM'N REPORTS 1257 (1980)	Enacted. 1980 Cal. Stats. ch. 215
130. <i>Uniform Veterans Guardianship Act</i> , 15 CAL. L. REVISION COMM'N REPORTS 1289 (1980)	Enacted. 1980 Cal. Stats. ch. 89
131. <i>Enforcement of Obligations After Death</i> , 15 CAL. L. REVISION COMM'N REPORTS 1327 (1980)	Enacted. 1980 Cal. Stats. ch. 124
132. <i>Interest Rate on Judgments</i> , 15 CAL. L. REVISION COMM'N REPORTS 7 (1980)	Enacted. 1982 Cal. Stats. ch. 150
133. <i>Married Women as Sole Traders</i> , 15 CAL. L. REVISION COMM'N REPORTS 21 (1980)	Enacted. 1980 Cal. Stats. ch. 123
134. <i>State Tax Liens</i> , 15 CAL. L. REVISION COMM'N REPORTS 29 (1980)	Enacted. 1980 Cal. Stats. ch. 600
135. <i>Guardianship-Conservatorship</i> (technical change), 15 CAL. L. REVISION COMM'N REPORTS 1247 (1980)	Enacted. 1980 Cal. Stats. ch. 246
136. <i>Revision of Guardianship-Conservatorship Law</i> , 15 CAL. L. REVISION COMM'N REPORTS 1463 (1980)	Enacted. 1981 Cal. Stats. ch. 9
137. <i>Enforcement of Judgments Law</i> , 15 CAL. L. REVISION COMM'N REPORTS 2001 (1980)	Enacted. 1982 Cal. Stats. chs. 497, 1364
138. <i>Uniform Durable Power of Attorney Act</i> , 15 CAL. L. REVISION COMM'N REPORTS 351 (1980)	Enacted. 1981 Cal. Stats. ch. 511

Recommendation	Action by Legislature
139. <i>Non-Probate Transfers</i> , 15 CAL. L. REVISION COMM'N REPORTS 1605 (1980); 16 CAL. L. REVISION COMM'N REPORTS 129 (1982)	Enacted in part (pay-on-death accounts) 1982 Cal. Stats. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stats. ch. 92.
140. <i>Revision of the Powers of Appointment Statute</i> , 15 CAL. L. REVISION COMM'N REPORTS 1667 (1980)	Enacted. 1981 Cal. Stats. ch. 63
141. <i>State Tax Liens</i> (technical change), 16 CAL. L. REVISION COMM'N REPORTS 24 (1982)	Enacted. 1981 Cal. Stats. ch. 217
142. <i>Assessment Liens on Property Taken for Public Use</i> (technical change), 16 CAL. L. REVISION COMM'N REPORTS 25 (1982)	Enacted. 1981 Cal. Stats. ch. 139
143. <i>Federal Pensions as Community Property</i> , 16 CAL. L. REVISION COMM'N REPORTS 47 (1982)	Proposed resolution adopted. 1982 Cal. Stats. res. ch. 44
144. <i>Holographic and Nuncupative Wills</i> , 16 CAL. L. REVISION COMM'N REPORTS 301 (1982)	Enacted. 1982 Cal. Stats. ch. 187
145. <i>Marketable Title of Real Property</i> , 16 CAL. L. REVISION COMM'N REPORTS 401 (1982)	Enacted. 1982 Cal. Stats. ch. 1268
146. <i>Statutory Bonds and Undertakings</i> , 16 CAL. L. REVISION COMM'N REPORTS 501 (1982)	Enacted. 1982 Cal. Stats. chs. 517, 998
147. <i>Attachment</i> , 16 CAL. L. REVISION COMM'N REPORTS 701 (1982)	Enacted. 1982 Cal. Stats. ch. 1198
148. <i>Escheat</i> (technical change), 16 CAL. L. REVISION COMM'N REPORTS 124 (1982)	Enacted. 1982 Cal. Stats. ch. 182
149. <i>Missing Persons</i> , 16 CAL. L. REVISION COMM'N REPORTS 105 (1982)	Enacted. 1983 Cal. Stats. ch. 201
150. <i>Emancipated Minors</i> , 16 CAL. L. REVISION COMM'N REPORTS 183 (1982)	Enacted. 1983 Cal. Stats. ch. 6
151. <i>Notice in Limited Conservatorship Proceedings</i> , 16 CAL. L. REVISION COMM'N REPORTS 199 (1982)	Enacted. 1983 Cal. Stats. ch. 72
152. <i>Disclaimer of Testamentary and Other Interests</i> , 16 CAL. L. REVISION COMM'N REPORTS 207 (1982)	Enacted. 1983 Cal. Stats. ch. 17

Recommendation	Action by Legislature
153. <i>Wills and Intestate Succession</i> , 16 CAL. L. REVISION COMM'N REPORTS 2301 (1982)	Enacted. 1983 Cal. Stats ch. 842
154. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 CAL. L. REVISION COMM'N REPORTS 2165 (1982)	Enacted. 1983 Cal. Stats. ch. 342
155. <i>Creditors' Remedies</i> , 16 CAL. L. REVISION COMM'N REPORTS 2175 (1982)	Enacted. 1983 Cal. Stats. ch. 155
156. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 CAL. L. REVISION COMM'N REPORTS 2239 (1982)	Enacted. 1983 Cal. Stats. ch. 18
157. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 CAL. L. REVISION COMM'N REPORTS 2251 (1982)	Enacted. 1983 Cal. Stats. ch. 107
158. <i>Liability of Marital Property for Debts</i> , 17 CAL. L. REVISION COMM'N REPORTS 1 (1984)	Enacted. 1984 Cal. Stats. ch. 1671
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 16 CAL. L. REVISION COMM'N REPORTS 101 (1984)	Enacted. 1983 Cal. Stats. ch. 1204
160. <i>Effect of Death of Support Obligor</i> , 17 CAL. L. REVISION COMM'N REPORTS 897 (1984)	Enacted. 1984 Cal. Stats. ch. 19
161. <i>Vacation of Streets</i> (technical change), 17 CAL. L. REVISION COMM'N REPORTS 825 (1984)	Enacted. 1983 Cal. Stats. ch. 52
162. <i>Marital Property Presumptions and Transmutations</i> , 17 CAL. L. REVISION COMM'N REPORTS 205 (1984)	Enacted in part (transmutations). 1984 Cal. Stats. ch. 1733
163. <i>Reimbursement of Educational Expenses</i> , 17 CAL. L. REVISION COMM'N REPORTS 229 (1984)	Enacted. 1984 Cal. Stats. ch. 1661
164. <i>Special Appearance in Family Law Proceedings</i> , 17 CAL. L. REVISION COMM'N REPORTS 243 (1984)	Enacted. 1984 Cal. Stats. ch. 156

Recommendation	Action by Legislature
165. <i>Liability of Stepparent for Child Support</i> , 17 CAL. L. REVISION COMM'N REPORTS 251 (1984)	Enacted. 1984 Cal. Stats. ch. 249
166. <i>Awarding Temporary Use of Family Home</i> , 17 CAL. L. REVISION COMM'N REPORTS 261 (1984)	Enacted. 1984 Cal. Stats. ch. 463
167. <i>Disposition of Community Property</i> , 17 CAL. L. REVISION COMM'N REPORTS 269 (1984)	Not enacted.
168. <i>Statutes of Limitation for Felonies</i> , 17 CAL. L. REVISION COMM'N REPORTS 301 (1984)	Enacted. 1984 Cal. Stats. ch. 1270
169. <i>Independent Administration of Decedent's Estate</i> , 17 CAL. L. REVISION COMM'N REPORTS 405 (1984)	Enacted. 1984 Cal. Stats. ch. 451
170. <i>Distribution of Estates Without Administration</i> , 17 CAL. L. REVISION COMM'N REPORTS 421 (1984)	Enacted. 1984 Cal. Stats. ch. 451
171. <i>Simultaneous Deaths</i> , 17 CAL. L. REVISION COMM'N REPORTS 443 (1984)	Not enacted.
172. <i>Notice of Will</i> , 17 CAL. L. REVISION COMM'N REPORTS 461 (1984)	Not enacted.
173. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 CAL. L. REVISION COMM'N REPORTS 471 (1984)	Enacted. 1984 Cal. Stats. ch. 493
174. <i>Bonds for Personal Representatives</i> , 17 CAL. L. REVISION COMM'N REPORTS 483 (1984)	Enacted. 1984 Cal. Stats. ch. 451
175. <i>Recording Affidavits of Death</i> , 17 CAL. L. REVISION COMM'N REPORTS 493 (1984)	Enacted. 1984 Cal. Stats. ch. 527
176. <i>Execution of Witnessed Will</i> , 17 CAL. L. REVISION COMM'N REPORTS 509 (1984)	Not enacted.
177. <i>Revision of Wills and Intestate Succession Law</i> , 17 CAL. L. REVISION COMM'N REPORTS 537 (1984)	Enacted. 1984 Cal. Stats. ch. 892

LEGISLATIVE ACTION

Recommendation	Action by Legislature
178. <i>Uniform Transfers to Minors Act</i> , 17 CAL. L. REVISION COMM'N REPORTS 601 (1984)	Enacted. 1984 Cal. Stats. ch. 243
179. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 CAL. L. REVISION COMM'N REPORTS 701 (1984)	Enacted. 1984 Cal. Stats. chs. 312, 602
180. <i>Dismissal for Lack of Prosecution</i> , 17 CAL. L. REVISION COMM'N REPORTS 905 (1984)	Enacted. 1984 Cal. Stats. ch. 1705
181. <i>Severance of Joint Tenancy</i> , 17 CAL. L. REVISION COMM'N REPORTS 941 (1984)	Enacted. 1984 Cal. Stats. ch. 519
182. <i>Quiet Title and Partition Judgments</i> , 17 CAL. L. REVISION COMM'N REPORTS 947 (1984)	Enacted. 1984 Cal. Stats. ch. 20
183. <i>Dormant Mineral Rights</i> , 17 CAL. L. REVISION COMM'N REPORTS 957 (1984)	Enacted. 1984 Cal. Stats. ch. 240
184. <i>Creditors' Remedies</i> , 17 CAL. L. REVISION COMM'N REPORTS 975 (1984)	Enacted. 1984 Cal. Stats. ch. 538
185. <i>Rights Among Cotenants</i> , 17 CAL. L. REVISION COMM'N REPORTS 1023 (1984)	Enacted. 1984 Cal. Stats. ch. 241

APPENDIX III
REPORT OF
ASSEMBLY COMMITTEE ON JUDICIARY
ON SENATE BILL 1365

[Extract from Assembly Journal for May 22, 1984 (1983-84 Regular Session)]

In order to indicate more fully its intent with respect to Senate Bill 1365, the Assembly Committee on Judiciary makes this report.

Senate Bill 1365 was introduced to effectuate the California Law Revision Commission *Recommendation Relating to Statutory Forms for Durable Powers of Attorney*, 17 Cal. L. Revision Comm'n Reports 701 (1984). Except for the new and revised comments set out below, the Law Revision Commission comments to the various sections of the bill reflect the intent of the Assembly Committee on Judiciary in approving the bill. The comments set out below also reflect the intent of the Assembly Committee on Judiciary in approving the bill.

Civil Code § 2410. Definitions

Comment. Section 2410 is amended to delete from subdivision (c) the former requirement that the attorney in fact be a resident of this state at the time the power of attorney was created or at the time the petition is filed under this article. This deletion permits a petition under this article, for example, where the attorney in fact is a nonresident and the principal is a patient in a hospital in California. Under Section 2416, the court has authority to stay or dismiss a proceeding in this state if in the interest of substantial justice the proceeding should be heard in a forum outside this state.

Civil Code § 2416. Dismissal of petition

Comment. Section 2416 is amended to make clear that the court has authority to stay or dismiss a proceeding in this state if in the interest of substantial justice the proceeding should be heard in a forum outside this state. See Code Civ. Proc. § 410.30.

Civil Code § 2432.5. Relative of principal as employee of treating health care provider

Comment. Section 2432.5 provides a special exception to subdivision (b) of Section 2432 which prohibits an employee of the treating health care provider from being designated as attorney in fact to make health care decisions under a durable power of attorney. Under Section 2432.5, such a person may be so designated if the person is a relative of the principal and the other requirements of this article are satisfied. This will, for example, permit a nurse to serve as attorney in fact for the nurse's spouse when the spouse is being treated at the hospital where the nurse is employed.

Civil Code § 2434. Authority of attorney in fact to make health care decisions

Comment. Subdivision (b) of Section 2434 is amended to make clear that an attorney in fact designated in a durable power of

attorney for health care may authorize an autopsy of the deceased principal and may direct the disposition of the remains of the deceased principal.

Civil Code § 2437. Revocation of durable power of attorney for health care

Comment. Subdivision (f) is added to Section 2437 to make clear that a person is not liable for acting in good faith reliance upon the durable power of attorney being effective unless the person has actual knowledge of the revocation. The subdivision is merely a specific application of the rule stated in subdivision (b) of Section 2356 and is comparable to a provision found in the Natural Death Act. See Section 7189(b) of the Health and Safety Code. Although a person is protected if the person acts in good faith and without actual notice of the revocation, a person who withholds knowledge of the revocation is guilty of unlawful homicide where the death of the principal is hastened as a result of the failure to disclose the revocation. See Section 2442.

Civil Code § 2500. Statutory form of durable power of attorney for health care

Comment. Section 2500 is consistent with and subject to the substantive law applicable to a durable power of attorney for health care. See Sections 2410–2423 (court review), 2430–2443 (durable power of attorney for health care). However, in the statutory form durable power of attorney for health care, the “warning” set out in Section 2500 replaces the one set out in Section 2433. See also Section 2501. And two witnesses are required for use of a statutory form durable power of attorney for health care; acknowledgment before a notary is not permitted. Compare Civil Code § 2432(a)(2)(B) (acknowledgment before notary public). The last sentence of the fifth paragraph of the “warning” recognizes the authority given the court by Section 2412.5.

Civil Code § 2502. Formal requirements

Comment. Section 2502 is comparable to Section 2432. To be valid a statutory form durable power of attorney for health care must satisfy the requirements of both Section 2501 and 2502. It should be noted that a statutory form durable power of attorney for health care requires two witnesses and, unlike Section 2432, acknowledgment before a notary is not authorized.

Civil Code § 2503. Requirements for power of attorney to be a statutory form durable power of attorney for health care

Comment. Section 2503 permits use of a statutory form durable power of attorney for health care that omits portions of the form set out in Section 2500, such as, for example, the paragraph on “Duration.” However, if the form is one sold or distributed for use by a person who does not have a lawyer, the form must be exactly as set out in the statute with nothing omitted. Section 2503 also permits use of a printed statutory form that includes separate attached printed statements of desires, special provisions, and limitations if the person using the form so desires, such as, for example, a statement that the health care agent is to confer with specified members of the principal’s family who are reasonably

available before making specified health care decisions or a statement that the health care agent is authorized and directed to arrange for health care of the principal by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof. A separately printed statement of the principal's desires concerning life-prolonging care, treatment, services, and procedures may also be used. The statements of desires, special provisions, and limitations—whether or not printed—are, of course, subject to the provisions of Article 5 (commencing with Section 2430) of Chapter 2. See the introductory clause of Section 2500.

Civil Code § 2506. Limitation of authority of alternate agent

Comment. Section 2506 applies only where the authority of the agent in fact is terminated by the court. The section does not apply where the agent dies or otherwise is not available or becomes ineligible to act as agent or loses the mental capacity to make health care decisions for the principal or where the principal revokes the agent's appointment or authority. See Paragraph 9 (Designation of Alternate Agents) of statutory form set forth in Section 2500. Where the court terminates the authority of the agent, Section 2506 applies and the alternate agent is not authorized to act as agent unless the court so orders. However, in such case, the court is required to authorize the alternate agent to act unless the court finds that would not be in the best interests of the principal.

Civil Code § 2507. Right to use other power of attorney

Comment. Section 2507 makes clear that a person may use a durable power of attorney for health care that is not a statutory form durable power of attorney for health care under this chapter. The other durable power of attorney for health care—whether a printed form or a specially drafted document—must, of course, comply with the requirements of Sections 2430–2443 and is subject to the provisions of those sections.

APPENDIX IV

COMMUNICATION OF LAW REVISION COMMISSION CONCERNING SENATE BILL 1366

[Extract from Assembly Journal for August 30, 1984 (1983-84 Regular Session)]

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assembly Member McAlister was granted unanimous consent that the following communication be printed in the Journal:

California Law Revision Commission
August 9, 1984

*Mr. James D. Driscoll, Chief Clerk
California State Assembly
State Capitol
Sacramento, California*

*Communication from California Law Revision Commission
Concerning Assembly Bills 1460 and 2274 and Senate Bill 1366*

Dear Mr. Driscoll: Assembly Bills 1460 and 2274 and Senate Bill 1366 were introduced to effectuate recommendations of the California Law Revision Commission. The bills were amended after introduction. The comments contained in the Law Revision Commission recommendations to the various sections of these bills as passed by the Legislature remain applicable except to the extent they are superseded by the new and revised comments set out in communications from the Law Revision Commission on file with the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and the office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

Communication Concerning Senate Bill 1366

Senate Bill 1366 was introduced to effectuate the California Law Revision Commission's *Revised Recommendation Relating to Dismissal for Lack of Prosecution*, 17 Cal. L. Revision Comm'n Reports 905 (1984). The Comments in the Commission's recommendation are replaced or supplemented by the revised or new Comments set out below.

Code of Civil Procedure § 581a (repealed)

Comment. The substance of the first portions of subdivisions (a) and (b) of former Section *581a is continued in Sections 583.210 (time for service), 583.220 (general appearance), and

583.250 (mandatory dismissal), but return is required within 60 days after expiration of the three-year period. The substance of the last portions of subdivisions (a) and (b) is continued in Sections 583.230 (extension of time) and 583.240 (computation of time).

Subdivision (c) is not continued. The provision was not well understood, was unduly inflexible, and was subject to numerous implied exceptions in the case law. Whether a default must be entered or judgment taken within a particular time is a matter for judicial determination pursuant to inherent authority. Rules governing the matter may be adopted pursuant to Section 575.1.

The substance of subdivision (d) is continued in subdivision (a) of Section 583.240 (computation of time).

The substance of subdivision (e) is continued in Section 583.220 (general appearance).

The substance of subdivision (f) is continued in Sections 583.140 (waiver and estoppel), 583.240 (computation of time), and 583.250 (mandatory dismissal). The portion of subdivision (f) that declared the times to be jurisdictional is superseded by Section 583.250 (mandatory dismissal).

Code of Civil Procedure § 583.110. Definitions

Comment. Subdivision (a) of Section 583.110 supersedes subdivision (e) of former Section 583. It implements the policy of permitting separate treatment of individual parties and causes of action, where appropriate. See, *e.g.*, *Innovest, Inc. v. Bruckner*, 122 Cal. App.3d 594, 176 Cal. Rptr. 90 (1981) (dismissal of cross-complaint). As used in this chapter, “action” does not include a statement of interest in or claim to property made solely in a responsive pleading. Subdivisions (b), (c), (d); (e), and (f) are new.

Code of Civil Procedure § 583.160. Transitional provisions

Comment. Section 583.160 expresses the legislative policy of making the provisions of this chapter immediately applicable to the greatest extent practicable, subject to limitations to avoid disturbing prior dismissals and pending motions for dismissal, and subject to a one-year phase-in to avoid any trap for a party in pending litigation.

Code of Civil Procedure § 583.210. Time for service and return of summons

Comment. Section 583.210 is drawn from the first portions of subdivisions (a) and (b) of former Section 581a. Unlike the former provisions, Section 583.210 extends the time for return of summons until 60 days after the time for service in order to allow for delays that could occur.

For exceptions and exclusions, see Sections 583.220 (general appearance), 583.230 (extension of time), and 583.240 (computation of time). Section 583.210 is consistent with Section 411.10 (civil action commenced by filing complaint) and applies to a cross-complaint from the time the cross-complaint is filed. See Section 583.110 (“action” and “complaint” defined). Section 583.210 applies to a defendant sued by a fictitious name from the time the complaint is filed and to a defendant added by amendment of the complaint from the time the amendment is made. See, *e.g.*, *Austin v. Mass. Bonding & Ins. Co.*, 56 Cal.2d 596, 364 P.2d 681, 15 Cal. Rptr. 817 (1961); *Elling Corp. v. Superior Court*, 48 Cal. App.3d 89, 123 Cal. Rptr. 734 (1975); *Warren v. A.T. & S.F. Ry. Co.*, 19 Cal. App.3d 24, 96 Cal. Rptr. 317 (1971); *Lesko v. Superior Court*, 127 Cal. App.3d 476, 179 Cal. Rptr. 595 (1982).

Code of Civil Procedure § 583.250. Mandatory dismissal

Comment. Subdivision (a) of Section 583.250 continues the substance of the first portions of subdivisions (a) and (b) of former Section 581a. The provisions of this subdivision are subject to waiver and estoppel. See Section 583.140 (waiver and estoppel). Subdivision (b) continues the substance of a portion of former Section 581a(f), making clear the meaning of “jurisdictional” as it was used in the former provision. Court action in violation of this article is voidable and subject to direct review, but is not void so as to render it subject to collateral attack.

Code of Civil Procedure § 583.350. Extension where less than six months remains

Comment. Section 583.350 provides an extension of time for a plaintiff to bring an action to trial where a period of tolling operates in such a way that at the end of the period the plaintiff would have less than six months to obtain a trial. In this situation the plaintiff has six months within which to bring the action to trial. Section 583.350 is consistent with the rule applicable to

judicial arbitration. Section 1141.17. It is intended to cure problems, other than those involving judicial arbitration, where the statutory period in which to bring the action to trial is extended pursuant to statute. See, e.g., Section 583.340 (computation of time).

Code of Civil Procedure § 583.420. Time for discretionary dismissal

Comment. Subdivision (a)(1) of Section 583.420 continues the substance of former Section 583(a) as it related to the authority of the court to dismiss for delay in making service. See, e.g., *Black Bros. Co. v. Superior Court*, 265 Cal. App.2d 501, 71 Cal. Rptr. 344 (1968) (two-year discretionary dismissal statute applicable to dismissal for delay in service) (disapproved on other grounds in *Denham v. Superior Court*, 2 Cal.3d 557, 468 P.2d 193, 86 Cal. Rptr. 65 (1970)).

Subdivision (a)(2) increases to three years the two-year discretionary dismissal period of former Section 583(a) for delay in bringing to trial, but the Judicial Council is authorized to adopt a rule providing a two-year discretionary dismissal period for any or all courts. A rule permitting a motion to dismiss after two years may be desirable, for example, in courts in which the calendar is such that a motion for discretionary dismissal made after two years would sometimes be appropriate.

Subdivision (a)(3) codifies the effect of cases stating the authority of the court to dismiss for delay in bringing to a new trial under inherent power of the court. See, e.g., *Blue Chip Enterprises, Inc. v. Brentwood Sav. & Loan Ass'n*, 71 Cal. App.3d 706, 139 Cal. Rptr. 651 (1977).

Code of Civil Procedure § 1141.17 (technical amendment).

Tolling limitation on dismissal for lack of prosecution

Comment. Section 1141.17 is amended to correct section references. The rule stated in Section 1141.17 is consistent with Section 583.350 (extension where less than six months remains). Section 1141.17 supersedes the rule stated in *Moran v. Superior Court*, 35 Cal.3d 229, 673 P.2d 216, 197 Cal. Rptr. 546 (1983), that the time between the date the arbitration award is filed and the date set for the trial de novo is to be excluded from the calculation of the five-year dismissal period.

APPENDIX V

LETTER CLARIFYING LEGISLATIVE INTENT OF ASSEMBLY BILL 781

[Extract from Senate Journal for February 9, 1984 (1983-84 Regular Session)]

MOTION TO PRINT IN JOURNAL

Senator Keene moved that the following letter be printed in the Journal.

Motion carried.

California Law Revision Commission
Palo Alto, January 27, 1984

Richard Thomson, Chief Counsel
Senate Committee on Judiciary

Re: Assembly Bill 781, as Amended

Dear Mr. Thomson: You asked that I advise whether Assembly Bill 781, as amended, would have any effect on the rights of those who succeed to the estate of the support obligor upon the death of the support obligor. The bill will have no effect on these rights.

Section 4801 of the Civil Code provides:

Except as otherwise agreed by the parties in writing, the obligation of any party under any order or judgment for the support and maintenance of the other party shall terminate upon the death of either party or the remarriage of the other party.

This provision remains unchanged by Assembly Bill 781. The only effect of the additional language added by Assembly Bill 781 is to authorize the court in an appropriate case to take into account the cost of insurance in setting the *amount* of support. This cost is only one of many factors that are taken into account in setting the amount of support under Section 4801 of the Civil Code. The additional language does *not extend* the time a support order remains in effect. The existing law is continued that the support order terminates when the support obligor dies unless the parties have otherwise agreed in writing.

Sincerely,

John H. DeMouly, Executive Secretary

APPENDIX VI
COMMUNICATION OF
LAW REVISION COMMISSION
CONCERNING ASSEMBLY BILL 1460

[Extract from Assembly Journal for August 30, 1984 (1983-84 Regular Session)]

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assembly Member McAlister was granted unanimous consent that the following communication be printed in the Journal:

California Law Revision Commission
August 9, 1984

*Mr. James D. Driscoll, Chief Clerk
California State Assembly
State Capitol
Sacramento, California*

*Communication from California Law Revision Commission
Concerning Assembly Bills 1460 and 2274 and Senate Bill 1366*

Dear Mr. Driscoll: Assembly Bills 1460 and 2274 and Senate Bill 1366 were introduced to effectuate recommendations of the California Law Revision Commission. The bills were amended after introduction. The comments contained in the Law Revision Commission recommendations to the various sections of these bills as passed by the Legislature remain applicable except to the extent they are superseded by the new and revised comments set out in communications from the Law Revision Commission on file with the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and the office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

Communication Concerning Assembly Bill 1460

Assembly Bill 1460 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Liability of Marital Property for Debts*, 17 Cal. L. Revision Comm'n Reports 1 (1984). The Comments in the Commission's recommendation are replaced or supplemented by the revised and new Comments set out below.

Civil Code § 4800 (amended)

Comment. A provision is added to Section 4800(b) to make clear the court's discretion to allocate debts in a way that will protect the rights of creditors. However, the division of debts

must be made in such a manner that the totals of the assets awarded to the parties after deduction of the obligations allocated to the parties are equal. See, *e.g.*, *In re Marriage of Fonstein*, 17 Cal.3d 738, 552 P.2d 1169, 131 Cal. Rptr. 873 (1976) (equal division required); *In re Marriage of Schultz*, 105 Cal. App.3d 846, 164 Cal. Rptr. 653 (1980) (court has no discretion to adjust the division of residual assets to reflect equitable considerations). This does not affect *In re Marriage of Eastis*, 47 Cal. App.3d 459, 120 Cal. Rptr. 861 (1975) (equitable division in "bankrupt family" situation).

Civil Code § 5120.110. Liability of community property

Comment. Subdivision (a) of Section 5120.110 continues the substance of former Section 5116 (contracts after marriage) and the implication of Section 5122(b) (torts), and makes clear that the community property (other than earnings of the nondebtor spouse) is liable for the prenuptial contracts of the spouses. The nondebtor spouse need not be made a party for the purpose of enforcing a judgment out of community property. However, special procedural provisions may apply. See, *e.g.*, Code Civ. Proc. § 706.109 (wage garnishment). Subdivision (a) applies regardless whether the debt was incurred prior to, on, or after January 1, 1975. For rules governing liability after division of the community property, see Section 5120.160.

The introductory and concluding clauses of subdivision (a) are intended to negate the implication of language found in 1974 Cal. Stats. ch. 1206, § 1, p.2609, that community property is liable only for the debts of the spouse having management and control. The introductory and concluding clauses make clear that the community property is liable for all debts of either spouse absent an express statutory exception. Thus community property under the management and control of one spouse pursuant to Section 5125(d) (spouse operating or managing business) or Financial Code Section 851 (one spouse bank account) or 3051 (conservatorship) remains liable for the debts of the other spouse. For an express statutory exception from liability of community property, see subdivision (b) (premarital debts).

The first sentence of subdivision (b) continues the substance of a portion of former Section 5120 and extends it to include all debts, not just those based on contract. The second sentence codifies the rule that, for purposes of liability, earnings may not be traced through changes in form. See, *e.g.*, *Pfunder v. Goodwin*, 83 Cal. App. 551, 257 P. 119 (1927).

The second sentence of subdivision (b) also makes clear the extent to which paid earnings remain not liable. The effect of the new language is to protect a deposit account only where the nonobligor spouse has an account into which only his or her earnings and separate property or property of a third person are deposited (unless the amount of other community property deposited in the account

is insignificant). In such a situation, it is clear that the nonobligor spouse has carefully set aside his or her earnings and separate property and it is appropriate to continue the protection given the earnings. Where the account is commingled with any significant amount of other community property (such as the earnings of the other spouse or other community property income), the intent to segregate the earnings and separate property is not clear, and hence the protection is not continued. The same reasoning justifies not protecting the account where the obligor spouse has a right to withdraw funds from the account.

Section 5120.150 provides that a child or spousal support obligation that does not arise out of the marriage is to be treated as a debt incurred before marriage. Hence, such an obligation is governed by the provisions of Section 5120.110. If property sought to be applied to the satisfaction of a judgment for child support is liable for the payment of the judgment but is shown to be exempt, in determining under Section 703.070 of the Code of Civil Procedure the extent to which the exempt property nevertheless shall be applied to the satisfaction of the support judgment, the court shall take into account, among other relevant circumstances, all of the other property of the spouses, including the separate property of each and the earnings which are not liable for child support under subdivision (b) of Section 5120.110. Although Section 703.070 of the Code of Civil Procedure requires the court to take into account property which is not liable under subdivision (b) of Section 5120.110, Section 703.070 does not make the property described in subdivision (b) of Section 5120.110 liable for payment of the support judgment. Nothing in Section 5120.110 limits or affects the payment under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of the Code of Civil Procedure of a claim based on a judgment for child support, whether the money to be applied to the claim is owed to the judgment debtor alone or to the judgment debtor and the spouse of the judgment debtor. This is clear because the protection for earnings after payment extends only to earnings deposited in a deposit account that meets the requirements of subdivision (b) of Section 5120.110.

Civil Code § 5120.130. Liability of separate property

Comment. Subdivision (a) of Section 5120.130 continues the substance of a portion of former Section 5121 (contracts) and the implication of Section 5122(b) (torts).

Subdivision (b) (1) continues the substance of former Section 5120 (prenuptial contracts), a portion of former Section 5121 (contracts after marriage), and the implication of Section 5122(b) (torts). Subdivision (b) (2) supersedes former Section 5123 (liability of separate property for debt secured by community property). *Cf. Carroll v. Puritan Leasing Co.*, 77 Cal. App.3d 481, 143 Cal. Rptr. 772 (1978). For an exception to the rule of subdivision (b), see Section 5120.140 (liability for necessities).

Civil Code § 5120.140. Liability for necessities

Comment. Section 5120.140 is an exception to the rule of Section 5120.130 that the separate property of a spouse is not liable for a debt of the other spouse incurred during marriage. The separate property of a spouse may not be subjected to process by necessities creditors of the other spouse unless the spouse is made a party for the purpose of enforcing the liability. See, *e.g.*, former Section 5121 (b); *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912); *Credit Bureau of Santa Monica Bay Dist. v. Terranova*, 15 Cal. App.3d 854, 93 Cal. Rptr. 538 (1971).

Subdivision (a) (1) continues the substance of a portion of former Section 5121, but eliminates the implication that the necessities must have been contracted for. See, *e.g.*, *Credit Bureau of San Diego v. Johnson*, 61 Cal. App.2d Supp. 834, 142 P.2d 963 (1943) (medical care not contracted by either spouse). Subdivision (a) (1) is consistent with Section 5132 (support obligation while spouses live together) but does not require exhaustion of community property before separate property of a nondebtor spouse can be reached. But see subdivision (b) (reimbursement).

Subdivision (a) (2) applies where the spouses are living separate not by agreement, as where one spouse leaves without an agreement between the spouses to live separate and apart. Compare Section 5131, which abrogates the obligation of support between spouses living separate by agreement, unless support is stipulated in the agreement. Nothing in subdivision (a) (2) should be deemed to limit the obligation of a spouse for support pursuant to a court order *pendente lite* or in a judgment decreeing the legal separation of the spouses. A spouse who desires to limit the liability pursuant to subdivision (a) (2), or a spouse who desires a greater support obligation than provided in subdivision (a) (2), may seek a support order, which supersedes liability under subdivision (a) (2).

Subdivision (a) (2) also abolishes the "station in life" test of cases such as *Wisnom v. McCarthy*, 48 Cal. App. 697, 192 P. 337 (1920) (maid necessary because of economic and social position of spouses), in determining what is a necessary of life; the separate property of the nondebtor spouse is liable only for debts for the "common" necessities of life of the other spouse while living separate. *Cf. Ratzlaff v. Portillo*, 14 Cal. App.3d 1013, 92 Cal. Rptr. 722 (1971) ("common" necessary is necessary required to sustain life).

Subdivision (b) implements a portion of former Sections 5121 and 5132 (order of satisfaction out of marital property). For

general provisions governing reimbursement, see Section 5120.210.

Civil Code § 5120.150. Liability for support obligation

Comment. Subdivision (a) of Section 5120.150 makes clear that a support obligation that arises before the marriage is a prenuptial debt for purposes of liability of marital property. As a result, the general rule is that the separate property of the obligor spouse and the community property of the marriage is liable for the support obligation, other than the earnings of the non-obligor spouse. See Section 5120.110 (liability of community property). Subdivision (a) also applies to an extramarital support obligation of a spouse that arises during the marriage.

Subdivision (b) codifies the rule of *Weinberg v. Weinberg*, 67 Cal.2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967), that the community is entitled to reimbursement, but prescribes a fixed measure for the community reimbursement based on the separate income of the obligor spouse. See also *Bare v. Bare*, 256 Cal. App.2d 684, 64 Cal. Rptr. 335 (1967); *In re Marriage of Smaltz*, 82 Cal. App.3d 568, 147 Cal. Rptr. 154 (1978).

Subdivision (c) makes clear that despite the general rule that earnings of the non-obligor spouse are not liable for the support obligation, the earnings of the spouses of both parties may be taken into account by the court in setting the amount of the support obligation. This codifies existing law. See, e.g., *In re Marriage of Havens*, 125 Cal. App.3d 1012, 178 Cal. Rptr. 477 (1981).

Civil Code § 5120.160. Liability of property after division

Comment. Section 5120.160 prescribes rules of liability of former community and quasi-community property and former separate property following a division of the property pursuant to a court judgment of separation, dissolution, or later division.

Subdivision (a) (1) states the rule that the rights of a creditor against the property of a debtor are not affected by assignment of the debt to the other spouse for payment pursuant to a property division. A creditor who is not paid may seek to satisfy the debt out of property of the debtor. Former law on this point was not clear. The debtor in such a case will have a right of reimbursement against the former spouse pursuant to subdivision (b).

Paragraphs (2) and (3) of subdivision (a) reverse the case law rule that a creditor may seek enforcement of a money judgment

against the former community property in the hands of a nondebtor spouse after dissolution of the marriage. See, e.g., *Bank of America N.T. & S.A. v. Mantz*, 4 Cal.2d 322, 49 P.2d 279 (1935). Subdivision (a) (2) makes clear that former community property received by the nondebtor spouse at division is liable only if the nondebtor spouse is assigned the debt in division. In the case of a judgment entered after the division of property, the nondebtor spouse must be made a party for due process reasons. If the property division calls for the one spouse to pay the debt and the creditor satisfies the judgment out of property of the other spouse, the other spouse will have a right of reimbursement pursuant to subdivision (b). Subdivision (a) (2) does not affect enforceability of liens on the property. See, e.g., *Kinney v. Vallentyne*, 15 Cal.3d 475, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

Subdivision (b) states the rule as to reimbursement where a debt is satisfied out of the property of a spouse other than the spouse to whom the debt was assigned pursuant to a property division. Former law on this point was not clear. For general provisions governing reimbursement, see Section 5120.210 (reimbursement). This subdivision is not intended to authorize reimbursement if reimbursement is precluded under Title 11 of the United States Code (Bankruptcy) by discharge of the debt in a case concerning the married person's spouse. *Cf. In re Marriage of Clements*, 134 Cal. App.3d 737, 184 Cal. Rptr. 756 (1982).

Civil Code § 5120.210. General provisions

Comment. Section 5120.210 limits reimbursement rights to a three-year enforceability period after discovery of the application of the property to the satisfaction of the debt, or less if a dissolution occurs before the end of the three-year period. *Contrast* *Weinberg v. Weinberg*, 67 Cal.2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967) (community property applied to support payments entitled to reimbursement at dissolution); *In re Marriage of Walter*, 57 Cal. App.3d 802, 129 Cal. Rptr. 351 (1976) (community property applied to separate tax and mortgage debts entitled to reimbursement at dissolution). Under Section 5120.210, the reimbursement right applies even though the spouse seeking reimbursement may have satisfied or consented to satisfaction of the debt out of a particular type of property, unless the spouse expressly waived in writing the reimbursement right. *Contrast In re Marriage of Smaltz*, 82 Cal. App.3d 568, 147

Cal. Rptr. 154 (1978) (no reimbursement where community property applied to support payments and no separate property available to make payments).

Civil Code § 5122 (amended)

Comment. Subdivision (c) is added to Section 5122 to limit the order of satisfaction requirement to liabilities not covered by insurance. Subdivision (c) also imposes a seven-year limitation period on any reimbursement right implied by the order of satisfaction requirement. *Cf. In re Marriage of Stitt*, 147 Cal. App.3d 579, 195 Cal. Rptr. 172 (1983).

Civil Code § 5127.6 (repealed)

Comment. Former Section 5127.6 is superseded by Sections 5120.110 (liability of community property), 5120.130 (liability of separate property), and 5120.150 (liability for support obligation). Repeal of Section 5127.6 is not intended to affect any consideration of the earnings of a person's spouse under AFDC regulations. See Welf. & Inst. Code § 11008.14.

Code of Civil Procedure § 706.109 (added)

Comment. Section 706.109 recognizes that despite the general rule that community property is liable for debts of a spouse, community property earnings are unique and may not be liable in some situations. See, *e.g.*, Civil Code § 5120.110 (liability of community property). For this reason an earnings withholding order against the spouse of the judgment debtor may only be issued upon noticed motion.

APPENDIX VII
REPORT OF
SENATE COMMITTEE ON JUDICIARY
ON ASSEMBLY BILL 2270

[Extract from Senate Journal for June 14, 1984 (1983-84 Regular Session)]

Assembly Bill 2270 was introduced to effectuate three recommendations of the California Law Revision Commission. See Recommendation Relating to Independent Administration of Decedent's Estate, 17 Cal. L. Revision Comm'n Reports 405 (1984); Recommendation Relating to Distribution of Estates Without Administration, 17 Cal. L. Revision Comm'n Reports 421 (1984); Recommendation Relating to Bonds for Personal Representatives, 17 Cal. L. Revision Comm'n Reports 483 (1984). The intent of the Senate Committee on Judiciary in approving Assembly Bill 2270 is reflected by the new and revised comments set out below, and, with respect to the comments which are not revised below, by the comments in the Law Revision Commission recommendations.

Probate Code § 462. Bond and oath of special administrator

Comment. Paragraph (1) of subdivision (c) of Section 462 permits the court to dispense with bond of the special administrator where all the persons interested in the estate waive the filing of bond. Paragraph (2) of subdivision (c) requires the court to dispense with bond where the will waives bond for the executor who is appointed special administrator; but, even though the will waives bond, the court nevertheless, for good cause, can require a bond. See Section 543. Subdivision (c) is drawn in part from subdivision (b) of Section 541 (bond of person to whom letters testamentary or of administration are directed to issue). The revisions of subdivisions (a) and (b) make no substantive change.

Probate Code § 541. Bond of executor or administrator

Comment. Subdivision (a) of Section 541 is amended to require that income from personal property be taken into account in fixing the amount of bond for personal sureties, the same as for an admitted surety insurer. Under former law, income from real and personal property was considered in setting bond for an admitted surety insurer, but only income from real property was considered in setting bond for personal sureties. Subdivision (a) is amended to refer to "gross" income, consistent with usage in the Judicial Council Form for the Petition for Probate (revised effective January 1, 1981). The former language requiring the court to ascertain the value of personal property and probable income by examining on oath the party applying and any other persons when the bond is to be given by personal sureties has been deleted as unnecessary.

Subdivision (b) is amended (1) to require the waivers to be in writing and attached to the petition and (2) to require the court (by

substituting "shall" for "may") to dispense with bond if properly waived unless good cause is shown to require bond under Section 543. The other revisions in subdivision (b) are not substantive.

Probate Code § 543. Requiring bond or increased bond notwithstanding provision in will or prior court direction

Comment. The first sentence of Section 543 is amended (1) to add a reference to Section 462 which dispenses with bond for a special administrator under specified circumstances and (2) to make clear that the court, for good cause, may require bond even though all the beneficiaries or all the heirs have waived bond under Section 462 or 541.

The second sentence of Section 543 is new, and makes clear that a request for bond by a beneficiary under the decedent's will, or by an heir of the decedent if there is no will, is itself good cause to require a bond sufficient to protect the interest of that beneficiary or heir.

Probate Code § 608.5. Objection to appraisal

Comment. Section 608.5 is new and is drawn from former Sections 14510-14513 of the Revenue and Taxation Code. See also Section 927 (exceptions to account, including objection to appraisal).

Probate Code § 630. Collection of decedent's personal property by affidavit

Comment. Section 630 is amended to do the following:

(1) To increase the maximum estate value for use of the affidavit procedure from \$30,000 to \$60,000.

(2) To make clear that the \$60,000 maximum estate value refers to gross value (not gross value less liens and encumbrances on the property), less the specific exclusions set forth in Section 630. Prior law was not clear.

(3) To permit use of the affidavit procedure notwithstanding the presence in the estate of a real property interest of a gross value of \$10,000 or less.

(4) To add a grandparent of the decedent to the list of the decedent's relatives who may use the affidavit procedure.

(5) To add the last sentence to subdivision (b) to make clear that the limitation that only personal property may be collected under this section is continued. The reference to "tangible" personal property and evidences of an "obligation", "stock", or "chase in action" in subdivision (b) is drawn from Section 3-1201 of the Uniform Probate Code and is clarifying. The word "issue" has been substituted for "lawful issue" in subdivision (b) to conform to the provisions relating to intestate succession. See Sections 6408 and 6408.5.

(6) To add subdivision (c) to make clear that a custodian nominated by the decedent's will to receive a bequest under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state may collect the bequest as provided in this section.

(7) To add subdivision (d), which is drawn from Uniform Probate Code Section 3-1201. The provision in subdivision (d) protecting the transfer agent from liability is consistent with Section 631.

(8) To add subdivision (e) to avoid the need for a public administrator to commence proceedings for probate or administration in order to be reimbursed for the costs and fees described in Section 1144.5.

Probate Code § 933. Waiver of accounting

Comment. Section 933 is new and codifies case law authority for waiver of the account. See *Middlecoff v. Superior Court*, 149 Cal. 94, 84 P. 764 (1906). Section 933 is drawn from and supersedes local probate rules.

Under paragraph (2) of subdivision (b), a waiver may be made on behalf of a minor by the minor's parent or guardian of the estate. The minor's parent or guardian of the estate is the person authorized to receive money or property belonging to the minor. See Sections 3400-3402. If waiver is by the guardian of the estate of the minor, approval of the guardianship court is not required. Formerly, under some local probate rules, either court approval was required or waiver of the account could not be made by or on behalf of a minor. Similarly, a conservator of the estate may waive the account without approval of the conservatorship court.

Paragraph (4) of subdivision (b) permits a trustee who has consented to act to waive the account on behalf of the trust. Formerly, some local probate rules provided either that all beneficiaries of the trust were required to join in waiving the account or that an account could not be waived on behalf of a trust.

A guardian, conservator, trustee, or personal representative who waives accounting under this section acts in a fiduciary capacity and is held to the same standard as applies to other actions taken in the fiduciary capacity. See generally Civil Code § 2228 (trustee); Prob. Code §§ 571, 920 (personal representative), 2401 (guardian or conservator).

Probate Code § 1200.5. Notice

Comment. Subdivision (a) of Section 1200.5 is amended to require notice of the filing of an objection to an appraisal. Objection to an appraisal is provided for in Section 608.5.

Probate Code § 2628. Order dispensing with accounting in case of small estate

Comment. Subdivision (b) of Section 2628 is amended (1) to exclude value of the residence of the ward or conservatee in determining the value of the property in the estate for the purposes of Section 2628, (2) to increase the maximum value of the estate for application of this section from \$2,000 to \$5,000, and (3) to increase the maximum monthly income from \$150 to \$300. These revisions broaden the discretionary authority of the court to make an order under this section that the guardian or conservator need not present accounts.

Section 21. Transitional provision

Comment. Section 21 makes clear that the amendments to the Independent Administration Act do not automatically apply where independent administration authority was granted prior to the operative date of this act. This is to protect an affected person who would have objected to the granting of independent administration authority if it had been petitioned for under the Independent Administration of Estates Act as amended by this act. Subdivision (b) permits the executor or administrator to petition for independent administration authority after the operative date of this act, even though independent administration authority was granted prior to the operative date. If the petition is granted, the amendments made by this act apply, including but not limited to the new provisions giving expanded independent administration authority and providing that an objection to a proposed action is waived if not timely made.

APPENDIX VIII

COMMUNICATION OF LAW REVISION COMMISSION CONCERNING ASSEMBLY BILL 2274

[Extract from Assembly Journal for August 30, 1984 (1983-84 Regular Session)]

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assembly Member McAlister was granted unanimous consent that the following communication be printed in the Journal:

California Law Revision Commission
August 9, 1984

*Mr. James D. Driscoll, Chief Clerk
California State Assembly
State Capitol
Sacramento, California*

*Communication from California Law Revision Commission
Concerning Assembly Bills 1460 and 2274 and Senate Bill 1366*

Dear Mr. Driscoll: Assembly Bills 1460 and 2274 and Senate Bill 1366 were introduced to effectuate recommendations of the California Law Revision Commission. The bills were amended after introduction. The comments contained in the Law Revision Commission recommendations to the various sections of these bills as passed by the Legislature remain applicable except to the extent they are superseded by the new and revised comments set out in communications from the Law Revision Commission on file with the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and the office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

Communication Concerning Assembly Bill 2274

Assembly Bill 2274 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984). The revised Comments set out below supplement the Comment in the Commission's recommendation to Civil Code Section 5110.740.

Civil Code § 5110.710. Transmutation of character of property

Comment. Section 5110.710 codifies the basic rule that spouses may transmute the character of community or separate

property. See, *e.g.*, Reppy, *Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage*, 18 San Diego L. Rev. 143 (1981). In addition to the limitations on transmutation provided in Sections 5110.720 to 5110.740, inclusive, the spouses are subject to the general rules governing the validity of agreements and transfers as well as the special rules that control the actions of persons occupying confidential relations with each other. See Section 5103. The characterization of community and separate property may be affected by a general marital property agreement, antenuptial or otherwise, as well as by a transmutation of specific property.

Civil Code § 5110.720. Fraudulent conveyance laws apply

Comment. Section 5110.720 codifies existing law. *Cf.* *Bailey v. Leeper*, 142 Cal. App.2d 460, 298 P.2d 684 (1956) (transfer of property from husband to wife); *Frankel v. Boyd*, 106 Cal. 608, 614, 39 P. 939, 941 (1895) (dictum); *Wikes v. Smith*, 465 F.2d 1142 (1972) (bankruptcy).

Civil Code § 5110.730. Form of transmutation

Comment. Section 5110.730 imposes formalities on interspousal transmutations for the purpose of increasing certainty in the determination whether a transmutation has in fact occurred. Section 5110.730 makes clear that the ordinary rules and formalities applicable to real property transfers apply also to transmutations of real property between the spouses. See Civil Code §§ 1091 and 1624 (statute of frauds), 1213-1217 (effect of recording). This overrules existing case law. See, *e.g.*, *Woods v. Security First Nat'l Bank*, 46 Cal.2d 697, 701, 299 P.2d 657, 659 (1956). Section 5110.730 also overrules existing law that permits oral transmutation of personal property; however, transmutation by gift of certain personal property is recognized.

APPENDIX IX
COMMUNICATION OF
LAW REVISION COMMISSION
CONCERNING ASSEMBLY BILL 2276

[Extract from Assembly Journal for July 3, 1984 (1983-84 Regular Session)]

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assembly Member McAlister was granted unanimous consent that the following communication be printed in the Journal:

California Law Revision Commission
Palo Alto, July 3, 1984

*Mr. James D. Driscoll, Chief Clerk
California State Assembly
State Capitol
Sacramento, California*

Communication from California Law Revision Commission
Concerning
Assembly Bills 2276, 2282, 2290, and 2295

Dear Mr. Driscoll: Assembly Bills 2276, 2282, 2290, and 2295 were introduced to effectuate recommendations of the California Law Revision Commission. The bills were amended after introduction. The comments contained in the Law Revision Commission recommendations to the various sections of these bills as passed by the Legislature remain applicable except to the extent they are superseded by the new and revised comments set out in communications from the Law Revision Commission on file with the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and the office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

Communication Concerning Assembly Bill 2276

Assembly Bill 2276 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Severance of Joint Tenancy*, 17 Cal. L. Revision Comm'n Reports 941 (1984). The revised Comment set out below replaces the Comment in the recommendation.

Civil Code § 683.2 (added)

Comment. Subdivision (a) of Section 683.2 codifies case law holdings that a "strawman" conveyance is not necessary to sever a real property joint tenancy by unilateral act of a joint

tenant. See, *e.g.*, *Riddle v. Harmon*, 102 Cal. App.3d 524, 162 Cal. Rptr. 530 (1980). The severance may be by deed of the joint tenant to himself or herself or by a declaration or other severing instrument. The effect of the severance as between the severing joint tenant and the other joint tenants is that a tenancy in common relationship exists, without the right of survivorship. The remaining joint tenants continue to hold title as joint tenants among themselves.

The severing deed or declaration must be in writing, and may be executed in the same manner as any other instrument, including subscription by the joint tenant or by the joint tenant's agent pursuant to written authority. Proof or acknowledgment of the instrument may be necessary if the instrument is to be recorded.

The methods of severing a joint tenancy prescribed in this section are not exclusive. See, *e.g.*, Code Civ. Proc. § 872.210 (partition of property owned by several persons concurrently). This section is intended to apply only to true joint tenancy property and not community property of married persons that appears of record in joint tenancy form.

APPENDIX X

**REPORT OF
SENATE COMMITTEE ON JUDICIARY
ON ASSEMBLY BILL 2278**

[Extract from Senate Journal for June 14, 1984 (1983-84 Regular Session)]

In order to indicate more fully its intent with respect to Assembly Bill 2278, the Senate Committee on Judiciary makes the following report.

Assembly Bill 2278 was introduced to effectuate the California Law Revision Commission's Recommendation Relating to Dormant Mineral Rights, 17 Cal. L. Revision Comm'n reports 957 (1984). Except for the revised comment set out below, the Law Revision Commission Comments to the provisions of Assembly Bill 2278 reflect the intent of the Senate Committee on Judiciary in approving Assembly Bill 2278. The revised comment set out below also reflects the intent of the committee in approving this bill.

§ 883.250. Late recordation of notice

Comment. Section 883.250 enables a mineral right owner to preserve the mineral right after commencement of an action to terminate the right by filing a late notice of intent to preserve the interest. This authority is conditioned upon payment of the property owner's litigation expenses. If the mineral rights are fractionated, the mineral right owner must pay only the fraction of litigation expenses that corresponds to the mineral rights preserved. Litigation expenses include disbursements made for title reports and other disbursements made in preparation for the litigation as well as court costs and attorneys fees incurred in connection with the litigation.

APPENDIX XI

COMMUNICATION OF LAW REVISION COMMISSION CONCERNING ASSEMBLY BILL 2282

[Extract from Assembly Journal for July 3, 1984 (1983-84 Regular Session)]

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assembly Member McAlister was granted unanimous consent that the following communication be printed in the Journal:

California Law Revision Commission
Palo Alto, July 3, 1984

*Mr. James D. Driscoll, Chief Clerk
California State Assembly
State Capitol
Sacramento, California*

Communication from California Law Revision Commission
Concerning
Assembly Bills 2276, 2282, 2290, and 2295

Dear Mr. Driscoll: Assembly Bills 2276, 2282, 2290, and 2295 were introduced to effectuate recommendations of the California Law Revision Commission. The bills were amended after introduction. The comments contained in the Law Revision Commission recommendations to the various sections of these bills as passed by the Legislature remain applicable except to the extent they are superseded by the new and revised comments set out in communications from the Law Revision Commission on file with the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and the office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

Communication Concerning Assembly Bill 2282

Assembly Bill 2282 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Garnishment of Amounts Payable to Trust Beneficiary*, 17 Cal. L. Revision Comm'n Reports 471 (1984). The Comment in the Commission's recommendation is replaced by the revised Comment set out below.

**Code of Civil Procedure § 709.010 (amended).
Enforcement against trusts**

Comment. Section 709.010 is amended to add subdivisions (c), (d), and (e), and to conform subdivision (f).

Under subdivision (c), the exempt portion of periodic payments from a spendthrift or support trust to a judgment debtor is determined in a manner consistent with the Wage Garnishment Law. The Wage Garnishment Law provides a formula for determining the amount to be paid to the judgment creditor. In the case of an ordinary judgment, the amount is determined by Section 706.050. Where the trust beneficiary can show that a greater amount is necessary for his or her support or the support of his or her dependents, the trust beneficiary may claim an exemption under Section 706.051. Where the execution is to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor, the amount to be withheld is determined by Section 706.052. See also Sections 706.074 and 706.076. The exempt portion is the amount that the court determines is substantially equivalent to the amount that would be exempt under the Wage Garnishment Law. Exact equivalence to wage garnishment standards is not required.

Subdivision (c) provides that the withholding order continues in effect until the judgment is satisfied unless the order otherwise provides or the order is modified or terminated. This precludes another creditor from reaching payments to the trust beneficiary while the court order is in effect; but, as is the case under the Wage Garnishment Law, a creditor with a higher priority may obtain a court order giving the creditor priority over the first order. *Cf.* Section 706.030 (priority of withholding order for support). The last sentence of subdivision (c) makes clear that the subdivision does not limit the rights of a public entity seeking reimbursement for support provided to a trust beneficiary. See *Estate of Lackmann*, 156 Cal. App.2d 674, 320 P.2d 186 (1958).

Subdivision (d) delays the effective date of the order for 30 days after service to allow time for the trustee to obtain modification or clarification of provisions of the order if necessary. But the court may include in its order specific provisions that become effective immediately. For example, the court might include in its order a provision taking immediate effect and directing that the trustee shall make no unusual payments to beneficiaries. Such an immediately effective provision would prevent the trustee from defeating the purpose of the order during the 30-day period before the remainder of the order becomes effective. The provision that the trustee is not required to pay any filing fee is drawn from the second sentence of subdivision (b) of Section 4363.1 of the Civil Code. Most of the

remainder of subdivision (d) is drawn from subdivisions (d) and (e) of Section 4363.2 of the Civil Code.

The last sentence of subdivision (d) makes clear that the right of the trustee to petition the court for instructions under the Probate Code is not limited by subdivision (d). See, *e.g.*, Prob. Code §§ 1120, 1138.1. The trustee may petition for instructions under the Probate Code whether or not the 30-day period specified in subdivision (d) has expired.

Under subdivision (e), the trustee has no duty to appear in a proceeding under this section, to oppose the petition, to make any claim of exemption for the beneficiary, or to do anything other than to comply with the court's order. The trustee incurs no liability for complying with the court's order.

Subdivision (f) makes clear that this section does not affect the provisions of Civil Code § 859 except as otherwise provided in subdivisions (c), (d), and (e).

APPENDIX XII

COMMUNICATION OF LAW REVISION COMMISSION CONCERNING ASSEMBLY BILL 2290

[Extract from Assembly Journal for July 3, 1984 (1983-84 Regular Session)]

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assembly Member McAlister was granted unanimous consent that the following communication be printed in the Journal:

California Law Revision Commission
Palo Alto, July 3, 1984

*Mr. James D. Driscoll, Chief Clerk
California State Assembly
State Capitol
Sacramento, California*

Communication from California Law Revision Commission Concerning Assembly Bills 2276, 2282, 2290, and 2295

Dear Mr. Driscoll: Assembly Bills 2276, 2282, 2290, and 2295 were introduced to effectuate recommendations of the California Law Revision Commission. The bills were amended after introduction. The comments contained in the Law Revision Commission recommendations to the various sections of these bills as passed by the Legislature remain applicable except to the extent they are superseded by the new and revised comments set out in communications from the Law Revision Commission on file with the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and the office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

Communication Concerning Assembly Bill 2290

Assembly Bill 2290 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Revision of Wills and Intestate Succession Law*, 17 Cal. L. Revision Comm'n Reports 537 (1984). The Comments in the Commission's recommendation are replaced or supplemented by the revised and new Comments set out below.

Civil Code § 226.12 (technical amendment). Notice to natural parent in case of stepparent adoption

Comment. Section 226.12 is amended to conform the notice to the provisions of Probate Code Sections 6408(a)(1) and 6408.5(a), the applicable inheritance provisions.

Civil Code § 5103 (technical amendment). Transactions between husband and wife

Comment. Section 5103 is amended to divide the section into two subdivisions and to add references to the Probate Code provisions that constitute exceptions to the rule stated in subdivision (b). The division of Section 5103 into two subdivisions facilitates reference in other sections to the rule stated in subdivision (b). See, *e.g.*, Prob. Code §§ 143, 144, 146. The deletion of the word “engagement” from subdivision (a) is not a substantive change.

Probate Code § 3 (repealed). Application of certain provisions where decedent died before January 1, 1985

Comment. Section 3, which was enacted by Chapter 842 of the Statutes of 1983, is repealed. Section 3 was to have become operative January 1, 1985. 1983 Cal. Stats. ch. 842, § 58. By this repeal, Section 3 does not become operative. Instead, former Section 3 is superseded by various codified transitional provisions scattered throughout the Probate Code, as well as various uncoded provisions. See Sections 105, 147, 150, 207, 226, 241, 257, 647.5, 649.6, 658, 665, 1055, 6103, 6122, 6226, 6247, 6330, 6390, 6414, 6580. The uncoded provisions are contained in the 1984 legislation which repealed Section 3.

Probate Code § 26 (technical amendment). Child

Comment. Section 26 is amended to delete the last clause of the section which excluded from the definition of “child” any person “who is only a stepchild, a foster child, a grandchild, or any more remote descendant.” The amendment does not make a substantive change; the deleted language has been omitted because it was unnecessary and was confusing. As was noted in the 1983 Legislative Committee Comment to Section 26 as originally enacted, a stepchild or foster child was not included within the definition of “child” *only* on the basis of that relationship, but could be included if the requirements of Section 6408 were met. Deletion of the last clause from Section 26 makes

it clearer that a stepchild or foster child may be included within the definition of "child" when the requirements of Section 6408 are met. See also Section 6152 (parent-child relationship for purposes of construing will).

Probate Code § 54 (technical amendment). Parent

Comment. Section 54 is amended to delete (1) the phrase "or who would be entitled to take if the child died without a will" and (2) the last clause of the section which excluded from the definition of "parent" any person "who is only a stepparent, foster parent, or grandparent." The first deletion eliminates unnecessary language and conforms Section 54 to Section 26 which does not contain similar language. The second deletion is not a substantive change, but the deleted language has been omitted because it was unnecessary and confusing. As was noted in the 1983 Legislative Committee Comment to Section 54 as originally enacted, a stepparent or foster parent was not included within the definition of "parent" *only* on the basis of that relationship, but could be included if the requirements of Section 6408 were met. Deletion of the last clause from Section 54, makes clearer that a stepparent or foster parent may be included within the definition of "parent" when the requirements of Section 6408 are met. See also Section 6152 (parent-child relationship for purpose of construing will) and Section 6408.5 (inheritance from or through child).

Probate Code § 82 (technical amendment). Trust

Comment. Section 82 is amended to add the reference to the Uniform Transfers to Minors Act of any state.

Probate Code § 105 (added). Applicable law where death before January 1, 1985

Comment. Section 105 limits the application of Sections 100-104 to cases where the decedent died on or after the operative date of those sections.

Probate Code § 140 (technical amendment). "Waiver" defined

Comment. Section 140 is amended to change the word "executed" to "signed" for clarity. This change is nonsubstantive. Conforming changes are made in Sections 143, 144, and 146.

Probate Code § 142 (amended). Formal requirements of waiver; general rule on enforceability

Comment. Section 142 is amended to add subdivisions (b) and (c). These new subdivisions make clear that enforcement of the waiver is subject to the same defenses as enforcement of a contract, but lack of consideration is not a defense and a minor intending to marry is treated as an emancipated minor (Civil Code § 63). The surviving spouse can raise the defense of lack of capacity to contract. See Civil Code § 1556 (unsound mind or deprived of civil rights). The defense of lack of consent because of duress, menace, fraud, undue influence, or mistake (Civil Code §§ 1565-1579) also is available. But see the Comment to Section 143.

Probate Code § 143 (amended). Enforcement where independent legal counsel and disclosure or waiver of disclosure

Comment. Section 143 is amended to expand the disclosure under subdivision (a) (1) to include a disclosure of the financial obligations of the decedent. Information concerning financial obligations may be important in determining whether the rights described in Section 141 should be waived.

Enforcement of a waiver under Section 143 is subject to the same defenses as enforcement of a contract. See Section 142(c). However, the requirement of representation by independent legal counsel and disclosure or waiver of disclosure on the advice of independent legal counsel should permit enforcement of the waiver against a claim of undue influence or duress or mistake except where the surviving spouse lacked sound mind or there was some type of duress, mistake, or fraud that the independent counsel and disclosure requirements do not protect against. Thus, parties who seriously want an enforceable waiver should obtain independent legal counsel despite the added expense. See Rothschild, *Antenuptial and Postnuptial Agreements*, in 2 California Marital Dissolution Practice § 29.2, at 1175, § 29.4, at 1176 (Cal. Cont. Ed. Bar 1983); Wolfe & Hellman, *Handling Surviving Spouse's Share of Marital Property*, in California Will Drafting Practice §§ 5.31-5.33, at 205-07 (Cal. Cont. Ed. Bar 1982). However, even if the requirements of Section 143 are not satisfied, the waiver may be enforceable under Section 144.

Subdivision (b) is added to make clear that the fiduciary standards normally applicable to spouses pursuant to Section 5103 do not apply if the waiver is enforceable under Section 143.

As to nonsubstantive clarifying revisions in Section 143, see the Comment to Section 140.

Probate Code § 144 (amended). Enforcement in discretion of court

Comment. Section 144 is amended to delete the requirement of paragraphs (1) and (2) of subdivision (a) that the surviving spouse “understood the effect of and voluntarily signed the waiver.” In place of this requirement, Section 142 has been amended to make enforcement of the waiver against the surviving spouse subject to the same defenses as enforcement of a contract. See the Comment to Section 142. See also the Comment to Section 143.

Paragraph (2) of subdivision (a) is amended to require adequate knowledge not only of the property of the decedent but also of the financial obligations of the decedent. Information concerning financial obligations may be important in determining whether the rights described in Section 141 should be waived.

The phrase “circumstances existing at the time enforcement is sought” is substituted for “existing facts and circumstances” in subdivision (b). This is a clarifying, nonsubstantive revision.

Section 144 also is amended to make clear the extent to which the fiduciary standards normally applicable to spouses pursuant to Section 5103 apply when the waiver is sought to be enforced under Section 144. See subdivision (a) (2) and subdivision (c) of Section 144. See also Wolfe & Hellman, *Handling Surviving Spouse’s Share of Marital Property*, in *California Will Drafting Practice* §§ 5.31, 5.32, at 205-06 (Cal. Cont. Ed. Bar 1982).

As to nonsubstantive clarifying revisions in Section 144, see the Comment to Section 140.

Probate Code § 146 (amended). Alteration or revocation of waiver

Comment. Section 146 is amended to conform to Sections 142-144. Under subdivision (b) a waiver expressly may provide, for example, that it is revocable during the lifetime of the other spouse. See also subdivisions (c) and (d) of Section 147. And see, e.g., Wolfe & Hellman, *Handling Surviving Spouse’s Share of*

Marital Property, in California Will Drafting Practice §§ 5.34, 5.36, at 207-09 (Cal. Cont. Ed. Bar 1982).

As to nonsubstantive clarifying revisions in Section 146, see the Comment to Section 140.

Probate Code § 147 (amended). Preexisting waivers of agreements and premarital property agreements not affected

Comment. Subdivisions (c) and (d) are added to Section 147. Subdivision (c) makes clear (1) that an enforceable agreement affecting rights listed in subdivision (a) of Section 141 may be made in a valid premarital property agreement, and (2) that a premarital waiver of rights listed in subdivision (a) also is enforceable under this chapter if the requirements of this chapter are satisfied. Subdivision (d) makes clear that this chapter does not limit the right of a spouse to revoke a consent or election to disposition of his or her half of the community or quasi-community property under the will of the other spouse. See Wolfe & Hellman, *Handling Surviving Spouse's Share of Marital Property*, in California Will Drafting Practice §§ 5.31-5.34, at 205-08 (Cal. Cont. Ed. Bar 1982). See also the Comment to Section 146.

Probate Code § 150 (technical amendment). Contracts concerning will or succession

Comment. Section 150 is amended to substitute "made" for "executed" in subdivision (a) and to add subdivision (c). Under subdivision (a), Section 150 applies only to contracts made after December 31, 1984. Subdivision (c) makes clear that if the contract was made on or before December 31, 1984, the law that was applicable to the contract before January 1, 1985, will continue to apply to that contract. See former subdivision (6) of Section 1624 of the Civil Code, which provided that "an agreement to devise or bequeath any property, or to make any provision for any person by will" had to be in writing and subscribed by the party to be charged or by the party's agent.

Probate Code § 207 (added). Applicable law where killing before January 1, 1985

Comment. Section 207 limits the application of Sections 200-206 to cases where the decedent was killed on or after the operative date of those sections.

Probate Code § 224 (amended). Life or accident insurance

Comment. Section 224 is amended to substitute the special rule provided by the optional provision of Section 5 of the Uniform Simultaneous Death Act for former subdivision (b) of Section 224. The new special rule applies where the insurance policy is community or quasi-community property and there is no alternative beneficiary except the estate or personal representative of the insured. In such a case, the proceeds are not paid to the estate or personal representative of the insured, but are distributed half as if one spouse had survived and as if that half belonged to that spouse, and half as if the other spouse had survived and as if that other half belonged to the other spouse. See Section 103.

Probate Code § 225 (added). Uniform construction

Comment. Section 225 continues the substance of former Section 296.7.

Probate Code § 226 (added). Applicable law where deaths occurred before January 1, 1985

Comment. Section 226 limits the application of Sections 220-225 to cases where the person the priority of whose death is in issue died on or after the operative date of those sections.

Probate Code § 240 (amended). Representation

Comment. Section 240 is amended (1) to apply its rule of representation to inter vivos and testamentary trusts where no contrary intention is expressed in the trust instrument, (2) to delete the former application of the section to a will that "calls for distribution per stirpes or by representation," and (3) to add the last sentence to provide that if a will or trust calls for distribution per stirpes or by right of representation, these terms shall be construed under the law that applied prior to January 1, 1985. For a discussion of the former law, see C.E.B. Estate Planning and California Probate Reporter 103 (February 1984).

Probate Code § 241 (added). Section 240 applies only where death occurs after December 31, 1984

Comment. Section 241 limits the application of Section 240 to cases where the decedent died on or after the operative date of Section 240.

Probate Code § 257 (added). Applicable law where killing before January 1, 1985

Comment. Section 257 limits the application of Sections 250-256 to cases where the decedent was killed on or after the operative date of those sections.

Probate Code § 282 (amended). Effect of disclaimer

Comment. Section 282 is amended to broaden paragraph (1) of subdivision (b) by deleting the former limitation in that paragraph to disclaimers of "an interest created by intestate succession" and by applying the paragraph to the situations where the division is made under any "other provision of a will or trust." The purpose of this paragraph is to prevent disclaiming property for the purpose of increasing the share of the disclaimant's line at the expense of other lines of descendants. This paragraph changes the rule concerning manner of distribution to children of the disclaimant as enunciated in *Estate of Bryant*, 149 Cal. App.3d 323, 335, 196 Cal. Rptr. 856 (1983).

Probate Code § 647.5 (added). Applicable law where death before January 1, 1985

Comment. Section 647.5 limits the application of the amendments made to Sections 640, 641, 645, and 645.3 by Chapter 842 of the Statutes of 1983 to cases where the decedent died on or after the operative date of those amendments.

Probate Code § 649.6 (added). References in instruments

Comment. Section 649.6 is new and makes clear that after the operative date of this article a reference in a written instrument to a provision of former law shall be deemed to be a reference to the comparable provision of this article.

Probate Code § 658 (added). Applicable law where death before January 1, 1985

Comment. Section 658 limits the application of the amendments made to Sections 650 and 655 by Chapter 842 of the Statutes of 1983, and of the amendments made to Sections 650, 653, 655, and 656 by Chapter 451 of the Statutes of 1984, to cases where the decedent died on or after the operative date of those amendments.

Probate Code § 665 (added). Chapter as restatement and continuation of prior law

Comment. Subdivision (a) of Section 665 is consistent with subdivision (a) of Section 2 of the Probate Code. Subdivision (b) of Section 665 makes clear that after the operative date of this section a reference in a written instrument to a provision of former law shall be deemed to be a reference to the corresponding provision of this chapter.

Probate Code § 736 (technical amendment). No sale of specifically devised property to exonerate other encumbered property

Comment. Section 736 is amended to make nonsubstantive drafting improvements.

Probate Code § 1055 (added). Applicable law where death before January 1, 1985

Comment. Section 1055 limits the application of the amendments and repeals made to provisions of this article by Chapter 842 of the Statutes of 1983 to cases where the decedent died on or after the operative date of those amendments and repeals.

Probate Code § 6103 (added). Applicable law where testator died before January 1, 1985

Comment. Section 6103 limits the application of Sections 6100-6303 to cases where the testator died on or after the operative date of those sections. For instances where the transitional rule is otherwise specifically provided, see Sections 6122, 6226, and 6247.

Probate Code § 6112 (amended). Who may witness a will; interested witness

Comment. Section 6112 is amended (1) to limit subdivision (b) so that the presumption does not apply if there are two other witnesses to the will who are disinterested witnesses and (2) to add subdivision (c). Subdivision (c) continues the substance a portion of former Section 51.

Probate Code § 6122 (amended). Revocation by annulment or dissolution of marriage; no revocation by other changes of circumstances

Comment. Section 6122 is amended to add subdivision (f) to limit the application of subdivisions (a)-(d) to cases where the final judgment of dissolution or annulment of marriage occurs on or after the operative date of this section.

Probate Code § 6130. Incorporation by reference

Comment. Section 6130 is the same as Section 2-510 of the Uniform Probate Code. Section 6130 codifies the doctrine of incorporation by reference which was recognized by prior California case law. See 7 B. Witkin, *Summary of California Law Wills and Probate* § 143, at 5660 (8th ed. 1974). The doctrine of incorporation by reference has been used, for example, to permit a validly executed will or codicil to incorporate by reference an earlier will which was defectively executed, and thereby to cure the defect of the former instrument. *In re Estate of Plumel*, 151 Cal. 77, 90 P. 192 (1907). See also Section 88 ("will" includes a codicil).

Probate Code § 6140 (technical amendment). Intention of testator; rules of construction

Comment. Section 6140 is amended to substitute language drawn from Section 2-603 of the Uniform Probate Code for the former language of the section. This change is nonsubstantive. Nothing in Section 6140 limits the extent to which extrinsic evidence admissible under former law may be used to determine the testator's intent as expressed in the will. See generally 7 B. Witkin, *Summary of California Law Wills and Probate* §§ 160-162, at 5676-79 (8th ed. 1974).

Probate Code § 6142 (technical amendment). Will passes all property including after-acquired property

Comment. Sections 6142, 6143, and 6144 are amended to provide that the section applies unless a contrary intention is indicated "by the will." This change is nonsubstantive. Nothing in these sections limits the extent to which extrinsic evidence admissible under former law may be used to determine the testator's intent as expressed in the will. See generally 7 B. Witkin, *Summary of California Law Wills and Probate* §§ 160-162, at 5676-79 (8th ed. 1974).

Probate Code § 6143 (technical amendment). Devisees as owners in common

Comment. See the Comment to Section 6142.

Probate Code § 6144 (technical amendment). Direction in will to convert real property into money

Comment. See the Comment to Section 6142.

Probate Code § 6146 (amended). Failure of devise

Comment. Section 6146 is amended to delete the second sentence from subdivision (a). The second sentence of subdivision (a) formerly established a constructional preference in favor of contingent remainders (survivorship required) rather than vested remainders (survivorship not required). With the deletion of the second sentence from subdivision (a), the question of whether or not survivorship is required is to be determined according to general rules of construction. See, *e.g.*, Section 6140 (intention of testator). See also 6153 (presumption that disposition vests at testator's death).

Probate Code § 6147 (amended). Antilapse

Comment. Section 6147 is amended to delete the second sentence of subdivision (c).

Probate Code § 6152 (technical amendment). Half bloods, adopted persons, and persons born out of wedlock

Comment. Section 6152 is amended to make clear that under some circumstances stepchildren and foster children are

included in terms of class gift or relationship pursuant to the rules for intestate succession. See Section 6408 (when stepchild or foster child treated the same as adopted child).

Subdivision (c), which is not affected by the amendment to Section 6152, makes clear that the rules stated in subdivisions (a) and (b) apply for the purposes of the antilapse statute (Section 6147) and in construing devises (Section 6151).

Probate Code § 6153 (added). Presumption that devise vests at testator's death

Comment. Section 6153 continues the substance of former Section 28.

Probate Code § 6165 (technical amendment). Rules of construction apply in absence of contrary intention

Comment. Section 6165 is amended to provide that the rules of construction in this article apply unless a contrary intention is indicated "by the will." This change is nonsubstantive. See the Comment to Section 6142.

Probate Code § 6206 (added). Reference to Uniform Gifts to Minors Act

Comment. Section 6206 is added in recognition that the Uniform Gifts to Minors Act has been superseded by the new Uniform Transfers to Minors Act. See also Sections 6245 and 6246.

Probate Code § 6226 (amended). Revocation by dissolution or annulment of marriage

Comment. Subdivision (d) of Section 6226 is amended so that the section will only apply to cases where the final judgment of dissolution or annulment of marriage occurs on or after January 1, 1985. This makes Section 6226 consistent with subdivision (f) of Section 6122.

Probate Code § 6247 (amended). Application of provisions of chapter; use of forms prepared under prior law

Comment. Section 6247 is amended to add subdivisions (b) and (c). Subdivision (c) validates California statutory wills executed after the operative date of the new law on a form

prepared under the old law; such wills are governed by old law except as provided in subdivision (b).

Probate Code § 6330 (added). Chapter as restatement and continuation of former law

Comment. The first sentence of Section 6330 is consistent with subdivision (a) of Section 2 of the Probate Code. The second sentence makes clear that after the operative date of this chapter a reference in a written instrument to the former law shall be deemed to be a reference to the corresponding provision of this chapter.

Probate Code § 6390 (added). Chapter as restatement and continuation of former law

Comment. The first sentence of Section 6390 is consistent with subdivision (a) of Section 2 of the Probate Code. The second sentence makes clear that after the operative date of this chapter a reference in a written instrument to the former law shall be deemed to be a reference to the corresponding provision of this chapter.

Probate Code § 6402 (technical amendment). Intestate share of heirs other than surviving spouse

Comment. Section 6402 is amended to make a nonsubstantive technical change.

Probate Code § 6408 (amended). Relationship of parent and child for purpose of determining intestate succession

Comment. Former paragraph (3) of subdivision (a) of Section 6408 has been deleted from Section 6408 and added to Section 6408.5. The other revisions of Section 6408 are clarifying.

Probate Code § 6408.5 (amended). Inheritance by natural relatives from or through adopted child or child born out of wedlock

Comment. Subdivision (a) is added to Section 6408.5 to continue what formerly was paragraph (3) of subdivision (a) of Section 6408. This transfer from Section 6408 to Section 6408.5 is

a nonsubstantive revision designed to make the sections easier to understand.

Section 6408.5 also is amended to require both acknowledgment and contribution to the support or care of a child born out of wedlock before the parent or a relative of that parent may inherit from or through the child. Formerly either acknowledgment or support was required.

Probate Code § 6409 (amended). Advancements

Comment. Section 6409 is amended so that it covers advancements where there is a partial intestacy.

Probate Code § 6414 (added). Law applicable where death before January 1, 1985

Comment. Section 6414 limits the application of Sections 6400-6411 and 6413 to cases where the decedent died on or after the operative date of those sections. Subdivision (c) makes clear that cross-references to a provision of this part contained in Section 377 of the Code of Civil Procedure, Section 3524 of the Penal Code, and Section 300 of the Probate Code, are deemed to be references to the corresponding provision of former law in cases where the decedent died before the operative date of this part.

Probate Code § 6560 (amended). Share of omitted spouse

Comment. Section 6560 is amended to provide that, with respect to the testator's separate property, the omitted spouse shall receive the lesser of an intestate share or one-half. This eliminates the possibility that the statutory shares may add up to more than one hundred per cent if the testator's will, for example, omits to provide for a spouse and two or more children. See Section 6401(c)(3) and Section 6570.

Probate Code § 6580 (added). Law applicable where testator died before January 1, 1985

Comment. Section 6580 limits the application of Sections 6560-6573 to cases where the testator died on or after the operative date of those sections. Sections 6500-6545 are applicable to any proceeding pending on January 1, 1985, even though the decedent died before January 1, 1985.

REPEALED SECTION

Probate Code § 25 (repealed). Codicil republishes will

Comment. Former Section 25 was repealed by Chapter 842 of the Statutes of 1983. Former Section 25 is superseded by Sections 6142 and 6130. The original purpose of former Section 25 was to extend the effect of a will to cover property acquired after the date of the will. Evans, *Comments on the Probate Code of California*, 19 Calif. L. Rev. 602, 608 (1931). The rule that a will ordinarily passes property acquired after execution of the will is continued in Section 6142.

Under former Section 25, a codicil has been held to revive a revoked will. *In re Estate of Cazaurang*, 42 Cal. App.2d 796, 110 P.2d 38 (1941). This doctrine is continued in Section 6130 which permits a will or codicil to incorporate by reference another writing in existence when the will or codicil is made. See also *In re Estate of Plumel*, 151 Cal. 77, 90 P. 192 (1907); Section 88 (“will” includes a codicil).

APPENDIX XIII
COMMUNICATION OF
LAW REVISION COMMISSION
CONCERNING ASSEMBLY BILL 2295

[Extract from Assembly Journal for July 3, 1984 (1983-84 Regular Session)]

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assembly Member McAlister was granted unanimous consent that the following communication be printed in the Journal:

California Law Revision Commission
Palo Alto, July 3, 1984

Mr. James D. Driscoll, Chief Clerk
California State Assembly
State Capitol
Sacramento, California

Communication from California Law Revision Commission
Concerning

Assembly Bills 2276, 2282, 2290, and 2295

Dear Mr. Driscoll: Assembly Bills 2276, 2282, 2290, and 2295 were introduced to effectuate recommendations of the California Law Revision Commission. The bills were amended after introduction. The comments contained in the Law Revision Commission recommendations to the various sections of these bills as passed by the Legislature remain applicable except to the extent they are superseded by the new and revised comments set out in communications from the Law Revision Commission on file with the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and the office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

Communication Concerning Assembly Bill 2295

Assembly Bill 2295 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Creditors' Remedies*, 17 Cal. L. Revision Comm'n Reports 975 (1984). The Comments in the Commission's recommendation are replaced or supplemented by the revised and new Comments set out below.

**Code of Civil Procedure § 486.110 (technical amendment).
Lien of temporary protective order**

Comment. The amendment to subdivision (a) of Section 486.110 is a nonsubstantive revision to make clear that Section 697.740 applies to transferees or encumbrancers of property subject to the lien of a temporary protective order whether the property is real or personal.

**Code of Civil Procedure § 488.080 (amended). Attachment
by registered process server**

Comment. Subdivisions (a) and (c) of Section 488.080 are amended to reflect the repeal of Section 488.465. Subdivision (c) (2) is amended to make clear that the registered process server is required to supply a garnishee's memorandum form to the garnishee at the time of service. Subdivision (e) is amended by adding the second sentence which states the consequences where the registered process server fails to comply with subdivisions (b) and (d). Under subdivision (e) the levying officer may release property even though the original writ has not been delivered.

**Code of Civil Procedure § 488.455 (amended). Attachment
of deposit accounts**

Comment. Subdivision (a) of Section 488.455 is amended to recognize the requirements of new Section 488.465. Subdivisions (c) and (f) are amended to reflect the repeal of former Section 488.465 (undertaking for levy on joint accounts) and the substitution of Section 6854 of the Financial Code for the sections deleted from subdivision (f) (2).

Subdivision (g) is added to permit financial institutions to hold attached deposit accounts under certain conditions that are designed to avoid penalties and preserve interest. If a financial institution is unwilling to hold an attached account under these conditions, the attached amount is to be paid over to the levying officer. See Section 488.600 (incorporating duties of garnishee under Section 701.010). Subdivision (h) makes clear that the financial institution can hold the account under subdivision (g) for a certain time and then pay the attached amount to the levying officer. Hence, a financial institution may hold a time deposit until maturity and then pay over the attached amount even though not yet required to do so.

**Code of Civil Procedure § 488.460 (technical amendment).
Attachment of safe deposit boxes**

Comment. Subdivision (a) of Section 488.460 is amended to recognize the requirements of new Section 488.465. Subdivision (c) is amended to reflect the repeal of former Section 488.465 (undertaking for levy on joint safe deposit box).

**Code of Civil Procedure § 488.465 (repealed). Attachment
of deposit accounts and safe deposit boxes not
exclusively in name of defendant**

Comment. The requirement of providing an undertaking as a prerequisite for attachment of a deposit account or safe deposit box not exclusively in the name of the defendant provided in Section 488.465 is repealed. See new Section 488.465 (limitations on attachment of accounts and boxes not in defendant's name); see also Sections 488.455(d), 488.460(c) (nonliability of financial institution for complying with levy). The nondefendant holder of the deposit account or safe deposit box may assert rights by way of a third-party claim. See Section 488.110.

**Code of Civil Procedure § 488.465 (added). Limitations on
attachment of deposit accounts and safe deposit boxes**

Comment. Section 488.465 supersedes the undertaking requirement provided by former Section 488.465 which applied where a deposit account or safe deposit box was held in the name of a third person, either alone or jointly with the defendant. Under the general rule provided in subdivision (a), a court order is required before the plaintiff may cause an attachment levy on an account or box not in the name of the defendant. This requirement is designed to protect the rights of persons who are not parties to the action and who may not have any relationship to the defendant. Subdivision (b) makes clear that a levy is permissible without a prior court order whenever the defendant's name appears on the account or box, regardless of whether the account or box is held jointly with another person. Subdivision (b) also specifies situations where a levy is permitted without prior court authorization even though the defendant's name does not appear on the account or box.

Subdivision (c) provides a 15-day holding period where a deposit account not in the name of the defendant is attached. This period is intended to provide the third person with an

opportunity to file a third-party claim before the attached amount is paid to the levying officer. See Section 488.110; see also Section 488.455(g) (holding attached deposit accounts generally).

A court order permitting a levy as provided under subdivision (a) may be obtained in a number of ways, depending on the facts of the case and the preference of the plaintiff. The procedure for examining a third person provided by Section 491.110 should be appropriate in most cases. This procedure provides for a summary determination of any adverse claim made by the third person. See Section 491.170. The plaintiff may also choose to proceed by way of a creditor's suit. See Sections 491.310-491.370. If the presence of the defendant's money in a deposit account or property in a safe deposit box involves a fraudulent conveyance, the plaintiff may wish to proceed under the Uniform Fraudulent Conveyance Act. See Civil Code § 3439.10. Other remedies may be available in appropriate circumstances.

Code of Civil Procedure § 488.480 (amended). Attachment of final money judgments

Comment. The first sentence of subdivision (c) of Section 488.480 is amended to permit notice of attachment to be served on the defendant's judgment debtor by mail. See Section 482.070 (manner of service). The second sentence has been deleted; it is superseded by Section 701.070 (duty of judgment debtor under final money judgment levied upon) which is incorporated by Section 488.600.

Code of Civil Procedure § 488.600 (technical amendment). Duties and liabilities of third persons

Comment. Subdivision (c) is added to Section 488.600 to reflect the addition of Section 701.070 pertaining to the duties of a judgment debtor obligated to pay a money judgment levied upon. See Section 488.480 (attachment of final money judgments).

Code of Civil Procedure § 491.140 (amended). Appearance at examination by representatives of organizations

Comment. Subdivision (d) is added to Section 491.140 to make clear that an entity may appear at an examination by an appropriate person regardless of whether that person is an attorney.

Code of Civil Procedure § 697.590 (repealed). Priority of judgment lien against security interest

Comment. Former Section 697.590 is superseded by a new Section 697.590.

Code of Civil Procedure § 697.590 (added). Priorities between conflicting judgment liens and security interests

Comment. Section 697.590 supersedes former Section 697.590. This section in general treats a judgment lien on personal property as analogous to a security interest that is perfected by filing on the date when the notice of judgment lien was filed with the Secretary of State. See Section 697.510.

Subdivision (b) of Section 697.590 provides the general rule governing priority between conflicting judgment liens and security interests in the same property. Subdivision (b) is the same in substance as Commercial Code Section 9312(5)(a). Subdivision (c) is the same in substance as Commercial Code Section 9312(6). See also Section 697.620 (lien on identifiable cash proceeds of transferred property).

Subdivision (d) is consistent with Commercial Code Section 9312(4) and continues the substance of part of former Section 697.590(b). The reference to the time of possession by the debtor *as a debtor under the security agreement* has been added to make clear that possession by the person in some other status before becoming a debtor does not cause commencement of the 10-day grace period. This is consistent with *Brodie Hotel Supply, Inc. v. U.S.*, 431 F.2d 1316 (9th Cir. 1970).

Subdivision (e) continues the substance of former Section 697.590(c). This provision resolves a circular priority problem that could arise where, for example, a secured party (SP #1) with a perfected security interest in after-acquired inventory has priority over a secured party (SP #2) with a purchase money security interest in the inventory because SP #2 failed to take a step necessary under Commercial Code Section 9312(3) to obtain priority over SP #1. In this situation, a creditor who filed a notice of judgment lien before SP #1 filed a financing statement would have priority over SP #1 pursuant to subdivision (b). The judgment lien would not have priority over SP #2, however, if SP #2 filed within 10 days after the debtor received possession of the inventory, even though SP #1 has priority over SP #2. See subdivision (d). To resolve this problem,

under subdivision (e) the judgment lien creditor is demoted to last place after SP #2 even though the judgment lien creditor would normally have priority over SP #1 under subdivision (b).

Subdivision (f) continues the substance of former law. See former Code Civ. Proc. § 697.590(a) (incorporating lien creditor rules of Com. Code § 9301); Com. Code § 9301(4) (future advance rule) and former subdivision (5) (notice requirement and manner of service). See also Com. Code § 1201(25) (knowledge means actual knowledge), (27) (knowledge on part of organization). Under subdivision (f), a judgment creditor who seeks to establish the priority of a judgment lien on personal property is required to serve a copy of the notice of judgment lien on the secured party as a prerequisite to a determination that the secured party had knowledge of the judgment lien.

As provided in the first sentence of subdivision (b), this section governs priority where there is a conflict between a judgment lien on personal property and a security interest in the property. These rules are also incorporated by the Attachment Law for the purpose of determining priorities between attachment liens on equipment, farm products, and inventory of a going business obtained by filing with the Secretary of State and conflicting security interests in the same property. See Sections 488.475 (equipment of going business), 488.405 (farm products and inventory of going business), 488.500(c) (attachment lien priority). This section does not apply in a situation where, by operation of another provision, there is no conflict because the judgment lien or attachment lien has expired or does not continue. See, *e.g.*, Sections 488.510 (duration of attachment lien generally), 697.030 (duration of enforcement liens generally), 697.510(b) (five-year duration of judgment lien on personal property), 697.610 (continuation of judgment lien on transferred property), 697.620 (limitations on judgment lien on proceeds).

Code of Civil Procedure § 699.080 (amended). Levy by registered process server

Comment. Subdivisions (a) and (c) of Section 699.080 are amended to reflect the repeal of Section 700.160. See also Section 706.108 (service of earnings withholding order). Subdivision (c)(2) is amended to make clear that the registered process server is required to supply a garnishee's memorandum form to the garnishee at the time of service. Subdivision (e) is amended by adding the second sentence which states the consequences where the registered process server fails to comply with

subdivisions (b) and (d). Under subdivision (e) the levying officer may release property even though the original writ has not been delivered.

**Code of Civil Procedure § 700.140 (technical amendment).
Levy on deposit accounts**

Comment. Subdivision (a) of Section 700.140 is amended to recognize the requirements of new Section 700.160. Subdivisions (c) and (f) are amended to reflect the repeal of former Section 700.160 (undertaking for levy on joint account) and Sections 700.165 and 700.167, and the substitution of Section 6854 of the Financial Code for the sections deleted from subdivision (f) (2).

**Code of Civil Procedure § 700.150 (technical amendment).
Levy on safe deposit boxes**

Comment. Subdivision (a) of Section 700.150 is amended to recognize the requirements of new Section 700.160. Subdivision (c) is amended to reflect the repeal of former Section 700.160 (undertaking for levy on joint safe deposit box).

**Code of Civil Procedure § 700.160 (repealed). Levy on
deposit accounts and safe deposit boxes not exclusively
in name of judgment debtor**

Comment. Section 700.160—which required an undertaking as a prerequisite to levy on a deposit account or safe deposit box not exclusively in the name of the defendant—is repealed. See new Section 700.160 (limitations on levy on accounts and boxes not in debtor’s name); see also Sections 700.140(d), 700.150(e) (nonliability of financial institution for complying with levy). The nondebtor who is the holder of the deposit account or safe deposit box may assert rights by way of a third-party claim. See Section 720.110 *et seq.*

**Code of Civil Procedure § 700.160 (added). Limitations on
levy on deposit accounts and safe deposit boxes**

Comment. Section 700.160 supersedes the undertaking requirement provided by former Section 700.160 which applied where a deposit account or safe deposit box was held in the name of a third person, either alone or jointly with the judgment debtor. Under the general rule provided in subdivision (a), a court order is required before the judgment creditor may cause

a levy on an account or box not in the name of the judgment debtor. This requirement is designed to protect the rights of persons whose rights have not been adjudicated and who may not have any relationship to the judgment debtor. Subdivision (b) makes clear that a levy is permissible without a prior court order whenever the judgment debtor's name appears on the account or box, regardless of whether the account or box is held jointly with another person. Subdivision (b) also specifies situations where a levy is permitted without prior court authorization even though the judgment debtor's name does not appear on the account or box.

Subdivision (c) provides a 15-day holding period where a deposit account not in the name of the judgment debtor is levied upon. This period is intended to provide the third person with an opportunity to file a third-party claim before the amount levied upon is paid to the levying officer. See Section 720.110 *et seq.*

A court order permitting a levy as provided under subdivision (a) may be obtained in a number of ways, depending on the facts of the case and the preference of the judgment creditor. The procedure for examining a third person provided by Section 708.120 should be appropriate in most cases. This procedure provides for a summary determination of any adverse claim made by the third person. See Section 708.180. The judgment creditor may also choose to proceed by way of a creditor's suit. See Sections 708.210-708.290. If the presence of the judgment debtor's money in a deposit account or property in a safe deposit box involves a fraudulent conveyance, the judgment creditor may wish to proceed under the Uniform Fraudulent Conveyance Act. See Civil Code § 3439.09. In an appropriate case involving a partnership, a charging order may be necessary. See Sections 708.310-708.320, 699.720(a)(2). Other remedies may be available in appropriate circumstances.

Code of Civil Procedure § 700.190 (amended). Levy on final money judgments

Comment. Section 700.190 is amended to permit a notice of levy to be served on the debtor's judgment debtor by mail. The final sentence has been deleted; it is superseded by Section 701.070 (duty of judgment debtor under final money judgment levied upon).

Code of Civil Procedure § 701.070 (added). Duty of judgment debtor obligated on final money judgment levied upon

Comment. Section 701.070 sets forth the duty of a judgment debtor obligated to pay a final money judgment levied upon under Section 700.190. See also Sections 488.480 (attachment of final money judgment), 488.600 (incorporating duties of this section for purposes of attachment). This section is analogous to Section 701.060 (duties of obligor under instrument). This section also supersedes provisions relating to notice formerly appearing in Sections 488.480(c) and 700.190(c).

Code of Civil Procedure § 704.740 (amended). Court order for sale; exemption claim where court order for sale not required

Comment. Subdivision (a) of Section 704.740 is amended to make clear that the requirements of this article do not apply to the sale of an interest in a dwelling owned by a corporation or other artificial person. This is a nonsubstantive amendment that recognizes what was implicit under former law—that the procedure of this article is not relevant in cases where the debtor is not entitled to exemptions. See Section 703.020 (only natural person entitled to exemptions). Subdivision (a) is also amended to make clear that this article provides the exclusive procedure for determining real property dwelling exemptions (other than leaseholds of less than two years). Accordingly, the general procedures for claiming exemptions from execution are not applicable, except as otherwise provided.

Code of Civil Procedure § 704.780 (amended). Hearing on homestead exemption

Comment. Subdivision (b) of Section 704.780 is amended to make clear that the court is not required to determine fair market value and the amount of liens to be satisfied where the dwelling is not an exempt homestead. These determinations are relevant only where the special minimum bid requirements provided by Section 704.800 apply—that is, where a dwelling has been found to qualify for a homestead exemption. The sale of a non-exempt dwelling is governed by the general procedures applicable to other types of property. It should be noted, however, that the special procedures of Section 704.790,

applicable where the order for sale is obtained by default, continue to apply even though the property is found not to qualify for an exemption.

The amendment of subdivision (a) (1) is a technical correction that makes clear where the burden lies where there is neither a homeowner's nor a veteran's exemption.

Code of Civil Procedure § 708.150 (amended). Appearance at examination by representatives of organizations

Comment. Subdivision (d) is added to Section 708.150 to make clear that an entity may appear at an examination by an appropriate person regardless of whether that person is an attorney.

Code of Civil Procedure § 729.060 (amended). Deposit of redemption price

Comment. Subdivision (b) of Section 729.060 is amended to require the satisfaction of liens of the purchaser at the sale when the judgment debtor redeems the property. If the judgment debtor wants to avoid having to satisfy liens of a junior lienholder who purchased the property at the foreclosure sale, the judgment debtor may bid at the sale. If successful, the judgment debtor will take the property free of any liens that are junior to the lien under which the sale is made, as provided in Section 726(c), without the need to satisfy them. A redemption from a junior lienholder who purchased the property at the foreclosure sale does not have the effect of reviving or satisfying liens that are senior to the purchaser's lien but junior to the lien under which the sale is made.

Code of Civil Procedure § 996.475 (added). Other statutes not affected

Comment. Section 996.475 is added to make clear that the provisions of this chapter relating to the liability of a surety are not intended, either expressly or by implication, to repeal any other applicable statutes relating to the liability of a surety. Thus, for example, the provision in Section 996.470, that the aggregate liability of a surety for all breaches of the condition of a bond is limited to the amount of the bond, is intended only to limit the liability of a surety as security for the obligation imposed by the statute pursuant to which the bond is given. It is not intended to immunize the surety from independent statutory liability for

willful failure to satisfy the obligation of a bond after the duty to pay has been established. See, *e.g.*, Section 996.480 (voluntary payment by surety). Likewise, the provision in Section 996.480 imposing costs, interest, and a reasonable attorney's fee is not intended to preclude any other applicable statutory provisions, such as any applicable regulations of the Insurance Code governing actions of admitted surety insurers.

Commercial Code § 9301 (amended). Priority of lien creditor

Comment. Section 9301 is revised to conform to a new Code of Civil Procedure Section 697.590. Subdivision (3) is amended to exclude from the definition of "lien creditor" a creditor who has only a judgment lien on personal property (see Code Civ. Proc. §§ 697.510-697.670) or attachment lien on equipment, farm products, or inventory (see Code Civ. Proc. §§ 488.475, 488.405) by filing with the Secretary of State. Special provisions govern priorities between these judgment and attachment liens and security interests. See Code Civ. Proc. §§ 488.500(c), 697.590. The substance of former subdivision (5) of Section 9301 is continued in Code of Civil Procedure Section 697.590(f).

Government Code § 26735 (repealed). Fee for serving and filing writ of attachment in decedent's estate

Comment. Section 26735 is repealed because it is unnecessary since Code of Civil Procedure Section 488.485 has dispensed with the requirement of former law that the writ of attachment be filed with the court clerk. See Section 26721 (fee for executing process in general).

APPENDIX XIV
REPORT OF
SENATE COMMITTEE ON JUDICIARY
ON ASSEMBLY BILL 2492

[Extract from Senate Journal for June 14, 1984 (1983-84 Regular Session)]

Assembly Bill 2492 was introduced to effectuate the California Law Revision Commission "Recommendation Relating to Uniform Transfers to Minors Act," 17 Cal. L. Revision Comm'n Reports 601 (1984). The intent of the Senate Committee on Judiciary in approving Assembly Bill 2492 is reflected by the revised comments set out below, and, with respect to the comments which are not revised below, by the comments in the Law Revision Commission recommendation.

Probate Code § 3901. Definitions

Comment. Section 3901 is the same in substance as Section 1 of the Uniform Transfers to Minors Act with four exceptions:

(1) "Adult" is defined in subdivision (a) to mean an individual who has attained the age of 18 years. This is consistent with Sections 25 and 27 of the Civil Code.

(2) "Court" is defined in subdivision (e) to mean "the superior court." This continues the definition of former Civil Code § 1155 (d).

(3) The definition of "financial institution" in subdivision (h) is expanded to include "an industrial loan company licensed and supervised under the laws of this state." This continues a provision of the definition of former Civil Code § 1155 (g).

(4) "Minor" is defined in subdivision (k) to mean an individual who has not attained the age of 18 years (consistent with Civil Code § 25), except that the term "minor" may include an older individual under some circumstances when the term is used with reference to the beneficiary for whose benefit custodial property is held or is to be held. See the Comments to Sections 3920 and 3920.5.

Section 3901 supersedes former Civil Code Section 1155 which provided definitions for the former California Uniform Gifts to Minors Act. To reflect the broader scope and the unlimited types of property to which the new California Uniform Transfers to Minors Act applies, a number of definitional changes have been made from the old California Uniform Gifts to Minors Act. In addition, several definitions in the old Act specifically applicable to limited types of property (cash, securities, and insurance policies) covered before the expansion of the scope of the Uniform Act have been omitted as unnecessary. These omitted definitions include the definitions of "bank," "issuer," "life or endowment insurance policies and annuity contracts," "savings and loan association," "security," and "transfer agent." No change in the meaning or construction of those terms as used in this part is intended by such omissions. See Uniform Law

Commissioners' Comment to Uniform Transfers to Minors Act § 1. The substantive effect of the definition of "[l]ife or endowment insurance policies and annuity contracts" in the old Act is superseded by Probate Code Section 3901(f) and subdivision (b)(3) of Section 3912 of the Probate Code (right to retain property transferred to custodian) and subdivision (c) of Section 3912 of the Probate Code (right to invest in or pay premiums on insurance or endowment policies). The definition of "insured financial institution" has been omitted because the prudent person rule of Section 3912(b) may dictate the use of insured institutions or depositories, without having the Act so specify. See Uniform Law Commissioners' Comment to Uniform Transfers of Minors Act § 1.

The principal changes or additions to the remaining definitions contained in former Civil Code Section 1155 are discussed below. These Comments are drawn from the Uniform Law Commissioners' Comment to Section 1 of the Uniform Transfers to Minors Act.

Subdivision (a). Subdivision (a), defining "adult," continues subdivision (a) of former Section 1155 of the Civil Code. One effect of this definition is that an individual custodian (other than a transferor-custodian) must be 18 years of age or older. See Section 3909. This minimum age requirement does not apply where the transferor is the custodian. See Section 3909. Under this Act, a transferor may be a custodian without regard to age so long as the transferor has the capacity to make the transfer. The requirement of former law—Civil Code Section 1156(a)—that the donor be an "adult" is not continued in this Act. If permitted under other law relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his or her own benefit or for the benefit of another minor. Section 63 of the Civil Code permits an emancipated minor to make a will, gift, or other transfer. Elimination of the requirement that the transferor be an adult makes clear that an emancipated minor can make a transfer to a custodian for the minor's own benefit or for the benefit of another minor and can also serve as the custodian for custodial property the minor transfers under this Act for the benefit of another minor.

The definition of "adult" is also used to determine persons who may file petitions under this Act. See Section 3918, subdivision (d) ("adult member of the minor's family" may petition the court to designate a successor custodian), subdivision (f) ("adult member of the minor's family" may petition the court to remove the custodian for cause and to designate a successor custodian or to require the custodian to give appropriate bond), Section 3919(a) ("adult member of minor's family" may petition for accounting or determination of custodian's liability).

Subdivision (b). The definition of "benefit plan" is new and is intentionally very broad and is meant to cover any contract, plan, system, account or trust such as a pension plan, retirement plan, death benefit plan, deferred compensation plan, employment agency arrangement, or stock bonus, option or profit sharing plan.

Subdivision (d). The term "conservator" is defined instead of "guardian" to conform to the Uniform Transfers to Minors Act. For California purposes, the term means the guardian of the estate of the minor, if the minor has not attained the age of 18 years (Prob. Code

§ 1600) and the conservator of the estate if the "minor" has attained the age of 18 years (Prob. Code § 1800).

Subdivision (f). The definition of "custodial property" has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real property and tangible or intangible personal property. The term is intended, for example, to include joint interests with right of survivorship, beneficial interests in land trusts, as well as all other intangible interests in property. Contingent or expectancy interests such as the designation as a beneficiary under insurance policies or benefit plans become "custodial property" only if the designation is irrevocable, or when it becomes so, but the Act specifically authorizes the "nomination" of a future custodian as beneficiary of such interests (see Section 3903). Proceeds of custodial property, both immediate and remote, are themselves custodial property, as was the case under former Civil Code Section 1155(e).

Custodial property is defined without reference to the physical location of the property, even if it has one. No useful purpose would be served by restricting the application of the Act to, for example, real estate "located in this state," since a conveyance recorded in the state of the property's location, if done with proper formalities, should be effective even if that state has not enacted this Act. The rights, duties and powers of the custodian should be determined by reference to the law of the state under which the custodianship is created, assuming there is sufficient nexus under Section 3902 between that state and the transferor, the minor, or the custodian.

Subdivision (j). The definition of "member of the minor's family" expands the definition under former Civil Code Section 1155 to include the minor's stepparent and spouse.

Subdivision (k). When used with reference to a beneficiary for whose benefit custodial property is held or is to be held, "minor" is defined as an individual who has not attained the age at which the custodial property is to be transferred to the beneficiary. This age depends upon the type of transfer and whether the transfer specifically provides for the custodianship to continue until the minor attains an age older than 18 years of age. See Sections 3920 and 3920.5 and the Comments to those sections. Where a custodianship may continue until a specified age older than 18, the custodianship may be established after the beneficiary has attained the age of 18 and may continue for so long as is specifically provided but not longer than the maximum duration permitted for a custodianship created by that type of transfer. Under former Civil Code Section 1155(m), the age of termination of the custodianship had been lowered from 21 to 18 (1972 Cal. Stats. ch. 579) to conform to the lowering of the age of majority from 21 to 18 (1971 Cal. Stats. ch. 1748, § 23).

Subdivision (m). The new definition of "personal representative" is based upon that definition in Section 1-201 (30) of the Uniform Probate Code.

Subdivision (o). The new definition of "transfer" is necessary to reflect the application of the Act not only to gifts, but also to distributions from trusts and estates, obligors of the minor, and transfers of the minor's own assets to a custodianship by the legal representative of a minor, all of which are now permitted by this Act.

Subdivision (p). The new definition of “transferor” is required because the term includes not only the maker of a gift, *i.e.*, a donor in the usual sense, but also fiduciaries and obligors who control or own property that is the subject of the transfer. Nothing in this Act requires that a transferor be an “adult.” See the Comment to subdivision (a) *supra*.

Subdivision (q). The new definition of “trust company” replaces the definition of former Civil Code Section 1155 (which defined a trust company by reference to Sections 107 and 109 of the Financial Code).

Only entities authorized to exercise “general” trust powers qualify as “trust companies”; that is, the authority to exercise only limited fiduciary responsibilities, such as the authority to accept Individual Retirement Account deposits, is not sufficient.

Probate Code § 3904. Transfer by gift or exercise of power of appointment

Comment. Section 3904 is the same as Section 4 of the Uniform Transfers to Minors Act.

To emphasize the different kinds of transfers that create presently effective custodianships under this Act, they are separately described in Sections 3904, 3905, 3906, and 3907.

Section 3904 in part corresponds to subdivision (a) of former Civil Code Section 1156 and covers the traditional lifetime gift that was the only kind of transfer authorized by that provision. Section 3904 does not continue the requirement of former Civil Code Section 1156 that the donor be an “adult person.” See the Comment to subdivision (a) of Section 3901.

Section 3904 also covers an irrevocable exercise of a power of appointment in favor of a custodian, as distinguished from the exercise of a power in a revocable instrument that results only in the nomination of a future custodian under Section 3903.

A custodianship created under this section will terminate upon the minor’s attainment of the age of 18 unless the transfer specifies a later time. In the case of the traditional lifetime transfer, the custodianship cannot be continued after the time the beneficiary attains 21 years of age. This limitation satisfies the requirements of Section 2503(c) of the Internal Revenue Code which permits “minority trusts” to continue in effect until age 21. In the case of an irrevocable exercise of a power of appointment in favor of a custodian, the custodianship cannot be continued after the time the beneficiary attains 25 years of age. See Sections 3920 and 3920.5 and the Comments thereto. A custodianship created under this section may be created for a beneficiary who has already attained the age of 18 if the transfer provides that the custodianship is to continue until the beneficiary attains a specified age older than 18. See Section 3901 (k).

Probate Code § 3905. Transfer authorized by will or trust

Comment. Section 3905 is the same as Section 5 of the Uniform Transfers to Minors Act. Former Section 6340 of the Probate Code permitted a testator to devise any kind of property to a custodian subject to the California Uniform Gifts to Minors Act. Section 3905 expands the authorization of former Probate Code Section 6340 to

include not only a testamentary disposition but also to make clear that a trustee may make a transfer to a custodian for the benefit of a minor as authorized in the governing trust. Section 3905 also authorizes the personal representative or trustee to designate the custodian whenever the settlor or testator fails to make a nomination or whenever a future custodian nominated under Section 3903 (and any alternate named) fails to qualify. See also Section 3918(a).

A custodianship created under this section will terminate upon the minor's attainment of the age of 18 unless a later time is specified in the will or trust and in the transfer, but in no event does the custodianship continue after the time the minor attains 25 years of age. See Sections 3920 and 3920.5 and the Comments thereto. A custodianship created under this section may be created for a beneficiary who has already attained age 18 if the will or trust provides that the custodianship is to continue until the beneficiary attains a specified age older than 18. See Section 3901(k).

Probate Code § 3906. Other transfer by fiduciary

Comment. Section 3906 is the same as Section 6 of the Uniform Transfers to Minors Act. Section 3906 had no counterpart in prior California law. It covers a new concept to permit custodianships to be used as guardianship substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. Subdivision (a) permits an executor or administrator of an estate or a trustee to transfer estate property to a custodian for the benefit of a minor in the absence of a will or under a will or trust that does not contain an authorization to do so. Subdivision (b) permits the guardian of the estate of a minor to transfer the minor's own property to a new or existing custodianship for the purpose of convenience or economics of administration.

A custodianship may be created under this section even though not specifically authorized by the transferor, the testator, or the settlor of the trust if three tests are satisfied. First, the fiduciary making the transfer must determine in good faith and in his or her fiduciary capacity that a custodianship will be in the best interest of the minor. Second, a custodianship may not be prohibited by, or inconsistent with, the terms of any governing instrument. Inconsistent terms would include, for example, a spendthrift clause in a governing trust, provisions terminating a governing trust for the minor's benefit at a time other than the time of the minor's age of majority, and provisions for mandatory distributions of income or principal at specific times or periodic intervals. Provisions for other outright distributions or bequests would not be inconsistent with the creation of a custodianship under this section. Third, the amount of property transferred (as measured by its value) must be of such relatively small amount (\$10,000 or less in value) that the lack of court supervision and the typically stricter investment standards that would apply to a guardianship will not be important. However, if the property is of greater value, transfer to a custodian may still be made if the court approves and if the other two tests are met.

The custodianship created under this section without express authority in the governing instrument will terminate upon the

minor's attainment of the age of 18, the same age at which a guardianship of the estate would end. See Section 3920 and the Comment thereto.

Probate Code § 3910. Single custodianship

Comment. Section 3910 is the same as Section 10 of the Uniform Transfers to Minors Act. The first sentence of Section 3910 continues subdivision (b) of former Civil Code Section 1156. The second sentence of Section 3910 states what was implicit in the former law, that additional transfers at different times and from different sources may be made to an existing custodian for the minor and do not create multiple custodianships. This provision also permits an existing custodian to be named as successor custodian by another custodian for the same minor who resigns under Section 3918 for the purpose of consolidating the assets in a single custodianship.

Note, however, that these results are limited to transfers made "under this part." Gifts previously made under the California Uniform Gifts to Minors Act or under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of another state must be treated as separate custodianships, even though the same custodian and minor are involved, because of possible differences in the age of distribution and custodian's powers under those other Acts. But see Section 3923.

Even when all transfers to a single custodian are made "under this part" and a single custodianship results, custodial property transferred under Sections 3906 and 3907 or under Section 3412, 3413, 3602, or 3611 may have to be accounted for separately from property transferred under or pursuant to Section 3903, 3904, or 3905 because the custodianship may terminate sooner with respect to the former property. See Sections 3920 and 3920.5 and the comments thereto.

Probate Code § 3912. Care of custodial property

Comment. Section 3912 is the same in substance as Section 12 of the Uniform Transfers to Minors Act except as indicated below.

Subdivision (a) of Section 3912 expands subdivision (a) of former Civil Code Section 1158 to include the duties to take control and appropriately register or record custodial property in the name of the custodian.

Subdivision (b) of Section 3912 restates and makes somewhat stricter the prudent man fiduciary standard for the custodian, since it is now cast in terms of a prudent person "dealing with property of another" rather than one "who is seeking a reasonable income and preservation of *his* capital," as under subdivision (c) of former Civil Code Section 1158 (emphasis added).

Subdivision (b) does not include the provision of the Uniform Transfers to Minors Act which specifically provides a slightly higher standard for professional fiduciaries. However, in determining what constitutes "the standard of care that would be observed by a prudent person dealing with the property of another," a professional custodian (such as a trust company or the trust department of a bank) will be held to a greater standard of care based on its presumed expertise than a lay custodian. *Cf.* Estate of Beach, 15 Cal.3d 623, 542 P.2d 994, 125 Cal. Rptr. 570 (1975) (executor). See also

the Legislative Committee Comment to Probate Code § 2401 (guardian or conservator). The rule stated in subdivision (b) parallels Section 7-302 of the Uniform Probate Code in order to refer to the existing and growing body of law interpreting that standard. Subdivision (b)(1) of Section 3912 continues subdivision (e) of former Civil Code Section 1159—a special immunity from liability for the custodian for losses to custodial property where the custodian is not compensated. No comparable provision is found in the Uniform Transfers to Minors Act. This provision is included because it is likely to reflect the desires of the donor who makes a transfer to a custodian who serves without compensation. Subdivision (c) of former Civil Code Section 1158 permitted a custodian to retain any security received, without the obligation to diversify investment. Subdivision (b)(2) of Section 3912 extends that rule to any property received.

In order to eliminate any uncertainty that existed under the former law, subdivision (c) of Section 3912 grants specific authority to invest custodial property in life insurance (1) on the minor's life if the minor's estate is the sole beneficiary or (2) on the life of another person in whom the minor has an insurable interest if the minor, the minor's estate, or the custodian in the custodial capacity is made the beneficiary of such policies.

Subdivision (d) of Section 3912 generally continues subdivision (g) of former Civil Code Section 1158, but adds the provision requiring that custodial property consisting of an undivided interest be held as a tenant in common. This provision permits the custodian to invest custodial property in common trust funds, mutual funds, or in a proportional interest in a "jumbo" certificate of deposit. Investment in property held in joint tenancy with right of survivorship is not permitted, but the Act does not preclude a transfer of such an interest to a custodian, and the custodian is authorized under subdivision (b) to retain a joint tenancy interest so received.

Subdivision (e) of Section 3912 continues subdivision (h) of former Civil Code Section 1158, but adds the requirement that income tax information be maintained and made available for preparation of the minor's tax returns. Because the custodianship is not a separate legal entity or taxpayer, the minor's tax identification number should be used to identify all custodial property accounts.

Probate Code § 3920. Termination of custodianship

Comment. Section 3920 is drawn from Section 20 of the Uniform Transfers to Minors Act. Sections 3920 and 3920.5 supersede subdivision (d) of former Civil Code Section 1158.

Subdivision (a) establishes the age of termination as 18 years unless the time of transfer of custodial property to the minor is delayed under Section 3920.5.

Probate Code § 3920.5. Delay of time of transfer to minor

Comment. Section 3920.5 is new. There is no provision for choice as to when custodial property shall be transferred to the minor under the Uniform Transfers to Minors Act or under prior California law. Section 3920.5 gives this choice since most transferors who specifically authorize a custodianship wish to preserve the custodianship as long as possible. This is most likely to be the case, for example, where the

custodial property is intended to be preserved and used to finance a college education. *E.g.*, Sacks, *Inter Vivos and Testamentary Trusts*, in *Estate Planning for the General Practitioner* § 4.8, at 182-83 (Cal. Cont. Ed. Bar 1979) ("A client may feel that a particular child at 18 does not have, or will not have, sufficient maturity to manage a substantial gift, particularly when the client wishes to make the gift for a particular purpose, *e.g.*, education. A . . . custodian under the California Uniform Gifts to Minors Act must deliver the property to the minor when he reaches 18 (CC § 1158(d)). Therefore, a testamentary or inter vivos trust may be necessary to achieve the client's goals."). Continuing the custodianship past the age of 18 permits the donor to avoid the expense of preparing a trust instrument to create a trust that otherwise would be required in order to retain the property under custodial management until the young person reaches the specified age.

The custodian is required to transfer the property to the minor when the minor attains the age of 18 years unless the transfer pursuant to Section 3909 specifies a later time. See Section 3920.

Subdivision (c) of Section 3920.5 permits the custodianship to continue until not later than the time the minor attains the age of 25 years where the transfer is made pursuant to a provision in a will or trust that provides that the custodianship is to continue until the specified age, not later than the time the beneficiary attains the age of 25. A custodianship may be established pursuant to a provision in a will or trust that provides that the custodianship is to continue until a specified age after age 18 even though the beneficiary has attained an age older than 18 but younger than the specified age at which the custodianship is to terminate. See Section 3901(k).

Subdivision (d) of Section 3920.5 permits the custodianship to continue until not later than the time the minor attains the age of 25 years where the custodial property is transferred by the irrevocable exercise of a power of appointment under Section 3904 if the transfer specifies that the custodianship is to continue until the specified age.

Subdivision (e) of Section 3920.5 permits the custodianship to continue until not later than the time the minor attains the age of 21 years where the custodial property is transferred by a lifetime gift. The 21-year maximum duration of the custodianship is consistent with the Internal Revenue Code which permits "minority trusts" under Section 2503(c) of the Internal Revenue Code to continue in effect until age 21.

Section 3920.5 does not provide for continuance beyond age 18 of a custodianship created under or pursuant to Sections 3412, 3413, 3602, 3611, 3906, or 3907. These custodianships terminate at age 18 because they are substitutes for a guardianship that otherwise would terminate at that time (see Section 1600). And, in the cases where Section 3920.5 permits the custodianship to continue after the minor attains the age of 18 years, if the transfer pursuant to Section 3909 does not specify any age, the custodianship terminates when the minor attains 18 years of age. See subdivision (f) of Section 3920.5.

Subdivision (g) validates a transfer that specifies a maximum time for the duration of the custodianship that is longer than permitted by Section 3920.5 by reducing the duration of the custodianship to

the maximum duration permitted for a custodianship created by that type of transfer.

Because property in a single custodianship may be distributable at different times, separate accounting for custodial property by source may be required. See Comment to Section 3910.

Probate Code § 3923. Effect on existing custodianships

Comment. Subdivision (b) of Section 3923 is the same as subsection (a) of Section 22 of the Uniform Transfers to Minors Act. This subdivision attempts to validate any transfer of custodial property made before the effective date of this part notwithstanding that there was no specific authority in California law for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made. The subdivision would, for example, validate a transfer from an intervivos trust by a trustee to a custodianship pursuant to an express provision in the trust instrument giving the trustee that authority. It was not clear under prior law that such a transfer created a valid custodianship.

Subdivision (c) is the same as subsection (b) of Section 22 of the Uniform Transfers to Minors Act, except that subdivision (c) does not contain the language of Section 22(b) relating to extending the duration of custodianships in existence on the operative date. The omitted language is unnecessary because custodianships created under prior law will still terminate at age 18 under the new law. See Sections 3920, 3920.5. Subdivision (c) makes this part apply to all transfers made before its effective date in the manner and form prescribed in the California Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights. This provision avoids having two bodies of law in force—one applicable to prior custodianships and the other to custodianships created under this part—for 18 more years until all custodianships created under the California Uniform Gifts to Minors Act have terminated.

Subdivision (d) is the same as the second sentence of Section 27 of the Uniform Transfers to Minors Act. It preserves prior law for matters not governed by this part.

Probate Code § 6341. Devises to minors under California Uniform Gifts to Minors Act or California Uniform Transfers to Minors Act

Comment. The introductory clause of Section 6341 is revised so that Section 6341 will apply whether the testator's will refers to the California Uniform Transfers to Minors Act or to the superseded California Uniform Gifts to Minors Act. This avoids the requirement that the will be modified to refer to the new Act.

Subdivision (a) is revised to make the California Uniform Transfers to Minors Act applicable to a devise to a minor that the will makes subject to either the old or the new Uniform Act.

Subdivision (b) continues the substance of former Section 6343, but subdivision (b) does not apply unless the beneficiary has attained the age at which the custodianship was to terminate, which age may be older than age 18 if the will so provides. See Sections 3920 and 3920.5.

Subdivision (c) continues the substance of former Section 6344. Subdivision (d) continues the substance of former Section 6346.

APPENDIX XV
REPORT OF
SENATE COMMITTEE ON JUDICIARY
ON ASSEMBLY BILL 3472

[Extract from Senate Journal for June 14, 1984 (1983-84 Regular Session)]

Assembly Bill 3472 was introduced to effectuate the California Law Revision Commission's Recommendation Relating to Liability of Stepparent for Child Support, 17 Cal. L. Revision Comm'n Reports 251 (1984). The intent of the Senate Committee on Judiciary in approving Assembly Bill 3472 is reflected by the new and revised comments set out below and, with respect to the comment which is not revised below, by the comment in the Law Revision Commission recommendation.

Civil Code § 5120 (amended)

Comment. Section 5120 is amended to make clear that the earnings of a stepparent are not liable for a child support obligation of the parent, notwithstanding implications to the contrary in cases and other statutes. *Cf.* Section 4807 (community property may be subjected to support of children); *In re Marriage of Brown*, 99 Cal. App.3d 702, 160 Cal. Rptr. 524 (1979) (community interest of parent in income of stepparent obligated for child support). The implications to the contrary in Sections 5127.5 and 5127.6 are limited to AFDC benefit determinations and the sections themselves have been impliedly repealed. See, *e.g.*, *In re Marriage of Shupe*, 139 Cal.App.3d 1026, 189 Cal. Rptr. 288 (1983); Cal. Stats. 1981-82, 1st Ex. Sess., ch. 3 (repealing Welfare and Institutions Code § 11261, which was identical to Civil Code § 5127.6, and enacting Welfare and Institutions Code § 11008.14, substituting a new rule that income of a stepparent shall be considered available for purposes of eligibility determination and grant computation to the extent required by federal law). The effect of the amendment is to place pre-existing child support and other pre-existing obligations in the same position as general premarital contractual obligations.

The second sentence is added to Section 5120 to make clear the extent to which paid earnings remain not liable. The effect of this sentence is to protect a deposit account only where the nonobligor spouse has an account into which only his or her earnings and separate property or property of a third person are deposited (unless the amount of other community property deposited in the account is insignificant). In such a situation, it is clear that the nonobligor spouse has carefully set aside his or her earnings and separate property and it is appropriate to continue the protection given the earnings. Where the account is commingled with any significant amount of other community property (such as the earnings of the other spouse or other community property income), the intent to

segregate the earnings and separate property is not clear, and hence the protection is not continued. The same reasoning justifies not protecting the account where the obligor spouse has a right to withdraw funds from the account.

If property sought to be applied to the satisfaction of a judgment for child support is liable for the payment of the judgment but is shown to be exempt, in determining under Section 703.070 of the Code of Civil Procedure the extent to which the exempt property nevertheless shall be applied to the satisfaction of the support judgment, the court shall take into account, among other relevant circumstances, all of the other property of the spouses, including the separate property of each and the earnings which are not liable for child support under Section 5120. Although Section 703.070 of the Code of Civil Procedure requires the court to take into account property which is not liable under Section 5120, Section 703.070 does not make the property described in Section 5120 liable for payment of the child support judgment. Nothing in Section 5120 limits or affects the payment under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of the Code of Civil Procedure of a claim based on a judgment for child support, whether the money to be applied to the claim is owed to the judgment debtor alone or to the judgment debtor and the spouse of the judgment debtor. This is clear because the protection for earnings after payment extends only to earnings deposited in a deposit account that meets the requirements of Section 5120.

Civil Code § 5120.110 (amended)

Comment. Subdivision (a) of Section 5120.110 continues the substance of former Section 5116 (contracts after marriage) and the implication of Section 5122(b) (torts), and makes clear that the community property (other than earnings of the nondebtor spouse) is liable for the prenuptial contracts of the spouses. The nondebtor spouse need not be made a party for the purpose of enforcing a judgment out of community property. However, special procedural provisions may apply. See, e.g., Code Civ. Proc. § 706.108 (wage garnishment). Subdivision (a) applies regardless whether the debt was incurred prior to, on, or after January 1, 1975. For rules governing liability after division of the community property, see Section 5120.160.

The introductory and concluding clauses of subdivision (a) are intended to negate the implication of language found in 1974 Cal. Stats. ch. 1206, § 1, p.2609, that community property is liable only for the debts of the spouse having management and control. The introductory and concluding clauses make clear that the community property is liable for all debts of either spouse absent an express statutory exception. Thus community property under the management and control of one spouse pursuant to Section 5125(d) (spouse operating or managing business) or Financial Code Section 851 (one spouse bank account) or 3051 (conservatorship) remains liable for the debts of the other spouse. For an express statutory exception from liability of community property, see subdivision (b) (premarital debts). See also Section 5120.240 (reimbursement for postseparation debts).

The first sentence of subdivision (b) continues the substance of a portion of former Section 5120 and extends it to include all debts, not just those based on contract. The second sentence codifies the rule that, for purposes of liability, earnings may not be traced through changes in form. See, *e.g.*, *Pfunder v. Goodwin*, 83 Cal. App. 551, 257 P. 119 (1927).

The second sentence of subdivision (b) also makes clear the extent to which paid earnings remain not liable. The effect of the new language is to protect a deposit account only where the nonobligor spouse has an account into which only his or her earnings and separate property or property of a third person are deposited (unless the amount of other community property deposited in the account is insignificant). In such a situation, it is clear that the nonobligor spouse has carefully set aside his or her earnings and separate property and it is appropriate to continue the protection given the earnings. Where the account is commingled with any significant amount of other community property (such as the earnings of the other spouse or other community property income), the intent to segregate the earnings and separate property is not clear, and hence the protection is not continued. The same reasoning justifies not protecting the account where the obligor spouse has a right to withdraw funds from the account.

Section 5120.150 provides that a child or spousal support obligation that does not arise out of the marriage is to be treated as a debt incurred before marriage. Hence, such an obligation is governed by the provisions of Section 5120.110. If property sought to be applied to the satisfaction of a judgment for child support is liable for the payment of the judgment but is shown to be exempt, in determining under Section 703.070 of the Code of Civil Procedure the extent to which the exempt property nevertheless shall be applied to the satisfaction of the support judgment, the court shall take into account, among other relevant circumstances, all of the other property of the spouses, including the separate property of each and the earnings which are not liable for child support under subdivision (b) of Section 5120.110. Although Section 703.070 of the Code of Civil Procedure requires the court to take into account property which is not liable under subdivision (b) of Section 5120.110, Section 703.070 does not make the property described in subdivision (b) of Section 5120.110 liable for payment of the support judgment. Nothing in Section 5120.110 limits or affects the payment under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of the Code of Civil Procedure of a claim based on a judgment for child support, whether the money to be applied to the claim is owed to the judgment debtor alone or to the judgment debtor and the spouse of the judgment debtor. This is clear because the protection for earnings after payment extends only to earnings deposited in a deposit account that meets the requirements of subdivision (b) of Section 5120.110.

APPENDIX XVI
STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

**Provision for Support
if Support Obligor Dies**

September 1984

**CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303**

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this Recommendation as *Recommendation Relating to Provision for Support if Support Obligor Dies*, 18 Cal. L. Revision Comm'n Reports 119 (1986).

CALIFORNIA LAW REVISION COMMISSION

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September 30, 1984

To: THE HONORABLE GEORGE DEUKMEJIAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

Unless the parties otherwise agree in writing, a spousal support order terminates when the support obligor dies. The Commission recommends that the court be given more flexibility in selecting an appropriate method to deal with the support needs after death terminates the order. Existing law gives the court authority to require insurance for the benefit of the supported spouse. This authority should be expanded to allow the court to order the purchase of an annuity for the supported spouse or to order that the support obligor establish a trust to provide for the support of the supported spouse.

This recommendation is made pursuant to 1983 Cal. Stats. res. ch. 40 (family law).

Respectfully submitted,

DAVID ROSENBERG
Chairperson

RECOMMENDATION

relating to

PROVISION FOR SUPPORT IF SUPPORT OBLIGOR DIES

A spousal support order does not survive the death of the support obligor.¹ This rule applies both to a contested court order and to an order made pursuant to a marital termination settlement. However, the parties to a marital termination settlement may agree that support continues to be an obligation of the estate of the support obligor,² and a spousal support order based on such an agreement may survive death.³ Absent an agreement, the support order is terminated by the obligor's death, even though continued support may be a necessity for the former spouse.

When the parties are negotiating a marital termination settlement, they may take into consideration the eventuality of the death of the support obligor and plan for it through life insurance, a trust fund, or other devices.⁴ Where the parties are unable to reach an agreement, the court in a contested case has very limited authority to provide for the possibility that the support obligor's death will terminate the support obligation. Civil Code Section 4801.4, enacted in 1984,⁵ authorizes the court in an appropriate case to take into account the cost of insurance in setting the amount of support.⁶ If insurance is already in

¹ *Parker v. Parker*, 193 Cal. 478, 225 P. 447 (1924); *Roberts v. Higgins*, 122 Cal. App. 170, 9 P.2d 517 (1932); *Miller v. Superior Court*, 9 Cal.2d 733, 72 P.2d 868 (1937); former Civil Code § 139, as amended by 1951 Cal. Stats. ch. 1700, § 7, at 3912, now recodified as Civil Code § 4801(b).

² See, e.g., *Steele v. Langmuir*, 65 Cal. App.3d 459, 135 Cal. Rptr. 426 (1976).

³ See, e.g., *Hilton v. McNitt*, 49 Cal.2d 79, 315 P.2d 1 (1957).

⁴ See, e.g., S. Walzer, *California Marital Termination Settlements* § 5.24, at 170-72, § 5.56, at 195 (Cal. Cont. Ed. Bar 1971) and Supp. 1984 § 5.44, at 76.

⁵ 1984 Cal. Stats. ch. 1573.

⁶ The only effect of the new section is to authorize the court in an appropriate case to take into account the cost of insurance in setting the amount of support. This cost is only one of many factors that are taken into account in setting the amount of support. See Civil Code § 4801(a). The new section does not extend the time a support order remains in effect. The existing law is continued that the support order

force on the life of the support obligor, this section authorizes the court to order that the support obligor maintain some or all of the insurance in force and name the supported spouse as the beneficiary of the insurance. Or, if the support obligor is insurable, the section authorizes the court to order that the support obligor obtain and maintain insurance and name the supported spouse as beneficiary. The support obligor can change the beneficiary on the insurance if the supported spouse dies before the support obligor.

The court's authority to require insurance is subject to important limitations: The authority may be exercised only "where it is just and reasonable in view of the circumstances of the respective parties" and only where the insurance is needed "so that the supported spouse will not be left without means for support in the event that the order for support is terminated by the death of the party required to make the payment of support."⁷

The Commission has received letters from several women whose long-term marriages were ended by a marriage dissolution.⁸ These women live in constant fear that their support payments will be terminated by the death of their former husbands, leaving them without any means for support. The 1984 statute is of no assistance to them. Their former husbands either are no longer insurable or insurance can be obtained only at a prohibitive cost. Yet the former husbands have the financial means to make some other provision for continued support if the husband dies.

The Commission recommends that the 1984 statute be expanded to give the court authority to order the purchase of an annuity for the supported spouse or to order the spouse required to make the payment of support to establish a trust to provide for the support of the supported

terminates when the support obligor dies unless the parties have otherwise agreed in writing. But the insurance proceeds upon the death of the support obligor will provide funds to the supported spouse for support after the death of the support obligor. See Senate Journal, Feb. 9, 1984, at 7784-85.

⁷ Civil Code § 4801.4, enacted by 1984 Cal. Stats. ch. 1573.

⁸ Letter from Janice Solotoy to Senator Rosenthal (Oct. 18, 1984); letter from Marilyn Silver to Assembly Member McAlister (July 16, 1984) (copies on file in office of Law Revision Commission). One writer was 75 years old and had been married for 25 years; the other was 60 years old and had been married for 32 years.

spouse.⁹ Like the authority to require insurance, the expanded authority could be exercised only where just and reasonable in view of the circumstances of the respective parties and only so that the supported spouse will not be left without means for support in the event that the order for support is terminated by the death of the party required to make the payment of support. This expansion would give the court more flexibility in selecting the appropriate method of protecting the supported spouse where it is just and reasonable to do so in view of the circumstances of the particular case. For example, if a trust is used, the trust could provide for the support of the supported spouse during that spouse's life and then the income or assets of the trust, or both, could be paid to the person designated by the support obligor who established the trust.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 4801.4 of the Civil Code, relating to family law.

The people of the State of California do enact as follows:

Civil Code § 4801.4 (amended)

SECTION 1. Section 4801.4 of the Civil Code is amended to read:

4801.4. For the purposes of Section 4801, where it is just and reasonable in view of the circumstances of the respective parties, the court, in determining the needs of a supported spouse, may include an amount sufficient to *purchase an annuity for the supported spouse or to maintain insurance for the benefit of the supported spouse on the life of the spouse required to make the payment of support, or may require the spouse required to make the*

⁹ This recommendation would give the court a somewhat more limited authority than was previously recommended by the Commission. See *Recommendation Relating to Effect of Death of Support Obligor*, 17 Cal. L. Revision Comm'n Reports 897 (1984).

payment of support to establish a trust to provide for the support of the supported spouse, so that the supported spouse will not be left without means for support in the event that the order for support is terminated by the death of the party required to make the payment of support.

Comment. Section 4801.4 is amended to give the court more flexibility in selecting an appropriate method to provide funds to the supported spouse for continued support after a support order is terminated by the death of the support obligor. The section is expanded to give the court authority to order the purchase of an annuity for the supported spouse or to order that the support obligor establish a trust to provide for the support of the supported spouse. This expansion is in recognition that in some circumstances the amount of insurance in force, if any, on the life of the support obligor may be insufficient and the support obligor may no longer be insurable or insurance can be obtained only at a prohibitive cost.

If insurance is already in force on the life of the support obligor, this section authorizes the court to order that the support obligor maintain some or all of the insurance in force and name the supported spouse as the beneficiary of the insurance. And, if the support obligor is insurable, the section authorizes the court to order that the support obligor obtain and maintain insurance and name the supported spouse as beneficiary. The support obligor can change the beneficiary on the insurance if the supported spouse dies before the support obligor. Instead of ordering the support obligor to maintain insurance and name the supported spouse as beneficiary, the court may order the support obligor to purchase an annuity for the supported spouse to provide support in the event that the support obligor dies before the supported spouse. In some cases, this may be less expensive than insurance. In other cases, the establishment of a trust to provide for the support of the supported spouse during that spouse's lifetime may be the best solution. If a trust is used, after the death of the supported spouse, the income or assets of the trust, or both, could be paid to the person designated by the support obligor.

Section 4801.4 does not change the rule that the support order terminates when the support obligor dies. Civil Code § 4801 (b). The section permits the court *where it is just and reasonable to do so in view of the circumstances of the particular case* to order (as a part of the support) insurance, an annuity, or establishment of a trust, *where necessary so that the supported spouse will not be left without means for support if the support obligor dies.* This

section supplements the provisions of Civil Code Section 4801 which requires the court to consider a number of factors in determining the amount and duration of support.

**APPENDIX XVII
STATE OF CALIFORNIA**

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

**Transfer Without Probate of
Certain Property Registered
by the State**

November 1984

**CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303**

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this Recommendation as *Recommendation Relating to Transfer Without Probate of Certain Property Registered by the State*, 18 Cal. L. Revision Comm'n Reports 129 (1986).

CALIFORNIA LAW REVISION COMMISSION

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ANN E. STODDEN

November 15, 1984

To: THE HONORABLE GEORGE DEUKMEJIAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

Existing statutory provisions permit transfer at death, without probate, of title to a vehicle, undocumented vessel, manufactured home, mobilehome, commercial coach, or truck camper if the deceased owner leaves no other property requiring probate. The Commission recommends that these provisions be revised to make them uniform and to eliminate uncertainty in their application.

This recommendation is authorized by 1980 Cal. Stats. res. ch. 37.

Respectfully submitted,

DAVID ROSENBERG
Chairperson

RECOMMENDATION

relating to

TRANSFER WITHOUT PROBATE OF CERTAIN PROPERTY REGISTERED BY THE STATE

Existing law provides a simple and expeditious procedure for transfer at death of title to a vehicle,¹ undocumented vessel,² manufactured home,³ mobilehome,⁴ commercial coach,⁵ or truck camper⁶ registered by the state. If the

¹ A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks. Veh. Code § 670.

² "Undocumented vessel" means a vessel which is not required to have and does not have a valid marine document issued by the cognizant federal agency. Veh. Code § 9840. "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except a seaplane on the water and a watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to or guided on such permanently fixed course by means of a mechanical device on a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled or by means of a mechanical device attached to the watercraft itself. *Id.* The Commission is informed that commercial vessels over 31 feet in length must be federally registered. Other vessels may be federally registered if the owner so chooses. Vessels not federally registered that are in California waters must be "numbered" by the California Department of Motor Vehicles. Veh. Code § 9850.

³ "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. "Manufactured home" also includes a structure which satisfies the foregoing definition except the size requirements if the manufacturer voluntarily files a certification and complies with the standards established under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, and includes a mobilehome subject to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401-5426). Health & Safety Code § 18007.

⁴ "Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than two dwelling units to be used with or without a foundation system. "Mobilehome" does not include a recreational vehicle, commercial coach, or factory-built housing. Health & Safety Code § 18008.

⁵ "Commercial coach" means a structure transportable in one or more sections, designed and equipped for human occupancy for industrial, professional, or commercial purposes, which is required to be moved under permit, and includes a trailer coach as defined in Section 635 of the Vehicle Code. Health & Safety Code § 18001.8.

⁶ "Truck camper" means a portable unit, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from a truck, and designed for human habitation for recreational or emergency occupancy. See Civil Code § 799.24 and Health & Safety Code § 18013.4.

deceased owner leaves no other property requiring probate, the surviving spouse or other near relatives⁷ of the decedent, if otherwise entitled to the property, may have the registration transferred into his or her name by presenting the registering agency with a certificate signed under penalty of perjury.⁸

The statutes governing vehicles and undocumented vessels are not consistent with the statute governing manufactured homes, mobilehomes, commercial coaches, and truck campers.⁹ It is not clear whether the statutes may be used by a beneficiary under the decedent's will who is not a near relative of the decedent.¹⁰ A vehicle registered under the Vehicle Code, a manufactured home, a mobilehome, a commercial coach, or a truck camper may be transferred by the summary method without regard to its value¹¹ if the decedent leaves no other property

⁷ The other near relatives who may use the summary transfer procedure are the decedent's children, issue of deceased children, parents, brothers and sisters, issue of a deceased brother or sister, and grandparents. Prob. Code § 630.

⁸ See Health & Safety Code § 18102; Veh. Code §§ 5910, 9916. The required documentation is: (1) the certificate of ownership and registration card (certificate of number in the case of an undocumented vessel), if available; (2) a certified statement of the heir or beneficiary setting forth the fact of survivorship or heirship and the names and addresses of other heirs; (3) if required by the department, a certificate of death of the decedent; (4) a statement that there are no creditors of the decedent or that they have been paid in full or otherwise discharged. *Id.* This procedure is closely analogous to the procedure under Section 630 of the Probate Code which permits the surviving spouse and other near relatives of the decedent to collect the decedent's personal property upon presentation of an affidavit, if the estate value does not exceed \$60,000.

⁹ Compare Veh. Code §§ 5910 and 9916 with Health & Safety Code § 18102.

¹⁰ In the case of a manufactured home, mobilehome, commercial coach, or truck camper, the summary procedure may be used by "the surviving heir or beneficiary in the order named in Section 630 of the Probate Code" unless the property "is, by will, otherwise bequeathed." Health & Safety Code § 18102. In the case of a vehicle or undocumented vessel, the summary procedure may be used by "the surviving husband or wife or other heir in the order named in Section 630 of the Probate Code" unless the property "is by will otherwise bequeathed." Veh. Code §§ 5910, 9916. The Commission is advised by the Department of Housing and Community Development that the department routinely uses Section 18102 of the Health and Safety Code to transfer title to manufactured homes, mobilehomes, and commercial coaches to persons entitled to the property under the decedent's will. See note 13, *infra*. The same interpretation would apply to truck campers which are governed by the same statutory provision. See 1984 Cal. Stats. ch. 1527 § 39 (amending Health & Safety Code § 18102).

¹¹ Health & Safety Code § 18102; Veh. Code § 5910. The statute governing transfer at death of mobilehomes and commercial coaches was first enacted in 1980 with no value limit. See 1980 Cal. Stats. ch. 1149, § 34 (former Health & Safety Code § 18076.27). Manufactured homes were added to the statute in 1983. See 1983 Cal.

requiring probate. But an undocumented vessel may be so transferred only if the total value of the decedent's property in California does not exceed \$60,000, even if the decedent leaves no other property requiring probate.¹²

The Commission recommends legislation to make uniform the various provisions governing transfer of registration of the decedent's title or interest in a vehicle, undocumented vessel, manufactured home, mobilehome, commercial coach, or truck camper. The recommended legislation would:

(1) Make clear that a manufactured home, mobilehome, commercial coach, truck camper, vehicle, or undocumented vessel may be transferred by the summary method to persons entitled under the decedent's will, as well as to those who are entitled to take in case of intestate succession. This is consistent with present administrative interpretation by the Department of Housing and Community Development,¹³ and with the general provisions for transfer of the decedent's personal property upon presentation of an affidavit of entitlement.¹⁴

(2) Eliminate the \$60,000 maximum estate value limitation for transfer of registration of the decedent's title or interest in an undocumented vessel registered under the Vehicle Code, making this provision consistent with those applying to vehicles, manufactured homes, mobilehomes, commercial coaches, and truck campers.

(3) Delay the transfer of title until 30 days have elapsed since the decedent's death.¹⁵ This delay will not interfere

Stats. ch. 1076, § 76 (amending Health & Safety Code § 18102). Truck campers were added to the statute in 1984. See 1984 Cal. Stats. ch. 1527, § 39 (amending Health & Safety Code § 18102). The statute governing vehicles registered under the Vehicle Code formerly provided for summary transfer only if the vehicle did not exceed a value of \$1,000. See 1935 Cal. Stats. ch. 27 (former Veh. Code § 185). The value limit was removed for vehicles in 1949. See 1949 Cal. Stats. ch. 1522.

¹² Veh. Code § 9916.

¹³ Letter from Department of Housing and Community Development to California Law Revision Commission (September 19, 1984).

¹⁴ Prob. Code § 630.

¹⁵ A number of other states that provide for summary collection of the decedent's personal property by affidavit require some period of delay after the decedent's death before the property may be collected. See Ariz. Rev. Stat. Ann. § 14-3971 (Supp. 1983-84) (30-day delay); Ark. Stat. Ann. § 62-2127 (Supp. 1983) (45-day delay); Del. Code Ann. tit. 12, § 2306 (Supp. 1982) (30-day delay); Mo. Ann. Stat. § 473.097 (Vernon Supp. 1984) (30-day delay); Tex. Prob. Code Ann. § 137 (Vernon Supp. 1984) (30-day delay).

with the survivor's use of the property, but will allow time for competing claimants, if any, to come forward.

(4) Make other technical changes.¹⁶

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 18102 of the Health and Safety Code, to amend Section 630 of the Probate Code, to add Section 9852.5 to, and to repeal and add Sections 5910 and 9916 of, the Vehicle Code, relating to decedents' estates.

The people of the State of California do enact as follows:

Health & Safety Code § 18102 (amended). Transfer of manufactured home, mobilehome, or commercial coach without probate

SECTION 1. Section 18102 of the Health and Safety Code is amended to read:

18102. ~~Upon~~ (a) If 30 days have elapsed since the death of a registered or legal owner of a manufactured home, mobilehome, commercial coach, or truck camper registered under this part, without the decedent leaving other property necessitating probate, unless the manufactured home, mobilehome, commercial coach, or truck camper is, by will, otherwise bequeathed, and irrespective of the value of the manufactured home, mobilehome, commercial coach, or truck camper the

¹⁶ The Commission recommends the following technical changes:

(1) A new section drawn from Vehicle Code Section 4150.5 should be added to provide for co-ownership of an undocumented vessel, to provide for passage of title on the death of one co-owner, and to provide rules for transfer by co-owners during lifetime.

(2) Section 630 of the Probate Code should be revised so that the decedent's heirs listed in that section are in the same order as provided for intestate succession under Section 6402 of the Probate Code. This change is needed because some provisions of the Health and Safety Code and the Vehicle Code provide that the decedent's surviving heirs take in the order named in Section 630 of the Probate Code. Health & Safety Code § 18102; Veh. Code §§ 5910, 9916.

(3) The contents of the certificate that the heir or beneficiary must present to the department should be standardized.

following person may secure a transfer of registration of the title or interest of the decedent:

(1) The surviving husband or wife or other heir or beneficiary in the order named in Section 630 of the Probate Code, unless the manufactured home, mobilehome, commercial coach, or truck camper is, by will, otherwise bequeathed.

(2) The beneficiary who takes the manufactured home, mobilehome, commercial coach, or truck camper under the will of the decedent, where the manufactured home, mobilehome, commercial coach, or truck camper is, by will, so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of registration of the title or interest of the decedent upon presenting to the department all of the following:

~~(a)~~

(1) The appropriate certificate of title and registration card, if available.

~~(b) A certified statement of the heir or beneficiary setting forth his or her interest in the estate of the decedent.~~

~~(c) The names and addresses of any other heirs or beneficiaries.~~

~~(d) If required by the department, a certificate of the death of the decedent.~~

~~(e) A statement that there are no creditors of the decedent or, if so, that the creditors of the decedent have been paid in full or their claims have been otherwise discharged.~~

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The declarant is entitled to the manufactured home, mobilehome, commercial coach, or truck camper either (i) as the surviving heir or heirs named in Section 630 of the Probate Code if the decedent left no will or (ii)

as the beneficiary or beneficiaries under the decedent's last will if the decedent left a will, and no one has a right to the decedent's manufactured home, mobilehome, commercial coach, or truck camper that is superior to that of the declarant.

(D) There are no creditors of the decedent or, if there are, the creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

Comment. Section 18102 is amended to add the provision for a 30-day delay after the decedent's death, and to make clear that a beneficiary who takes a manufactured home, mobilehome, commercial coach, or truck camper under the decedent's will (whether or not the beneficiary is related to the decedent) may secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. This is consistent with the practice of the department. Since Section 18102 applies only where the decedent left no other property necessitating probate, the amendment to Section 18102 avoids the need to probate the decedent's estate merely to secure a transfer of registration of the title or interest of the decedent. The amendment makes Section 18102 consistent with Section 630 of the Probate Code which avoids the need for probate by permitting the beneficiaries under the decedent's will to "have any evidences of a debt, obligation, interest, right, stock, or chose in action transferred" to the beneficiary entitled to the property upon furnishing the person acting as registrar or transfer agent with an affidavit or declaration under penalty of perjury showing the right of the persons to have such evidences transferred. For comparable provisions, see Veh. Code §§ 5910 (vehicle), 9916 (vessel).

Probate Code § 630 (amended). Affidavit procedure for disposition of personal property of small estate without probate

SEC. 2. Section 630 of the Probate Code is amended to read:

630. (a) Subject to Section 632, subdivision (b) applies only where the gross value of the decedent's real

property in this state, if any, does not exceed ten thousand dollars (\$10,000) and the gross value of the decedent's real and personal property in this state (excluding any ~~motor~~ vehicle; ~~or~~ *registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code, any vessel numbered under Division 3.5 (commencing with Section 9840) of the Vehicle Code, or any manufactured home, mobilehome, or commercial coach, or truck camper registered under the provisions of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, of which the decedent is the owner or legal owner) over and above any amounts due to the decedent for services in the armed forces of the United States, and over and above the amount of salary not exceeding five thousand dollars (\$5,000), including compensation for unused vacation, owing to decedent for services from any employment, does not exceed sixty thousand dollars (\$60,000).*

(b) The surviving spouse, the children, the issue of deceased children, ~~a grandparent, parent parents,~~ brothers or sisters of the decedent, the issue of a deceased brother or sister, *the grandparents,* or the guardian or conservator of the estate of any person bearing such relationship to the decedent, or the trustee named under a trust agreement executed by the decedent during his or her lifetime, the primary beneficiaries of which bear such relationship to the decedent, if such person or persons has or have a right to succeed to the property of the decedent, or the sole beneficiary, or all of the beneficiaries under the last will of the decedent, regardless of whether or not any beneficiary is related to the decedent, may, without procuring letters of administration, or awaiting the probate of the will, collect any money due the decedent (including money of the decedent on deposit in a financial institution as defined in Section 40), receive the tangible personal property of the decedent, and have any evidences of a debt, obligation, interest, right, stock, or chose in action

transferred to such person or persons upon furnishing the person, representative, corporation, officer or body owing the money, having custody of such property or acting as registrar or transfer agent of such evidences of debt, obligation, interest, right, stock, or chose in action, with an affidavit or declaration under penalty of perjury showing the right of the person or persons to receive such money or property, or to have such evidences transferred. Nothing in this subdivision applies to real property or an interest in real property.

(c) If the decedent's will nominates a custodian to receive a bequest to a beneficiary under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state and the nomination has not been revoked and the other conditions of subdivisions (a) and (b) are satisfied, the custodian may collect the bequest as provided in subdivision (b) if the beneficiary has not attained the age at which the custodianship is to terminate.

(d) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subdivision (b) and is discharged from liability in so doing as provided in Section 631.

(e) A public administrator who has taken charge of the estate of a decedent as provided in Section 1140 may refuse to pay money or deliver property of the estate pursuant to this article if payment of the costs and fees described in Section 1144.5, subject to the dollar limitations specified in that section, has not first been made or adequately assured to the satisfaction of the public administrator.

Comment. Subdivision (a) of Section 630 is amended to expand the types of property that are excluded in determining the gross value of the decedent's property to include all vehicles registered under the Vehicle Code, vessels numbered under the Vehicle Code, and manufactured homes and truck campers registered under the Health & Safety Code. These additional types of property are covered by special statutory provisions comparable to the special statutory provisions that cover the

types of property formerly excluded under Section 630 (motor vehicles, mobilehomes, and commercial coaches). See Health & Safety Code § 18102 (manufactured homes, mobilehomes, commercial coaches, and truck campers), Veh. Code §§ 5910 (vehicles), 9916 (vessels).

Subdivision (b) of Section 630 is amended so that the heirs of the decedent are listed in the same order as provided for intestate succession under Section 6402. This change is needed because some special statutory provisions provide that the decedent's surviving heirs take in the order named in Section 630. Health & Safety Code § 18102, Veh. Code §§ 5910, 9916.

Vehicle Code § 5910 (repealed and added). Transfer of vehicle without probate

SEC. 3. Section 5910 of the Vehicle Code is repealed.

5910. ~~Upon the death of an owner or legal owner of any vehicles registered under this code without the decedent leaving other property necessitating probate, the surviving husband or wife or other heir in the order named in Section 630 of the Probate Code, unless the vehicle is by will otherwise bequeathed, and irrespective of the value of the vehicle, may secure a transfer of registration of the title or interest of the deceased upon presenting to the department the appropriate certificate of ownership and registration card, if available, and a certified statement of the person setting forth the fact of survivorship or heirship, and the names and addresses of any other heirs, and, if required by the department, a certificate of the death of the deceased together with a statement that there are no creditors of the deceased or, if so, that the creditors of the deceased have been paid in full or the claims have been otherwise discharged.~~

SEC. 4. Section 5910 is added to the Vehicle Code, to read:

5910. (a) If 30 days have elapsed since the death of an owner or legal owner of a vehicle registered under this code, without the decedent leaving other property necessitating probate, and irrespective of the value of the vehicle, the following person may secure transfer of registration of the title or interest of the decedent:

(1) The surviving husband or wife or other heir in the order named in Section 630 of the Probate Code unless the vehicle is, by will, otherwise bequeathed.

(2) The beneficiary who takes the vehicle under the will of the decedent where the vehicle is, by will, so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of registration of the title or interest of the decedent upon presenting to the department all of the following:

(1) The appropriate certificate of ownership and registration card, if available.

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The declarant is entitled to the vehicle either (i) as the surviving heir or heirs named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary or beneficiaries under the decedent's last will if the decedent left a will, and no one has a right to the decedent's vehicle that is superior to that of the declarant.

(D) There are no creditors of the decedent or, if there are, the creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

(c) The department may prescribe a combined form for use under this section and Section 9916.

Comment. New Section 5910 continues former Section 5910 with revisions that (1) add the provision for a 30-day delay after the decedent's death and (2) permit a beneficiary who takes a vehicle under the decedent's will (whether or not the beneficiary is related to the decedent) to secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. Since Section 5910 applies

only where the decedent left no other property necessitating probate, the revision making Section 5910 apply where the beneficiary takes the vehicle under the decedent's will avoids the need to probate the decedent's estate merely to secure a transfer of registration of the title or interest of the decedent. This revision makes new Section 5910 consistent with Section 630 of the Probate Code which avoids the need for probate by permitting the beneficiaries under the decedent's will to "have any evidences of a debt, obligation, interest, right, stock, or chose in action transferred" to the beneficiary entitled to the property upon furnishing the person acting as registrar or transfer agent with an affidavit or declaration under penalty of perjury showing the right of the persons to have such evidences transferred. For comparable provisions, see Health & Safety Code § 18102 (manufactured home, mobilehome, commercial coach, or truck camper), Veh. Code § 9916 (vessel). Subdivision (c) of Section 5910, which permits a combined form, is consistent with the prior practice which used a combined form.

Vehicle Code § 9852.5 (added). Vessel coownership registration

SEC. 5. Section 9852.5 is added to the Vehicle Code, to read:

9852.5. Ownership of an undocumented vessel subject to registration may be held by two or more coowners as follows:

(a) A vessel may be registered in the names of two or more persons as coowners in the alternative by the use of the word "or." A vessel so registered in the alternative shall be deemed to be held in joint tenancy. Each coowner shall be deemed to have granted to the other coowners the absolute right to dispose of the title and interest in the vessel. Upon the death of a coowner the interest of the decedent shall pass to the survivor as though title or interest in the vessel was held in joint tenancy unless a contrary intention is set forth in writing upon the application for registration.

(b) A vessel may be registered in the names of two or more persons as coowners in the alternative by the use of the word "or" and if declared in writing upon the application for registration by the applicants to be community property, or tenancy in common, shall grant

to each coowner the absolute power to transfer the title or interest of the other coowners only during the lifetime of such coowners.

(c) A vessel may be registered in the names of two or more persons as coowners in the conjunctive by the use of the word "and" and shall thereafter require the signature of each coowner or his personal representative to transfer title to the vessel, except where title to the vessel is set forth in joint tenancy, the signature of each coowner or his or her personal representative shall be required only during the lifetime of the coowners, and upon death of a coowner title shall pass to the surviving coowner.

(d) The department may adopt suitable abbreviations to appear upon the certificate of ownership and certificate of number to designate the manner in which title to the vessel is held if set forth by the coowners upon the application for registration.

Comment. Section 9852.5 is drawn from Section 4150.5 (vehicles).

Vehicle Code § 9916 (repealed and added). Transfer of vessel without probate

SEC. 6. Section 9916 of the Vehicle Code is repealed.

9916. Upon the death of an owner or legal owner of any vessel numbered under this code without the decedent leaving other property necessitating probate, the surviving husband or wife or other heir in the order named in Section 630 of the Probate Code, unless the vessel is by will otherwise bequeathed, and if the total value of the decedent's property in this state does not exceed the amount specified in Section 630 of the Probate Code, may secure a transfer of ownership of the title or interest of the deceased upon presenting to the department the appropriate certificate of ownership and certificate of number, if available, and a certified statement of the person setting forth the fact of survivorship or heirship, and the names and addresses of any other heirs, and, if required by the department, a certificate of the death of the deceased, together with a

~~statement that there are no creditors of the deceased or, if so, that the creditors of the deceased have been paid in full or the claims have been otherwise discharged.~~

SEC. 7. Section 9916 is added to the Vehicle Code, to read:

9916. (a) If 30 days have elapsed since the death of an owner or legal owner of any vessel numbered under this division without the decedent leaving other property necessitating probate, and irrespective of the value of the vessel, the following person may secure a transfer of ownership of the title or interest of the decedent:

(1) The surviving husband or wife or other heir in the order named in Section 630 of the Probate Code unless the vessel is, by will, otherwise bequeathed.

(2) The beneficiary who takes the vessel under the will of the decedent where the vessel is, by will, so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of ownership of the title or interest of the decedent upon presenting to the department all of the following:

(1) The appropriate certificate of ownership and certificate of number, if available.

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The declarant is entitled to the vessel either (i) as the surviving heir or heirs named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary or beneficiaries under the decedent's last will if the decedent left a will, and no one has a right to the decedent's vessel that is superior to that of the declarant.

(D) There are no creditors of the decedent or, if there are, the creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

Comment. New Section 9916 continues former Section 9916 with revisions that (1) add the provision for a 30-day delay after the decedent's death, (2) permit a beneficiary who takes a vessel under the decedent's will (whether or not the beneficiary is related to the decedent) to secure a transfer of ownership of the title or interest of the decedent without the need to probate the decedent's estate and (3) eliminate the provision that made the section not applicable if the total value of the decedent's property in this state exceeds the amount specified in Section 630 of the Probate Code.

Since Section 9916 applies only where the decedent left no other property necessitating probate, the revision making Section 9916 apply where the beneficiary takes the vessel under the decedent's will avoids the need to probate the decedent's estate merely to secure a transfer of ownership of the title or interest of the decedent. This revision makes Section 9916 consistent with Section 630 of the Probate Code. See the Comment to Section 5910.

Elimination of the former provision that made Section 9916 not applicable where the value of decedent's property in this state exceeds the amount specified in Probate Code Section 630 makes Section 9916 consistent with Section 5910 (vehicles) and Health & Safety Code Section 18102 (manufactured home, mobilehome, commercial coach, or truck camper).

APPENDIX XVIII
STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Dividing Jointly Owned Property
Upon Marriage Dissolution

November 1984

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this Recommendation as *Recommendation Relating to Dividing Jointly Owned Property Upon Marriage Dissolution*, 18 Cal. L. Revision Comm'n Reports 147 (1986).

CALIFORNIA LAW REVISION COMMISSION

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ANN E. STODDEN

November 9, 1984

To: THE HONORABLE GEORGE DEUKMEJIAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The Law Revision Commission was authorized by Resolution Chapter 65 of the Statutes of 1978 to study whether the law relating to community property should be revised. The Commission submits this recommendation concerning one aspect of the study—giving the court in a marital dissolution proceeding jurisdiction to divide joint tenancy and tenancy in common property of the spouses along with the community property.

This recommendation renews a recommendation made in 1982. See *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982). The earlier recommendation was not enacted because of practitioners' concerns about potential tax problems; these concerns have since been resolved by federal tax legislation enacted in 1984.

Respectfully submitted,

DAVID ROSENBERG
Chairperson

RECOMMENDATION

relating to

DIVIDING JOINTLY OWNED PROPERTY UPON MARRIAGE DISSOLUTION

A husband and wife may hold property as joint tenants, tenants in common, or as community property.¹ Although the court in a dissolution or legal separation proceeding has jurisdiction to settle the property rights of the parties,² the jurisdiction is construed to extend only to the community property and not to include separate property held by the parties as joint tenants or tenants in common.³ Such property must be divided in a separate partition action.⁴

The most significant consequence of this scheme is that the court in a dissolution proceeding may be unable to make the most sensible disposition of property because not all the marital property is available. For example, it may be desirable to award a community property business to the managing spouse and offset the value of the business by awarding real property to the other spouse. But because the spouses frequently hold their interests in real property as joint tenants, the court may be unable to accomplish this disposition. The result is that the business must be divided at dissolution and the real property divided in a later partition action. As a further example, it may be desirable to award temporary occupancy of the family home to the spouse awarded custody of the minor children; this can be done if the family home is the community property of the

¹ Civil Code § 5104.

² Civil Code § 4351.

³ Civil Code § 4800; *In re Marriage of Leversee*, 156 Cal. App.3d 891, 203 Cal. Rptr. 481 (1984); *In re Marriage of Askren*, 157 Cal. App.3d 205, 203 Cal. Rptr. 606 (1984); *Schindler v. Schindler*, 126 Cal. App.2d 597, 272 P.2d 566 (1954); *Walker v. Walker*, 108 Cal. App.2d 605, 239 P.2d 106 (1952). See discussion in *Porter v. Superior Court*, 73 Cal. App.3d 793, 141 Cal. Rptr. 59 (1977) and Lichtig, *Valuation and Division of Property*, in 1 California Marital Dissolution Practice §§ 8.3, 8.6-8.7 (Cal. Cont. Ed. Bar 1981).

⁴ Code Civ. Proc. §§ 872.010-874.240; see Code Civ. Proc. § 872.210 (partition permitted as to property other than community property).

spouses⁵ but not if it is the separate property of the spouses held as joint tenants.⁶

To cure these problems the Law Revision Commission recommends that the court at dissolution or separation be given jurisdiction to include in the property division separate property held by the parties as joint tenants and tenants in common,⁷ at the request of either party. Other community property jurisdictions require disposition of the joint tenancy and tenancy in common property along with the community property.⁸ California family law courts now dispose of such property in dissolution proceedings where both parties submit the property to the court⁹ or later where the court reserves jurisdiction to divide community property (which becomes tenancy in common by operation of law).¹⁰ In some courts joint tenancy property may be divided as a matter of practice. Express authority for the court to divide joint tenancy and tenancy in common property will minimize litigation over the community or separate character of the property, add flexibility to the formulation of a just property disposition, and avoid the need for a separate partition action for the property.

This recommendation is similar in effect to an earlier recommendation of the California Law Revision Commission,¹¹ which was not enacted because of practitioners' concern about possible adverse tax

⁵ See, e.g., *In re Marriage of Duke*, 101 Cal. App.3d 152, 161 Cal. Rptr. 444 (1980); *In re Marriage of Herrmann*, 84 Cal. App.3d 361, 148 Cal. Rptr. 550 (1978); *In re Marriage of Boseman*, 31 Cal. App.3d 372, 107 Cal. Rptr. 232 (1973).

⁶ See, e.g., *Carter v. Carter*, 148 Cal. App.2d 845, 307 P.2d 630 (1957).

⁷ See discussion in Sterling, *Joint Tenancy and Community Property in California*, 14 Pac. L.J. 927, 971-72 (1983), reprinted in 10 Community Prop. J. 157, 203 (1983).

⁸ Ariz. Rev. Stat. Ann. § 25-318 (Supp. 1981); Nev. Rev. Stat. § 125.150 (1981).

⁹ See, e.g., *Allen v. Allen*, 159 Cal. 197, 113 P. 160 (1911); *Womack v. Womack*, 242 Cal. App.2d 572, 51 Cal. Rptr. 668 (1966); *Spahn v. Spahn*, 70 Cal. App.2d 791, 162 P.2d 53 (1945).

¹⁰ See, e.g., *De Godey v. Godey*, 39 Cal. 157 (1870); *Marriage of Borges*, 83 Cal. App.3d 771, 148 Cal. Rptr. 118 (1978); Comment, *Post-Dissolution Suits to Divide Community Property: A Proposal for Legislative Action*, 10 Pac. L.J. 825 (1979). Where the court fails to reserve jurisdiction to divide omitted or after-discovered community property a separate partition action is necessary since the property has become tenancy in common by operation of law, thereby causing the court to lose jurisdiction. See, e.g., *Henn v. Henn*, 26 Cal.3d 323, 161 Cal. Rptr. 502, 605 P.2d 10 (1980).

¹¹ *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982).

consequences of dividing separate property.¹² Since then the tax law has been revised to eliminate the taxation problem,¹³ and experience has shown the desirability of giving the family law court direct jurisdiction over joint tenancy and tenancy in common property. As the court stated in *In re Marriage of Lerversee*,¹⁴ "The present case demonstrates the wisdom of the Law Revision Commission's recommendation. In the interest of judicial economy and avoidance of needless expenditures of legal fees and costs for parties such as the Lerversees, the Legislature should again consider the Law Revision Commission's recommendation."

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to add Section 4800.4 to the Civil Code, relating to division of family law.

The people of the State of California do enact as follows:

§ 4800.4 (added). Division of joint tenancy and tenancy in common property

SECTION 1. Section 4800.4 is added to the Civil Code, to read:

4800.4. (a) In a proceeding for division of the community property and the quasi-community property, the court has jurisdiction, at the request of either party, to divide the separate property interests of the parties in real and personal property, wherever situated and whenever acquired, held by the parties as joint tenants or tenants in common. The property shall be divided together with, and in accordance with the same procedure for and limitations on, division of community property and quasi-community property.

¹² See California Law Revision Commission Report Concerning Assembly Bill 26, Senate Journal 4865, 4866 (July 14, 1983).

¹³ Int. Rev. Code § 1041 (1984) (transfers of property between spouses or incident to divorce).

¹⁴ 156 Cal. App.3d 891, 898, 203 Cal. Rptr. 481 (1984).

(b) If joint tenancy property is divided pursuant to this section, the judgment of dissolution of the marriage or the judgment decreeing the legal separation of the parties severs the joint tenancy.

(c) This section applies to proceedings commenced on or after January 1, 1986, regardless of whether the property was acquired before, on, or after January 1, 1986.

Comment. Section 4800.4 reverses the rule that the court in a dissolution or separation proceeding has no jurisdiction over property of the parties other than community or quasi-community property. See, e.g., *In re Marriage of Leverage*, 156 Cal. App.3d 891, 203 Cal. Rptr. 481 (1984); *In re Marriage of Askren*, 157 Cal. App.3d 205, 203 Cal. Rptr. 606 (1984); *Schindler v. Schindler*, 126 Cal. App.2d 597, 272 P.2d 566 (1954); *Walker v. Walker*, 108 Cal. App.2d 605, 239 P.2d 106 (1952); cf. *Porter v. Superior Court*, 73 Cal. App.3d 793, 141 Cal. Rptr. 59 (1977) (general discussion). Section 4800.4 supplements provisions governing community property held in joint tenancy form by extending the jurisdiction of the court to separate property held in joint tenancy form as well. It is consistent with the general rule that the court has jurisdiction to settle the property rights of the parties and with the principle that the court has jurisdiction to settle matters submitted to it by the parties. Section 4351 (jurisdiction of court); see, e.g., *Allen v. Allen*, 159 Cal. 197, 113 P. 160 (1911). It is also consistent with the rule that the court may reserve jurisdiction to divide community property that has become tenancy in common by operation of law upon dissolution or separation. See, e.g., *Marriage of Borges*, 83 Cal. App.3d 771, 148 Cal. Rptr. 118 (1978); Comment, *Post-Dissolution Suits to Divide Community Property: A Proposal for Legislative Action*, 10 Pac. L.J. 825 (1979).

Subdivision (a) supplements Section 4800 by giving the court express jurisdiction over joint tenancy or tenancy in common separate property submitted by a party in a property division proceeding under the Family Law Act. Property subject to division includes property acquired by the parties either before or during marriage. It also includes property acquired or situated either in this state or elsewhere. For a special rule governing treatment of real property situated in another state, see Section 4800.5 (community and quasi-community property). See also Section 4813 (jurisdiction where service is by publication). The jurisdiction of the court extends only to the interests of the spouses, whether equal or unequal, and the court may not affect

interests of third parties in the property. The interests of third parties may be subject to partition pursuant to Title 10.5 (commencing with Section 872.010) of the Code of Civil Procedure.

Subdivision (b) makes clear the time of severance of a joint tenancy where the property is divided pursuant to this section. Severance terminates the right of survivorship.

Under subdivision (c), the rule that separate joint tenancy and tenancy in common property may be divided in a community and quasi-community property division proceeding applies only to proceedings commenced on or after January 1, 1986.

It should be noted that division of property pursuant to this section is subject to the same limitations applicable to division of community property. Therefore, an express agreement of the parties waiving partition or otherwise governing their rights in the property prevails over this section. See Section 4800 (division of community property "except upon written agreement of the parties").

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 Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378
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 (unnumbered) in Volume 3 also deal with the subject of condemnation
 law and procedure.]

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Number 1—Tort Liability of Public Entities and Public Employees

Number 2—Claims, Actions and Judgments Against Public Entities and Public
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- Number 3—Insurance Coverage for Public Entities and Public Employees
- Number 4—Defense of Public Employees
- Number 5—Liability of Public Entities for Ownership and Operation of Motor Vehicles
- Number 6—Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers
- Number 7—Amendments and Repeals of Inconsistent Special Statutes [out of print]
- Tentative Recommendation and A Study Relating to the Uniform Rules of Evidence (Article VIII. Hearsay Evidence)

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- Article I (General Provisions)
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- Article IV (Witnesses)
- Article V (Privileges)
- Article VI (Extrinsic Policies Affecting Admissibility)
- Article VII (Expert and Other Opinion Testimony)
- Article VIII (Hearsay Evidence) [same as publication in Volume 4]
- Article IX (Authentication and Content of Writings)

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Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property

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Abandonment or Termination of a Lease
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Wage Garnishment and Related Matters
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 Enforcement of Sister State Money Judgments
 Prejudgment Attachment
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 Liquidated Damages

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 Liquidated Damages

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 Wage Garnishment Procedure
 Revision of the Attachment Law
 Undertakings for Costs
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- Attachment Law: Effect of Bankruptcy Proceedings; Effect of General Assignments for Benefit of Creditors
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- Evidence of Market Value of Property
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- Parol Evidence Rule

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- Technical Revisions in the Attachment Law: Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action"
- Ad Valorem Property Taxes in Eminent Domain Proceedings
- Security for Costs

Recommendation Relating to Guardianship-Conservatorship Law

VOLUME 15 (1980)

[This volume is published in two parts; each part is considered a separate volume in determining the price.]

Part I

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- Special Assessment Liens on Property Taken for Public Use
- Assignments for the Benefit of Creditors
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- Quiet Title Actions
- Agreements for Entry of Paternity and Support Judgments
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Guardianship-Conservatorship Law with Official Comments [out of print]

Recommendation Relating to:

- Enforcement of Judgments: Interest Rate on Judgments; Married Women as Sole Traders; State Tax Liens
- Application of Evidence Code Property Valuation Rules in Noncondemnation Cases
- Uniform Durable Power of Attorney Act
- Probate Homestead

Part II

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- Revision of the Guardianship-Conservatorship Law: Appointment of Successor Guardian or Conservator; Support of Conservatee Spouse from Community Property; Appealable Orders

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Dismissal for Lack of Prosecution

Conforming Changes to the Bond and Undertaking Law

Notice of Rejection of Late Claim Against Public Entity

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Holographic and Nuncupative Wills

Marketable Title of Real Property

Statutory Bonds and Undertakings

Attachment

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Severance of Joint Tenancy

Effect of Quiet Title and Partition Judgments

Dormant Mineral Rights

Creditors' Remedies: Levy on Joint Deposit Accounts; Issuance of Earnings Withholding Orders by Registered Process Servers; Protection of Declared Homestead After Owner's Death; Jurisdiction of Condominium Assessment Lien Enforcement; Technical Amendments

Rights Among Cotenants in Possession and Out of Possession of Real Property

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Statutory Forms For Durable Powers of Attorney

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Probate Law: Independent Administration of Decedent's Estates; Distribution of Estates Without Administration; Execution of Witnessed Wills; Simultaneous Deaths; Notice of Will; Garnishment of Amounts Payable to Trust Beneficiary; Bonds for Personal Representatives; Revision of Wills and Intestate Succession Law; Recording Affidavit of Death

Statutes of Limitation for Felonies

Uniform Transfers to Minors Act

VOLUME 18 (1986)

[Volume expected to be available September 1987]

Annual Report (March 1985) includes the following recommendations:

Provision for Support if Support Obligor Dies

Transfer Without Probate of Certain Property Registered by the State

Dividing Jointly Owned Property Upon Marriage Dissolution