

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

Annual Report



December 1980

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94306

# THE CALIFORNIA LAW REVISION COMMISSION

## COMMISSION MEMBERS

BEATRICE P. LAWSON <i>Chairperson</i>	ROBERT J. BERTON <i>Member</i>
JEAN C. LOVE <i>Vice Chairperson</i>	GEORGE Y. CHINN <i>Member</i>
OMER L. RAINS <i>Member of the Senate</i>	THOMAS S. LOO <i>Member</i>
ALISTER MCALISTER <i>Member of the Assembly</i>	WARREN M. STANTON <i>Member</i>
JUDITH MEISELS ASHMANN <i>Member</i>	BION M. GREGORY <i>Ex Officio Member</i>

## COMMISSION STAFF

### Legal

JOHN H. DEMOULLY <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>

### Administrative-Secretarial

JUAN C. ROGERS <i>Administrative Assistant</i>	LETA M. SKAUG <i>Word Processing Technician</i>
KRISTINE A. CLUTE <i>Word Processing Technician</i>	

## 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 15 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1981.

Cite this pamphlet as *Annual Report*, 15 CAL. L. REVISION COMM'N REPORTS 1401 (1980).

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

Annual Report



December 1980

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94306



## SUMMARY OF WORK OF COMMISSION

The Commission plans to submit a major recommendation to the 1981 session. This recommendation will propose the enactment of a new comprehensive statute relating to enforcement of judgments. Other recommendations also will be submitted to the 1981 session.

In 1980, the Commission recommended 15 bills to the Legislature. Fourteen were enacted. The enacted bills dealt with:

- quiet title actions.
- guardianship-conservatorship law.
- security for costs.
- probate homesteads.
- special assessment liens.
- married women as sole traders.
- enforcement of liens and judgments after death.
- assignments for the benefit of creditors.
- enforcement of claims and judgments against public entities.
- valuation evidence.
- state tax liens.
- agreements for entry of paternity and support judgments.
- vacation of streets and service easements.

Commission recommendations enacted by the 1980 session affected 477 sections of the California statutes: 153 new sections were enacted, 125 sections were amended, and 199 sections were repealed.

During 1981, the Commission plans to continue work on other major projects:

- problems under the community property statutes.
- whether a Marketable Title Act should be enacted in California.
- various aspects of the Probate Code.

Other topics will also be considered to the extent time and resources permit.



---

**CALIFORNIA LAW REVISION COMMISSION**

4000 Middlefield Road, Room D-2  
Palo Alto, CA 94306  
(415) 494-1335

BEATRICE P. LAWSON

*Chairperson*

JEAN C. LOVE

*Vice Chairperson*

SENATOR OMER L. RAINS

ASSEMBLYMAN ALISTER McALISTER

JUDITH MEISELS ASHMANN

ROBERT J. BERTON

GEORGE Y. CHINN

THOMAS S. LOO

WARREN M. STANTON

BION M. GREGORY

*Ex Officio*

December 1, 1980

To: THE HONORABLE EDMUND G. BROWN JR.  
*Governor of California* and  
THE LEGISLATURE OF CALIFORNIA

In conformity with Government Code Section 10335, the California Law Revision Commission herewith submits this report of its activities during 1980.

I am pleased to report that at the 1980 session 14 of the 15 bills introduced to implement the Commission's recommendations were enacted. I would like to give special recognition to Senator Omer L. Rains and to Assemblyman Alister McAlister who carried the bills recommended by the Commission in the Legislature.

From its creation in 1954 until June 1980, the office of the Commission was located at Stanford Law School. Since June 1980, its office has been located at 4000 Middlefield Road, Room D-2, Palo Alto, California 94306.

Respectfully submitted,

BEATRICE P. LAWSON  
*Chairperson*





## CONTENTS

	<i>Page</i>
<b>SUMMARY OF WORK OF COMMISSION .....</b>	<b>1403</b>
<b>ANNUAL REPORT FOR THE YEAR 1980.....</b>	<b>1409</b>
<b>Introduction.....</b>	<b>1409</b>
<b>1981 Legislative Program .....</b>	<b>1411</b>
<b>Major Studies in Progress .....</b>	<b>1412</b>
Enforcement of Judgments .....	1412
Probate Code .....	1412
Marketable Title Act and Related Matters .....	1413
Community Property .....	1413
Adoption.....	1414
<b>Calendar of Topics for Study .....</b>	<b>1415</b>
Topics Authorized for Study .....	1415
Topics Under Active Consideration .....	1415
Other Topics Authorized for Study.....	1416
Topics Continued on Calendar for Further Study ...	1417
Topics to Be Removed from Calendar of Topics .....	1419
Topics for Future Consideration .....	1420
<b>Function and Procedure of Commission .....</b>	<b>1421</b>
<b>Personnel of Commission.....</b>	<b>1424</b>
<b>Legislative History of Recommendations Submitted to 1980 Legislative Session .....</b>	<b>1426</b>
Creditors' Remedies .....	1426
Agreements for entry of paternity and support judgments.....	1426
Enforcement of liens and judgments after death .....	1426
Married women as sole traders .....	1426
Enforcement of claims and judgments against public entities .....	1426
Assignments for the benefit of creditors .....	1427
State tax lien .....	1427
Interest rate on judgments .....	1427
Guardianship-Conservatorship Law .....	1427
Guardianship-conservatorship revision.....	1427
Veterans Guardianship Act .....	1428
Quiet Title Actions .....	1428
Security for Costs .....	1428

	<i>Page</i>
Probate Homestead .....	1428
Special Assessment Liens on Property Acquired for Public Use .....	1428
Valuation Evidence .....	1429
Vacation of Streets and Highways .....	1429
Resolutions Approving Topics for Study .....	1429
<b>Report on Statutes Repealed by Implication or Held Unconstitutional .....</b>	<b>1430</b>
<b>Recommendations .....</b>	<b>1432</b>
<b>APPENDICES</b>	
I. Legislative Action on Commission Recommendations (Cumulative) .....	1433
II. Report of Senate Committee on Judiciary on Assembly Bill 2115 (Agreements for Entry of Paternity and Support Judgments) .....	1445
III. Report of Senate Committee on Judiciary on Assembly Bill 2146 (Enforcement of Claims and Judgments Against Public Entities) .....	1447
IV. Report of Assembly Committee on Judiciary on Senate Bill 1541 (State Tax Liens) .....	1449
V. Report of Senate Committee on Judiciary on Assembly Bill 1676 (Quiet Title Actions) .....	1457
VI. Report of Senate Committee on Judiciary on Assembly Bill 2121 (Valuation Evidence) .....	1459
VII. Recommendation Relating to Revision of the Guardianship-Conservatorship Law .....	1463
<b>PUBLICATIONS OF THE CALIFORNIA LAW REVISION COMMISSION .....</b>	<b>1495</b>

# ANNUAL REPORT FOR THE YEAR 1980

## INTRODUCTION

The primary objective of the California Law Revision Commission is to study the statutory and decisional law of this state to discover defects and anachronisms and to recommend legislation to make needed reforms.

The Commission consists of a Member of the Senate appointed by the Committee on Rules, a Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel is an *ex officio* nonvoting member of the Commission.

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 may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 31 topics,<sup>1</sup> including four topics added by the Legislature at the 1980 session.

Commission recommendations have resulted in the enactment of legislation affecting 5,848 sections of the California statutes: 2,451 sections have been added, 1,262 sections amended, and 2,135 sections repealed. Of the 134 Commission recommendations submitted to the Legislature, 121 (90%) have been enacted into law either in whole or in substantial part.<sup>2</sup>

<sup>1</sup> See listing of topics under "Calendar of Topics for Study" *infra*.

<sup>2</sup> See listing of recommendations and legislative action in Appendix I *infra*.

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

## 1981 LEGISLATIVE PROGRAM

The Commission plans to submit recommendations on the following subjects to the 1981 Legislature:

- (1) Enforcement of judgments.<sup>3</sup>
- (2) Interest rate on judgments.<sup>4</sup>
- (3) Revision of the Guardianship-Conservatorship Law.<sup>5</sup>
- (4) Durable power of attorney.
- (5) Nonprobate transfers.
- (6) Statutory bonds and undertakings.

Other recommendations will be submitted if work on them is completed in time to permit their submission to the 1981 Legislature.

---

<sup>3</sup> See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980).

<sup>4</sup> See *Recommendation Relating to Interest Rate on Judgments*, 15 Cal. L. Revision Comm'n Reports 7 (1980).

<sup>5</sup> See *Recommendation Relating to Revision of the Guardianship-Conservatorship Law* (October 1980), published as Appendix VII to this Report.

## MAJOR STUDIES IN PROGRESS

### Enforcement of Judgments

The Commission plans to propose for enactment by the 1981-1982 session of the Legislature a package of bills that will provide a modern, comprehensive enforcement of judgment statute and make necessary conforming changes in existing statutes. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980). This package of bills is the result of a study conducted over the past five years. The new enforcement of judgments statute covers such matters as the manner of levy of execution, exemptions, redemption, third-party claims, judgment liens, and other creditors' remedies.

The Commission anticipates that a significant portion of its time and resources during 1981 will be devoted to considering the comments and suggestions of interested persons and organizations relating to these bills and making any necessary changes in the bills.

The Commission also plans to propose for enactment in 1981 its recommended legislation relating to the interest rate on judgments. See *Recommendation Relating to Interest Rate on Judgments*, 15 Cal. L. Revision Comm'n Reports 7 (1980). At the 1980 session, Senate Bill 1542 was introduced to effectuate this recommendation. This bill would have increased the interest rate on judgments to 10 percent. The bill was not enacted. Senate Bill 1394 relating to the same subject passed the Legislature but was vetoed by the Governor. The Governor's veto message indicates approval of the substance of the Commission recommended legislation.<sup>1</sup>

### Probate Code

The 1980 session of the Legislature directed the Commission to make a study of the Probate Code. In response to this directive, the Commission plans to study portions of the Uniform Probate Code and the existing California law relating to those portions. As a result of its study so far, the Commission plans to recommend legislation to the 1981 legislative session relating to

<sup>1</sup> The Governor's veto message reads:

"I am returning Senate Bill No. 1394 without my signature.

"In 1978, the voters amended the California Constitution expressly authorizing the Legislature to increase interest on all civil judgments. I have supported legislation in the past to comply with the voters' mandate, and call upon the Legislature next session to enact this badly needed reform by providing for a 10% interest rate on civil judgments without the restrictions imposed by this bill."

durable powers of attorney and nonprobate transfers. As its time and resources permit, the Commission will study additional areas of the probate law.

### **Marketable Title Act and Related Matters**

The Commission has commenced active study of another major topic—whether a Marketable Title Act should be enacted in California. This study will also cover two other topics on the Commission's agenda—whether the law relating to possibilities of reverter and powers of termination should be revised, and whether Section 1464 of the Civil Code should be repealed or revised.

Professor James L. Blawie, Santa Clara Law School, the Commission's consultant on this topic, has prepared an analysis of the areas and problems that might be covered in this study. Because of the complexity and magnitude of the study, the Commission anticipates that a number of years will elapse before comprehensive legislation on this subject can be recommended for enactment.

### **Community Property**

Another major topic under active study by the Commission is the law relating to community property. Work on this study has been divided into two phases. The first phase covers the liability of various kinds of community property and separate property to third-party creditors for debts and tort obligations of either or both spouses. Professor William A. Reppy, Jr., Duke Law School, is the Commission's principal consultant on this phase of the topic. The Commission has received Professor Reppy's background study and is now drafting a recommendation.

The second phase covers the problems in connection with equal management and control of community property, the division of community property upon dissolution of marriage, and related problems. Professor Carol S. Bruch of the Law School, University of California at Davis, is preparing a background report on this phase of the topic. One portion of her report has been completed and is now under Commission study. The remainder of the report will be completed early in 1981. Professor Bruch is also assisting the Commission in preparing a recommendation on the first phase of the study.

Professor Bruce Wolk of the Law School, University of California at Davis, serves as a special consultant on the tax aspects of the community property study.

## Adoption

The existing adoption statute is in great need of reorganization and simplification. In addition, substantive changes appear to be needed. The Commission has retained Professor Brigitte M. Bodenheimer of the Law School, University of California at Davis, as its consultant on this topic. Her background report is published. See *New Trends and Requirements in Adoption Law and Proposals for Legislative Change*, 49 So. Cal. L. Rev. 10 (1975). (The background study does not represent the views of the Commission; the Commission's views will be reflected in its own recommendation.)

The Commission's staff has commenced work on a new comprehensive adoption statute and is following closely the development of the Revised Uniform Adoption Act and other legislative proposals in this field. The Commission's Executive Secretary serves as a member of the subcommittee of the Uniform Laws Commissioners now engaged in preparing a Revised Uniform Adoption Act.



# CALENDAR OF TOPICS FOR STUDY

## 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.<sup>1</sup>

## Topics Under Active Consideration

During the next year, the Commission plans to devote substantially all of its time to consideration of the following topics:

**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.<sup>2</sup>

For additional information on this topic, see discussion under "Major Studies in Progress," *supra*.

**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.<sup>3</sup>

For additional information on this topic, see discussion of "Adoption" under "Major Studies in Progress," *supra*.

**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.<sup>4</sup>

For additional information on this topic, see discussion under "Major Studies in Progress," *supra*.

<sup>1</sup> Section 10335 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 topic which the Legislature by concurrent resolution refers to it for study.

<sup>2</sup> Authorized by 1974 Cal. Stats. res. ch. 45. See also 1972 Cal. Stats. res. ch. 27; 1957 Cal. Stats. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 15 (1957).

<sup>3</sup> 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).

<sup>4</sup> Authorized by 1980 Cal. Stats. res. ch. 37.

**Marketable Title Act and related matters.** Whether a Marketable Title Act should be enacted in California and whether the law relating to covenants and servitudes relating to land, and the law relating to nominal, remote, and obsolete covenants, conditions, and restrictions on land use, should be revised.<sup>5</sup>

For additional information on this topic, see discussion under "Major Studies in Progress," *supra*.

**Possibilities of reverter and powers of termination.** Whether the law relating to possibilities of reverter and powers of termination should be revised.<sup>6</sup>

For additional information on this topic, see discussion of "Marketable Title Act and Related Matters" under "Major Studies in Progress," *supra*.

**Civil Code Section 1464.** Whether Section 1464 of the Civil Code should be revised or repealed.<sup>7</sup>

For additional information on this topic, see discussion of "Marketable Title Act and Related Matters" under "Major Studies in Progress," *supra*.

**Community property.** Whether the law relating to community property should be revised.<sup>8</sup>

For additional information on this topic, see discussion under "Major Studies in Progress," *supra*.

**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.<sup>9</sup>

The Commission plans to submit a recommendation on one aspect of this topic—the durable power of attorney—to the 1981 Legislature.

## **Other Topics Authorized for Study**

The Commission has not yet begun the preparation of a recommendation on the topics listed below.

**Prejudgment interest.** Whether the law relating to the award

---

<sup>5</sup> Authorized by 1976 Cal. Stats. res. ch. 30. See also 1975 Cal. Stats. res. ch. 82.

<sup>6</sup> Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 528 (1974).

<sup>7</sup> Authorized by 1978 Cal. Stats. res. ch. 65.

<sup>8</sup> Authorized by 1978 Cal. Stats. res. ch. 65. See also 14 Cal. L. Revision Comm'n Reports 22 (1978).

<sup>9</sup> Authorized by 1979 Cal. Stats. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).

of prejudgment interest in civil actions and related matters should be revised.<sup>10</sup>

**Class actions.** Whether the law relating to class actions should be revised.<sup>11</sup>

The Commission is deferring consideration of this topic because it is under study by the California Uniform State Laws Commissioners and the California State Bar.

**Offers of compromise.** Whether the law relating to offers of compromise should be revised.<sup>12</sup>

**Discovery in civil cases.** Whether the law relating to discovery in civil cases should be revised.<sup>13</sup>

**Involuntary dismissal for lack of prosecution.** Whether the law relating to involuntary dismissal for lack of prosecution should be revised.<sup>14</sup>

The Commission has retained Garrett H. Elmore as a consultant on this topic. Mr. Elmore is preparing a background report.

**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 attorney fees to the prevailing party.<sup>15</sup>

**Special assessments for public improvements.** Whether the acts governing special assessments for public improvements should be simplified and unified.<sup>16</sup>

## **Topics Continued on Calendar for Further Study**

On the following topics, studies and recommendations relating to the topic, or one or more aspects of the topic, have been made. The topics are continued on the Commission's calendar for further study of recommendations not enacted or for the study of additional aspects of the topic or new developments.

<sup>10</sup> Authorized by 1971 Cal. Stats. res. ch. 75.

<sup>11</sup> Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).

<sup>12</sup> Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).

<sup>13</sup> Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).

<sup>14</sup> Authorized by 1978 Cal. Stats. res. ch. 63. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).

<sup>15</sup> Authorized by 1980 Cal. Stats. res. ch. 37.

<sup>16</sup> Authorized by 1980 Cal. Stats. res. ch. 37.

**Eminent domain.** Whether the law relating to eminent domain should be revised.<sup>1</sup>

**Quiet title actions.** Whether the law relating to quiet title actions should be revised.<sup>2</sup>

**Abandonment or vacation of streets and highways.** Whether the law relating to the abandonment or vacation of public streets and highways by cities, counties, and the state should be revised.<sup>3</sup>

**Evidence.** Whether the Evidence Code should be revised.<sup>4</sup>

The Commission plans to undertake a study of the differences between the newly adopted Federal Rules of Evidence and the California Evidence Code when time permits. Professor Jack Friedenthal of the Stanford Law School is the Commission's consultant on this study. The experience under the Evidence Code will be reviewed in the course of this study to determine whether any revisions are needed.

**Arbitration.** Whether the law relating to arbitration should be revised.<sup>5</sup>

**Escheat; unclaimed property.** Whether the law relating to the escheat of property and the disposition of unclaimed or abandoned property should be revised.<sup>6</sup>

**Partition.** Whether the law relating to partition should be revised.<sup>7</sup>

**Modification of contracts.** Whether the law relating to modification of contracts should be revised.<sup>8</sup>

**Governmental liability.** Whether the law relating to sovereign or governmental immunity in California should be revised.<sup>9</sup>

**Inverse condemnation.** Whether the decisional, statutory,

---

<sup>1</sup> Authorized by 1977 Cal. Stats. res. ch. 17. See also 1965 Cal. Stats. res. ch. 130; 1956 Cal. Stats. res. ch. 42; 4 Cal. L. Revision Comm'n Reports 115 (1963).

<sup>2</sup> Authorized by 1978 Cal. Stats. res. ch. 65. See also 14 Cal. L. Revision Comm'n Reports 22 (1978).

<sup>3</sup> Authorized by 1978 Cal. Stats. res. ch. 65.

<sup>4</sup> Authorized by 1965 Cal. Stats. res. ch. 130.

<sup>5</sup> Authorized by 1968 Cal. Stats. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).

<sup>6</sup> Authorized by 1967 Cal. Stats. res. ch. 81. See also 1956 Cal. Stats. res. ch. 42.

<sup>7</sup> Authorized by 1977 Cal. Stats. res. ch. 17. See also 1959 Cal. Stats. res. ch. 218; 1956 Cal. Stats. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 21 (1957).

<sup>8</sup> 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).

<sup>9</sup> Authorized by 1977 Cal. Stats. res. ch. 17. See also 1957 Cal. Stats. res. ch. 202.

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.<sup>10</sup>

**Lease law.** Whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised.<sup>11</sup>

**Liquidated damages.** Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised.<sup>12</sup>

**Parol evidence rule.** Whether the parol evidence rule should be revised.<sup>13</sup>

**Powers of appointment.** Whether the law relating to powers of appointment should be revised.<sup>14</sup>

**Pleadings in civil actions.** Whether the law relating to pleadings in civil actions and proceedings should be revised.<sup>15</sup>

### **Topics to Be Removed From Calendar of Topics**

A study and recommendation having been made on the following topic, the Commission recommends that the topic not be continued on the Commission's Calendar of Topics.<sup>16</sup>

**Unincorporated associations.** Whether the law relating to suit by and against partnerships and other unincorporated associations should be revised and whether the law relating to the liability of such associations and their members should be revised.

---

<sup>10</sup> Authorized by 1971 Cal. Stats. res. ch. 74. See also 1970 Cal. Stats. res. ch. 46; 1965 Cal. Stats. res. ch. 130.

<sup>11</sup> Authorized by 1965 Cal. Stats. res. ch. 130. See also 1957 Cal. Stats. res. ch. 202.

<sup>12</sup> Authorized by 1973 Cal. Stats. res. ch. 39. See also 1969 Cal. Stats. res. ch. 224.

<sup>13</sup> Authorized by 1971 Cal. Stats. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).

<sup>14</sup> Authorized by 1979 Cal. Stats. res. ch. 19. See also 1965 Cal. Stats. res. ch. 130; 14 Cal. L. Revision Comm'n Reports 218 (1978).

<sup>15</sup> Authorized by 1980 Cal. Stats. res. ch. 37.

<sup>16</sup> Some of the topics upon which studies and recommendations have been made are nevertheless retained on the Commission's calendar for further study of recommendations not enacted or for the study of additional aspects of the topic or new developments. See this Report *supra*.

### **Topics for Future Consideration**

The Commission now has a number of major studies on its calendar. Because of the substantial and numerous topics already on its calendar (four of which were added by the 1980 Legislature), the Commission does not at this time recommend any additional topics for inclusion on its calendar of topics.

## FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the Legislative Counsel who is *ex officio* a nonvoting member.<sup>1</sup>

The principle duties of the Law Revision Commission 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,<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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.

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

<sup>1</sup> See Gov't Code § 10301. See also Gov't Code §§ 10300-10340 (statute establishing Law Revision Commission).

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

<sup>3</sup> See Gov't Code § 10330. 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 § 10331.

<sup>4</sup> See Gov't Code § 10335.

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 printed pamphlet.<sup>5</sup> In some cases, the background study is published in the pamphlet containing the recommendation.<sup>6</sup>

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 committee reports<sup>7</sup> to reflect amendments<sup>8</sup> 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.<sup>9</sup> 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

<sup>5</sup> 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.

<sup>6</sup> In some cases, the background study may have been previously published in a law review. For a listing 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), and 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976).

<sup>7</sup> 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. 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 V to this Report.

<sup>8</sup> 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.

<sup>9</sup> *E.g.*, *Van Arsdale v. Hollinger*, 68 Cal.2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968). The Comments are published by both the Bancroft-Whitney Company and the West Publishing Company in their editions of the annotated codes.



case authorities.<sup>10</sup> 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.<sup>11</sup>

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.<sup>12</sup> 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.<sup>13</sup> The annual reports and the recommendations and studies of the Commission are bound in a set of 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.

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

<sup>11</sup> 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.

<sup>12</sup> See Gov't Code § 10333.

<sup>13</sup> 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).

## PERSONNEL OF COMMISSION

As of December 1, 1980, the membership of the Law Revision Commission is:

	<i>Term Expires</i>
Beatrice P. Lawson, Los Angeles, <i>Chairperson</i> .....	October 1, 1983
Jean C. Love, Davis, <i>Vice Chairperson</i> .....	October 1, 1979
Hon. Omer L. Rains, Ventura, <i>Senate Member</i> .....	*
Hon. Alister McAlister, San Jose, <i>Assembly Member</i> .....	*
Judith Meisels Ashmann, Los Angeles, <i>Member</i> .....	October 1, 1983
Robert J. Berton, San Diego, <i>Member</i> .....	October 1, 1983
George Y. Chinn, San Francisco, <i>Member</i> .....	October 1, 1981
Thomas S. Loo, Los Angeles, <i>Member</i> .....	October 1, 1981
Warren M. Stanton, Encino, <i>Member</i> .....	October 1, 1981
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 *ex officio* a nonvoting member of the Commission

In March 1980, Governor Brown appointed Robert J. Berton, San Diego (replacing Laurence N. Walker who had resigned), and Thomas S. Loo, Los Angeles (replacing Ernest M. Hiroshige who resigned when appointed judge of the Municipal Court). In March 1980, Governor Brown reappointed Judith Meisels Ashmann, Los Angeles, and Beatrice P. Lawson, Los Angeles, to a second term on the Commission.

In January 1980, Jean C. Love was elected Vice Chairperson of the Commission for a term expiring on December 30, 1981.

As of December 1, 1980, the staff of the Commission is:

### *Legal*

John H. DeMouilly <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>

### *Administrative-Secretarial*

Juan C. Rogers <i>Administrative Assistant</i>	
Kristine A. Clute <i>Word Processing Technician</i>	Leta M. Skaug <i>Word Processing Technician</i>

The Commission lost its entire administrative and word processing staff during 1980. Juan C. Rogers, the Administrative Assistant, resigned to enter graduate school. Violet S. Harju, a word processing technician, retired after more than 16 years as a member of the staff. Kristine A. Clute, who was in charge of the printing program, suffered a serious illness. Mrs. Clute had served on the staff for approximately 12 years. It is uncertain if she will

be able to return to work. The Commission wishes to take this opportunity to recognize the outstanding contributions of these exceptionally able and dedicated employees.

During 1980, the following Stanford Law School and University of Santa Clara Law School students were employed on a part-time, intermittent basis: Susan Gaylord, Marcia Grimm, Robert Helm, Keith Levy, Ann Ross, Michael Shibley, and Cory Streisinger.

## LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1980 LEGISLATIVE SESSION

The Commission recommended one concurrent resolution and 15 bills for enactment at the 1980 session.<sup>1</sup> The concurrent resolution was adopted and 14 of the bills were enacted. One bill was not enacted.

### Creditors' Remedies

Seven bills relating to creditors' remedies were recommended by the Commission for enactment at the 1980 session.

**Agreements for entry of paternity and support judgments.** Assembly Bill 2115, which became Chapter 682 of the Statutes of 1980, was introduced by Assemblyman Alister McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Agreements for Entry of Paternity and Support Judgments*, 15 Cal. L. Revision Comm'n Reports 1237 (1980). See also *Report of Senate Committee on Judiciary on Assembly Bill 2115*, Senate J. (May 20, 1980), at 10954, reprinted as Appendix II to this Report. The bill was enacted after a number of significant amendments were made.

**Enforcement of liens and judgments after death.** Assembly Bill 2116, which became Chapter 124 of the Statutes of 1980, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Enforcement of Obligations After Death*, 15 Cal. L. Revision Comm'n Reports 1327 (1980). The bill was enacted as introduced.

**Married women as sole traders.** Assembly Bill 2117, which became Chapter 123 of the Statutes of 1980, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Married Women as Sole Traders*, 15 Cal. L. Revision Comm'n Reports 21 (1980). The bill was enacted after technical amendments were made.

**Enforcement of claims and judgments against public entities.** Assembly Bill 2146, which became Chapter 215 of the Statutes of 1980, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject.

---

<sup>1</sup> The Commission also prepared a recommendation to the 1980 session relating to the psychotherapist-patient privilege, but a bill was not introduced in 1980 to effectuate this recommendation. See *Recommendation Relating to the Psychotherapist-Patient Privilege*, 15 Cal. L. Revision Comm'n Reports 1307 (1980).

See *Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities*, 15 Cal. L. Revision Comm'n Reports 1257 (1980). See also *Report of Senate Committee on Judiciary on Assembly Bill 2146*, Senate J. (May 20, 1980), at 10954, reprinted as Appendix III to this Report. The bill was enacted after a few minor amendments were made.

**Assignments for the benefit of creditors.** Senate Bill 1539, which became Chapter 135 of the Statutes of 1980, was introduced by Senator Omer L. Rains to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Assignments for the Benefit of Creditors*, 15 Cal. L. Revision Comm'n Reports 1117 (1980). The bill was enacted as introduced.

**State tax liens.** Senate Bill 1541, which became Chapter 600 of the Statutes of 1980, was introduced by Senator Rains to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to State Tax Liens*, 15 Cal. L. Revision Comm'n Reports 29 (1980). See also *Report of Assembly Committee on Judiciary on Senate Bill No. 1541*, noted in Assembly J. (May 29, 1980), at 15523, reprinted as Appendix IV to this Report. The bill was enacted after a number of technical changes were made.

**Interest rate on judgments.** Senate Bill 1542 was introduced by Senator Rains to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Interest Rate on Judgments*, 15 Cal. L. Revision Comm'n Reports 7 (1980). This bill was not enacted. The Commission plans to submit the recommended legislation for enactment at the 1981 session.

### **Guardianship-Conservatorship Law**

Two bills relating to guardianship-conservatorship law were recommended by the Commission for enactment at the 1980 session.

**Guardianship-conservatorship revision.** Assembly Bill 2118, which became Chapter 246 of the Statutes of 1980, was introduced by Assemblyman McAlister to make clarifying revisions and technical changes in the new Guardianship-Conservatorship Law, enacted in 1979 upon recommendation of the Commission. See *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

**Veterans Guardianship Act.** Assembly Bill 2119, which became Chapter 89 of the Statutes of 1980, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Uniform Veterans Guardianship Act*, 15 Cal. L. Revision Comm'n Reports 1289 (1980). The bill was enacted after technical amendments were made.

### **Quiet Title Actions**

Assembly Bill 1676, which became Chapter 44 of the Statutes of 1980, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Quiet Title Actions*, 15 Cal. L. Revision Comm'n Reports 1187 (1980). See also *Report of Senate Committee on Judiciary on Assembly Bill 1676*, Senate J. (February 28, 1980), at 8752, reprinted as Appendix V to this Report. The bill was enacted after a number of amendments were made upon recommendation of the Commission as a result of its continuing study of this topic after the bill was introduced.

### **Security for Costs**

Senate Bill 1538, which became Chapter 114 of the Statutes of 1980, was introduced by Senator Rains to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Security for Costs*, 14 Cal. L. Revision Comm'n Reports 319 (1978). This bill was enacted as introduced.

### **Probate Homestead**

Assembly Bill 2184, which became Chapter 119 of the Statutes of 1980, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Probate Homestead*, 15 Cal. L. Revision Comm'n Reports 401 (1980). This bill was enacted as introduced.

### **Special Assessment Liens on Property Acquired for Public Use**

Assembly Bill 2120, which became Chapter 122 of the Statutes of 1980, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Special Assessment Liens on Property Acquired for Public Use*, 15 Cal. L. Revision Comm'n Reports 1101 (1980). This bill was enacted as introduced.

### **Valuation Evidence**

Assembly Bill 2121, which became Chapter 381 of the Statutes of 1980, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Application of Evidence Code Property Valuation Rules in Noncondemnation Cases*, 15 Cal. L. Revision Comm'n Reports 301 (1980). See also *Report of Senate Committee on Judiciary on Assembly Bill 2121*, Senate J. (June 18, 1980), at 12174, reprinted as Appendix VI to this Report. The bill was enacted after a number of amendments were made upon recommendation of the Commission as a result of its continuing study of this topic after the bill was introduced.

### **Vacation of Streets and Highways**

Senate Bill 1540, which became Chapter 1050 of the Statutes of 1980, was introduced by Senator Rains to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Vacation of Public Streets, Highways, and Service Easements*, 15 Cal. L. Revision Comm'n Reports 1137 (1980). The bill was enacted after a number of amendments were made.

### **Resolutions Approving Topics for Study**

Assembly Concurrent Resolution 101, introduced by Assemblyman McAlister and adopted as Resolution Chapter 24 of the Statutes of 1980, authorizes the Commission to continue the study of 27 topics previously authorized for study.

Assembly Concurrent Resolution 107, introduced by Assemblyman McAlister and adopted as Resolution Chapter 37 of the Statutes of 1980, authorizes Commission study of four new topics: summary procedures for removal of doubtful or invalid liens, California Probate Code, the law relating special assessments for public improvements, and the law relating to pleadings in civil actions and proceedings.

## REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 10331 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 reviewed the decisions of the United States Supreme Court and of the California Supreme Court published since the Commission's last Annual Report was prepared,<sup>1</sup> and has the following to report:

(1) 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.

(2) No decision of the United States Supreme Court holding a statute of this state unconstitutional has been found.<sup>2</sup>

(3) Three decisions of the California Supreme Court held statutes of this state unconstitutional.<sup>3</sup>

<sup>1</sup> This study has been carried through 27 Cal.3d 284 (advance sheet no. 17, June 19, 1980) and 100 S. Ct. 1672 (advance sheet no. 15, June 1, 1980).

<sup>2</sup> One decision of the U.S. Supreme Court held statutes of this state in violation of federal law. In *California Retail Dealers Association v. Midcal Aluminum Inc.*, 100 S. Ct. 937 (1980), the court held Business and Professions Code Sections 24752, 24862, 24864-24866, and 24880—which provide a wine pricing system to be set by wine merchants and fines, license suspension or revocation penalties for selling below established prices—constitute resale price maintenance in violation of the Sherman Anti-Trust Act, 15 U.S.C.A. § 1, *et seq.*

<sup>3</sup> Four other decisions of the California Supreme Court imposed constitutional qualifications on the application of statutes of this state without invalidating any statutory language:

In *Pryor v. Municipal Court*, 25 Cal.3d 238 (1979), the court held that Penal Code Section 647(a)—which declares that a person is guilty of disorderly conduct “who solicits anyone to engage in or who engages in *lewd or dissolute conduct* in any public place”—is unconstitutionally vague. Rather than rule the statute unconstitutional, however, the court chose to adopt a limited and specific construction of the statute to “prohibit only the solicitation or commission of conduct in a public place or one open to the public or exposed to public view which involves the touching of the genitals, buttocks, or female breast, for purposes of sexual arousal, gratification, annoyance, or offense, by a person who knows or should know of the presence of persons who may be offended by the conduct.”

In *In re Waters of Long Valley Creek Stream System*, 25 Cal.3d 339 (1979), the court held that Water Code Sections 2500 *et seq.*—which give the State Water Resources Control Board broad authority to determine future riparian rights—should not be interpreted as allowing the extinguishment of such rights since such an interpretation would violate California Constitution Article X, Section 2, which requires that water resources be put to beneficial use to the fullest extent of which they are capable.

In *In re Perrone C.*, 26 Cal.3d 49 (1980), the court held Welfare and Institutions Code Section 602—which provides for a jurisdictional hearing of a juvenile before a juvenile court to determine if that person is a ward of the court—unconstitutional



In *Hays v. Wood*, 25 Cal.3d 772 (1979), the court held a provision of the Political Reform Act of 1974—Government Code Section 87207, subdivision (b) (2)—unconstitutional as violating the equal protection principles of the state and federal constitutions. The unconstitutional provision required public officials who are also attorneys or brokers to disclose the names of their clients if the public official's income from the client is equal to or exceeds \$1,000 per calendar year. By way of contrast, the comparable provision for other officials subject to reporting requirements—Government Code Section 87207, subdivision (b) (3)—provides a \$10,000 threshold. The court held that the later provision is applicable to all public officials subject to reporting requirements.

In *Jesse W. v. Superior Court*, 26 Cal.3d 41 (1980), the court held that Welfare and Institutions Code Sections 253 and 254—which provide for a rehearing de novo of any matter heard before a referee of juvenile court—are unconstitutional violations of the Double Jeopardy clause of the United States Constitution, Fifth Amendment.

In *San Francisco Labor Council v. Regents of University of California*, 26 Cal.3d 785 (1980), the court held Education Code Section 92611—which compels the Regents of the University of California to fix minimum salary rates at or above the prevailing wage rates in various localities—conflicts with California Constitution Article IX, Section 9, which gives the Regents full powers of organization and government over the University of California.

---

if heard by a juvenile court referee absent a stipulation by the parties conferring judicial power on the referee since California Constitution Article VI, Section 22, limits referees to subordinate judicial duties.

In *Olson v. Cory*, 26 Cal.3d 672 (1980), the court held amended Government Code Section 68203—which limits the annual cost-of-living increases in judicial salaries previously provided by statute to a maximum of five percent—unconstitutional as to any judge who served any portion of his term or the unexpired term of a predecessor judge prior to January 1, 1977, and as to judicial pensioners whose benefits were based on the salary for the office of such a judge because, under California Constitution Article VI, Section 16, and Government Code Sections 71145 and 71180, a judge is entitled to contracted-for-benefits during the remainder of his term. The decision was modified in 27 Cal.3d 203 (1980) to provide that amended Government Code Section 68203 would affect the salaries of judges serving a protected term once they embark on a new term.

One decision held a California Rule of Court unconstitutional. In *Mosk v. Superior Court*, 25 Cal.3d 474 (1979), the court held Rule 902.5 of the California Rules of Court—which authorizes a public hearing of an investigation of judicial misconduct by the Commission on Judicial Performance—unconstitutional as being inconsistent with California Constitution Article VI, Section 18, subdivision (f), which mandates confidentiality of proceedings before the Commission.

## 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 for Study” *supra*) and to remove from its calendar of topics the topic listed under “Topics to Be Removed From Calendar of Topics” *supra*.

Pursuant to the mandate imposed by Section 10331 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 to be unconstitutional.

# APPENDIX I

## LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

(Cumulative)

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. Cal. Stats. 1955, 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. Cal. Stats. 1955, 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. Cal. Stats. 1957, 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. Cal. Stats. 1957, 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. Cal. Stats. 1957, 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. Cal. Stats. 1957, 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.
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. Cal. Stats. 1959, Ch. 470

Recommendation	Action by Legislature
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. Cal. Stats. 1957, 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. Cal. Stats. 1957, 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. Cal. Stats. 1959, 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. Cal. Stats. 1957, Ch. 1498
17. <i>Grand Juries</i> , 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 20 (1959)	Enacted. Cal. Stats. 1959, Ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 21 (1959)	Enacted. Cal. Stats. 1959, 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. Cal. Stats. 1959, Chs. 1715, 1724, 1725, 1726, 1727, 1728; CAL. CONST., Art. XI, § 10 (1960)
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. Cal. Stats. 1974, Ch. 425.
22. <i>Mortgages to Secure Future Advances</i> , 2 CAL. L. REVISION COMM'N REPORTS at C-1 (1959)	Enacted. Cal. Stats. 1959, Ch. 528

Recommendation	Action by Legislature
23. <i>Doctrine of Worthier Title</i> , 2 CAL. L. REVISION COMM'N REPORTS at D-1 (1959)	Enacted. Cal. Stats. 1959, 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 Cal. Stats. 1972, 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. Cal. Stats. 1959, 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. Cal. Stats. 1961, 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. Cal. Stats. 1961, 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. Cal. Stats. 1961, Ch. 1616
32. <i>Survival of Actions</i> , 3 CAL. L. REVISION COMM'N REPORTS at F-1 (1961)	Enacted. Cal. Stats. 1961, Ch. 657
33. <i>Arbitration</i> , 3 CAL. L. REVISION COMM'N REPORTS at G-1 (1961)	Enacted. Cal. Stats. 1961, 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.

Recommendation	Action by Legislature
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. Cal. Stats. 1961, 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. Cal. Stats. 1967, Ch. 1104
38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 801 (1963)	Enacted. Cal. Stats. 1963, 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. Cal. Stats. 1963, Ch. 1715
40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 1201 (1963)	Enacted. Cal. Stats. 1963, Ch. 1682
41. <i>Defense of Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 1301 (1963)	Enacted. Cal. Stats. 1963, 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. Cal. Stats. 1965, Ch. 1527
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. Cal. Stats. 1963, Ch. 1684
44. <i>Sovereign Immunity—Amendments and Repeals of Inconsistent Statutes</i> , 4 CAL. L. REVISION COMM'N REPORTS 1601 (1963)	Enacted. Cal. Stats. 1963, Chs. 1685, 1686, 2029
45. <i>Evidence Code</i> , 7 CAL. L. REVISION COMM'N REPORTS 1 (1965)	Enacted. Cal. Stats. 1965, Ch. 299

Recommendation	Action by Legislature
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 CAL. L. REVISION COMM'N REPORTS 401 (1965)	Enacted. Cal. Stats. 1965, Ch. 653
47. <i>Evidence Code Revisions</i> , 8 CAL. L. REVISION COMM'N REPORTS 101 (1967)	Enacted in part. Cal. Stats. 1967, Ch. 650. Balance enacted. Cal. Stats. 1970, Ch. 69
48. <i>Evidence—Agricultural Code Revisions</i> , 8 CAL. L. REVISION COMM'N REPORTS 201 (1967)	Enacted. Cal. Stats. 1967, Ch. 262
49. <i>Evidence—Commercial Code Revisions</i> , 8 CAL. L. REVISION COMM'N REPORTS 301 (1967)	Enacted. Cal. Stats. 1967, 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. Cal. Stats. 1968, Chs. 457, 458
51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 CAL. L. REVISION COMM'N REPORTS 501 (1967)	Enacted. Cal. Stats. 1967, Ch. 702
52. <i>Additur</i> , 8 CAL. L. REVISION COMM'N REPORTS 601 (1967)	Enacted. Cal. Stats. 1967, 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. Cal. Stats. 1970, Ch. 89
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. Cal. Stats. 1968, Ch. 150
55. <i>Suit By or Against an Unincorporated Association</i> , 8 CAL. L. REVISION COMM'N REPORTS 901 (1967)	Enacted. Cal. Stats. 1967, Ch. 1324
56. <i>Escheat</i> , 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967)	Enacted. Cal. Stats. 1968, 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. Cal. Stats. 1968, Ch. 133

Recommendation	Action by Legislature
58. <i>Service of Process on Unincorporated Associations</i> , 8 CAL. L. REVISION COMM'N REPORTS 1403 (1967)	Enacted. Cal. Stats. 1968, 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. Cal. Stats. 1970, Ch. 104
60. <i>Additur and Remittitur</i> , 9 CAL. L. REVISION COMM'N REPORTS 63 (1969)	Enacted. Cal. Stats. 1969, Ch. 115
61. <i>Fictitious Business Names</i> , 9 CAL. L. REVISION COMM'N REPORTS 71 (1969)	Enacted. Cal. Stats. 1969, Ch. 114
62. <i>Quasi-Community Property</i> , 9 CAL. L. REVISION COMM'N REPORTS 113 (1969)	Enacted. Cal. Stats. 1970, Ch. 312
63. <i>Arbitration of Just Compensation</i> , 9 CAL. L. REVISION COMM'N REPORTS 123 (1969)	Enacted. Cal. Stats. 1970, Ch. 417
64. <i>Revisions of Evidence Code</i> , 9 CAL. L. REVISION COMM'N REPORTS 137 (1969)	Enacted in part. Cal. Stats. 1970, Ch. 69. See also Cal. Stats. 1970, Chs. 1396, 1397
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 CAL. L. REVISION COMM'N REPORTS 201 (1969)	Enacted. Cal. Stats. 1969, Ch. 156
66. <i>Powers of Appointment</i> , 9 CAL. L. REVISION COMM'N REPORTS 301 (1969)	Enacted. Cal. Stats. 1969, Chs. 113, 155
67. <i>Evidence Code—Revisions of Privileges Article</i> , 9 CAL. L. REVISION COMM'N REPORTS 501 (1969)	Vetoed. But see Cal. Stats. 1970, Chs. 1396, 1397
68. <i>Fictitious Business Names</i> , 9 CAL. L. REVISION COMM'N REPORTS 601 (1969)	Enacted. Cal. Stats. 1970, Ch. 618
69. <i>Representations as to the Credit of Third Persons and the Statute of Frauds</i> , 9 CAL. L. REVISION COMM'N REPORTS 701 (1969)	Enacted. Cal. Stats. 1970, Ch. 720
70. <i>Revisions of Governmental Liability Act</i> , 9 CAL. L. REVISION COMM'N REPORTS 801 (1969)	Enacted in part. Cal. Stats. 1970, Chs. 662, 1099



Recommendation	Action by Legislature
71. <i>"Vesting" of Interests Under Rule Against Perpetuities</i> , 9 CAL. L. REVISION COMM'N REPORTS 901 (1969)	Enacted. Cal. Stats. 1970, 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. Cal. Stats. 1971, Chs. 244, 950. See also Cal. Stats. 1973, 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. Cal. Stats. 1978, Ch. 1133. See also Cal. Stats. 1979, Ch. 66
74. <i>Proof of Foreign Official Records</i> , 10 CAL. L. REVISION COMM'N REPORTS 1022 (1971)	Enacted. Cal. Stats. 1970, Ch. 41
75. <i>Inverse Condemnation—Insurance Coverage</i> , 10 CAL. L. REVISION COMM'N REPORTS 1051 (1971)	Enacted. Cal. Stats. 1971, Ch. 140
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 CAL. L. REVISION COMM'N REPORTS 1147 (1971)	Enacted. Cal. Stats. 1971, Ch. 1607
77. <i>Civil Arrest</i> , 11 CAL. L. REVISION COMM'N REPORTS 1 (1973)	Enacted. Cal. Stats. 1973, Ch. 20
78. <i>Claim and Delivery Statute</i> , 11 CAL. L. REVISION COMM'N REPORTS 301 (1973)	Enacted. Cal. Stats. 1973, 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. Cal. Stats. 1973, Res. Ch. 76. Legislation enacted. Cal. Stats. 1975, Ch. 25.
80. <i>Enforcement of Sister State Money Judgments</i> , 11 CAL. L. REVISION COMM'N REPORTS 451 (1973)	Enacted. Cal. Stats. 1974, Ch. 211
81. <i>Prejudgment Attachment</i> , 11 CAL. L. REVISION COMM'N REPORTS 701 (1973)	Enacted. Cal. Stats. 1974, Ch. 1516. See also Cal. Stats. 1975, Ch. 200.

Recommendation	Action by Legislature
82. <i>Landlord-Tenant Relations</i> , 11 CAL. L. REVISION COMM'N REPORTS 951 (1973)	Enacted. Cal. Stats. 1974, Chs. 331, 332
83. <i>Pleading</i> (technical change), 11 CAL. L. REVISION COMM'N REPORTS 1024 (1973)	Enacted. Cal. Stats. 1972, Ch. 73
84. <i>Evidence—Judicial Notice</i> (technical change), 11 CAL. L. REVISION COMM'N REPORTS 1025 (1973)	Enacted. Cal. Stats. 1972, 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. Cal. Stats. 1974, 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. Cal. Stats. 1977, Ch. 198
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 CAL. L. REVISION COMM'N REPORTS 575 (1974)	Enacted. Cal. Stats. 1975, Ch. 285
89. <i>View by Trier of Fact in a Civil Case</i> , 12 CAL. L. REVISION COMM'N REPORTS 587 (1974)	Enacted. Cal. Stats. 1975, Ch. 301
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 CAL. L. REVISION COMM'N REPORTS 601 (1974)	Enacted. Cal. Stats. 1975, Ch. 318
91. <i>Improvement Acts</i> , 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974)	Enacted. Cal. Stats. 1974, Ch. 426
92. <i>The Eminent Domain Law</i> , 12 CAL. L. REVISION COMM'N REPORTS 1601 (1974)	Enacted. Cal. Stats. 1975, 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. Cal. Stats. 1975, Chs. 581, 582, 584, 585, 586, 587, 1176, 1276

Recommendation	Action by Legislature
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. Cal. Stats. 1975, Ch. 7; Cal. Stats. 1976, Ch. 109.
95. <i>Partition of Real and Personal Property</i> , 13 CAL. L. REVISION COMM'N REPORTS 401 (1976)	Enacted. Cal. Stats. 1976, Ch. 73
96. <i>Revision of the Attachment Law</i> , 13 CAL. L. REVISION COMM'N REPORTS 801 (1976)	Enacted. Cal. Stats. 1976, 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. Cal. Stats. 1976, Ch. 145
100. <i>Relocation Assistance by Private Condemnors</i> , 13 CAL. L. REVISION COMM'N REPORTS 2085 (1976)	Enacted. Cal. Stats. 1976, 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). Cal. Stats. 1976, Ch. 994
102. <i>Transfer of Out-of-State Trusts to California</i> , 13 CAL. L. REVISION COMM'N REPORTS 2101 (1976)	Enacted. Cal. Stats. 1976, Ch. 144
103. <i>Admissibility of Duplicates in Evidence</i> , 13 CAL. L. REVISION COMM'N REPORTS 2115 (1976)	Not enacted. But see Cal. Stats. 1977, 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. Cal. Stats. 1976, Ch. 888
105. <i>Sister State Money Judgments</i> , 13 CAL. L. REVISION COMM'N REPORTS 1669 (1976)	Enacted. Cal. Stats. 1977, Ch. 232
106. <i>Damages in Action for Breach of Lease</i> , 13 CAL. L. REVISION COMM'N REPORTS 1679 (1976)	Enacted. Cal. Stats. 1977, Ch. 49

Recommendation	Action by Legislature
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 Writ of Execution</i> , 14 CAL. L. REVISION COMM'N REPORTS 49 (1978)	Enacted. Cal. Stats. 1977, 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. Cal. Stats. 1977, Ch. 499
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 CAL. L. REVISION COMM'N REPORTS 83 (1978)	Enacted. Cal. Stats. 1978, Ch. 286
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 CAL. L. REVISION COMM'N REPORTS 93 (1978)	Enacted. Cal. Stats. 1978, Ch. 151
112. <i>Evidence of Market Value of Property</i> , 14 CAL. L. REVISION COMM'N REPORTS 105 (1978)	Enacted in part. Cal. Stats. 1978, 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.
114. <i>Parol Evidence Rule</i> , 14 CAL. L. REVISION COMM'N REPORTS 143 (1978)	Enacted. Cal. Stats. 1978, 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. Cal. Stats. 1978, Ch. 273
116. <i>Powers of Appointment</i> (technical changes), 14 CAL. L. REVISION COMM'N REPORTS 257 (1978)	Enacted. Cal. Stats. 1978, Ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 CAL. L. REVISION COMM'N REPORTS 291 (1978)	Enacted. Cal. Stats. 1979, Ch. 31
118. <i>Security for Costs</i> , 14 CAL. L. REVISION COMM'N REPORTS 319 (1978)	Enacted. Cal. Stats. 1980, Ch. 114

Recommendation	Action by Legislature
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. Cal. Stats. 1979, Chs. 165, 726, 730. See also Cal. Stats. 1980, Ch. 246
120. <i>Effect of New Bankruptcy Law on The Attachment Law</i> , 15 CAL. L. REVISION COMM'N REPORTS 1043 (1980)	Enacted. Cal. Stats. 1979, Ch. 77
121. <i>Confessions of Judgment</i> , 15 CAL. L. REVISION COMM'N REPORTS 1053 (1980)	Enacted. Cal. Stats. 1979, Ch. 568
122. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 CAL. L. REVISION COMM'N REPORTS 1101 (1980)	Enacted. Cal. Stats. 1980, Ch. 122
123. <i>Assignments for the Benefit of Creditors</i> , 15 CAL. L. REVISION COMM'N REPORTS 1117 (1980)	Enacted. Cal. Stats. 1980, Ch. 135
124. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 CAL. L. REVISION COMM'N REPORTS 1137 (1980)	Enacted. Cal. Stats. 1980, Ch. 1050
125. <i>Quiet Title Actions</i> , 15 CAL. L. REVISION COMM'N REPORTS 1187 (1980)	Enacted. Cal. Stats. 1980, Ch. 44
126. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 CAL. L. REVISION COMM'N REPORTS 1237 (1980)	Enacted. Cal. Stats. 1980, 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. Cal. Stats. 1980, Ch. 381
128. <i>Probate Homestead</i> , 15 CAL. L. REVISION COMM'N REPORTS 401 (1980)	Enacted. Cal. Stats. 1980, Ch. 119
129. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 CAL. L. REVISION COMM'N REPORTS 1257 (1980)	Enacted. Cal. Stats. 1980, Ch. 215
130. <i>Uniform Veterans Guardianship Act</i> , 15 CAL. L. REVISION COMM'N REPORTS 1289 (1980)	Enacted. Cal. Stats. 1980, Ch. 89

Recommendation	Action by Legislature
131. <i>Enforcement of Obligations After Death</i> , 15 CAL. L. REVISION COMM'N REPORTS 1327 (1980)	Enacted. Cal. Stats. 1980, Ch. 124
132. <i>Interest Rate on Judgments</i> , 15 CAL. L. REVISION COMM'N REPORTS 7 (1980)	Not enacted 1980. The Commission plans to submit the recommended legislation for enactment at the 1981 legislative session.
133. <i>Married Women as Sole Traders</i> , 15 CAL. L. REVISION COMM'N REPORTS 21 (1980)	Enacted. Cal. Stats. 1980, Ch. 123
134. <i>State Tax Liens</i> , 15 CAL. L. REVISION COMM'N REPORTS 29 (1980)	Enacted. Cal. Stats. 1980, Ch. 600

## APPENDIX II

### REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 2115

[Extract From Senate Journal for May 20, 1980 (1979-1980 Regular Session)]

In order to indicate more fully its intent with respect to Assembly Bill 2115, the Senate Committee on Judiciary makes this report.

Assembly Bill 261 was introduced to effectuate the "Recommendation of the California Law Revision Commission Relating to Agreements for Entry of Paternity and Support Judgments," 15 Cal. L. Revision Comm'n Reports 1237 (1980).

The following revised comment to Section 11476.1 of the Welfare and Institutions Code reflects the intent of the Senate Committee on Judiciary in approving Assembly Bill 2115.

Comment. Section 11476.1 is amended to provide procedures for waiver of the noncustodial parent's due process rights in connection with an agreement for entry of judgment of paternity or for periodic child support or both. The procedures are designed to satisfy the constitutional standards announced in *Isbell v. County of Sonoma*, 21 Cal.3d 61, 577 P.2d 188, 145 Cal. Rptr. 368 (1978), and *County of Ventura v. Castro*, 93 Cal. App.3d 462, 156 Cal. Rptr. 66 (1979). See Recommendation Relating to Agreements for Entry of Paternity and Support Judgments, 15 Cal. L. Revision Comm'n Reports 1237 (1980).

A provision has been added to Section 11476.1 making clear that an agreement for entry of judgment may be made before the birth of the child and that the agreement may be conditioned on the birth of the child.

Subdivision (b) limits the use of an agreement for entry of judgment to cases where the constitutional requirements of the *Isbell* and *Castro* cases are satisfied. Subdivision (d) is a new provision which implements subdivision (b) (2).

Subdivision (e) continues the substance of a former provision of Section 11476.1. The informational notice required by paragraph (2) of subdivision (e) need not be a separate document; the informational notice may be stamped or typed on the copy of the judgment.

Subdivision (f) adopts the procedure of Civil Code Section 4700—the general provision relating to modification or revocation of a child support order. Insofar as Section 11476.1 formerly limited modification or revocation to a case of changed circumstances, Section 11476.1 was inconsistent with the general provision of Section 4700. The reference to Section 4700 also picks up the procedural provisions of that section. See Civil Code § 4700 ("Any order for child support may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. The order of modification or revocation may be

made retroactive to the date of the filing of the notice of motion or order to show cause to modify or revoke, or to any date subsequent thereto. The order of modification or revocation may include an award of attorney fees and court costs to the prevailing party.”).

Subdivision (g) supersedes the last paragraph of Section 11476.1 as the section read prior to its amendment. The superseded paragraph was consistent with Civil Code Section 246 prior to the amendment of Section 246 in 1976. The substitution of subdivision (g) eliminates the inconsistency created by the 1976 amendment.

Subdivision (h) is drawn from Section 270b of the Penal Code.

Subdivision (i) makes clear that Section 11476.1 has no application to a case after a civil action has been commenced. Hence, the section has no application, for example, to the procedure for a stipulated judgment.



# **APPENDIX III**

## **REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 2146**

[Extract From Senate Journal for May 20, 1980 (1979-1980 Regular Session)]

In order to indicate more fully its intent with respect to Assembly Bill 2146, the Senate Committee on Judiciary makes the following report.

Assembly Bill 2146 was introduced to effectuate the "Recommendation of the California Law Revision Commission Relating to Enforcement of Claims and Judgments Against Public Entities," 15 Cal. L. Revision Comm'n Reports 1257 (1980). Except for the revised comments set out below, the Law Revision Commission comments to the various sections of Assembly Bill 2146 reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Assembly Bill 2146.

Government Code § 906 (added)

Comment. Section 906 is added to provide rules governing when interest is payable on claims allowed in whole or in part or on amounts offered by the public entity to settle or compromise claims. The section makes clear that the public entity can condition its allowance or offer by providing different rules concerning interest than those specified in Section 906. Section 906 recognizes that a public entity may allow a claim in whole or in part. See Sections 912.6 (local public entity), 965 (state). Section 906 does not affect or limit the applicability of Section 926.10 (interest on liquidated claim against public entity) in cases covered by that section.

Government Code § 965.5 (added)

Comment. Section 965.5 is a new provision that prescribes the time within which a money judgment against the state or a state agency is enforceable and the method of enforcement.

The 10-year period provided in subdivision (a) is drawn from Code of Civil Procedure Section 681. Subdivision (a)—not Code of Civil Procedure Sections 681 and 685—prescribes the period of enforceability of a money judgment against the state or a state agency. Where the judgment is payable in installments, the 10-year period commences to run when the last installment becomes payable.

Subdivision (b) is drawn from the second sentence of former Section 955.5 but subdivision (b) applies to all money judgments, whereas the provision of former Section 955.5 was limited to a tort liability claim, settlement, or judgment. See also Section 965.6. Subdivision (b) is consistent with the general rule under case law. See *Westinghouse Elec. & Mfg. Co. v. Chambers*, 169 Cal. 131, 145 P. 1025 (1915); *Meyer v. State Land Settlement Bd.*, 104 Cal. App. 577, 286 P. 743 (1930).

Subdivision (b) makes clear that execution and other remedies under the Code of Civil Procedure for the enforcement of money judgments do not apply to enforcement of a money judgment against the state or a state agency. The effect of subdivision (b) is that no money or property belonging to, in the custody of, or owing to the state or any state agency is subject to garnishment, execution, or attachment to enforce a claim, settlement, or judgment against the state or any state agency for the payment of money. But see Section 865.9 (Regents of the University of California).

**APPENDIX IV**  
**REPORT OF**  
**ASSEMBLY COMMITTEE ON JUDICIARY**  
**ON SENATE BILL 1541**

[Noted in Assembly Journal for May 29, 1980 (1979-1980 Regular Session)]

In order to indicate more fully its intent with respect to Senate Bill No. 1541, the Assembly Committee on Judiciary makes the following report.

Senate Bill No. 1541 was introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to State Tax Liens*, 15 Cal. L. Revision Comm'n Reports 29 (1980). Except for the new and revised comments set out below, the Law Revision Commission comments to the sections of Senate Bill No. 1541 reflect the intent of the Assembly Committee on Judiciary in approving the bill.

**Code of Civil Procedure § 675. Satisfaction of judgment**

**Comment.** Section 675 is amended to delete former subdivision (e) which is superseded by subdivision (c) of Section 7174 of the Government Code.

**Fish & Game Code § 8052. Release or subordination of lien**

**Comment.** Former Section 8052 is continued in Section 7174 of the Government Code.

**Government Code § 6103.8. Fee for recording or filing certain releases; periodic billing**

**Comment.** Section 6103.8 is amended to revise the cross-references in subdivisions (a) and (c). The provision formerly found in Section 675 of the Code of Civil Procedure for recording satisfaction of a state tax liability has been superseded by subdivision (c) of Section 7174 of the Government Code. Former Sections 6758, 7873, 8997, 16066, 16067, and 30323 are continued in Section 7174 of the Government Code. Former Section 10100 of the Revenue and Taxation Code was repealed by Chapter 563 of the Statutes of 1972.

**Government Code § 7150. Application of definitions**

**Comment.** Sections 7150-7164 are new. These sections continue provisions formerly found in Section 8048 of the Fish and Game Code, Sections 3423 and 3772 of the Public Resources Code, Sections 6757, 7872, 8996, 16063, 18881, 26161, 30322, and 32363 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code. The application of the definitions in this article to Section 38532 of the Revenue and Taxation Code (timber yield tax) is new.

**Government Code § 7150.5. Agency**

**Comment.** Section 7150.5 is a new provision that avoids cumbersome repetition in the sections where the defined term is used.

**Government Code § 7170. Property to which state tax lien attaches**

**Comment.** Section 7170 continues the substance of provisions formerly found in subdivisions (a), (b), and (c) of the following sections: Section 8048 of the Fish and Game Code, Sections 3423 and 3772 of the Public Resources Code, Sections 6757, 7872, 8996, 16063, 18881, 26161, 30322, and 32363 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code. Section 7170 supersedes the provisions relating to the property to which the tax lien attaches formerly found in Sections 38532 and 38533 of the Revenue and Taxation Code. Terms used in Section 7170 are defined in Sections 7151-7164.

**Government Code § 7171. Recording or filing of notice of state tax lien**

**Comment.** Section 7171 continues the substance of provisions formerly found in subdivisions (b), (c), and (d) of the following sections: Section 8048 of the Fish and Game Code, Sections 3423 and 3772 of the Public Resources Code, Sections 6757, 7872, 8996, 16063, 18881, 26161, 30322, and 32363 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code. Section 7171 supersedes provisions formerly found in the first sentence of Section 38532 and the first sentence of Section 38533 of the Revenue and Taxation Code. Paragraph (2) of subdivision (c) of Section 7171 requiring that the notice of state tax lien identify the agency giving notice of the lien is new and continues

a provision formerly found in Section 7221. Terms used in Section 7171 are defined in Sections 7150.5-7164.

### **Government Code § 7172. Duration of state tax lien**

**Comment.** Section 7172 continues the substance of provisions formerly found in subdivisions (a) and (e) of the following sections: Section 8048 of the Fish and Game Code, Sections 3423 and 3772 of the Public Resources Code, Sections 6757, 7872, 8996, 16063, 18881, 26161, 30322, and 32363 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code. The provisions that determine when the liability is “due and payable” have been retained in these 12 sections. For the purpose of subdivision (a), the date of creation of a state tax lien is the date that the liability is “due and payable” under these 12 sections. See Section 7162.

Section 7172 also supersedes provisions formerly found in the third and fourth sentences of Section 38532 of the Revenue and Taxation Code. For an exception to Section 7172, see Revenue and Taxation Code Section 16063.

### **Government Code § 7174. Release or subordination of lien**

**Comment.** Section 7174 supersedes the following repealed provisions:

- |                 |   |
|-----------------|---|
| Subdivision (a) | Fish & Game Code § 8052; Pub. Res. Code §§ 3423.8 (first sentence), 3772.8 (first sentence); Rev. & Tax. Code §§ 6758, 7873, 8997, 16066, 18884, 26162 (first sentence), 30323, 38534; Unemp. Ins. Code § 1704. |
| Subdivision (b) | Rev. & Tax. Code §§ 6758.5, 7873.5, 8997.5, 18884.5, 26162.5, 30323.5, 38535; Unemp. Ins. Code § 1704.5.  |
| Subdivision (c) | Code Civ. Proc. § 675(e).   |
| Subdivision (d) | Rev. & Tax. Code § 18888.   |
| Subdivision (g) | Pub. Res. Code §§ 3423.8 (second sentence), 3772.8 (second sentence); Rev. & Tax. Code §§ 6759, 16067, 18885, 26162 (second sentence), 30324, 38536; Unemp. Ins. Code § 1705.                                   |

The inclusion of these provisions in this chapter makes them applicable to all state tax liens as defined in Section 7162. Under former law, the provisions were applicable to some but not all

state tax liens. Subdivisions (e) and (f) are new. See also Section 7223 (filing of certificate of release, partial release, or subordination).

### **Government Code § 7220. Filing of notice of state tax lien**

**Comment.** Section 7220 is amended to make a specific reference to Section 7171 which authorizes the taxing agencies referred to in Section 7150.5 to file a notice of state tax lien as provided in this chapter.

### **Government Code § 7227. Filing fee**

**Comment.** Section 7227 is amended to add the last clause to the second sentence. The clause is drawn from Section 72361.3 (fee of county recorder). See also Section 7174 (duty of taxing agency when liability satisfied).

### **Government Code § 27282. Documents recordable without acknowledgment**

**Comment.** Section 27282 is amended to correct the cross-references to the state tax lien provisions which are now found in Sections 7151-7191. The addition of the reference in paragraph (3) of subdivision (a) to certificates of partial releases is a nonsubstantive revision that makes clear that partial releases are recordable. The former references to Sections 10099, 10100, 16064, 18882, and 18883 of the Revenue and Taxation Code have been deleted in view of the repeal of those sections. See 1972 Cal. Stats. ch. 563 (repealing former Sections 10099 and 10100 of the Revenue and Taxation Code); 1977 Cal. Stats. ch. 481 (repealing former Sections 16064, 18882, and 18883 of the Revenue and Taxation Code).

### **Revenue & Taxation Code § 6756. Priority of tax**

**Comment.** Section 6756 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

### **Revenue & Taxation Code § 7872. Lien of tax**

**Comment.** Section 7872 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, and to change the

word "Controller" to "board." "Board" means the State Board of Equalization. Section 20.

### **Revenue & Taxation Code § 16063. Lien of tax**

**Comment.** Section 16063 is amended to delete provisions that are continued in Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code. Subdivision (b) constitutes a special exception to Government Code Section 7172 and makes clear that the 10-year period which limits the life of a state tax lien commences to run from the time a deficiency determination is issued. This continues a provision formerly found in subdivision (a).

### **Revenue & Taxation Code § 16071. Warrant for collection of tax**

**Comment.** Section 16071 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code. The section is also amended to change the period from three years to 10 years after the last recording of a notice of state tax lien during which a warrant may issue under this section and to make clear that the provision applies to the "filing" of a notice of state tax lien as well. These latter changes make Section 16071 consistent with other comparable sections. See, *e.g.*, Rev. & Tax. Code §§ 6776, 7881, 9001, 30301, 30341, 32365, 32381, 38502; Unemp. Ins. Code §§ 1755, 1785, 1852.

### **Revenue & Taxation Code § 18866. Release or subordination of lien**

**Comment.** Section 18866 continues former Section 18884 as that section applied to a lien imposed pursuant to this article.

### **Revenue & Taxation Code § 18867. Release of lien when liability legally unenforceable**

**Comment.** Section 18867 continues the portion of former Section 18884.5 which applied to a lien imposed under Section 18863 or 18864.

**Revenue & Taxation Code § 18868. Conclusive effect of certificate**

**Comment.** Section 18868 continues former Section 18885 as that section applied to a lien imposed pursuant to this article.

**Revenue & Taxation Code § 18869. Collection of costs of recording from taxpayer**

**Comment.** Section 18869 is new and is consistent with subdivision (d) of Section 7174 of the Government Code.

**Revenue & Taxation Code § 18884. Release or subordination of lien**

**Comment.** Former Section 18884 is continued in Section 18866 of this code and in Section 7174 of the Government Code.

**Revenue & Taxation Code § 18884.5. Release of lien when liability unenforceable**

**Comment.** Former Section 18884.5 is continued in Section 18867 of this code and in Section 7174 of the Government Code.

**Revenue & Taxation Code § 18885. Conclusive effect of certificate**

**Comment.** Former Section 18885 is continued in Section 18868 of this code and in Section 7174 of the Government Code.

**Revenue & Taxation Code § 18888. Liability for recording release of lien**

**Comment.** Former Section 18888 is continued in Section 7174 of the Government Code which applies to the recording of a release of lien with respect to all state tax liens as defined in Section 7162 of the Government Code. See also Section 18869.

**Revenue & Taxation Code § 18933. Priority of tax**

**Comment.** Section 18933 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.



**Revenue & Taxation Code § 26312. Priority of tax**

**Comment.** Section 26312 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

**Revenue & Taxation Code § 30321. Priority of tax**

**Comment.** Section 30321 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

**Revenue & Taxation Code § 32386. Priority of tax**

**Comment.** Section 32386 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code, and to add the last paragraph which makes Section 32386 consistent with other comparable provisions. See, *e.g.*, Rev. & Tax. Code §§ 6756, 18933, 26312, 30321, 38531; Unemp. Ins. Code § 1702.

**Revenue & Taxation Code § 38502. Notice to withhold**

**Comment.** Section 38502 is amended to substitute the reference to Section 7171 of the Government Code for the former reference to Section 38532. The state tax lien provisions are now found in Sections 7150-7191 of the Government Code.

**Revenue & Taxation Code § 38511. Action to collect delinquent amount**

**Comment.** Section 38511 is amended to substitute the reference to Section 7171 of the Government Code for the former reference to Sections 38532 and 38533. The state tax lien provisions are now found in Sections 7150-7191 of the Government Code.

**Revenue & Taxation Code § 38531. Priority of tax**

**Comment.** Section 38531 is amended to refer to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

**Revenue & Taxation Code § 38532. Lien of tax**

**Comment.** Section 38532 is amended to delete provisions that are superseded by Sections 7170-7172 of the Government Code.

**Revenue & Taxation Code § 38533. Filing certificate of state tax lien**

**Comment.** Former Section 38533 is superseded by Sections 7170-7171 of the Government Code.

**Revenue & Taxation Code § 38534. Release or subordination of lien**

**Comment.** Former Section 38534 is continued in Section 7174 of the Government Code.

**Revenue & Taxation Code § 38535. Release of lien when liability legally unenforceable**

**Comment.** Former Section 38535 is continued in Section 7174 of the Government Code.

**Revenue & Taxation Code § 38536. Conclusive effect of certificate**

**Comment.** Former Section 38536 is continued in Section 7174 of the Government Code.

**Revenue & Taxation Code § 38541. Warrant for collection of tax**

**Comment.** Section 38541 is amended to substitute the reference to Section 7171 of the Government Code for the former reference to Section 38532. The state tax lien provisions are now found in Sections 7150-7191 of the Government Code.

**Unemployment Insurance Code § 1702. Limitation on effect of Section 1701**

**Comment.** Section 1702 is amended to correct the cross-reference to the state tax lien provisions which are now found in Sections 7150-7191 of the Government Code.

## APPENDIX V

### REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 1676

[Extract From Senate Journal for February 28, 1980 (1979-1980 Regular Session)]

In order to indicate more fully its intent with respect to Assembly Bill 1676, the Senate Committee on Judiciary makes the following report.

Assembly Bill 1676 is intended to effectuate the *Recommendation of the California Law Revision Commission Relating to Quiet Title Actions*, 15 Cal. L. Revision Comm'n Reports 1187 (1980). Except for the new and revised comments set out below, the comments contained under the various sections of Assembly Bill 1676 as set out in the Commission's recommendation reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Assembly Bill 1676.

The following new and revised comments also reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Assembly Bill 1676.

#### § 760.030. *Remedy cumulative*

*Comment.* Subdivision (a) of Section 760.030 continues the substance of the third paragraph of former Section 751 and the first portion of the third paragraph of former Section 751.1. Subdivision (b) is new. Other proceedings that may be available to clear title to property include actions concerning real property titles affected by public improvement assessments (Sections 801.1-801.15), actions under the Destroyed Land Records Relief Law and Cullen Earthquake Act (Sections 751.01-751.28 and 751.50-751.65), partition actions (Sections 872.010-874.240), actions to quiet title to tax-deeded property (Rev. & Tax. Code §§ 3591-3617 and 3950-3972), actions to remove a cloud on title (Civil Code § 3412), and declaratory relief actions (Code Civ. Proc. § 1060). For special actions and proceedings to clear title, see Sections 770.010-770.080 (identity of person in chain of title), 771.010-771.020 (land dedicated for public improvement), and 772.010-772.060 (right of entry or occupation of surface lands under oil or gas lease). See also Civil Code § 794 (quitclaim of expired oil, gas, or mineral lease).

#### § 761.030. *Answer*

*Comment.* Paragraphs (1) and (2) of subdivision (a) of Section 761.030 are comparable to subdivisions (a) and (b) of Section 872.410 (partition). Paragraph (3) is drawn from Section 431.30(b) (contents of answer in general rules of pleading). See also Section 760.060 (rules of practice in civil actions govern this chapter except where inconsistent). The verification requirement is a specific application of Section 446 (when complaint is verified, answer must be verified).

Subdivision (b) continues the substance of former Section 739. It provides an express exception to Section 1032 (costs in superior court).

**§ 762.090. State as party**

*Comment.* Section 762.090 is a specific application of Government Code Section 945 (a public entity may sue and be sued). It is intended to resolve any doubt whether the doctrine of sovereign immunity still applies in quiet title actions since enactment of the Governmental Liability Act in 1963. Cases that state in holding or dictum that the state may not be made a party to a quiet title action on the basis of sovereign immunity are no longer good law. See, e.g., *State v. Royal Consol. Mining Co.*, 187 Cal. 343, 202 P. 133 (1931). For a listing of specific statutes authorizing quiet title actions against the state that predate the 1963 Governmental Liability Act, see 2 A. Bowman, *Ogden's Revised California Real Property Law*, § 27.67, at 1367-68 (TICOR-CEB 1975); see also former Section 738.5 (escheat under Alien Land Law) and Sts. & Hy. Code § 9012 (refunding of bonds).

**§ 764.070. Effect on State of California and United States**

*Comment.* Section 764.070 continues the substance of provisions formerly located in the first portion of the second paragraph of former Sections 751 and 751.1, but eliminates the implication that the United States may be sued in a quiet title action under this chapter. The United States may be sued in a quiet title action only in federal court. See 28 U.S.C. §§ 1346(f), 2409a; *California v. Arizona*, 99 S.Ct. 919, 924 (1979). The state may be made a party to a quiet title action. See Section 762.090 and Comment thereto.

# APPENDIX VI

## REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 2121

[Extract From Senate Journal for June 18, 1980 (1979-1980 Regular Session)]

In order to indicate more fully its intent with respect to Assembly Bill 2121, the Senate Committee on Judiciary makes the following report:

Assembly Bill 2121 is intended to effectuate the "Recommendation of the California Law Revision Commission Relating to Application of Evidence Code Property Valuation Rules in Noncondemnation Cases," 15 Cal. L. Revision Comm'n Reports 301 (1979). The following comments also reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Assembly Bill 2121.

### *Evidence Code § 810 (amended)*

*Comment.* Section 810 is amended to remove the limitation on application of this article to eminent domain and inverse condemnation proceedings. This article does not attempt to define market value and does not apply the eminent domain definition of market value to other cases; it is limited to procedural rules for determining market value, however defined.

This article applies to any action or proceeding in which the value of real property, or real and personal property taken as a unit, is to be determined. See Section 811 and Comment thereto ("value of property" defined). See also Sections 105 and 120 ("action" includes action or proceeding). These cases include, but are not limited to, the following:

(1) Eminent domain proceedings. See, e.g., Code Civ. Proc. § 1263.310 (measure of compensation is fair market value of property taken).

(2) Inheritance taxation. See, e.g., Rev. & Tax. Code §§ 13311, 13951 (property taxed on basis of market value).

(3) Breach of contract of sale. See, e.g., Civil Code §§ 3306, 3307 (damages for breach of real property contract based on value of property).

(4) Mortgage deficiency judgments. See, e.g., Code Civ. Proc. §§ 580a, 726 (judgments calculated on fair market value or fair value of property).

(5) Gift taxation. See, e.g., Rev. & Tax. Code § 15203 (gift tax computed on market value of property).

(6) Fraud in the purchase, sale, or exchange of property. See, e.g., Civil Code § 3343 (measure of damages includes damages based on actual value of property).

(7) Other cases in which no statutory standard of market value or its equivalent is prescribed but in which the court is required to

make a determination of market value, such as marriage dissolution. See, e.g., *In re Marriage of Folb*, 53 Cal. App. 3d 862, 126 Cal. Rptr. 306 (1975).

This article applies only where market value is to be determined, whether for computing damages and benefits or for any other purpose. In cases involving some other standard of value, the rules provided in this article are not made applicable by statute.

The introductory proviso of subdivision (a) ensures that, where a particular provision requires a special rule relating to value, the special rule prevails over this article. By virtue of subdivision (b), property tax assessment and equalization proceedings, whether judicial or administrative, are not subject to this article. They are governed by a well-developed and adequate set of rules that are comparable to the Evidence Code rules. See, e.g., Rev. & Tax. Code §§ 402.1, 402.5 (valuation and assessment rules); Rev. & Tax. Code §§ 1606, 1609, 1609.4, 1636–1641 (equalization proceedings); Cal. Admin. Code, Tit. 18 (public revenues regulations).

Nothing in this section intended to require a hearing to ascertain the value of property where a hearing is not required by statute. See, e.g., Rev. & Tax. Code §§ 14501–14505 (Inheritance Tax Referee permitted but not required to conduct hearing to ascertain value of property).

#### *Evidence Code § 811 (amended)*

*Comment.* Subdivision (b) of Section 811 is amended to include personal property only when valued together with real property. The effect of this amendment is to limit the scope of the evidence of market value provisions to actions involving real property or real and personal property combined. See Section 810 (article provides rules applicable to action in which “value of property” to be ascertained). Actions involving personal property alone are governed by general law, including the general rules of evidence prescribed in this code, although where appropriate the court may look to the special rules prescribed in this article.

#### *Evidence Code § 813 (amended)*

*Comment.* Paragraph (2) of Section 813(a) is amended to make clear that either spouse may testify as to the value of community property since both spouses are the owners. In addition, paragraph (2) authorizes either spouse to testify as to the value of the separate property of the other spouse as well as to his or her own separate property. This authority may be useful in cases under the Family Law Act where the character of the property is in dispute as well as in other cases requiring valuation where the nonowning spouse may be a more competent valuation witness than the owning spouse.

Subdivision (c) of Section 813 is amended to make clear that a person claiming to be an owner may testify as an owner in litigation over title. Such litigation may arise, for example, between a buyer and seller concerning title to and value of real property under a contract of sale, or between a landlord and tenant concerning characterization and value of property as trade fixtures.

*Evidence Code § 814 (amended)*

*Comment.* Section 814 is amended to make technical changes. While the value of property may be determined by reference to matters listed in Sections 815 to 821 where appropriate, an opinion as to value may also be based on any other matter that satisfies the general requirements of Section 814. See, e.g., *City of Los Angeles v. Retlaw Enterprises, Inc.*, 16 Cal.3d 473, 486 n.8, 546 P.2d 1380, 1388 n.8, 128 Cal. Rptr. 436, 444 n.8 (1976) (price trend data admissible); *People ex rel. Dep't of Transp. v. Southern Pac. Transp. Co.*, 84 Cal. App.3d 315, 325, 148 Cal. Rptr. 535, 541 (1978) (replacement cost of land as opposed to improvements admissible); *South Bay Irr. Dist. v. California-American Water Co.*, 61 Cal. App.3d 944, 980, 133 Cal. Rptr. 166, 191 (1976) (capitalization based on nonrental income admissible); *Redevelopment Agency v. Del-Camp Invs., Inc.*, 38 Cal. App.3d 836, 842, 113 Cal. Rptr. 762, 766-67 (1974) (capitalization based on gross rentals admissible); *People ex rel. Dep't of Pub. Works v. Home Trust Inv. Co.*, 8 Cal. App. 3d 1022, 1026, 87 Cal. Rptr. 722, 724 (1970) (noncomparable sales admissible in appropriate circumstances).

*Evidence Code § 822 (amended)*

*Comment.* Section 822 is amended to limit the application of subdivision (a) to eminent domain and inverse condemnation cases despite the general expansion of this article to cover real property valuation cases generally. See Sections 810 and 811 and Comments thereto. The introductory portion of subdivision (a) is also amended to make clear that subdivision (a) regulates only the bases for an opinion of value admissible in evidence; it does not purport to prescribe rules or regulations governing the practice of the appraisal profession outside of expert testimony in a case.

Subdivision (b) is added to make clear that the exclusion of the matters listed in subdivision (a) in eminent domain and inverse condemnation cases does not imply that those matters are admissible in other cases. The rules governing admissibility in other cases of matters listed in subdivision (a) are found in Section 814 and in the general Evidence Code rules relating to relevance, prejudice, and the like.

*Evidence Code § 823 (new)*

*Comment.* Section 823 is drawn from Code of Civil Procedure Section 1263.320(b) (fair market value in eminent domain proceeding of property for which there is no relevant market). Section 823 is included because there may be no relevant market for some types of special purpose properties such as schools, churches, cemeteries, parks, utilities, and similar properties. See Code Civ. Proc. § 1263.320(b) and Comment thereto.





APPENDIX VII  
STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

## Revision of the Guardianship- Conservatorship Law

Appointment of Successor Guardian or Conservator  
Support of Conservatee Spouse from Community Property  
Appealable Orders

October 1980

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94306

#### 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 Revision of the Guardianship-Conservatorship Law*, 15 CAL. L. REVISION COMM'N REPORTS 1463 (1980).

## CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Room D-2  
Palo Alto, CA 94306  
(415) 494-1335

BEATRICE P. LAWSON  
*Chairperson*

JEAN C. LOVE  
*Vice Chairperson*

SENATOR OMER L. RAINS

ASSEMBLYMAN ALISTER McALISTER

JUDITH MEISELS ASHMANN

ROBERT J. BERTON

GEORGE Y. CHINN

THOMAS S. LOO

WARREN M. STANTON

BION M. GREGORY  
*Ex Officio*

October 11, 1980

To: THE HONORABLE EDMUND G. BROWN JR.  
*Governor of California* and  
THE LEGISLATURE OF CALIFORNIA

The Law Revision Commission was authorized by Resolution Chapter 27 of the Statutes of 1972 to make a study to determine whether the law relating to guardianship and related matters should be revised. A new guardianship-conservatorship law was enacted by Chapter 726 of the Statutes of 1979 upon recommendation of the Commission. See *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

The Commission has continued to review the law relating to guardianship and conservatorship to determine whether any technical or substantive changes are necessary. As a result of this continuing review, the Commission recommends revision of the Guardianship-Conservatorship Law to clarify the procedure for appointment of a successor guardian or conservator, to provide a summary procedure to compel the spouse managing or controlling the community property to provide for the support of the conservatee spouse from the community property, and to make clear the extent to which appeals may be taken from orders and judgments made under the provisions relating to the management or disposition of community or homestead property where a spouse lacks legal capacity.

Respectfully submitted,

BEATRICE P. LAWSON  
Chairperson



# RECOMMENDATION

*relating to*

## REVISION OF GUARDIANSHIP-CONSERVATORSHIP LAW

### Introduction

The 1979 session of the California Legislature enacted a new guardianship-conservatorship law<sup>1</sup> upon recommendation of the California Law Revision Commission.<sup>2</sup> The Commission has considered suggestions for revision of the new law and this recommendation is the result of that consideration. The recommendation deals with three matters discussed below.

### Procedure for Appointment of Successor Guardian or Conservator

If a vacancy occurs in the office of guardian or conservator, the court may appoint a successor "after notice and hearing as in the case of an original appointment."<sup>3</sup> This statutory language is satisfactory where a successor guardian of a minor ward is required since the procedure for an original appointment of a guardian is relatively simple. However, the provision provides no adequate guide as to the procedure for the appointment of a successor conservator. As a result, the courts follow no uniform procedure in appointing a successor conservator.

In a case<sup>4</sup> involving the appointment of a successor

<sup>1</sup> 1979 Cal. Stats. ch. 726. See also 1979 Cal. Stats. ch. 730 (conforming changes) and 1980 Cal. Stats. chs. 89, 246 (1980 revisions).

<sup>2</sup> *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978). See also *Recommendation Relating to Uniform Veterans Guardianship Act*, 15 Cal. L. Revision Comm'n Reports 1289 (1980). The new law, including 1980 enacted revisions, was published by the Law Revision Commission in cooperation with the California Continuing Education of the Bar. See *Guardianship-Conservatorship Law (with Official Comments)*, 15 Cal. L. Revision Comm'n Reports 451 (1980).

<sup>3</sup> Prob. Code § 2110. Section 2110 was enacted by Chapter 726 of the Statutes of 1979 and becomes operative January 1, 1981. The provision in Section 2110 for notice and hearing as in the case of an original appointment was a continuation of prior statutory language. See Prob. Code §§ 1582 (guardianship), 1954 (conservatorship), repealed as of January 1, 1981.

<sup>4</sup> Estate of Mims, 202 Cal. App.2d 332, 20 Cal. Rptr. 667 (1962).

guardian for an incompetent adult, the statutory language was construed not to require that a citation be issued and served on the ward as would have been required had the petition been for an original appointment. Although guardians are no longer appointed for adults,<sup>5</sup> the case supports the view that the citation procedure is not required for appointment of a successor conservator. However, the case does not determine the extent to which other procedural requirements for an original appointment apply to the appointment of a successor conservator.

The Commission recommends that the procedure for the appointment of a successor conservator be clarified by providing the same basic protections to the conservatee that are provided for an original appointment.<sup>6</sup> Under the recommended procedure, if the conservatee attends the hearing on the appointment of the successor conservator, the court is required to do all of the following:

(1) Inform the conservatee of the nature and purpose of the proceeding.

(2) Inform the conservatee that the conservatee has the right to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, and, if not represented by legal counsel, to be represented by legal counsel if the conservatee so chooses and to have legal counsel appointed by the court if unable to retain legal counsel.

(3) After so informing the conservatee, consult with the conservatee to determine the conservatee's opinion concerning the question of who should be appointed as successor conservator.

The recommended procedure does not require the presence of the conservatee at the hearing; but, if the conservatee is not present at the hearing, a successor conservator may be appointed only after an investigation and report by the court investigator. The court investigator

<sup>5</sup> Under the new guardianship-conservatorship law, there are no longer guardianships for adult incompetents. See Prob. Code § 1485.

<sup>6</sup> The proposed legislation also includes provisions relating to the persons that may file a petition for appointment of a successor conservator, the contents of the petition, the giving of notice of the hearing on the petition, the persons who may support or oppose the petition, and the requirements where the conservatee is in missing status as determined under federal law. These provisions are drawn from those that apply to the appointment of an original conservator.

must interview the conservatee personally, inform the conservatee of the nature of the proceeding and the conservatee's rights in connection with the proceeding, determine whether the conservatee objects to the person proposed to be appointed or prefers that another person be appointed, determine the conservatee's desires as to legal representation, and make a report to the court.

The court determines the question of who should be appointed as successor conservator according to the provisions that govern the appointment of an original conservator.

The recommended legislation also makes clear that special notice may be requested of a petition for appointment of a successor guardian or conservator and that an appeal may be taken from the making or refusal to make an order appointing a successor guardian or conservator.

### **Enforcement of Support of Conservatee From Community Property**

Section 3051 of the Probate Code gives the spouse with legal capacity the exclusive management and control over community property where the other spouse has a conservator of the estate.<sup>7</sup> If the competent spouse is unwilling to support the conservatee spouse from the community property,<sup>8</sup> it appears that the conservator or other interested person can enforce the support obligation only by instituting a separate action. There is no provision for a summary procedure in the conservatorship

<sup>7</sup> The right given to the competent spouse to manage and control the community property where a conservatorship is established does not otherwise alter the rights of the spouses in the community property or in the income or proceeds of such property. Prob. Code § 3020. The competent spouse may consent to the inclusion of some or all of the community property in the conservatorship estate. See Prob. Code § 3051(c). Even if the competent spouse consents to the inclusion of community property in the conservatorship estate, the court has authority to exclude the property from the conservatorship estate if the court determines that its inclusion would not be in the best interest of the spouses or their estates. See Prob. Code § 3054.

<sup>8</sup> Both spouses owe to each other mutual duties of support. Civil Code §§ 242, 5100, 5132. See also *In re Marriage of Epstein*, 24 Cal. 3d 76, 85, 592 P.2d 1165, 154 Cal. Rptr. 413 (1979). The establishment of a conservatorship for one spouse does not relieve the other spouse of the duty of support. See *Guardianship of Thrasher*, 105 Cal. App.2d 768, 234 P.2d 230 (1951).

proceeding to enforce the support obligation from the community property.<sup>9</sup>

The Commission recommends the enactment of legislation to provide a summary procedure that will permit the conservator or other interested person to obtain an order requiring the competent spouse to apply the community property income or principal or both to the support of the conservatee spouse.<sup>10</sup> There already is precedent for such a summary procedure in a conservatorship proceeding where the conservatee has a claim to real or personal property, title to or possession of which is held by another.<sup>11</sup> The requirement that a separate action be instituted to enforce the support obligation merely results in unnecessary expense and delay.

The legislation recommended by the Commission contains the following significant provisions:

(1) A proceeding to enforce the obligation for support from the community property may be initiated by the filing of a petition in the court in which the conservatorship proceeding is pending. The petition may be filed by the conservator or conservatee, a relative or friend of the conservatee, or any interested person.<sup>12</sup> Giving broad authority to file such a petition will be useful, for example, where the competent spouse is the conservator.

(2) A citation may be issued to the competent spouse requiring that spouse to appear before the court for examination concerning matters relevant to the petition.

(3) The court may order the competent spouse to pay temporary support pending determination of the petition.

<sup>9</sup> The statute does not specify what procedure may be used to require the competent spouse to support the conservatee spouse from the community property. As to the possible availability under existing law of a summary procedure in the conservatorship proceeding to enforce such support, see the discussion in note 11 *infra*.

<sup>10</sup> The new provisions should be made a part of the statute governing the management and control of community property where a conservator has been appointed for one of the spouses (Prob. Code §§ 3000-3074).

<sup>11</sup> Prob. Code §§ 2520-2528. Whether the summary procedure under Sections 2520-2528 would be available to enforce support is unclear and, even if available, the procedure under those sections is inadequate to enforce the support obligation since, for example, there is no provision for periodic payments or for an assignment order. In addition, the proceeding may be halted by an objection on the ground that venue would be improper if the matter were determined in a separate civil action. See Section 2524.

<sup>12</sup> See Prob. Code § 1424 (defining "interested person" to include a public officer or employee of a public entity).



The competent spouse must serve and file a financial declaration concerning current income and expenses and one concerning current property. Ex parte protective orders concerning the property of the competent spouse may be obtained. These provisions are comparable to provisions found in the Family Law Act.

(4) The court may hear and determine whether property is community or separate property when the issue is raised in the proceeding.

(5) In determining the amount for support, the court shall consider the same factors that would be considered in a separate action for support.

(6) The court may order the community property income or principal or both to be applied to the support of the conservatee as ordered by the court. The court may order a specified monthly or other periodic payment to the conservator of the person or other person designated in the order. The court may order a wage assignment for the amount of the periodic payment and the employer must comply with the order. The wage assignment provisions are drawn from those applicable to wage assignments for support under Civil Code Section 4701.

(7) If the spouse ordered to provide support refuses to comply with the order, the court is given discretionary authority to divide the community and quasi-community property equally as in a marriage dissolution and to order that the property awarded to the conservatee spouse be transferred to and be included in the conservatorship estate.

(8) The orders of the court may be enforced in the same manner as support orders under the Family Law Act.

(9) The court retains jurisdiction to modify or vacate the order for support where justice requires. The order also may be modified or vacated by the court granting a dissolution of the marriage or legal separation.

(10) The Judicial Council is authorized to provide by rule for practice and procedure.

(11) The new summary procedure is permissive and in addition to any other procedure otherwise available to enforce the support obligation.

(12) Use of the summary procedure is not permitted if support is sought from the separate property of the spouse managing or controlling the community property or from some other person. Ordinarily all property of the conservatee becomes property of the conservatorship estate and is available for the support of the conservatee.<sup>13</sup> The conservatee spouse has an ownership interest in the community property,<sup>14</sup> but making community property a part of the conservatorship estate would deprive the competent spouse of the right of equal management and control.<sup>15</sup> For this reason, the existing statute gives the competent spouse the right of exclusive management and control of community property if a conservator of the estate is appointed for the other spouse.<sup>16</sup> It would go too far, however, to extend the right of exclusive management and control to deprive the court in which the conservatorship proceeding is pending of the authority to make an appropriate order requiring that community property be applied to the support of the conservatee spouse. On the other hand, the enforcement of a support obligation against other property—property that is not property of the conservatee—is best left to determination in an independent action as would be the case if there were no conservatorship.<sup>17</sup>

### Appealable Orders

The existing statute contains no specific provision governing appeals from orders or judgments under Probate Code Sections 3000-3154 (management or disposition of community or homestead property where spouse lacks legal capacity). The recommended legislation makes clear

<sup>13</sup> See Prob. Code § 2401 (duty to manage and control conservatee's estate). See also the Comment to Prob. Code § 2401 ("duty of management and control . . . requires that the conservator act diligently in marshaling, taking possession of, and making an inventory of the conservatee's assets"). See Prob. Code §§ 2420 and 2422 (use of income of estate or proceeds of sale of estate assets for support of conservatee).

<sup>14</sup> See Civil Code § 5105.

<sup>15</sup> See Civil Code § 5125 (spouses have equal right of management and control of community property).

<sup>16</sup> Prob. Code § 3051. See also note 7 *supra*.

<sup>17</sup> In enforcing a support obligation, the court must resort first to the community property and then to the quasi-community or other separate property of the spouse required to make the support payment. See Civil Code §§ 4805, 5132.

that an appeal may be taken from an order or judgment made under those provisions as in a civil action.

### **Recommended Legislation**

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

An act to amend Sections 1461, 1461.5, 2700, and 2750 of, to add Chapter 9.5 (commencing with Section 2670) to Part 4 of Division 4 of, to add Section 3024 to, and to add Article 3 (commencing with Section 3080) to Chapter 2 of Part 6 of Division 4 of, and to repeal Section 2110 of, the Probate Code, relating to protective proceedings.

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

### **Probate Code § 1461 (amended). Notice to Director of Mental Health or Director of Developmental Services**

SECTION 1. Section 1461 of the Probate Code is amended to read:

1461. (a) As used in this section, "director" means:

(1) The Director of Mental Health when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Mental Health.

(2) The Director of Developmental Services when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Developmental Services.

(b) Except where the petition, report, or account is filed by the director, notice of the time and place of hearing on the petition, report, or account, and a copy of the petition, report, or account, shall be mailed to the director at the director's office in Sacramento at least 15 days before the hearing if both of the following conditions exist:

(1) The ward or conservatee is or has been during the guardianship or conservatorship proceeding a patient in or on leave from a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services.

(2) The petition, report, or account is filed under any one or more of the following provisions: Section 1510, 1820, 1861, 2212, 2403, 2421, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2580, 2592, or 2620 ; ; *Chapter 9.5 (commencing with Section 2670) of Part 4; Section 3080 or 3088*; or Chapter 3 (commencing with Section 3100) of Part 6.

(c) If the ward or conservatee has been discharged from the state hospital, the director, upon ascertaining the facts, may file with the court a certificate stating that the ward or conservatee is not indebted to the state and waive the giving of further notices under this section. Upon the filing of the certificate of the director, compliance with this section thereafter is not required unless the certificate is revoked by the director and notice of the revocation is filed with the court.

(d) The statute of limitations does not run against any claim of the State Department of Mental Health or the State Department of Developmental Services against the estate of the ward or conservatee for board, care, maintenance, or transportation with respect to an account that is settled without giving the notice required by this section.

**Comment.** Section 1461 is amended to include a reference to Chapter 9.5 (commencing with Section 2670) of Part 4 and to Sections 3080 and 3088 so that the department will receive notice of a petition filed under any of those provisions where the department may have an interest in the petition.

### **Probate Code § 1461.5 (amended). Notice to Veterans Administration**

**SEC. 2.** Section 1461.5 of the Probate Code is amended to read:

**1461.5.** Except for a petition filed by the Veterans Administration, notice of the time and place of hearing on a petition, report, or account, and a notice of the filing of an inventory, together with a copy of the petition, report, inventory, or account, shall be mailed to the office of the Veterans Administration having jurisdiction over the area in which the court is located at least 15 days before the

hearing, or within 15 days after the inventory is filed, if both of the following conditions exist:

(a) The guardianship or conservatorship estate consists or will consist wholly or in part of any of the following:

(1) Money received from the Veterans Administration.

(2) Revenue or profit from such money or from property acquired wholly or in part from such money.

(3) Property acquired wholly or in part with such money or from such property.

(b) The petition, report, inventory, or account is filed under any one or more of the following provisions: Section 1510, 1601, 1820, 1861, 1874, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2570, 2571, 2580, 2592, 2610, 2613, or 2620; Chapter 8 (commencing with Section 2640) of Part 4; *Chapter 9.5 (commencing with Section 2670) of Part 4; Section 3080 or 3088*; or Chapter 3 (commencing with Section 3100) of Part 6.

**Comment.** Section 1461.5 is amended to add the reference to Chapter 9.5 (commencing with Section 2670) of Part 4 and to Sections 3080 and 3088 so that the Veterans Administration will receive notice of a petition filed under any of those provisions where the Veterans Administration may have an interest in the petition.

#### **Probate Code § 2110 (repealed). Appointment to fill vacancy**

SEC. 3. Section 2110 of the Probate Code is repealed.

~~2110. When for any reason a vacancy occurs in the office of guardian or conservator, the court may appoint a successor, after notice and hearing as in the case of an original appointment.~~

**Comment.** Former Section 2110 is superseded by Chapter 9.5 (commencing with Section 2670) of Part 4 of Division 4 of the Probate Code.

#### **Probate Code §§ 2670-2689 (added). Appointment of successor guardian or conservator**

SEC. 4. Chapter 9.5 (commencing with Section 2670) is added to Part 4 of Division 4 of the Probate Code, to read:

## CHAPTER 9.5. APPOINTMENT OF SUCCESSOR GUARDIAN OR CONSERVATOR

### Article 1. Appointment of Successor Guardian

#### § 2670. Appointment of successor guardian

2670. When for any reason a vacancy occurs in the office of guardian, the court may appoint a successor guardian, after notice and hearing as in the case of an original appointment of a guardian.

**Comment.** Section 2670 continues the substance of former Section 2110 as the former section applied to guardianships of minors.

### Article 2. Appointment of Successor Conservator

#### § 2680. Application of article

2680. When for any reason a vacancy occurs in the office of conservator, the court may appoint a successor conservator in the manner provided in this article.

**Comment.** Article 2 (commencing with Section 2680) supersedes former Section 2110 as that section applied to conservatorships. Article 2 makes clear the procedure for appointment of a successor conservator. Under former Section 2110, appointment of a successor conservator was to be made “after notice and hearing as in the case of an original appointment,” but it was not clear which of the requirements applicable to an original appointment applied to the appointment of a successor conservator and which did not. *Cf.* Estate of Mims, 202 Cal. App.2d 332, 20 Cal. Rptr. 667 (1962) (adult ward need not be served with citation as on original appointment where petition is for successor guardian).

#### § 2681. Who may file petition

2681. A petition for appointment of a successor conservator may be filed by any of the following:

- (a) The conservatee.
- (b) The spouse of the conservatee.
- (c) A relative of the conservatee.

(d) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

(e) Any other interested person or friend of the conservatee.

**Comment.** Section 2681 is comparable to subdivision (a) of Section 1820 (petition for initial appointment of conservator).

#### **§ 2682. Contents of petition**

2682. (a) The petition shall request that a successor conservator be appointed for the person or estate, or both, and shall specify the name and address of the proposed successor conservator and the name and address of the conservatee.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the conservatee within the second degree.

(c) If the petition is filed by one other than the conservatee, the petition shall state whether or not the petitioner is a creditor or debtor of the conservatee.

(d) If the conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the conservatee.

(f) The petition shall state whether or not the conservatee will be present at the hearing.

**Comment.** Section 2682 is comparable to Section 1821 (petition for initial appointment of conservator).

**§ 2683. Notice of hearing**

2683. (a) At least 15 days before the hearing on the petition for appointment of a successor conservator, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), and (d) of this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be mailed to the following persons (other than the petitioner or persons joining in the petition):

(1) The conservatee at the address stated in the petition.

(2) The spouse, if any, of the conservatee at the address stated in the petition.

(3) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If notice is required by Section 1461.5 to be given to the Veterans Administration, notice shall be mailed as so required.

**Comment.** Section 2683 is comparable to Section 1822 (notice on initial appointment of conservator). The notice may be personally delivered instead of being mailed. Section 1466. If the conservatee is an "absentee" as defined in Section 1403, notice must be given as provided in Sections 1842 and 2683, except that notice need not be given to the conservatee. Section 2689.

**§ 2684. Interview and report by court investigator**

2684. Unless the petition states that the conservatee will be present at the hearing, the court investigator shall do all of the following:

(a) Interview the conservatee personally.

(b) Inform the conservatee of the nature of the proceeding to appoint a successor conservator, the name of the person proposed as successor conservator, and the conservatee's right to appear personally at the hearing, to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, to be represented by legal counsel if the



conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether the conservatee objects to the person proposed as successor conservator or prefers another person to be appointed.

(d) If the conservatee is not represented by legal counsel, determine whether the conservatee wishes to be represented by legal counsel and, if so, determine the name of an attorney the conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(e) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(f) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee objects to the person proposed as successor conservator or prefers that some other person be appointed.

(g) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (f) to all of the following:

- (1) The attorney, if any, for the petitioner.
- (2) The attorney, if any, for the conservatee.
- (3) Such other persons as the court orders.

**Comment.** Section 2684 is comparable to Section 1826 (interview and report of court investigator on initial appointment of conservator). If the conservatee is unable to retain legal counsel and requests the court to appoint counsel, or if the court determines that the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee, the court shall appoint the public defender or private counsel to represent the interest of the conservatee in proceedings under this article. Section 1471. An interview and report by the court investigator is not required

under Section 2684 if the conservatee is an “absentee” as defined in Section 1403. Section 2689.

**§ 2685. Information to conservatee by court**

2685. If the conservatee is present at the hearing, prior to making an order appointing a successor conservator the court shall do all of the following:

(a) Inform the conservatee of the nature and purpose of the proceeding.

(b) Inform the conservatee that the conservatee has the right to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, and, if not represented by legal counsel, to be represented by legal counsel if the conservatee so chooses and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) After the court so informs the conservatee, the court shall consult the conservatee to determine the conservatee’s opinion concerning the question of who should be appointed as successor conservator.

**Comment.** Section 2685 is comparable to Section 1828 (information to proposed conservatee by court on initial appointment of conservator). If the conservatee is unable to retain legal counsel and requests the court to appoint counsel or if the court determines that the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee, the court shall appoint the public defender or private counsel to represent the interest of the conservatee in proceedings under this article. Section 1471.

**§ 2686. Conservatee not present at hearing**

2686. If the petition states that the conservatee will be present at the hearing and the conservatee fails to appear at the hearing, the court shall continue the hearing and direct the court investigator to perform the duties set forth in Section 2684.

**Comment.** Section 2686 is new and is to ensure that the conservatee is informed of his or her rights before a successor conservator is appointed.

**§ 2687. Persons who may support or oppose petition**

2687. The conservatee, the spouse or any relative or friend of the conservatee, or any other interested person may appear at the hearing to support or oppose the petition.

**Comment.** Section 2687 is comparable to Section 1829 (persons who may support or oppose petition for initial appointment of conservator). “Interested person” includes state, local, or federal entities and employees. Section 1424.

**§ 2688. Order appointing successor conservator**

2688. (a) The court shall determine the question of who should be appointed as successor conservator according to the provisions of Article 2 (commencing with Section 1810) of Chapter 1 of Part 3.

(b) The order appointing the successor conservator shall contain, among other things, the names, addresses and telephone numbers of the successor conservator, the conservatee’s attorney, if any, and the court investigator, if any.

**Comment.** Subdivision (a) of Section 2688 makes clear that the order of preference for appointment as conservator set forth in Section 1812 applies to the selection of a successor conservator and that a nomination made pursuant to Section 1810 or 1811 will be given the same weight as on an initial appointment of a conservator. Subdivision (b) is comparable to Section 1830 (order making initial appointment of conservator).

There is no right to trial by jury on the appointment of a successor conservator. See Section 1452. This is consistent with the rule applicable to the initial appointment of a conservator (as distinguished from the establishment of the conservatorship) where there is no right to trial by jury. See the Comment to Section 1827.

**§ 2689. Provisions applicable where conservatee is an “absentee”**

2689. If the conservatee is an “absentee” as defined in Section 1403:

(a) The petition for appointment of a successor conservator shall contain the matters required by Section 1841 in addition to the matters required by Section 2682.

(b) Notice of the hearing shall be given as provided by Section 1842 in addition to the requirements of Section 2683, except that notice need not be given to the conservatee.

(c) An interview and report by the court investigator is not required.

**Comment.** Section 2689 requires additional allegations in the petition and additional notice and dispenses with the interview and report by the court investigator where the conservatee is in missing status as determined under federal law.

**Probate Code § 2700 (amended). Request for special notice**

**SEC. 5.** Section 2700 of the Probate Code is amended to read:

**2700.** (a) At any time after the issuance of letters of guardianship or conservatorship, the ward if over 14 years of age or the conservatee, the spouse or any relative or creditor of the ward or conservatee, or any other interested person, in person or by attorney, may file with the clerk of the court a written request for special notice of the filing or commencing of any one or more or all of the following:

(1) Petitions to direct, authorize, approve, or confirm the sale, lease, encumbrance, conveyance, or exchange of property.

(2) Petitions for transfer of the proceeding to another county.

(3) Inventory and appraisal of the estate, including any supplemental inventory and appraisal.

(4) Accounts of the guardian or conservator.

(5) Petitions for the authorization to commence an action for the partition of property.

(6) Petitions for allowances of any nature payable from the estate of the ward or conservatee.

(7) Petitions for the investment of funds of the estate or for the purchase of real property.

(8) Petitions for the resignation, removal, suspension, or discharge of the guardian or conservator.

(9) Proceedings for the final termination of the guardianship or conservatorship proceeding.

(10) Petitions to direct or allow payment of a debt or claim or to fix, direct, authorize, or allow payment of an attorney's fee.

(11) Petitions to fix, direct, authorize, or allow payment of the compensation or expenses of a guardian or conservator.

(12) Petitions to direct, authorize, approve, or modify payments for the support, maintenance, or education of the ward or conservatee or a person legally entitled to support, maintenance, or education from the ward or conservatee.

(13) Petitions filed pursuant to Section 2423 (payment of surplus income to relatives of conservatee) or Article 10 (commencing with Section 2580) of Chapter 6 (substituted judgment).

(14) Petitions filed pursuant to Section 2359 or Section 2403 (authorization and instruction or approval and confirmation by court).

(15) Petitions filed pursuant to Article 11 (commencing with Section 2590) of Chapter 6 (independent exercise of powers).

(16) Petitions filed under Section 2520 (conveyance or transfer of property claimed to belong to ward or conservatee or other person).

(17) Petitions filed pursuant to Article 5 (commencing with Section 2500) of Chapter 6 (compromise of claims and actions or extension, renewal, or modification of obligations).

(18) Petitions to fix the residence of the ward or conservatee at a place not within this state.

(19) Petitions to remove property to another jurisdiction.

(20) Petitions filed pursuant to Chapter 4 (commencing with Section 1870) of Part 3 (legal capacity of conservatee).

*(21) Petitions filed pursuant to Chapter 9.5 (commencing with Section 2670) (appointment of successor guardian or conservator).*

*(22) Petitions filed pursuant to Article 3 (commencing with Section 3080) of Chapter 2 of Part 6 (enforcement of support of spouse who has conservator).*

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent. If the request is for all of the matters referred to in subdivision (a), the request may refer generally to the provisions of this section. If the request is for less than all of the matters set forth in subdivision (a), the request shall state specifically each of the matters of which special notice is requested.

(c) A copy of the request shall be served on the guardian or conservator or on the attorney for the guardian or conservator.

(d) The original of the request when filed with the clerk shall be accompanied by a written admission or proof of service.

**Comment.** Section 2700 is amended to add paragraphs (21) and (22) to subdivision (a).

### **Probate Code § 2750 (amended). Appealable orders**

**SEC. 6.** Section 2750 of the Probate Code is amended to read:

**2750.** An appeal may be taken from the making of, or the refusal to make, a judgment, order, or decree doing any of the following:

(a) Granting or revoking letters of guardianship or conservatorship except letters of temporary guardianship or temporary conservatorship.

(b) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, conveyance, or exchange of property.

(c) Adjudicating the merits of any claim under Article 5 (commencing with Section 2500) (compromise of claim or action or extension, renewal, or modification of obligation) or Article 6 (commencing with Section 2520) (conveyance or transfer of property claimed to belong to ward or conservatee or other person) of Chapter 6.

(d) Settling an account of a guardian or conservator.

(e) Authorizing and instructing a guardian or conservator or approving and confirming acts of a guardian or conservator.

(f) Granting permission to the guardian or conservator to fix the residence of the ward or conservatee at a place not within this state.

(g) Directing or allowing payment of a debt or claim or fixing, directing, authorizing, or allowing payment of an attorney's fee.

(h) Fixing, directing, authorizing, or allowing payment of the compensation or expenses of a guardian or conservator.

(i) Directing, authorizing, approving, or modifying payments for the support, maintenance, or education of the ward or conservatee or a person legally entitled to support, maintenance, or education from the ward or conservatee.

(j) Granting or denying a petition under Section 2423 (payment of surplus income to relatives of conservatee) or under Article 10 (commencing with Section 2580) of Chapter 6 (substituted judgment).

(k) Transferring the assets of the guardianship or conservatorship estate to a guardian, conservator, committee, or comparable fiduciary in another jurisdiction.

(l) Affecting the legal capacity of the conservatee pursuant to Chapter 4 (commencing with Section 1870) of Part 3.

(m) Allowing or denying a petition of the guardian or conservator to resign.

(n) Removing or discharging the guardian or conservator.

(o) Discharging a surety on the bond of a guardian or conservator.

*(p) Appointing a successor guardian or conservator.*

**Comment.** Section 2750 is amended to add subdivision (p). For the provisions relating to appointment of a successor guardian or conservator, see Sections 2670-2689. For a provision governing appeals from orders and judgments under Part 6 (management or disposition of community or homestead property where spouse lacks legal capacity), see Section 3024.

**Probate Code § 3024 (added). Appeals**

SEC. 7. Section 3024 is added to the Probate Code, to read:

3024. Appeals may be taken from orders and judgments under this part as in a civil action.

**Comment.** Section 3024 makes clear that rules governing appeals in a civil action govern appeals from orders and judgments under this part.

**Probate Code §§ 3080-3092 (added).**

SEC. 8. Article 3 (commencing with Section 3080) is added to Chapter 2 of Part 6 of Division 4 of the Probate Code, to read:

**Article 3. Enforcement of Support of  
Spouse Who Has Conservator**

**§ 3080. Petition for order**

3080. If one spouse has a conservator and the other spouse has the management or control of community property, the conservator or conservatee, a relative or friend of the conservatee, or any interested person may file a petition under this article in the court in which the conservatorship proceeding is pending for an order requiring the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee as ordered by the court.

**Comment.** Sections 3080-3092 provide a new procedure for obtaining an order requiring a spouse managing and controlling community property to apply such property to the support of the spouse having a conservator. A public officer or employee or a public entity may file a petition under this article. See Section 1424 (defining “interested person”). The procedure provided by this article is supplemental to other procedures to enforce the duty of support. See Section 3092.

Where an issue is raised in a proceeding under this article whether property is community property or the separate property of either spouse, the court may hear and determine the issue in the proceeding. See Section 3087.



**§ 3081. Notice of hearing**

3081. (a) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(b) If the spouse who has the management or control of community property is not the conservator, the petitioner shall also cause notice of the hearing and a copy of the petition to be served on that spouse in accordance with Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure.

**Comment.** Section 3081 is adapted from Section 2521 (property claimed to belong to ward or conservatee).

**§ 3082. Citation to and examination of spouse managing or controlling community property**

3082. (a) Upon the filing of a petition under this article, the court may cite the spouse who has the management or control of community property to appear before the court, and the court and the petitioner may examine the spouse under oath concerning the community property and other matters relevant to the petition filed under this article. If the person so cited refuses to appear and submit to an examination, the court may proceed against the person as provided in Section 614. Upon such examination, the court may make an order requiring the person cited to disclose his or her knowledge of the community property and other matters relevant to the petition filed under this article, and if the order is not complied with the court may proceed against the person as provided in Section 614.

**Comment.** Section 3082 is drawn from Section 2616 (examination concerning assets of guardianship or conservatorship estate).

**§ 3083. Support pendente lite**

3083. In any proceeding under this article, the court may, after notice and hearing, order that the spouse who has the management or control of community property to pay from the community property such amount as the court determines is necessary to the support and maintenance of

the conservatee spouse pending the determination of the petition under this article. An order made pursuant to this section shall not prejudice the rights of the spouses or other interested parties with respect to any subsequent order which may be made under this article. Any order made under this section may be modified or revoked at any time except as to any amount that may have accrued prior to the date of filing of the petition to modify or revoke the order.

**Comment.** Section 3083 is the same in substance as Section 4357 of the Civil Code (Family Law Act). The section permits the court to make a temporary order for support if necessary pending the determination of the petition.

**§ 3084. Income and expense declaration and property declaration of competent spouse**

3084. When a petition is filed under this article, the spouse having the management or control of community property shall serve and file a current income and expense declaration and a current property declaration in the form prescribed by the Judicial Council.

**Comment.** Section 3084 requires the filing of financial declarations similar to the requirement of Rule 1243 of the California Rules of Court (Family Law rules). The time for serving and filing the financial declarations may be prescribed by Judicial Council rule. See Section 3091.

**§ 3085. Ex parte protective orders**

3085. During the pendency of any proceeding under this article, the court, upon the application of the petitioner, may issue ex parte orders:

(a) Restraining the spouse having the management or control of community property from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.

(b) Requiring the spouse having the management or control of the community property to notify the petitioner of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.

**Comment.** Section 3085 is the same in substance as subdivision (a) (1) of Civil Code Section 4359 (Family Law Act).

**§ 3086. Continuance for preparation for hearing**

3086. Any person interested in the proceeding under this article may request time for filing a response to the petition, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of such purposes.

**Comment.** Section 3086 is the same in substance as Section 2522 (property claimed to belong to ward or conservatee).

**§ 3087. Determination of character of property**

3087. In a proceeding under this article, the court may hear and determine whether property is community property or the separate property of either spouse if that issue is raised in the proceeding.

**Comment.** Section 3087 makes clear that the court has jurisdiction to determine whether property is community or separate in a proceeding under this article. The section is consistent with Section 3023 which applies generally to proceedings under this division; but, unlike Section 3023, Section 3087 does not deprive the court of jurisdiction where an objection based on improper venue is raised. Also unlike Section 3023, Section 3087 does not contain an express provision requiring the court to abate a proceeding under this article when another action is pending. However, the general rules of civil procedure with respect to abatement when another action is pending apply to proceedings under this article. See Section 1233. See generally 3 B. Witkin, *California Procedure Pleading* §§ 961-972, at 2537-47 (2d ed. 1971).

**§ 3088. Order of court**

3088. (a) The court may order the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee (including care, treatment, and support of a conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or

the State Department of Developmental Services) as ordered by the court.

(b) In determining the amount ordered for support and maintenance, the court shall consider the following circumstances of the spouses:

- (1) The earning capacity and needs of each spouse.
- (2) The obligations and assets, including the separate property, of each spouse.
- (3) The duration of the marriage.
- (4) The age and health of the spouses.
- (5) The standard of living of the spouses.
- (6) Any other relevant factors which it considers just and equitable.

(c) At the request of any interested person, the court shall make appropriate findings with respect to the circumstances.

(d) The court may order the spouse who has the management or control of community property to make a specified monthly or other periodic payment to the conservator of the person of the conservatee or to such other person as is designated in the order. The court may order the spouse required to make the periodic payments to give reasonable security therefor.

(e) The court may order the spouse required to make the periodic payments to assign, to the person designated in the order to receive the payments, that portion of the earnings of the spouse due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support and maintenance of the conservatee. Such order shall operate as an assignment and shall be binding upon any existing or future employer upon whom a copy of the order is served. The Judicial Council shall prescribe the form for such assignment orders. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any execution or other assignment unless otherwise ordered by the court or unless the other assignment is made pursuant to Section 4701 of the Civil Code.

(f) The court shall retain jurisdiction to modify or to vacate an order made under this section where justice requires, except as to any amount that may have accrued prior to the date of the filing of the petition to modify or revoke the order. At the request of any interested person, the order of modification or revocation shall include findings of fact and may be made retroactive to the date of the filing of the petition to revoke or modify, or to any date subsequent thereto. At least 15 days before the hearing on the petition to modify or vacate the order, the petitioner shall mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the spouse who has the management or control of the community property. Notice shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to any other persons entitled to notice of the hearing under that chapter.

(g) In a proceeding under Title 3 (commencing with Section 4500) of Part 5 of Division 4 of the Civil Code, the court has jurisdiction to modify or vacate an order made under this section to the same extent as it may modify or vacate an order made in a proceeding under that title.

**Comment.** Subdivision (a) of Section 3088 is drawn in part from subdivision (a) of Section 2420. Subdivision (b) is drawn from Civil Code Section 246 (Uniform Civil Liability for Support Act).

Subdivision (c) is the same in substance as the first sentence of the last paragraph of subdivision (a) of Civil Code Section 4801 (Family Law Act).

Subdivision (d) provides for periodic payments, which are to be made to the conservator of the person or other person designated in the order (such as the State Department of Mental Health or the State Department of Developmental Services). The second sentence of subdivision (d) is drawn from the last paragraph of subdivision (a) of Civil Code Section 4801.

Subdivision (e) is drawn from Civil Code Section 4701.

The first two sentences of subdivision (f) are drawn from Civil Code Section 247 (Uniform Civil Liability of Support Act) and from the last paragraph of subdivision (a) of Civil Code Section 4801. The remainder of the subdivision, which provides for notice to the spouse obligated to make the payment and to other interested persons, is new.

Subdivision (g) makes clear that an order made under this section may be modified or vacated in a dissolution or legal separation proceeding under the Family Law Act.

**§ 3089. Division of community property; transfer of property to conservator of estate**

3089. If the spouse who has the management or control of the community property refuses to comply with any order made under this article or an order made in a separate action to provide support for the conservatee spouse, upon request of the petitioner or other interested person, the court may, in its discretion, divide the community property and the quasi-community property of the spouses equally in the same manner as where a marriage is dissolved. If the property is so divided, the property awarded to each spouse shall be the separate property of that spouse and the court shall order that the property awarded to the conservatee spouse be transferred or paid over to the conservator of the estate of that spouse to be included in the conservatorship estate and be managed, controlled, and disposed of as a part of the conservatorship estate.

**Comment.** Section 3089 gives the court in which the conservatorship proceeding is pending authority to make an equal division of the community and quasi-community property as in a marriage dissolution proceeding. The court has discretion whether to make such a division. The spouse having the management or control of community property may consent to all or a part of such property being administered in the conservatorship estate. See Section 3051(c). Such consent may avoid the need for a division under Section 3089.

The authority granted by Section 3089 will be useful, for example, where the property awarded to the conservatee spouse will be sufficient to provide for the support and maintenance of that spouse. The division in such a case will avoid the need for further proceedings to enforce the support obligation from the community property. A division of the community property does not, however, necessarily eliminate the support obligation of the competent spouse; but, if such a division is made, a separate action will be necessary to obtain future support from the separate property of the competent spouse. See Section 3092 and Comment thereto.

The authority to divide the community property may not be exercised unless the competent spouse refuses to comply with an order made under this article or in a separate action for support of the conservatee spouse.

**§ 3090. Enforcement of orders**

3090. Any order of the court made under this article may be enforced by the court by execution, the appointment of a receiver, contempt, or by such other order or orders as the court in its discretion may from time to time deem necessary.

**Comment.** Section 3090 is the same in substance as Section 4380 of the Civil Code (Family Law Act). The section adds to the methods of enforcement (such as a wage assignment under Section 3088 or a division of the community property under Section 3089) that are specifically provided for elsewhere in this article.

**§ 3091. Rules for practice and procedure**

3091. Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this article.

**Comment.** Section 3091 is the same in substance as Civil Code Section 4001 (Family Law Act).

**§ 3092. Use of other procedures for enforcement of support obligation not limited**

3092. Nothing in this article affects or limits the right of the conservator or any interested person to institute an action against any person to enforce the duty otherwise imposed by law to support the spouse having a conservator. This article is permissive and in addition to any other procedure otherwise available to enforce the obligation of support.

**Comment.** Section 3092 makes clear that this article may be used as an alternative to other procedures for enforcement of a support obligation and does not preclude the enforcement of a support obligation by a separate action for support against the spouse managing or controlling the community property. If a

separate action is pending at the time a proceeding is brought under this article, the general rules of civil procedure relating to abatement apply. See the Comment to Section 3087. The procedure provided in this article cannot be used and a separate action is necessary if support is sought from the separate property of the spouse managing and controlling the community property or from some other person. As to enforcement of support generally, see Civil Code §§ 241-254 (Uniform Civil Liability for Support Act). See also Code Civ. Proc. §§ 1650-1699 (Revised Uniform Reciprocal Enforcement of Support Act of 1968).



## **PUBLICATIONS OF THE CALIFORNIA LAW REVISION COMMISSION**

The California Law Revision Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The *pamphlets* are available for complimentary distribution as long as the supply lasts and may be obtained only from California Law Revision Commission, 4000 Middlefield Road, Room D-2, Palo Alto, California 94306. Telephone (415) 494-1335.

The *volumes* may be obtained only from the Publications Section of the Office of Procurement, P.O. Box 1015, North Highlands, California 95660.

### **How To Purchase From Publications Section**

All sales are subject to payment in advance of shipment of publications, with the exception of purchases by federal, state, county, city, and other government agencies. Several types of accounts are also available for use; information on these may be obtained from the Publications Section (address indicated above). However, orders for continuing subscriptions are not accepted.

**Checks or money orders should be made payable to the State of California. The price of each volume is \$11.98; California residents add 72¢ sales tax.** Ten percent discount is given on orders of 50 copies or more. All prices are subject to change without notice.

Requests and orders should include the name of the issuing agency ("California Law Revision Commission") and the title of the publication.

### **VOLUME 1 (1957)**

[Out of print—copies of pamphlets (listed below) available]

1955 Annual Report

1956 Annual Report

1957 Annual Report

**Recommendation and Study Relating to:**

The Maximum Period of Confinement in a County Jail  
 Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions  
 Taking Instructions to the Jury Room  
 The Dead Man Statute  
 Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere  
 The Marital "For and Against" Testimonial Privilege  
 Suspension of the Absolute Power of Alienation  
 Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378  
 Judicial Notice of the Law of Foreign Countries  
 Choice of Law Governing Survival of Actions  
 The Effective Date of an Order Ruling on a Motion for New Trial  
 Retention of Venue for Convenience of Witnesses  
 Bringing New Parties into Civil Actions

**VOLUME 2 (1959)**

1958 Annual Report

1959 Annual Report

**Recommendation and Study Relating to:**

The Presentation of Claims Against Public Entities  
 The Right of Nonresident Aliens to Inherit  
 Mortgages to Secure Future Advances  
 The Doctrine of Worthier Title  
 Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving  
 Time Within Which Motion for New Trial May Be Made  
 Notice to Shareholders of Sale of Corporate Assets

**VOLUME 3 (1961)**

[Out of print—copies of pamphlets (listed below) available]

1960 Annual Report

1961 Annual Report

**Recommendation and Study Relating to:**

Evidence in Eminent Domain Proceedings  
 Taking Possession and Passage of Title in Eminent Domain Proceedings  
 The Reimbursement for Moving Expenses When Property is Acquired for Public Use  
 Rescission of Contracts  
 The Right to Counsel and the Separation of the Delinquent From the Nondelinquent Minor in Juvenile Court Proceedings  
 Survival of Actions

## Arbitration

The Presentation of Claims Against Public Officers and Employees  
 Inter Vivos Marital Property Rights in Property Acquired While  
 Domiciled Elsewhere  
 Notice of Alibi in Criminal Actions

**VOLUME 4 (1963)**

1962 Annual Report

1963 Annual Report

1964 Annual Report

Recommendation and Study Relating to Condemnation Law and Procedure:

Number 4—Discovery in Eminent Domain Proceedings [The first three pamphlets (unnumbered) in Volume 3 also deal with the subject of condemnation law and procedure.]

Recommendations Relating to Sovereign Immunity:

Number 1—Tort Liability of Public Entities and Public Employees

Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees

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)

**VOLUME 5 (1963)**

[Out of print—copies of pamphlet (listed below) available]

A Study Relating to Sovereign Immunity

**VOLUME 6 (1964)**

[Out of print—copies of pamphlets (listed below) available]

Tentative Recommendations and Studies Relating to the Uniform Rules of Evidence:

Article I (General Provisions)

Article II (Judicial Notice)

Burden of Producing Evidence, Burden of Proof, and Presumptions  
 (replacing URE Article III)

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)

**VOLUME 7 (1965)**

1965 Annual Report

1966 Annual Report

Evidence Code with Official Comments [out of print]

Recommendation Proposing an Evidence Code [out of print]

Recommendation Relating to Sovereign Immunity: Number 8—Revisions of the Governmental Liability Act: Liability of Public Entities for Ownership and Operation of Motor Vehicles; Claims and Actions Against Public Entities and Public Employees

**VOLUME 8 (1967)**

Annual Report (December 1966) includes the following recommendation:

Discovery in Eminent Domain Proceedings

Annual Report (December 1967) includes following recommendations:

Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding

Improvements Made in Good Faith Upon Land Owned by Another  
Damages for Personal Injuries to a Married Person as Separate or Community Property

Service of Process on Unincorporated Associations

Recommendation and Study Relating to:

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

Vehicle Code Section 17150 and Related Sections

Additur

Abandonment or Termination of a Lease

The Good Faith Improver of Land Owned by Another

Suit By or Against An Unincorporated Association

Recommendation Relating to the Evidence Code:

Number 1—Evidence Code Revisions

Number 2—Agricultural Code Revisions

Number 3—Commercial Code Revisions

Recommendation Relating to Escheat

Tentative Recommendation and A Study Relating to Condemnation Law and Procedure: Number 1—Possession Prior to Final Judgment and Related Problems

**VOLUME 9 (1969)**

[Out of print—copies of pamphlets (listed below) available]

Annual Report (December 1968) includes following recommendations:

Recommendation Relating to Sovereign Immunity: Number 9—Statute of Limitations in Actions Against Public Entities and Public Employees

Recommendation Relating to Additur and Remittitur

Recommendation Relating to Fictitious Business Names

Annual Report (December 1969) includes following recommendations:

- Recommendation Relating to Quasi-Community Property
- Recommendation Relating to Arbitration of Just Compensation
- Recommendation Relating to the Evidence Code: Number 5—Revisions of the Evidence Code
- Recommendation Relating to Real Property Leases
- Proposed Legislation Relating to Statute of Limitations in Actions Against Public Entities and Public Employees

Recommendation and Study Relating to:

- Mutuality of Remedies in Suits for Specific Performance
- Powers of Appointment
- Fictitious Business Names
- Representations as to the Credit of Third Persons and the Statute of Frauds
- The "Vesting" of Interests Under the Rule Against Perpetuities

Recommendation Relating to:

- Real Property Leases
- The Evidence Code: Number 4—Revision of the Privileges Article
- Sovereign Immunity: Number 10—Revisions of the Governmental Liability Act

### VOLUME 10 (1971)

Annual Report (December 1970) includes the following recommendation:

- Recommendation Relating to Inverse Condemnation: Insurance Coverage

Annual Report (December 1971) includes the following recommendation:

- Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Discharge From Employment

California Inverse Condemnation Law [out of print]

Recommendation and Study Relating to Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions

Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law [out of print]

### VOLUME 11 (1973)

Annual Report (December 1972)

Annual Report (December 1973) includes the following recommendations:

- Evidence Code Section 999—The "Criminal Conduct" Exception to the Physician-Patient Privilege
- Erroneously Ordered Disclosure of Privileged Information

Recommendation and Study Relating to:

- Civil Arrest
- Inheritance Rights of Nonresident Aliens
- Liquidated Damages

**Recommendation Relating to:**

- Wage Garnishment and Related Matters
- The Claim and Delivery Statute
- Unclaimed Property
- Enforcement of Sister State Money Judgments
- Prejudgment Attachment
- Landlord-Tenant Relations

**Tentative Recommendation Relating to:**

- Prejudgment Attachment

**VOLUME 12 (1974)****Annual Report (December 1974) includes following recommendations:**

- Payment of Judgments Against Local Public Entities
- View by Trier of Fact in a Civil Case
- The Good Cause Exception to the Physician-Patient Privilege
- Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments

**Recommendation Proposing the Eminent Domain Law****Recommendation Relating to Condemnation Law and Procedure:**

- Conforming Changes in Improvement Acts

**Recommendation Relating to Wage Garnishment Exemptions****Tentative Recommendations Relating to Condemnation Law and Procedure:**

- The Eminent Domain Law
- Condemnation Authority of State Agencies
- Conforming Changes in Special District Statutes

**VOLUME 13 (1976)****Annual Report (December 1975) includes following recommendations:**

- Admissibility of Copies of Business Records in Evidence
- Turnover Orders Under the Claim and Delivery Law
- Relocation Assistance by Private Condemnors
- Condemnation for Byroads and Utility Easements
- Transfer of Out-of-State Trusts to California
- Admissibility of Duplicates in Evidence
- Oral Modification of Contracts
- Liquidated Damages

**Annual Report (December 1976) includes following recommendations:**

- Service of Process on Unincorporated Associations
- Sister State Money Judgments
- Damages in Action for Breach of Lease
- Wage Garnishment
- Liquidated Damages

Selected Legislation Relating to Creditors' Remedies [out of print]  
Eminent Domain Law with Conforming Changes in Codified Sections and  
Official Comments [out of print]  
Recommendation and Study Relating to Oral Modification of Written  
Contracts  
Recommendation Relating to:  
Partition of Real and Personal Property  
Wage Garnishment Procedure  
Revision of the Attachment Law  
Undertakings for Costs  
Nonprofit Corporation Law

### **VOLUME 14 (1978)**

Annual Report (December 1977) includes following recommendations:  
Use of Keepers Pursuant to Writs of Execution  
Attachment Law—Effect of Bankruptcy Proceedings; Effect of General  
Assignments for Benefit of Creditors  
Review of Resolution of Necessity by Writ of Mandate  
Use of Court Commissioners Under the Attachment Law  
Evidence of Market Value of Property  
Psychotherapist-Patient Privilege  
Parol Evidence Rule  
Annual Report (December 1978) includes following recommendations:  
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)**

[Volume expected to be available December 1981]  
Annual Report (December 1979) includes following recommendations:  
Effect of New Bankruptcy Law on the Attachment Law  
Confessions of Judgment  
Special Assessment Liens on Property Taken for Public Use  
Assignments for the Benefit of Creditors  
Vacation of Public Streets, Highways, and Service Easements  
Quiet Title Actions  
Agreements for Entry of Paternity and Support Judgments  
Enforcement of Claims and Judgments Against Public Entities  
Uniform Veterans Guardianship Act  
Psychotherapist-Patient Privilege  
Enforcement of Obligations After Death

Annual Report (December 1980) includes following recommendation:

Revision of the Guardianship-Conservatorship Law: Appointment of Successor Guardian or Conservator; Support of Conservatee Spouse from Community Property; Appealable Orders

Guardianship-Conservatorship Law with Official Comments [out of print]

Recommendation Proposing the Enforcement of Judgments Law

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  
Probate Homestead

( 1503-1600 Blank )