

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

Annual Report



December 1985

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

# THE CALIFORNIA LAW REVISION COMMISSION

## COMMISSION MEMBERS

EDWIN K. MARZEC <i>Chairperson</i>	ALISTER MCALISTER <i>Member of Assembly</i>
ARTHUR K. MARSHALL <i>Vice Chairperson</i>	TIM PAONE <i>Member</i>
ROGER ARNEBERGH <i>Member</i>	ANN E. STODDEN <i>Member</i>
BION M. GREGORY <i>Member</i>	VACANCY <i>Member</i>
BILL LOCKYER <i>Member of Senate</i>	VACANCY <i>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>	VICTORIA V. MATIAS <i>Word Processing Technician</i>
EUGENIA AYALA <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 18 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1986.

Cite this pamphlet as *Annual Report, 18 Cal L. Revision Comm'n Reports 201 (1986)*.

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## **SUMMARY OF WORK OF COMMISSION**

### **Recommendations to 1986 Legislative Session**

The California Law Revision Commission plans to submit to the 1986 legislative session recommendations relating to:

- A new comprehensive trust statute
- Civil Code Sections 4800.1 and 4800.2
- Disposition of estates without administration
- Small estate set-aside
- Proration of estate taxes

### **Recommendations Enacted by 1985 Legislative Session**

In 1985, eight of nine bills recommended by the Commission were enacted. Bills enacted in 1985 effectuated Commission recommendations relating to:

- Recording severance of joint tenancy
- Abandoned easements
- Creditors' remedies
- Provision for support if support obligor dies
- Dividing jointly owned property at marriage dissolution
- Transfer of state registered property without probate
- Distribution under a will or trust
- Probate law and procedure
- Uniform Transfers to Minors Act
- Protection of mediation communications
- Powers of attorney
- Effect of adoption or out of wedlock birth on rights at death
- Litigation expenses in family law proceedings

### **Commission Plans for 1986**

During 1986, the Commission plans to devote its attention almost exclusively to the preparation of a new Probate Code for introduction at the 1987 legislative session.



**CALIFORNIA LAW REVISION COMMISSION**

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Palo Alto, CA 94303-4739  
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EDWIN K. MARZEC

*Chairperson*

ARTHUR K. MARSHALL

*Vice Chairperson*

SENATOR BILL LOCKYER

ASSEMBLYMAN ALISTER McALISTER

ROGER ARNEBERGH

BION M. GREGORY

ANN E. STODDEN

December 1, 1985

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

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1985.

I am pleased to report that at the 1985 legislative session eight of nine bills introduced to implement the Commission's recommendations were enacted.

I would like to give special recognition to Assembly Member Alister McAlister who was the author of six of the Commission recommended measures enacted in 1985, and to Senator Bill Lockyer, the Commission's newly appointed Senate Member, and Assembly Member Byron Sher, each of whom authored a Commission recommended measure enacted in 1985.

The Commission held nine two-day meetings in 1985. Meetings were held in Los Angeles, Palo Alto, Sacramento, and San Francisco.

Respectfully submitted,

EDWIN K. MARZEC  
*Chairperson*



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# ANNUAL REPORT FOR THE YEAR 1985

## INTRODUCTION

The California Law Revision Commission<sup>1</sup> was created in 1953 (as the permanent successor to the Code Commission) with the responsibility for a continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies the California law to discover defects and anachronisms and recommends legislation to make needed reforms.

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

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

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

The Commission consists of:

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

—A Member of the Assembly appointed by the Speaker.

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

—The Legislative Counsel who is an *ex officio* member.

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

Commission recommendations have resulted in the enactment of legislation affecting 8,728 sections of the California statutes:

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

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

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

3,761 sections have been added, 2,084 sections amended, and 2,883 sections repealed. Of the 196 Commission recommendations submitted to the Legislature, 180 (92%) have been enacted in whole or in substantial part.<sup>4</sup>

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

## 1986 LEGISLATIVE PROGRAM

The Commission plans to recommend legislation on the following subjects to the 1986 Legislature:

- (1) A new comprehensive trust statute.<sup>5</sup>
- (2) Civil Code Sections 4800.1 and 4800.2 (division of property acquired during marriage in joint tenancy; reimbursement for contributions to acquisition of property).<sup>6</sup>
- (3) Disposition of Estates Without Administration.<sup>7</sup>
- (4) Small Estate Set-Aside.<sup>8</sup>
- (5) Proration of Estate Taxes.<sup>9</sup>

## THE PROBATE CODE STUDY

The Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure.<sup>10</sup> The goal is to submit an entire new Probate Code for enactment at the 1987 legislative session.

During 1986, the Commission will send tentative drafts of portions of the new code to interested persons and organizations for review and comment. The comments received will be taken into account in preparing the new code.

The Commission is working in close cooperation with the Estate Planning, Trust and Probate Law Section of the State Bar

<sup>4</sup> See list of recommendations and legislative action in Appendix II *infra*.

<sup>5</sup> See *Recommendation Proposing The Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986).

<sup>6</sup> See *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2* (December 1985), published as Appendix XVI to this Report.

<sup>7</sup> See *Recommendation Relating to Disposition of Estates Without Administration* (December 1985). This recommendation will be separately published.

<sup>8</sup> See *Recommendation Relating to Small Estate Set-Aside* (December 1985). This recommendation will be separately published.

<sup>9</sup> See *Recommendation Relating to Proration of Estate Taxes* (December 1985). This recommendation will be separately published.

<sup>10</sup> In 1980, the Legislature directed the Commission to make this study. 1980 Cal. Stats. res. ch. 37.

and the Probate and Trust Law Section of the Los Angeles County Bar Association. The views of members of the public and of lawyers, judges, court commissioners, probate referees, and others who work in the probate law field are being sought and will be taken into account in preparing the new code. A special effort has been made to obtain the suggestions of members of the probate and trust law committees of local bar associations. The California Bankers Association has appointed a special committee to work with the Commission.

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

## CALENDAR OF TOPICS FOR STUDY

The Commission's calendar of topics is set out in Appendix I to this Report. Each of these topics has been authorized for Commission study by the Legislature.<sup>11</sup> Because of the substantial and numerous topics already on its calendar, the Commission does not at this time recommend any additional topics for inclusion on its calendar of topics.

## FUNCTION AND PROCEDURE OF COMMISSION

The principal duties of the Law Revision Commission<sup>12</sup> 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>13</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

<sup>11</sup> Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study.

<sup>12</sup> Gov't Code §§ 8280-8297 (statute governing California Law Revision Commission).

<sup>13</sup> The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

bring the law of this state into harmony with modern conditions.<sup>14</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>15</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. Expert consultants are also retained to advise the Commission at meetings.

The background study is given careful consideration by the Commission and, after making its preliminary decisions on the subject, the Commission ordinarily distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to effectuate its recommendation) is published in a pamphlet.<sup>16</sup> In some cases, the background study is published in the pamphlet containing the recommendation.<sup>17</sup>

<sup>14</sup> See Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the Supreme Court of the United States. Gov't Code § 8290.

<sup>15</sup> See Gov't Code § 8293. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments each 10 years and to recommend any needed revisions.

<sup>16</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>17</sup> Background studies may be published in law reviews. For background studies published in law reviews in 1985, see Bird, *Trust Termination: Unborn, Living, and Dead Hands—Too Many Fingers in the Trust Pie*, 36 Hastings L.J. 563 (1985). For a list of background studies published in law reviews prior to 1985, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971), 11 Cal. L. Revision Comm'n Reports 1008 n.5 & 1108 n.5 (1973), 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976), 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982), and 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984).

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>18</sup> to reflect amendments<sup>19</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>20</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 case authorities.<sup>21</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>22</sup>

<sup>18</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 or in a report on file with the committee. For a description of the legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App.3d 877, 884, 109 Cal. Rptr. 421, 426 (1973). For an example of such a report, see Appendix X to this Report.

<sup>19</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>20</sup> *E.g.*, *Van Arsdale v. Hollinger*, 68 Cal.2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968). See also *Milligan v. City of Laguna Beach*, 34 Cal.3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983) ("To ascertain the legislative intent, courts have resorted to many rules of construction. However, when the Legislature has stated the purpose of its enactment in unmistakable terms [*e.g.*, in official comments], we must apply the enactment in accordance with the legislative direction, and all other rules of construction must fall by the wayside. Speculation and reasoning as to legislative purpose must give way to expressed legislative purpose."). The Comments are published by both Bancroft-Whitney Company and the West Publishing Company in their editions of the annotated codes.

<sup>21</sup> See, *e.g.*, *Arellano v. Moreno*, 33 Cal. App.3d 877, 109 Cal. Rptr. 421 (1973).

<sup>22</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.

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>23</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>24</sup> The annual reports and the recommendations and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out-of-print, but others are available for purchase.<sup>25</sup>

## PERSONNEL OF COMMISSION

As of December 1, 1985, the membership of the Law Revision Commission is:

	<i>Term Expires</i>
Edwin K. Marzec, Santa Monica, <i>Chairperson</i> .....	October 1, 1987
Arthur K. Marshall, Los Angeles, <i>Vice Chairperson</i> .....	October 1, 1987
Roger Arnebergh, Van Nuys, <i>Member</i> .....	October 1, 1987
Bion M. Gregory, Sacramento, <i>ex officio Member</i> .....	†
Bill Lockyer, Hayward, <i>Senate Member</i> .....	*
Alister McAlister, Fremont, <i>Assembly Member</i> .....	*
Ann E. Stodden, Los Angeles, <i>Member</i> .....	October 1, 1987
Vacancy, <i>Member</i> .....	October 1, 1989
Vacancy, <i>Member</i> .....	October 1, 1989
Vacancy, <i>Member</i> .....	October 1, 1989

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

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

As of December 1, 1985, there are three vacancies on the Commission. David Rosenberg resigned from the Commission in May 1985 and the terms of James H. Davis and John B. Emerson expired on October 1, 1985.

In June 1985, James H. Davis was selected by the Commission to serve as Chairperson (succeeding Edwin K. Marzec) for a term beginning July 1, 1985 and ending September 30, 1985.

<sup>23</sup> See Gov't Code § 8291.

<sup>24</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).

<sup>25</sup> See "Publications of the California Law Revision Commission" *infra*.

In September 1985, Edwin K. Marzec was elected Chairperson (succeeding James H. Davis) for a term ending June 30, 1986, and Arthur K. Marshall was elected Vice Chairperson (filling a vacancy in this position) for a term ending June 30, 1986.

As of December 1, 1985, the staff of the Commission is:

*Legal*

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

During 1985, the following Stanford Law School and University of Santa Clara Law School students were employed as intermittent legal assistants: Mark A. Dupont, Stephen Gronowski, Phillip L. Jelsma, Jan H. Marx, Lizbeth Morris, S. Diane Rynerson, Judith S. Suelzle, and Cheryl Jean H. Young.

## LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1985 LEGISLATIVE SESSION

The Commission recommended nine bills and one concurrent resolution for enactment at the 1985 session.<sup>26</sup> The concurrent resolution and eight bills were enacted.

### Estate Planning and Probate

Three bills relating to estate planning, probate, and related matters were recommended by the Commission for enactment at the 1985 session.

<sup>26</sup> In addition, recommendations of the Commission were effectuated by three additional bills (not introduced at the request of the Commission that were enacted in 1985:

(1) Senate Bill 641, which became Chapter 100 of the Statutes of 1985, enacted the substance of a previously submitted Commission recommendation relating to admissibility of duplicates in evidence. See *Recommendation Relating to Admissibility of Duplicates in Evidence*, 13 Cal. L. Revision Comm'n Reports 2115 (1976).

(2) Senate Bill 1044, which became Chapter 1077 of the Statutes of 1985, enacted the substance of previously submitted Commission recommendation that Evidence Code Section 1028 (criminal proceeding exception to psychotherapist-patient privilege) be repealed. See *Recommendation Relating to Psychotherapist-Patient Privilege*, 15 Cal. L. Revision Comm'n Reports 307 (1980).

(3) Assembly Bill 1410, which became Chapter 545 of the Statutes of 1985, enacted the substance of a previously submitted Commission recommendation that the psychotherapist-patient privilege be extended to licensed educational psychologists. See *Recommendation Relating to Psychotherapist-Patient Privilege*, *supra*.

**Clarifying revisions.** Assembly Bill 97, which became Chapter 359 of the Statutes of 1985, was introduced by Assembly Member Alister McAlister. The Commission did not publish a recommendation relating to this bill. This bill was introduced as an urgency measure to make clarifying revisions in provisions previously enacted upon Commission recommendation.

As enacted, Assembly Bill 97 requires the giving of notices under the Probate Code to a stepchild or foster child and those claiming through them only if the person giving the notice has actual knowledge of facts which a person would reasonably believe give rise under Section 6408 to the parent-child relationship, thus avoiding the expense of giving notice to stepchildren and foster children and those claiming through them where such persons are not reasonably believed to be heirs, devisees, or legatees of the decedent or testator.

The bill added Section 591.9 to the Probate Code making clear that various provisions that apply when real property is sold under court supervision do not apply when real property is sold under independent administration authority. The new section also makes clear that when independent administration authority includes authority to sell real property, the bond of the executor or administrator must be increased to include the estimated value of the real property in the decedent's estate.

The bill also made other technical and clarifying amendments.

**Probate law and procedure.** Assembly Bill 196, which became Chapter 982 of the Statutes of 1985, was introduced by Assembly Member McAlister to effectuate three Commission recommendations. See *Recommendation Relating to Transfer Without Probate of Certain Property Registered by the State*, 18 Cal. L. Revision Comm'n Reports 129 (1986); *Recommendation Relating to Distribution Under a Will or Trust*, (January 1985) published as Appendix VI to this Report; *Recommendation Relating to Effect of Adoption or out of Wedlock Birth on Rights at Death*, (January 1985) published as Appendix VII to this Report. See also *Communication from California Law Revision Commission Concerning Assembly Bill 196*, reprinted as Appendix XIII to this Report and noted in the Assembly Journal for July 15, 1985, at page 3444. This bill was enacted after a number of substantive, technical, and clarifying amendments were made.

**Powers of attorney.** Senate Bill 1270, which became Chapter 403 of the Statutes of 1985, was introduced by Senator Bill Lockyer to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Durable Powers of*

*Attorney*, (January 1985) published as Appendix VIII to this Report. See also *Communication from California Law Revision Commission Concerning Senate Bill 1270*, Senate J. (July 15, 1985) at page 2613, reprinted as Appendix XV to this Report. This bill was enacted after amendments were made.

### **Real Property Law**

Assembly Bill 96, which became Chapter 157 of the Statutes of 1985, was introduced by Assembly Member McAlister to effectuate two Commission recommendations. See *Recommendation Relating to Recording Severance of Joint Tenancy*, (January 1985) published as Appendix IV to this Report, and *Recommendation Relating to Abandoned Easements*, (January 1985) published as Appendix V to this Report. See also *Communication from Law Revision Commission Concerning Assembly Bill 96*, Senate J. (June 13, 1985) at page 1871, reprinted as Appendix X to this Report. The bill was enacted after amendments were made.

### **Creditors' Remedies**

Assembly Bill 98, which became Chapter 41 of the Statutes of 1985, was introduced by Assembly Member McAlister.

As enacted, Assembly Bill 98 makes technical and clarifying revisions in the Enforcement of Judgments Law enacted by Chapter 1364 of the Statutes of 1982 upon recommendation of the Commission.

The Commission did not publish a recommendation relating to Assembly Bill 98, but the Commission's Comments to the individual bill sections are printed as Appendix XI to this Report.

### **Family Law**

Assembly Bill 150, which became Chapter 362 of the Statutes of 1985, was introduced by Assembly Member McAlister to effectuate three Commission recommendations. See *Recommendation Relating to Provision for Support if Support Obligor Dies*, 18 Cal. L. Revision Comm'n Reports 119 (1986); *Recommendation Relating to Dividing Jointly Owned Property Upon Marriage Dissolution*, 18 Cal. L. Revision Comm'n Reports 147 (1986); *Recommendation Relating to Litigation Expenses in Family Law Proceedings*, (March 1985) published as Appendix IX to this Report. See also *Communication from California Law Revision Commission Concerning Assembly Bill 150*, Senate J. (June 13, 1985) at page 1871, reprinted as Appendix XII to this Report. The bill was enacted after amendments were made.

### **Uniform Transfers to Minors Act**

Assembly Bill 690, which became Chapter 90 of the Statutes of 1985, was introduced by Assembly Member Byron Sher.

As enacted, Assembly Bill 690 gives a transferor of property under the Uniform Transfers to Minors Act authority to designate one or more persons as successor custodians in case the original custodian is unable, declines, or is ineligible to serve or resigns, dies, becomes incapacitated, or is removed. The bill requires that the transferor designate the successor custodians either in the document that creates the custodianship or in a separate document executed as part of the same transaction that created the custodianship and contemporaneously with the execution of the document that created the custodianship. The Commission did not publish a recommendation relating to this legislation.

### **Mediation**

Assembly Bill 1030, which became Chapter 731 of the Statutes of 1985, was introduced by Assembly Member McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Protection of Mediation Communications*, (January 1985) published as Appendix III to this Report. See also *Communication from California Law Revision Commission Concerning Assembly Bill 1030*, reprinted as Appendix XIV to this Report and noted in the Assembly Journal for July 15, 1985, at page 3444. The bill was enacted after amendments were made.

### **Revision of Commission's Enabling Statute**

Assembly Bill 195 was introduced by Assembly Member McAlister at the request of the Commission to amend Government Code Section 8288 to allow the employees of the Commission and members of the Commission appointed by the Governor to advocate in their official capacity the passage by the Legislature or approval by the Governor of legislation recommended by the Commission, and to add a provision that the office of a member of the Commission appointed by the Governor becomes vacant if the member is absent, without excuse, from three consecutive Commission meetings. See *Annual Report*, 18 Cal. L. Revision Comm'n Reports 13 n.18 (1986).

Assembly Bill 195 was amended in the Senate to add a provision permitting members of the Legislature appointed to the Commission to designate an alternate who, in the absence of

the legislative member, shall be counted toward a quorum, may vote, and may receive compensation and expenses for attending meetings of the Commission. The bill passed the Senate as so amended. At the request of the Commission's Chairperson, Assembly Member McAlister requested that the bill be placed on the inactive file, and the bill was not enacted.

### **Resolution Approving Topics for Study**

Assembly Concurrent Resolution 4, introduced by Assembly Member McAlister and adopted as Resolution Chapter 25 of the Statutes of 1985, continues the Commission's authority to study topics previously authorized for study.

## **REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL**

Section 8290 of the Government Code provides:

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

Pursuant to this directive, the Commission has made a study of the decisions of the United States Supreme Court and the California Supreme Court handed down since the Commission's last Annual Report was prepared<sup>27</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.
- (3) One decision of the California Supreme Court holding a statute unconstitutional has been found.

In *In re William A. Misener*, 38 Cal.3d 543 (1985), the court held that Penal Code Section 1102.5, which compels the defendant to supply the prosecution with evidence that can impeach defense witnesses, is unconstitutional because it violates that aspect of a defendant's privilege against self-incrimination under Section 15 of Article 1 of the California Constitution which requires the prosecution to carry the entire burden of proving defendant's guilt.

<sup>27</sup> This study has been carried through 38 Cal.3d 912 (Advance Sheet No. 21, August 1, 1985) and 105 S.Ct. 3552 (Advance Sheet No. 18, July 15, 1985).

## RECOMMENDATIONS

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

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

## APPENDIX I

### CALENDAR OF TOPICS AUTHORIZED FOR STUDY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**APPENDIX II**  
**LEGISLATIVE ACTION ON COMMISSION**  
**RECOMMENDATIONS**

(Cumulative)

LEGISLATIVE ACTION

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

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

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

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

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

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

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

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

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

Recommendation	Action by Legislature
102. <i>Transfer of Out-of-State Trusts to California</i> , 13 CAL. L. REVISION COMM'N REPORTS 2101 (1976)	Enacted. 1976 Cal. Stats. ch. 144
103. <i>Admissibility of Duplicates in Evidence</i> , 13 CAL. L. REVISION COMM'N REPORTS 2115 (1976)	Enacted. 1985 Cal. Stats. ch. 100
104. <i>Service of Process on Unincorporated Associations</i> , 13 CAL. L. REVISION COMM'N REPORTS 1657 (1976)	Enacted. 1976 Cal. Stats. ch. 888
105. <i>Sister State Money Judgments</i> , 13 CAL. L. REVISION COMM'N REPORTS 1669 (1976)	Enacted. 1977 Cal. Stats. ch. 232
106. <i>Damages in Action for Breach of Lease</i> , 13 CAL. L. REVISION COMM'N REPORTS 1679 (1976)	Enacted. 1977 Cal. Stats. ch. 49
107. <i>Nonprofit Corporation Law</i> , 13 CAL. L. REVISION COMM'N REPORTS 2201 (1976)	Not enacted. Legislation on this subject, not recommended by the Commission, was enacted in 1978.
108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 CAL. L. REVISION COMM'N REPORTS 49 (1978)	Enacted. 1977 Cal. Stats. ch. 155
109. <i>Attachment Law—Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 CAL. L. REVISION COMM'N REPORTS 61 (1978)	Enacted. 1977 Cal. Stats. ch. 499
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 CAL. L. REVISION COMM'N REPORTS 83 (1978)	Enacted. 1978 Cal. Stats. ch. 286
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 CAL. L. REVISION COMM'N REPORTS 93 (1978)	Enacted. 1978 Cal. Stats. ch. 151
112. <i>Evidence of Market Value of Property</i> , 14 CAL. L. REVISION COMM'N REPORTS 105 (1978)	Enacted in part. 1978 Cal. Stats. ch. 294. Substance of remainder enacted in 1980. See item 127 <i>infra</i> .
113. <i>Psychotherapist-Patient Privilege</i> , 14 CAL. L. REVISION COMM'N REPORTS 127 (1978); 15 CAL. L. REVISION COMM'N REPORTS 1307 (1980)	Enacted in part. 1985 Cal. Stats. chs. 545 (licensed educational psychologist), 1077 (repeal of Evidence Code § 1028).

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

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

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

<b>Recommendation</b>	<b>Action by Legislature</b>
153. <i>Wills and Intestate Succession</i> , 16 CAL. L. REVISION COMM'N REPORTS 2301 (1982)	Enacted. 1983 Cal. Stats ch. 842
154. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 CAL. L. REVISION COMM'N REPORTS 2165 (1982)	Enacted. 1983 Cal. Stats. ch. 342
155. <i>Creditors' Remedies</i> , 16 CAL. L. REVISION COMM'N REPORTS 2175 (1982)	Enacted. 1983 Cal. Stats. ch. 155
156. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 CAL. L. REVISION COMM'N REPORTS 2239 (1982)	Enacted. 1983 Cal. Stats. ch. 18
157. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 CAL. L. REVISION COMM'N REPORTS 2251 (1982)	Enacted. 1983 Cal. Stats. ch. 107
158. <i>Liability of Marital Property for Debts</i> , 17 CAL. L. REVISION COMM'N REPORTS 1 (1984)	Enacted. 1984 Cal. Stats. ch. 1671
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 16 CAL. L. REVISION COMM'N REPORTS 101 (1984)	Enacted. 1983 Cal. Stats. ch. 1204
160. <i>Effect of Death of Support Obligor</i> , 17 CAL. L. REVISION COMM'N REPORTS 897 (1984)	Enacted in part. 1984 Cal. Stats. ch. 19. Balance enacted. 1985 Cal. Stats. ch. 362 (item 186 <i>infra</i> ).
161. <i>Vacation of Streets</i> (technical change), 17 CAL. L. REVISION COMM'N REPORTS 825 (1984)	Enacted. 1983 Cal. Stats. ch. 52
162. <i>Marital Property Presumptions and Transmutations</i> , 17 CAL. L. REVISION COMM'N REPORTS 205 (1984)	Enacted in part (transmutations). 1984 Cal. Stats. ch. 1733
163. <i>Reimbursement of Educational Expenses</i> , 17 CAL. L. REVISION COMM'N REPORTS 229 (1984)	Enacted. 1984 Cal. Stats. ch. 1661
164. <i>Special Appearance in Family Law Proceedings</i> , 17 CAL. L. REVISION COMM'N REPORTS 243 (1984)	Enacted. 1984 Cal. Stats. ch. 156
165. <i>Liability of Stepparent for Child Support</i> , 17 CAL. L. REVISION COMM'N REPORTS 251 (1984)	Enacted. 1984 Cal. Stats. ch. 249

Recommendation	Action by Legislature
166. <i>Awarding Temporary Use of Family Home</i> , 17 CAL. L. REVISION COMM'N REPORTS 261 (1984)	Enacted. 1984 Cal. Stats. ch. 463
167. <i>Disposition of Community Property</i> , 17 CAL. L. REVISION COMM'N REPORTS 269 (1984)	Not enacted.
168. <i>Statutes of Limitation for Felonies</i> , 17 CAL. L. REVISION COMM'N REPORTS 301 (1984)	Enacted. 1984 Cal. Stats. ch. 1270
169. <i>Independent Administration of Decedent's Estate</i> , 17 CAL. L. REVISION COMM'N REPORTS 405 (1984)	Enacted. 1984 Cal. Stats. ch. 451
170. <i>Distribution of Estates Without Administration</i> , 17 CAL. L. REVISION COMM'N REPORTS 421 (1984)	Enacted. 1984 Cal. Stats. ch. 451
171. <i>Simultaneous Deaths</i> , 17 CAL. L. REVISION COMM'N REPORTS 443 (1984)	Not enacted.
172. <i>Notice of Will</i> , 17 CAL. L. REVISION COMM'N REPORTS 461 (1984)	Not enacted.
173. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 CAL. L. REVISION COMM'N REPORTS 471 (1984)	Enacted. 1984 Cal. Stats. ch. 493
174. <i>Bonds for Personal Representatives</i> , 17 CAL. L. REVISION COMM'N REPORTS 483 (1984)	Enacted. 1984 Cal. Stats. ch. 451
175. <i>Recording Affidavits of Death</i> , 17 CAL. L. REVISION COMM'N REPORTS 493 (1984)	Enacted. 1984 Cal. Stats. ch. 527
176. <i>Execution of Witnessed Will</i> , 17 CAL. L. REVISION COMM'N REPORTS 509 (1984)	Not enacted.
177. <i>Revision of Wills and Intestate Succession Law</i> , 17 CAL. L. REVISION COMM'N REPORTS 537 (1984)	Enacted. 1984 Cal. Stats. ch. 892
178. <i>Uniform Transfers to Minors Act</i> , 17 CAL. L. REVISION COMM'N REPORTS 601 (1984)	Enacted. 1984 Cal. Stats. ch. 243

<b>Recommendation</b>	<b>Action by Legislature</b>
179. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 CAL. L. REVISION COMM'N REPORTS 701 (1984)	Enacted. 1984 Cal. Stats. chs. 312 (health care) and 602 (general power of attorney).
180. <i>Dismissal for Lack of Prosecution</i> , 17 CAL. L. REVISION COMM'N REPORTS 905 (1984)	Enacted. 1984 Cal. Stats. ch. 1705
181. <i>Severance of Joint Tenancy</i> , 17 CAL. L. REVISION COMM'N REPORTS 941 (1984)	Enacted. 1984 Cal. Stats. ch. 519
182. <i>Quiet Title and Partition Judgments</i> , 17 CAL. L. REVISION COMM'N REPORTS 947 (1984)	Enacted. 1984 Cal. Stats. ch. 20
183. <i>Dormant Mineral Rights</i> , 17 CAL. L. REVISION COMM'N REPORTS 957 (1984)	Enacted. 1984 Cal. Stats. ch. 240
184. <i>Creditors' Remedies</i> , 17 CAL. L. REVISION COMM'N REPORTS 975 (1984)	Enacted. 1984 Cal. Stats. ch. 538
185. <i>Rights Among Cotenants</i> , 17 CAL. L. REVISION COMM'N REPORTS 1023 (1984)	Enacted. 1984 Cal. Stats. ch. 241
186. <i>Provision for Support if Support Obligor Dies</i> , 18 CAL. L. REVISION COMM'N REPORTS 119 (1986)	Enacted. 1985 Cal. Stats. ch. 362
187. <i>Transfer of State Registered Property Without Probate</i> , 18 CAL. L. REVISION COMM'N REPORTS 129 (1986)	Enacted. 1985 Cal. Stats. ch. 982
188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 CAL. L. REVISION COMM'N REPORTS 147 (1986)	Enacted. 1985 Cal. Stats. ch. 362
189. <i>Protection of Mediation Communications</i> (January 1985), published as Appendix III to this Report.	Enacted. 1985 Cal. Stats. ch. 731
190. <i>Recording Severance of Joint Tenancy</i> (January 1985), published as Appendix IV to this Report.	Enacted. 1985 Cal. Stats. ch. 157
191. <i>Abandoned Easements</i> (January 1985), published as Appendix V to this Report.	Enacted. 1985 Cal. Stats. ch. 157

<b>Recommendation</b>	<b>Action by Legislature</b>
192. <i>Distribution Under a Will or Trust</i> (January 1985), published as Appendix VI to this Report.	Enacted. 1985 Cal. Stats. ch. 982
193. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> (January 1985), published as Appendix VII to this Report.	Enacted. 1985 Cal. Stats. ch. 982
194. <i>Durable Powers of Attorney</i> (January 1985), published as Appendix VIII to this Report.	Enacted. 1985 Cal. Stats. ch. 403
195. <i>Litigation Expenses in Family Law Proceedings</i> (March 1985), published as Appendix IX to this Report.	Enacted. 1985 Cal. Stats. ch. 362
196. <i>Creditors' Remedies</i> , see "Legislative History of Recommendations Submitted to 1985 Legislative Session" in this Report.	Enacted. 1985 Cal. Stats. ch. 41
197. <i>Uniform Transfers to Minors Act</i> , see "Legislative History of Recommendations Submitted to 1985 Legislative Session" in this Report.	Enacted. 1985 Cal. Stats. ch. 90
198. <i>Probate Law</i> (clarifying revisions), see "Legislative History of Recommendations Submitted to 1985 Legislative Session" in this Report.	Enacted. 1985 Cal. Stats. ch. 359



APPENDIX III  
STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Protection of  
Mediation Communications

January 1985

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

#### NOTE

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

**Cite this Recommendation as *Recommendation Relating to Protection of Mediation Communications*, 18 Cal. L. Revision Comm'n Reports 241 (1986).**

**CALIFORNIA LAW REVISION COMMISSION**

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

EDWIN K. MARZEC  
*Chairperson*

JAMES H. DAVIS  
*Vice Chairperson*

SENATOR BARRY KEENE

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JOHN B. EMERSON

BION M. GREGORY

ARTHUR K. MARSHALL

DAVID ROSENBERG

ANN E. STODDEN

January 24, 1985

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

The Commission recommends that statements made and documents prepared in the course of a mediation be protected from disclosure in later judicial proceedings. This protection will make mediation a more useful alternative to a court or jury trial. The recommended protection would not exclude evidence in a criminal proceeding. This recommendation is submitted pursuant to 1965 Cal. Stats. res. ch. 130.

Respectfully submitted,

EDWIN K. MARZEC  
*Chairperson*



# RECOMMENDATION

*relating to*

## PROTECTION OF MEDIATION COMMUNICATIONS

Successful mediation of disputes is one way to reduce court congestion and to avoid the cost of litigation. The Commission has considered whether legislation is needed to make mediation a more useful alternative to a court or jury trial.<sup>1</sup> The Commission has concluded that legislation is needed to protect information disclosed in a mediation from later disclosure in a judicial proceeding. This protection would supplement, not replace, the protection already given under Evidence Code Section 1152 which excludes evidence of conduct and statements made in negotiation of a compromise of a claim of loss or damage.<sup>2</sup>

The Commission recommends that a new section be added to the Evidence Code to protect oral and written information disclosed in the course of a mediation from later disclosure in a civil action or proceeding.<sup>3</sup> To receive this protection the persons who conduct or otherwise participate in the mediation must agree in writing that the

<sup>1</sup> The Commission has concluded that it would not be desirable to enact comprehensive legislation governing mediation at this time. Many different techniques of mediation are now in use or are being developed. Legislation might limit this experimentation and preclude the development of new or improved mediation techniques.

<sup>2</sup> Evidence Code Section 1152 provides:

1152. (a) Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his liability for the loss or damage or any part of it.

(b) This section does not affect the admissibility of evidence of:

(1) Partial satisfaction of an asserted claim or demand without questioning its validity when such evidence is offered to prove the validity of the claim; or

(2) A debtor's payment or promise to pay all or a part of his preexisting debt when such evidence is offered to prove the creation of a new duty on his part or a revival of his preexisting duty.

<sup>3</sup> The new section would not prevent consideration of information disclosed in a mediation if the evidence is received in court without objection. This is consistent with the protection given to an offer of compromise. See Comment to Evid. Code § 1152.

new section applies to the mediation.<sup>4</sup> So that they will be aware of the protection given their communications, the text of the new section must be set out in the agreement.

The new section would not apply to exclude evidence offered in a criminal action or proceeding. Nor would the new section apply where the admissibility of the evidence is governed by existing statutory provisions applicable to proceedings in family conciliation courts<sup>5</sup> or mediation to settle custody or visitation rights.<sup>6</sup>

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

An act to add Section 1152.5 to the Evidence Code, relating to mediation.

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

**Evidence Code § 1152.5 (added). Mediation for the purpose of resolving dispute**

SECTION 1. Section 1152.5 is added to the Evidence Code, to read:

1152.5. (a) Subject to the conditions and exceptions provided in this section, when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a dispute:

(1) Evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence, and disclosure of any such evidence shall not be compelled, in any action or in any proceeding in which, pursuant to law, testimony can be compelled to be given.

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<sup>4</sup> This requirement will make clear when the new section applies. The new section does not define "mediator" or "mediation." The varied qualifications and lack of any requirement for licensing for mediators preclude providing a useful definition of "mediator." Because of the variety of methods and means of "mediation," the section does not define the term. The requirement of a written agreement will impose no burden on the mediator; the mediator can have the parties execute a form agreement before the mediation begins. However, this requirement will limit the protection to cases where the parties have agreed that the protection should apply.

<sup>5</sup> Code Civ. Proc. § 1747.

<sup>6</sup> Civil Code §§ 4351.5, 4607.

(2) Unless the document otherwise provides, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled, in any action or in any proceeding in which, pursuant to law, testimony can be compelled to be given. This paragraph does not limit the admissibility of the agreement referred to in subdivision (b) nor does it limit the effect of an agreement not to take a default in a pending civil action.

(b) This section does not apply unless, before the mediation begins, the persons who agree to conduct and participate in the mediation execute an agreement in writing that sets out the text of this section and states that the persons agree that this section shall apply to the mediation. Notwithstanding the agreement, this section does not limit the admissibility of evidence if all persons who conducted or otherwise participated in the mediation consent to its disclosure.

(c) This section does not limit the admissibility of evidence in a criminal action.

(d) This section does not apply where the admissibility of the evidence is governed by Section 4351.5 or 4607 of the Civil Code or by Section 1747 of the Code of Civil Procedure.

(e) Nothing in this section makes admissible evidence that is inadmissible under Section 1152.

**Comment.** Subject to the conditions and exceptions discussed below, Section 1152.5 gives effect to a written agreement that oral and written information disclosed in a mediation will not later be disclosed in a civil action or proceeding or other proceeding in which, pursuant to law, testimony can be compelled to be given. Nothing in Section 1152.5 prohibits consideration of information disclosed in a mediation if the evidence is received without objection. Thus, information made inadmissible by the section should be considered to the extent it is relevant when it is presented to the trier of fact without objection. This is consistent with the protection given to an offer to compromise under Section 1152. See the Comment to Section 1152. In addition, subdivision (b) permits admission of evidence when all the persons participating in the mediation consent to the disclosure.

Section 1152.5 provides protection to information disclosed during mediation to encourage this alternative to a judicial determination of the action. The same policy that protects offers to compromise (Section 1152) justifies protection to information disclosed in a mediation.

Because of the variety of means and methods of mediation, Section 1152.5 does not attempt to define "mediation." Instead, the applicability of the section is limited to a case where the persons who will participate in the mediation (including the mediator), before the mediation begins, execute a written agreement stating that Section 1152.5 of the Evidence Code applies to the mediation. The agreement must set out the full text of Section 1152.5.

Subdivision (c) provides an exception to the protection afforded by this section: The admissibility of evidence is not limited in a criminal action (defined in Section 130).

Subdivision (d) makes clear that in a case where Section 4351.5 or 4607 of the Civil Code or Section 1747 of the Code of Civil Procedure is applicable, the admissibility of communications is determined under that section and not under Section 1152.5.

Subdivision (e) makes clear that Section 1152.5 has no effect on the protection afforded under Section 1152 (offer to compromise and conduct and statements made in negotiation thereof inadmissible). Accordingly, even though a communication is not made inadmissible by Section 1152.5, the communication is protected if it is protected under Section 1152.

APPENDIX IV  
STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Recording Severance of  
Joint Tenancy

January 1985

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

#### NOTE

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

Cite this Recommendation as *Recommendation Relating to Recording Severance of Joint Tenancy*, 18 Cal. L. Revision Comm'n Reports 249 (1986).

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**CALIFORNIA LAW REVISION COMMISSION**

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JOHN B. EMERSON

BION M. GREGORY

ARTHUR K. MARSHALL

DAVID ROSENBERG

ANN E. STODDEN

January 24, 1985

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

The Commission recommends that severance of a real property joint tenancy of record by one joint tenant acting alone should be recorded before the death of that joint tenant in order to be effective. This new requirement will prevent the severing joint tenant from suppressing the severing instrument if the other joint tenant dies first. The requirement will not place an undue burden on the severing joint tenant or create title or proof problems. This recommendation is made pursuant to 1983 Cal. Stats. res. ch. 40.

Respectfully submitted,

EDWIN K. MARZEC  
*Chairperson*



# RECOMMENDATION

*relating to*

## RECORDING SEVERANCE OF JOINT TENANCY

A joint tenant may unilaterally sever the joint tenancy,<sup>1</sup> thereby converting it to a tenancy in common<sup>2</sup> and destroying the automatic right of survivorship which is the principal feature of a joint tenancy.<sup>3</sup> No notice need be given to the other joint tenant.<sup>4</sup> Since a severance may be made secretly,<sup>5</sup> there is an opportunity for fraud: A joint

<sup>1</sup> Civil Code § 683.2, enacted by 1984 Cal. Stats. ch. 519.

<sup>2</sup> Estate of Dean, 109 Cal. App.3d 156, 160, 167 Cal. Rptr. 138 (1980); Riddle v. Harmon, 102 Cal. App.3d 524, 527, 162 Cal. Rptr. 530 (1980); 3 B. Witkin, Summary of California Law *Real Property* § 222, at 1952 (8th ed. 1973).

<sup>3</sup> Riddle v. Harmon, 102 Cal. App.3d 524, 526, 162 Cal. Rptr. 530 (1980). Joint tenancy is a popular form of title because people want the automatic survivorship feature. Griffith, *Community Property in Joint Tenancy Form*, 14 Stan. L. Rev. 87, 88, 90, 108 (1961); Sterling, *Joint Tenancy and Community Property in California*, 14 Pac. L.J. 927, 952 (1983); Hines, *Personal Property Joint Tenancies: More Law, Fact and Fancy*, 54 Minn. L. Rev. 509, 550 (1970); see also Basye, *Joint Tenancy: A Reappraisal*, 30 Cal. St. B.J. 504, 506 (1955). People who use joint tenancy want the survivor to get all the property in the event of death. Griffith, *supra*, at 108. They want the survivor to take the property automatically without the delay and expense of probate. *Id.* at 90. The joint tenancy has been called the "poor man's will," and it works well in practice for people of modest means. *Id.* at 108.

<sup>4</sup> Estate of Dean, 109 Cal. App.3d 156, 159, 167 Cal. Rptr. 138 (1980); Burke v. Stevens, 264 Cal. App.2d 30, 35, 70 Cal. Rptr. 87 (1968); see Estate of Carpenter, 140 Cal. App.3d 709, 712, 189 Cal. Rptr. 651 (1983).

<sup>5</sup> See Burke v. Stevens, 264 Cal. App.2d 30, 70 Cal. Rptr. 87 (1968). In the *Burke* case, the joint tenants were husband and wife. The husband had originally purchased a 60-acre orange grove, taking title with his wife as joint tenants. Some 19 years later, the wife discussed with her attorney the possibility of severing the joint tenancy and converting it to a tenancy in common so she could leave her half by will to her children of a former marriage. The severance was accomplished in secret and the instruments were kept in the office of the wife's attorney. The court noted that the actions of the wife were "subject to ethical criticism" and her "stealthy approach" was "not to be acclaimed." Nonetheless, the court found that, since there was no legal requirement of notice to the other joint tenant or that the severing instruments be recorded, the joint tenancy had been properly severed and the wife's half passed under her will to the children of her former marriage. The husband argued that the court should not permit the severance on the grounds that, if the husband had died first, the wife could have suppressed the severing instruments and taken title to the whole property by survivorship. The court found no evidence to support this claim, saying that "it is pure guess and contrary to the presumption of fair dealing." At least one commentator has found the result in the *Burke* case to be troubling. See Crawford, *Destructibility of Joint Tenancies in Real Property*, 45 Cal. St. B.J. 222 (1970).

tenant may execute an undisclosed severance, deposit the severing instrument with a third person, and instruct the third person to produce the instrument if the severing joint tenant dies first so the severed half may pass to his or her heirs or devisees. However, if the other joint tenant dies first, the secret severing instrument may be destroyed so that the surviving joint tenant will take the other half of the property by survivorship, thereby becoming owner of the entire property.

To preclude this situation, the Law Revision Commission recommends that severance of a real property joint tenancy of record by one joint tenant acting alone should be recorded before the death of that joint tenant in order to be effective.<sup>6</sup> This new requirement will prevent the severing joint tenant from suppressing the severing instrument if the other joint tenant dies first. The requirement will not place an undue burden on the severing joint tenant or create title or proof problems.

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

An act to amend Section 683.2 of the Civil Code, relating to joint tenancies.

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

SECTION 1. Section 683.2 of the Civil Code is amended to read:

683.2. (a) ~~In~~ *Subject to the limitations and requirements of this section, in addition to any other means*

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For other cases in which a joint tenant made a secret severance of the joint tenancy, see *Estate of Carpenter*, 140 Cal. App.3d 709, 189 Cal. Rptr. 651 (1983); *Estate of Dean*, 109 Cal. App.3d 156, 167 Cal. Rptr. 138 (1980); *Clark v. Carter*, 265 Cal. App.2d 291, 70 Cal. Rptr. 923 (1968) (severing joint tenant intended that the instrument be recorded, but recording not accomplished until after her death). See also *Riddle v. Harmon*, 102 Cal. App.3d 524, 162 Cal. Rptr. 530 (1980) (not clear whether severance was secret).

<sup>6</sup> This renews a portion of an earlier Commission recommendation. See *Recommendation Relating to Severance of Joint Tenancy*, 17 Cal. L. Revision Comm'n Reports 941 (1984).

by which a joint tenancy may be severed, a joint tenant may sever a joint tenancy in real property as to the joint tenant's interest without the joinder or consent of the other joint tenants by any of the following means:

(1) Execution and delivery of a deed that conveys legal title to the joint tenant's interest to a third person, whether or not pursuant to an agreement that requires the third person to reconvey legal title to the joint tenant.

(2) Execution of a written instrument that evidences the intent to sever the joint tenancy, including a deed that names the joint tenant as transferee, or of a written declaration that, as to the interest of the joint tenant, the joint tenancy is severed.

(b) Nothing in this section authorizes severance of a joint tenancy contrary to a written agreement of the joint tenants.

*(c) Severance of a joint tenancy of record by deed, written declaration, or other written instrument pursuant to subdivision (a) is not effective to terminate the right of survivorship as to the joint tenant's interest unless, before the death of the joint tenant, the deed, written declaration, or other written instrument effecting the severance is recorded in the county where the real property is located.*

*(d) Nothing in subdivision (c) limits the manner or effect of:*

*(1) A written instrument executed by all the joint tenants that severs the joint tenancy.*

*(2) A severance made by or pursuant to a written agreement of all the joint tenants.*

*(3) A deed from a joint tenant to another joint tenant.*

~~(e) This section applies~~

*(e) Subdivisions (a) and (b) apply to all joint tenancies in real property, whether the joint tenancy was created before, on, or after January 1, 1985, except that in the case of death of a joint tenant before January 1, 1985 the validity of a severance under subdivisions (a) and (b) is determined by the law in effect at the time of death. Subdivisions (c) and (d) do not apply to or affect a severance made before January 1, 1986, of a joint tenancy.*

**Comment.** Subdivision (c) is added to Section 683.2 to require that, in the case of a recorded real property joint tenancy, severance by written declaration or by other instrument must be recorded during the lifetime of the severing joint tenant to be effective. Subdivision (d) permits joint tenants to agree among themselves concerning the manner or effect of a severance, to join in the severance, or to make a deed from one to another, without being subject to the requirements of subdivision (c). Subdivision (e) is amended so that the new recording requirement will not make ineffective a nonrecorded severance where the severance was made before January 1, 1986.

If the joint tenancy is held by husband and wife, the property may actually be community property notwithstanding the joint tenancy form of title. See 7 B. Witkin, *Summary of California Law Community Property* §§ 49-50, at 5140-42 (8th ed. 1974). If it is established that the apparent joint tenancy is actually community property, each spouse may dispose of his or her interest in the property by will, whether or not a severance of the apparent joint tenancy has been recorded pursuant to subdivision (c). See *Estate of Wilson*, 64 Cal. App.3d 786, 134 Cal. Rptr. 749 (1976); *Sandrini v. Ambrosetti*, 111 Cal. App.2d 439, 244 P.2d 742 (1952); *Chase v. Leiter*, 96 Cal. App.2d 439, 215 P.2d 756 (1950); *Estate of Jameson*, 93 Cal. App.2d 35, 208 P.2d 54 (1949).

APPENDIX V  
STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Abandoned Easements

January 1985

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

#### NOTE

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

Cite this Recommendation as *Recommendation Relating to Abandoned Easements*, 18 Cal. L. Revision Comm'n Reports 257 (1986).

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**CALIFORNIA LAW REVISION COMMISSION**

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DAVID ROSENBERG

ANN E. STODDEN

January 24, 1985

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

A series of statutes was enacted upon recommendation of the Law Revision Commission in 1983 and 1984 to achieve greater marketability of title to real property by removing the cloud on title created by obsolete interests of record. The Commission herewith submits its recommendation to deal with abandoned easements, a property interest not dealt with in the Commission's earlier proposals. This recommendation is submitted pursuant to 1983 Cal. Stats. res. ch. 40 (law relating to real and personal property).

Respectfully submitted,

EDWIN K. MARZEC  
*Chairperson*



## RECOMMENDATION

*relating to*

### ABANDONED EASEMENTS

Almost all improved land and much unimproved land is either benefitted or burdened by easements.<sup>1</sup> Easements tend to make the land and the improvements thereon more usable or beneficial. Thus the mere existence of the burden of an easement may not indicate that the title is unmarketable; it may only mean that when these interests become obsolete, they constitute an unreasonable encumbrance.<sup>2</sup>

If an easement acquired by prescription becomes obsolete, it can be extinguished through nonuse.<sup>3</sup> If an easement acquired by grant becomes obsolete, nonuse alone is not sufficient to extinguish the easement;<sup>4</sup> the intent to abandon the easement must also be shown.<sup>5</sup>

Clearing record title of an easement created by grant that is obsolete thus requires a judicial proceeding and a difficult proof question—intent to abandon. The fact that an easement has not been used for a long period of time is not itself sufficient to infer an abandonment.<sup>6</sup> Similarly, the mere fact that the holder of an easement fails to maintain and repair it, or selects an alternate route, is insufficient to infer an abandonment.<sup>7</sup>

The difficulty of clearing the record of an abandoned easement impairs the value and marketability of property even though the easement is obsolete. As a general rule, if

<sup>1</sup> 1 A. Bowman, *Ogden's Revised California Real Property Law* § 13.1 (1974).

<sup>2</sup> L. Simes & C. Taylor, *The Improvement of Conveyancing by Legislation* 223 (1960).

<sup>3</sup> Civil Code § 811(4).

<sup>4</sup> See 3 B. Witkin, *Summary of California Law Real Property* § 374, at 2069 (8th ed. 1973); 1 A. Bowman, *Ogden's Revised California Real Property Law* § 13.50 (1974); 3 H. Miller & M. Starr, *Current Law of California Real Estate* § 18:64 (rev. 1977).

<sup>5</sup> See 3 B. Witkin, *Summary of California Law Real Property* § 376, at 2070 (8th ed. 1973); 1 A. Bowman, *Ogden's Revised California Real Property Law* § 13.49 (1974); 3 H. Miller & M. Starr, *Current Law of California Real Estate* § 18:66 (rev. 1977).

<sup>6</sup> See, e.g., *City of Vallejo v. Scally*, 192 Cal. 175, 219 P. 63 (1923).

<sup>7</sup> See 3 H. Miller & M. Starr, *Current Law of California Real Estate* § 18:64 (rev. 1977).

an easement is relatively old and has been unused for a period of time, the easement should be subject to extinguishment without a showing of actual intent to abandon.<sup>8</sup>

The Law Revision Commission recommends that an easement be deemed abandoned if it has been unused for at least 20 years continuously, without payment of taxes or any other record transaction relating to the easement.<sup>9</sup> To accommodate cases where the easement holder's nonuse is merely temporary or where the easement is held for future use, the Commission further recommends that the easement holder be permitted to extend the duration of the easement for a period of 20 years at a time by recording a notice of intent to preserve the easement.<sup>10</sup> In the case of large easement holders, such as public utilities, where the burden of recording as to multiple easements could be substantial, a single recording should suffice for all easements in a county. This will provide a relatively simple but effective means of ensuring preservation of the easement through periods of nonuse.

This scheme for clearing abandoned easements from record title would not apply to public entity easement holders. A public entity can always be located. An agreement with the public entity may be negotiated if the easement is no longer necessary for public use.

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

An act to add Chapter 7 (commencing with Section 887.010) to Title 5 of Part 2 of Division 2 of the Civil Code, relating to easements.

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<sup>8</sup> Negative easements, such as for light and air, are excepted from this rule since the fact of nonuse is difficult to ascertain.

<sup>9</sup> This rule should not apply to "conservation easements" that are perpetual in duration pursuant to Civil Code Section 815.2.

<sup>10</sup> Recordation of a notice of intent to preserve for 20 years would not affect the ability of the servient tenement owner to show an actual abandonment should it occur before expiration of the 20-year period.

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

SECTION 1. Chapter 7 (commencing with Section 887.010) is added to Title 5 of Part 2 of Division 2 of the Civil Code, to read:

## CHAPTER 7. ABANDONED EASEMENTS

### § 887.010. “Easement” defined

887.010. As used in this chapter, “easement” means a burden or servitude upon land, whether or not attached to other land as an incident or appurtenance, that allows the holder of the burden or servitude to do acts upon the land.

**Comment.** Section 887.010 provides a special definition of an easement for the purposes of this chapter. This chapter applies to affirmative easements, whether appurtenant or in gross. Contrast Sections 801 and 803 (“easement” is an appurtenant servitude). Negative easements are not governed by this chapter.

### § 887.020. Application of chapter

887.020. This chapter does not apply to an easement that is part of a unified or reciprocal system for the mutual benefit of multiple parties.

**Comment.** Section 887.020 is intended to exclude planned developments and their sets of interrelated easements and servitudes from the scope of this chapter. Thus condominium covenants, conditions, and restrictions would not be covered, nor would reciprocal easement agreements.

Easements held by public entities and conservation easements are not subject to expiration pursuant to this section. See Section 880.240 (interests excepted from title); Section 887.080 (abandoned easement deemed to have expired).

### § 887.030. Common law of abandonment not affected

887.030. This chapter supplements and does not limit or otherwise affect the common law governing abandonment of an easement or any other procedure provided by statute or otherwise for clearing an abandoned easement from title to real property.

**Comment.** Section 887.030 makes clear that although this chapter prescribes a standard for determining that an easement

has been abandoned, it is not intended to limit the common law of abandonment of easements. See discussion in 3 B. Witkin, *Summary of California Law Real Property* §§ 374-376 (8th ed. 1973); 1 A. Bowman, *Ogden's Revised California Real Property Law* §§ 13.49-13.50 (1974); 3 H. Miller & M. Starr, *Current Law of California Real Estate* §§ 18:64-18:66 (rev. 1977).

#### § 887.040. Action authorized

887.040. (a) The owner of real property subject to an easement may bring an action to establish the abandonment of the easement and to clear record title of the easement.

(b) The action shall be brought in the superior court of the county in which the real property subject to the easement is located.

(c) The action shall be brought in the same manner and shall be subject to the same procedure as an action to quiet title pursuant to Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure, to the extent applicable.

**Comment.** Subdivision (a) of Section 887.040 authorizes an action to establish abandonment of an easement, subject to the limitations and conditions in this chapter. This is consistent with public policy to enable and encourage full use and development of real property. Section 880.020 (declaration of policy and purposes). This is also consistent with the common law rule that easements are subject to abandonment. See Section 887.030 and Comment thereto (common law of abandonment not affected). This chapter supplements common law principles of abandonment by providing a separate and independent basis for determining abandonment of an easement.

Subdivisions (b) and (c) incorporate, insofar as applicable, the general quiet title procedures for an action pursuant to this chapter. See Code Civ. Proc. §§ 760.010-764.070.

#### § 887.050. Abandonment

887.050. (a) For purposes of this chapter, an easement is abandoned if all of the following conditions are satisfied for a period of 20 years immediately preceding commencement of the action to establish abandonment of the easement:

- (1) The easement is not used at any time.
  - (2) No separate property tax assessment is made of the easement or, if made, no taxes are paid on the assessment.
  - (3) No instrument creating, reserving, transferring, or otherwise evidencing the easement is recorded.
- (b) This section applies notwithstanding any provision to the contrary in the instrument creating, reserving, transferring, or otherwise evidencing the easement or in another recorded document, unless the instrument or other document provides an earlier expiration date.

**Comment.** Section 887.050 provides for expiration of an unused easement after 20 years, notwithstanding a longer or an indefinite period provided in the instrument creating the easement. This reverses prior law that an easement obtained by grant cannot be lost by mere nonuse. See, e.g., discussion in 3 B. Witkin, *Summary of California Law Real Property* § 376 (8th ed. 1973); 1 A. Bowman, *Ogden's Revised California Real Property Law* § 13.49 (1974); 3 H. Miller & M. Starr, *Current Law of California Real Estate* § 18:66 (rev. 1977).

The expiration period can be extended for up to 20 years at a time by recordation of a notice of intent to preserve the easement before the easement expires. See Section 887.060 (preservation of easement). Recordation of a notice of intent to preserve the easement does not necessarily preclude abandonment of the easement pursuant to general principles governing abandonment for nonuse upon a showing of intent to abandon. See Section 880.310 (notice of intent to preserve interest); see also discussion in 3 B. Witkin, *Summary of California Law Real Property* § 374 (8th ed. 1973); 1 A. Bowman, *Ogden's Revised California Real Property Law* § 13.50 (1974); and 3 H. Miller & M. Starr, *Current Law of California Real Estate* § 18:64 (rev. 1977).

For purposes of subdivision (a)(3), in the case of an appurtenant easement, a transfer of the dominant tenement without reference to the easement does not start the 20-year period running anew, even though such a transfer may be effective to convey the easement. Sections 1084, 1104.

#### § 887.060. Preservation of easement

887.060. (a) The owner of an easement may at any time record a notice of intent to preserve the easement.

(b) In lieu of the statement of the character of the interest claimed and the record location of the documents creating or evidencing the easement claimed, as otherwise required by paragraph (2) of subdivision (b) of Section 880.330, and in lieu of the legal description of the real property in which the interest is claimed, as otherwise required by paragraph (3) of subdivision (b) of Section 880.330, and notwithstanding the provisions of Section 880.340 or any other provision in this title, a notice of intent to preserve an easement may refer generally and without specificity to any or all easements claimed by the claimant in any real property situated in the county.

(c) An easement is not abandoned for purposes of this chapter if either of the following occurs:

(1) A notice of intent to preserve the easement is recorded within 20 years immediately preceding commencement of the action to establish the abandonment of the easement.

(2) A notice of intent to preserve the easement is recorded pursuant to Section 887.070 after commencement of the action to establish the abandonment of the easement and before judgment is entered in the action.

**Comment.** Section 887.060 makes recording a notice of intent to preserve an easement conclusive evidence of non-abandonment for purposes of this chapter. Recording a notice of intent to preserve also creates a presumption affecting the burden of proof that the claimant has not abandoned the easement for purposes of a determination of abandonment pursuant to common law. Section 880.310 (notice of intent to preserve interest).

### **§ 887.070. Late recordation**

887.070. In an action to establish the abandonment of an easement pursuant to this chapter, the court shall permit the owner of the easement to record a late notice of intent to preserve the easement as a condition of dismissal of the action, upon payment into court for the benefit of the owner of the real property the litigation expenses attributable to the easement or portion thereof as to which the notice is recorded. As used in this section, the term "litigation expenses" means recoverable costs and expenses

reasonably and necessarily incurred in preparation for the action, including a reasonable attorney's fee.

**Comment.** Section 887.070 enables the owner of an easement to preserve the easement, after commencement of an action to establish its abandonment and clear title, by filing a late notice of intent to preserve the interest. This authority is conditioned upon payment of the property owner's litigation expenses. Litigation expenses include disbursements made for title reports and other disbursements made in preparation for the litigation as well as court costs and attorneys fees incurred in connection with the litigation.

### **§ 887.080. Effect of establishing abandonment**

887.080. An abandoned easement is unenforceable and is deemed to have expired. A court order establishing abandonment of an easement pursuant to this chapter is equivalent for all purposes to a conveyance of the easement to the owner of the real property.

**Comment.** Section 887.080 makes clear that establishment of abandonment of an easement has the effect of a reconveyance to the owner of the land. See also Section 887.040 (action authorized) and Code Civ. Proc. §§ 764.010-764.070 (effect of quiet title judgment).

### **§ 887.090. Transitional provision**

887.090. Subject to Sections 880.370 (grace period for recording notice) and 887.020, this chapter applies to all easements, whether executed or recorded before, on, or after January 1, 1986.

**Comment.** Section 887.090 makes clear the legislative intent to apply this chapter to easements existing on the date this chapter becomes operative (January 1, 1986). Section 880.370 provides a five-year grace period for recording a notice of intent to preserve an easement that would be subject to termination pursuant to this chapter before, on, or within five years after the operative date of this chapter. See Sections 887.060 (preservation of easement) and 880.370 (grace period for recording notice) and Comments thereto.



APPENDIX VI  
STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Distribution Under a Will or Trust

January 1985

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

#### NOTE

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

**Cite this Recommendation as *Recommendation Relating to Distribution Under a Will or Trust*, 18 Cal. L. Revision Comm'n Reports 269 (1986).**

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DAVID ROSENBERG

ANN E. STODDEN

January 24, 1985

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

The Commission recommends legislation to provide alternative provisions specifying the manner of distribution of property to descendants under a will or trust. The drafter of a will or trust could select among these alternatives by a simple reference in the instrument to the desired statutory alternative. This would bring clarity and certainty to provisions for distribution to descendants and would encourage those drafting wills and trusts to consider the more popular alternatives and to discuss them with clients.

Respectfully submitted,

EDWIN K. MARZEC  
*Chairperson*



# RECOMMENDATION

*relating to*

## DISTRIBUTION UNDER A WILL OR TRUST

Wills and trusts often provide that if a beneficiary is deceased when distribution is made the property shall go to descendants of the deceased beneficiary.<sup>1</sup> How the property is to be divided and apportioned among descendants depends on the language of the instrument, but some of the terms in present use are ambiguous and lead to confusion and possible litigation over the proper interpretation of the instrument.<sup>2</sup> It would be useful to persons drafting wills and trusts to have statutory alternatives for distributing the property among descendants that could be selected by a simple reference in the instrument to the desired statutory alternative. This would bring clarity and certainty to such provisions and would encourage those drafting wills and trusts to consider the more popular alternatives and to discuss them with clients.

The Commission recommends that four statutory choices be provided:

(1) *A pure stirpital distribution pattern.*<sup>3</sup> Under this distribution pattern, the initial division of the property is made at the generation of the children of the deceased beneficiary, whether or not any children are living. Grandchildren and more remote generations divide the share of their deceased parent.

<sup>1</sup> See, e.g., Johnston, *Outright Bequests and Devises*, in California Will Drafting § 11.38, at 371-72, § 11.42, at 374 (Cal. Cont. Ed. Bar 1965); Drafting California Revocable Inter Vivos Trusts § 5.44, at 172 (Cal. Cont. Ed. Bar 1972); Drafting California Irrevocable Inter Vivos Trusts, at 377 (Cal. Cont. Ed. Bar 1973).

<sup>2</sup> For example, a will or trust may call for descendants to take in the deceased beneficiary's place "by right of representation" or "per stirpes." It is not clear whether this means a pure stirpital distribution pattern or refers to the intestate pattern. Halbach, *Whither Distribution by Representation?*, in 1984 CEB Estate Planning & California Probate Reporter 103.

<sup>3</sup> An example of distribution under a pure stirpital distribution pattern may be found in the Comment to proposed Probate Code Section 246 in this recommendation.

(2) *The distribution pattern for intestate succession.*<sup>4</sup> Under this distribution pattern, the initial division of the property is made at the first generation of descendants having at least one living member. The number of shares is equal to the number of living members of that generation plus the number of deceased members who leave surviving descendants. Each living member of that generation takes one share. More remote generations divide the share of their deceased parent, except that if a descending share reaches a generation all of whose members in that line are deceased, that share is divided in the same manner at the next generation having at least one living member.

(3) *The distribution pattern called "per capita at each generation."*<sup>5</sup> Under this distribution pattern, the initial division of the property is made at the first generation having at least one living member. The number of shares is equal to the number of living members of that generation plus the number of deceased members who leave surviving descendants. Each living member of that generation takes one share. The shares of deceased members of that generation are aggregated into a lump sum. The lump sum descends to the next generation of descendants of the deceased ancestors which has at least one living member. There the process is repeated, with each living member taking one share and the shares of deceased members being aggregated and descending further.

(4) *The distribution pattern called "per capita."*<sup>6</sup> Under this distribution pattern, subject to the antilapse statute, each living member of the designated class takes one share, equal to every other living member of the designated class. This statutory choice should be available only when all members of the designated class are in the same generation. When the members of the

<sup>4</sup> See Prob. Code § 240. An example of distribution under Section 240 may be found in the Comment to proposed Probate Code Section 245 in this recommendation.

<sup>5</sup> Waggoner, *A Proposed Alternative to the Uniform Probate Code's System for Intestate Distribution Among Descendants*, 66 Nw. U.L. Rev. 626, 630-31 (1971). An example of distribution under a per-capita-at-each-generation pattern may be found in the Comment to proposed Probate Code Section 247 in this recommendation.

<sup>6</sup> Examples of distribution under the per capita pattern may be found in the Comment to proposed Section 248 in this recommendation.

designated class are from several generations, there is a likelihood that the drafter of the will or trust did not intend members of more remote generations to take a share without regard to whether the member's parent or other ancestor is living or dead.

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

An act to amend Section 1389.4 of the Civil Code, to amend Sections 240, 6147, 6402, and 6402.5 of, to amend the heading of Part 6 (commencing with Section 240) of Division 2 of, to add a heading immediately preceding Section 240 of, and to add Chapter 2 (commencing with Section 245) to Part 6 of Division 2 of, the Probate Code, relating to probate law and procedure.

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

**Civil Code § 1389.4 (technical amendment). Power of appointment**

SECTION 1. Section 1389.4 of the Civil Code is amended to read:

1389.4. (a) Except as provided in subdivision (b), if an appointment by will or by instrument effective only at the death of the donee is ineffective because of the death of an appointee before the appointment becomes effective and the appointee leaves issue surviving the donee, the surviving issue of such appointee shall take the appointed property in the same manner as the appointee would have taken had the appointee survived the donee except that the property shall pass only to persons who are permissible appointees, including those permitted under Section 1389.5. If the surviving issue are all of the same degree of kinship to the deceased appointee they take equally, but if of unequal degree then those of more remote degree take ~~by representation~~ as in the manner provided in Section 240 of the Probate Code.

(b) This section does not apply if either the donor or donee manifests an intent that some other disposition of the appointive property shall be made.

**Comment.** Section 1389.4 is amended to delete the reference to taking “by representation.” This change is nonsubstantive.

**Probate Code—heading for Part 6 (commencing with Section 240) of Division 2 (amended)**

SEC. 2. The heading of Part 6 (commencing with Section 240) of Division 2 of the Probate Code is amended to read:

**PART 6. ~~DIVISION BY REPRESENTATION~~  
DISTRIBUTION AMONG HEIRS OR  
BENEFICIARIES**

**Probate Code—heading for Chapter 1 (commencing with Section 240) of Part 6 of Division 2 (added)**

SEC. 3. A heading is added immediately preceding Section 240 of the Probate Code, to read:

**CHAPTER 1. INTESTATE DISTRIBUTION SYSTEM**

**Probate Code § 240 (amended). Intestate distribution system**

SEC. 4. Section 240 of the Probate Code is amended to read:

240. ~~If representation is called for by this code, or if a will or trust that expresses no contrary intention provides for issue or descendants to take without specifying the manner~~ *a statute calls for property to be distributed or taken in the manner provided in this section*, the property shall be divided into as many equal shares as there are living members of the nearest generation of issue then living and deceased members of that generation who leave issue then living, each living member of the nearest generation of issue then living receiving one share and the share of each deceased member of that generation who leaves issue then living being divided in the same manner among his or her

then living issue. ~~If a will or trust calls for distribution per stirpes or by right of representation, these terms shall be construed under the law that applied prior to January 1, 1985.~~

**Comment.** Section 240 is amended to delete the language relating to construction of a will or trust. The language deleted from the first sentence of Section 240 is continued in Section 245. The former second sentence which has been deleted from Section 240 is continued in Section 246.

The former reference to "representation" is also deleted from Section 240 to avoid confusion with the definition of the term when used in a will or trust. See Section 246.

For sections applying Section 240, see Civil Code § 1389.4; Prob. Code §§ 6402, 6402.5. For an example of distribution under Section 240, see the Comment to Section 245.

### **Probate Code §§ 245-248 (added). Distribution under a will or trust**

SEC. 5. Chapter 2 (commencing with Section 245) is added to Part 6 of Division 2 of the Probate Code, to read:

## **CHAPTER 2. DISTRIBUTION UNDER A WILL OR TRUST**

### **§ 245. Distribution according to intestate distribution system**

245. (a) When a will or trust calls for property to be distributed or taken "in the manner provided in Section 240 of the Probate Code," or when a will or trust that expresses no contrary intention provides for issue or descendants to take without specifying the manner, the property to be distributed shall be distributed in the manner provided in Section 240.

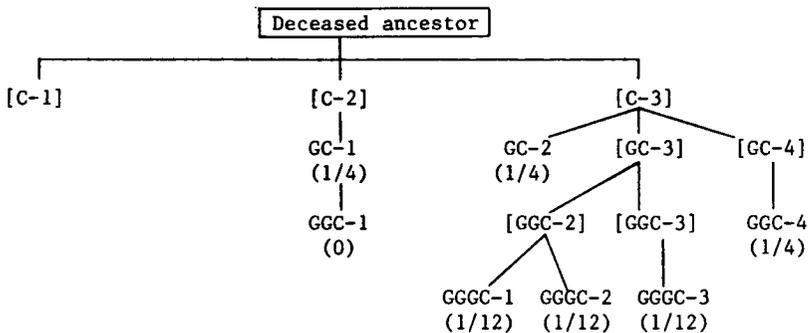
(b) Use of the following words, without more, as applied to issue or descendants is not an expression of contrary intention:

(1) "Per capita" when living members of the designated class are not all of the same generation.

(2) Self-contradictory wording such as "per capita and per stirpes" or "equally and by right of representation."

**Comment.** Section 245 is new and gives one drafting a will or trust the option of selecting the distribution system provided in Section 240. Section 240 is the distribution system used in case of intestate succession. Under Section 240, if the first generation of issue of the deceased ancestor are themselves all deceased, the initial division of the property is not made at that generation, but is instead made at the first descending generation of issue having at least one living member. See generally Fellows, Simon & Rau, *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 Am. B. Found. Research J. 321, 380.

For example, if there have been four generations of descendants of the deceased ancestor but all of the deceased ancestor's children are dead, distribution under Section 240 is made as follows (brackets indicate those who are dead when distribution is made):



If GGGC-3 in the above example were deceased, leaving three surviving children, each of the surviving children would take a  $\frac{1}{36}$  share.

The language in subdivision (a) that “a will or trust that expresses no contrary intention provides for issue or descendants to take without specifying the manner” is governed by Section 240 continues a provision formerly found in Section 240.

Subdivision (b) provides that certain language is not an expression of a contrary intention sufficient to negate application of Section 245. For example, if property in a testamentary trust is to be distributed when the trust terminates to “the descendants of the testator per capita” and at the time of distribution the testator’s three children survive and one of the surviving children has five children, each of the surviving children takes a one-third share; the five grandchildren of the

testator take nothing since their parent survives. This results from applying the distribution scheme of Section 240. Under paragraph (1) of subdivision (b) of Section 245, this scheme is not negated by use of the term “per capita,” since the living members of the designated class (“descendants of the testator”) are not all of the same generation. In this context, it is reasonable to assume that the use of the term “per capita” is not intended to provide a share for a class member whose parent or other ancestor is still living and takes a share, although the drafter of the instrument may provide for such a result by appropriately clear language. In order for the testator’s grandchildren in the above example to take under Section 245, their parent (the testator’s child) must be dead at the time of distribution. In such a case, the testator’s two living children each take a one-third share and the five children of the deceased child share equally in the one-third share their deceased parent would have taken.

#### § 246. Per stirpes or by right of representation

246. (a) When a will or trust calls for property to be distributed or taken “in the manner provided in Section 246 of the Probate Code,” the property to be distributed shall be divided into as many equal shares as there are living children of the designated ancestor, if any, and deceased children who leave issue then living. Each living child of the designated ancestor is allocated one share, and the share of each deceased child who leaves issue then living is divided in the same manner.

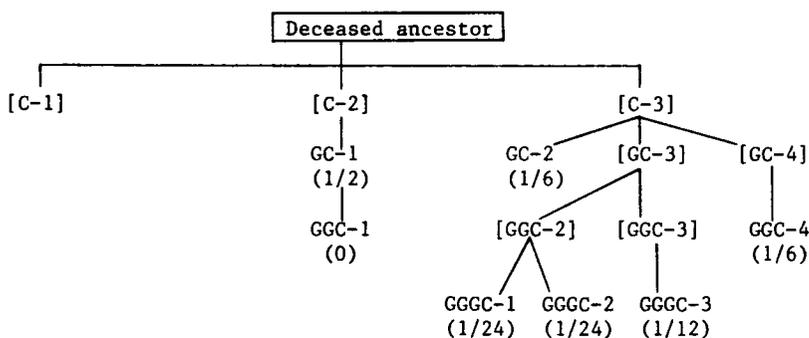
(b) Unless the will or trust expressly provides otherwise, if a will or trust executed on or after January 1, 1986, calls for property to be distributed or taken “per stirpes,” “by representation,” or “by right of representation,” the property shall be distributed in the manner provided in subdivision (a).

(c) If a will or trust executed before January 1, 1986, calls for property to be distributed or taken “per stirpes,” “by representation,” or by “right of representation,” the property shall be distributed in the manner provided in subdivision (a), absent a contrary intent of the testator or trustor.

**Comment.** Section 246 is new and gives one drafting a will or trust the option of selecting a pure stirpital representation

system. Under such a system, the roots or stocks are determined at the children's generation, whether or not any children are then living. See generally Fellows, Simon & Rau, *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 Am. B. Found. Research J. 321, 378-79. See also the discussion in *Maud v. Catherwood*, 67 Cal. App.2d 636, 155 P.2d 111 (1945).

For example, if there have been four generations of descendants of the deceased ancestor but all of the deceased ancestor's children are dead, distribution under Section 246 is made as follows (brackets indicate those who are dead when distribution is made):



The terms defined in subdivision (b) are subject to some other definition which may be provided in the instrument. For example, many wills define "by right of representation" to refer to the distribution pattern for intestate succession, rather than to a pure stirpital distribution pattern as under subdivision (a). See, e.g., Johnston, *Outright Bequests and Devises*, in *California Will Drafting* §§ 11.42-11.43, at 374 (Cal. Cont. Ed. Bar 1965). In such a case, the definition provided in the instrument will control.

Subdivision (c) supersedes a provision formerly found in Section 240.

#### § 247. Per capita at each generation

247. (a) When a will or trust calls for property to be distributed or taken "in the manner provided in Section 247 of the Probate Code," the property to be distributed shall be divided into as many equal shares as there are living members of the nearest generation of issue then living and deceased members of that generation who leave issue then

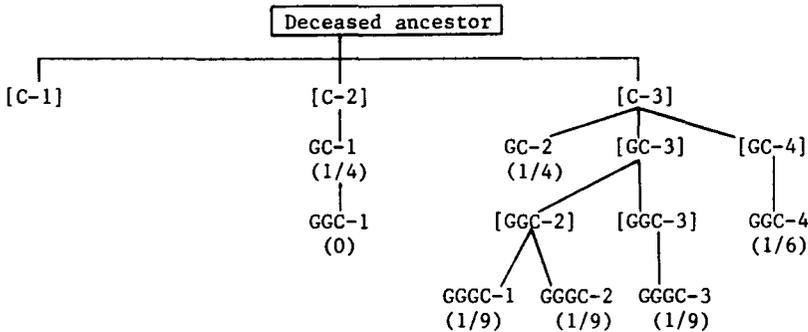
living. Each living member of the nearest generation of issue then living is allocated one share, and the remaining shares, if any, are combined and then divided and allocated in the same manner among the remaining issue as if the issue already allocated a share and their descendants were then deceased.

(b) Unless the will or trust expressly provides otherwise, if a will or trust executed on or after January 1, 1986, calls for property to be distributed or taken “per capita at each generation,” the property shall be distributed in the manner provided in subdivision (a).

(c) If a will or trust executed before January 1, 1986, calls for property to be distributed or taken “per capita at each generation,” the property shall be distributed in the manner provided in subdivision (a), absent a contrary intent of the testator or trustor.

**Comment.** Section 247 is new and gives one drafting a will or trust the option of selecting the system of per capita at each generation distribution. See generally Waggoner, *A Proposed Alternative to the Uniform Probate Code’s System for Intestate Distribution Among Descendants*, 66 Nw. U.L. Rev. 626, 630-31 (1971); Fellows, Simon & Rau, *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 Am. B. Found. Research J. 321, 380-82.

For example, if there have been four generations of descendants of the deceased ancestor but all of the deceased ancestor’s children are dead, distribution under Section 247 is made as follows (brackets indicate those who are dead when distribution is made):



**§ 248. Per capita**

248. (a) This section applies only when all living members of the designated class are in the same generation.

(b) When a will or trust calls for property to be distributed or taken "in the manner provided in Section 248 of the Probate Code," subject to Section 6147, the property to be distributed shall be divided into as many equal shares as there are living members of the designated class, and each living member of the class is allocated one share.

(c) Unless the will or trust expressly provides otherwise, if a will or trust executed on or after January 1, 1986, calls for property to be distributed among or taken by a class of persons "per capita," the property shall be distributed in the manner provided in subdivision (b).

(d) If a will or trust executed before January 1, 1986, calls for property to be distributed among or taken by a class of persons "per capita," the property shall be distributed in the manner provided in subdivision (b), absent a contrary intent of the testator or trustor.

**Comment.** Section 248 is new and gives one drafting a will or trust the option of providing per capita distribution to the members of a one-generation class. Per capita distribution is not representation. Thus, with per capita distribution, each member of the designated class takes an equal share in his or her own right. However, the antilapse statute (Section 6147) may operate to permit the issue of a deceased member of the designated class to take in his or her place.

The following examples illustrate the operation of Section 248:

*Example 1.* Testator's will creates a trust which terminates upon the death of the testator's wife at which time the trust estate is to be distributed to the "testator's children per capita." Testator has three children; when the wife dies, two of the children are living, and one predeceased the wife, leaving four children all of whom survived the wife. The two living children each take a one-third share. The one-third share of the deceased child is divided equally among the four children of the deceased child. The antilapse statute (Section 6147) applies to save the share of the deceased child for his or her children who take in his or her place.

*Example 2.* Testator's will creates a trust which terminates upon the death of the testator's wife at which time the trust

estate is to be distributed to “the children of X per capita.” The children of X are not devisees who are kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator, so the antilapse statute is not applicable. X has three children; when testator’s wife dies, two of the children are living, and one child predeceased the testator’s wife, leaving four children all of whom survived the testator’s wife. The two living children each take a one-half share. The children of the deceased child take nothing since the antilapse statute does not apply.

Under subdivision (a), Section 248 applies only where all living members of the designated class are in the same generation (such as “children”). In the context of a multi-generational class (such as “issue” where there is issue all of whom are not of the same generation), it is not always clear that the term “per capita” is intended to provide a share for a class member whose parent or other ancestor is still living, although the drafter of the instrument may provide for such a result by appropriately clear language. See also Section 245(b).

### **Probate Code § 6147 (technical amendment). Anti-lapse**

SEC. 6. Section 6147 of the Probate Code is amended to read:

6147. (a) As used in this section, “devisee” means a devisee who is kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator.

(b) Subject to subdivision (c), if a devisee is dead when the will is executed, or is treated as if he or she predeceased the testator, or fails to survive the testator or until a future time required by the will, the issue of the deceased devisee take in his or her place ~~by representation~~ *in the manner provided in Section 240*. A devisee under a class gift is a devisee for the purpose of this subdivision unless his or her death occurred before the execution of the will and that fact was known to the testator when the will was executed.

(c) The issue of a deceased devisee do not take in his or her place if the will expresses a contrary intention or a substitute disposition.

**Comment.** Section 6147 is amended to substitute the reference to Section 240 for the former reference to taking “by representation.” This change is nonsubstantive.

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

SEC. 7. Section 6402 of the Probate Code is amended to read:

6402. Except as provided in Section 6402.5, the part of the intestate estate not passing to the surviving spouse under Section 6401, or the entire intestate estate if there is no surviving spouse, passes as follows:

(a) To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take ~~by representation~~ *in the manner provided in Section 240.*

(b) If there is no surviving issue, to the decedent's parent or parents equally.

(c) If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take ~~by representation~~ *in the manner provided in Section 240.*

(d) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, to the grandparent or grandparents equally, or to the issue of such grandparents if there is no surviving grandparent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take ~~by representation~~ *in the manner provided in Section 240.*

(e) If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by the issue of a predeceased spouse, to such issue, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take ~~by representation~~ *in the manner provided in Section 240.*

(f) If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, or issue of a predeceased spouse, but the decedent is survived by next of kin, to the next of kin in equal degree, but when there

are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote.

(g) If there is no surviving next of kin of the decedent and no surviving issue of a predeceased spouse of the decedent, but the decedent is survived by the parents of a predeceased spouse or the issue of such parents, to the parent or parents equally, or to the issue of such parents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take ~~by representation~~ *in the manner provided in Section 240.*

**Comment.** Section 6402 is amended to substitute the references to Section 240 for the former references to taking “by representation.” This change is nonsubstantive.

**Probate Code § 6402.5 (technical amendment). Special rule for portion of decedent’s estate attributable to the decedent’s predeceased spouse**

**SEC. 8.** Section 6402.5 of the Probate Code is amended to read:

6402.5. (a) If the decedent had a predeceased spouse who died not more than 15 years before the decedent and there is no surviving spouse or issue of the decedent, the portion of the decedent’s estate attributable to the decedent’s predeceased spouse passes as follows:

(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take ~~by representation~~ *in the manner provided in Section 240.*

(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse’s surviving parent or parents equally.

(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue

of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take ~~by representation~~ *in the manner provided in Section 240.*

(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.

(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.

(b) For the purposes of this section, the "portion of the decedent's estate attributable to the decedent's predeceased spouse" means all of the following property in the decedent's estate:

(1) One-half of the community real property in existence at the time of the death of the predeceased spouse.

(2) One-half of any community real property, in existence at the time of death of the predeceased spouse, which was given to the decedent by the predeceased spouse by way of gift, descent, or devise.

(3) That portion of any community real property in which the predeceased spouse had any incident of ownership and which vested in the decedent upon the death of the predeceased spouse by right of survivorship.

(4) Any separate real property of the predeceased spouse which came to the decedent by gift, descent, or devise of the predeceased spouse or which vested in the decedent upon the death of the predeceased spouse by right of survivorship.

(c) For the purposes of this section, quasi-community real property shall be treated the same as community real property.

(d) For the purposes of this section:

(1) Relatives of the predeceased spouse conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

(2) A person who is related to the predeceased spouse through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share.

**Comment.** Section 6402.5 is amended to substitute the references to Section 240 for the former reference to taking "by representation." This change is nonsubstantive.



APPENDIX VII  
STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Effect of Adoption or  
Out of Wedlock Birth  
on Rights at Death

January 1985

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

#### NOTE

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

**Cite this Recommendation as *Recommendation Relating to Effect of Adoption or Out of Wedlock Birth on Rights at Death*, 18 Cal. L. Revision Comm'n Reports 289 (1986).**

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**CALIFORNIA LAW REVISION COMMISSION**

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ANN E. STODDEN

January 24, 1985

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

This recommendation proposes a number of clarifying and substantive revisions in the law relating to the effect of adoption or out of wedlock birth on rights at death. This recommendation is submitted pursuant to 1980 Cal. Stats. res. ch. 37.

Respectfully submitted,

EDWIN K. MARZEC  
*Chairperson*



# RECOMMENDATION

*relating to*

## EFFECT OF ADOPTION OR OUT OF WEDLOCK BIRTH ON RIGHTS AT DEATH

A newly-enacted statute governs intestate succession by or from adopted persons, persons born out of wedlock, stepchildren, and foster children,<sup>1</sup> and provides rules for construing wills which make class gifts that may include such persons.<sup>2</sup> The Commission recommends the following revisions to the new statute to deal with problems that have been brought to the Commission's attention.<sup>3</sup>

### **Inheritance by Natural Parent Who Declines to Consent to Adoption**

The new statute provides that the relationship between a person and his or her foster parent or stepparent "has the same effect as if it were an adoptive relationship" if the relationship began during the person's minority and continued throughout the parties' joint lifetimes and the foster parent or stepparent would have adopted the child

<sup>1</sup> Prob. Code §§ 6408, 6408.5. These sections were enacted by 1983 Cal. Stats. ch. 842 and amended by 1984 Cal. Stats. ch. 892.

<sup>2</sup> Prob. Code § 6152. This section was enacted by 1983 Cal. Stats. ch. 842 and amended by 1984 Cal. Stats. ch. 892.

<sup>3</sup> A technical change is also recommended. The new statute contains a provision that applies where a testator makes a class gift to the children or issue of another person: The child or issue of the child can take as a member of the class only if the child lived while a minor as a regular member of the household of the child's natural parent or as a regular member of the household of that parent's surviving spouse, brother, sister, or parent. Prob. Code § 6152(b). This requirement operates to exclude a child born out of wedlock where the child was not a regular member of the parent's family or the family of one of the parent's relatives listed in the statute. See the Comment to Prob. Code § 6152. But the provision is not limited to cases where the child is born out of wedlock. Inclusion of the child who lived with the natural parent or the natural parent's surviving spouse will include almost every child born of a marital relationship. However, if the natural parent is living, the reference to the parent's "surviving" spouse might be construed to exclude the child of a living natural parent who lives with the parent's spouse. The statutory reference to the parent's "surviving" spouse without a parallel reference to the parent's "spouse" appears to have been a drafting oversight. The Commission recommends that this be corrected by adding the parent's "spouse" to the relatives in whose household the child must have lived in order to be included in class gift terminology.

but for a legal barrier.<sup>4</sup> A completed adoption cuts off the right of the natural parent to inherit from the child.<sup>5</sup>

These provisions may have the unintended and undesirable effect of cutting off the natural parent's right to inherit where the natural parent refuses to consent to adoption of the child by a foster parent or stepparent.<sup>6</sup> The Commission recommends that the statute be amended to make clear that the provision treating the foster child or stepchild as an adopted child does not have the effect of terminating the right of the natural nonconsenting parent to inherit.<sup>7</sup>

### **Inheritance By Adopted Child Where Natural Parent Dies Before Child's Birth**

Under the new statute, the general rule is that adoption cuts off the right of the adopted child to inherit from his or her natural parents or their relatives.<sup>8</sup> The statute includes an exception to this general rule where the adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.<sup>9</sup> This exception is limited to the case where the natural parent and adopted person "lived together at any time as parent and child."<sup>10</sup>

If the father dies while the child is in gestation and the child is later adopted by the new husband of the natural mother, the existing requirement that the father and child have "lived together at any time as parent and child" would

<sup>4</sup> Prob. Code § 6408(a)(3).

<sup>5</sup> Prob. Code § 6408.5(b).

<sup>6</sup> For example, assume the natural father and mother divorce, the mother remarries, her new husband (the child's stepfather) wants to adopt the child, but the natural father declines to consent to the adoption. Under the new law, the relationship between the child and the stepfather "has the same effect as if it were an adoptive relationship." Prob. Code § 6408(a)(3). If the father had consented and there were a formal adoptive relationship between the child and the stepfather, the right of the natural father to inherit from the child would be cut off by the adoption. Prob. Code § 6408.5(b). Giving the relationship between the child and the stepfather "the same effect as if it were an adoptive relationship" might be interpreted to cause the natural father to lose his inheritance rights even where the natural father refuses to consent to the adoption. This would unfairly penalize the natural father.

<sup>7</sup> In such a case, the natural parent who declined to consent to the adoption would continue to inherit from the child, but the foster parent or stepparent would not.

<sup>8</sup> Prob. Code § 6408.5(a).

<sup>9</sup> Prob. Code § 6408.5(a).

<sup>10</sup> Prob. Code § 6408.5(a).

not be satisfied, with the result that the child would no longer inherit from relatives of the natural father. For example, the adopted child would not inherit from the mother of the deceased natural father, even though the child's grandmother had a close relationship with the child until her death. To avoid this result, the Commission recommends that the new statute be amended to permit the adopted child to inherit from relatives of the natural father where the natural father was married to or cohabitating with the child's mother at the time the child was conceived and died before the birth of the child.

### **Inheritance By Parent or Relative of Parent From or Through Child Born Out of Wedlock**

The new statute does not permit a parent or relative of a parent to inherit from or through a child born out of wedlock unless the parent acknowledged the child and contributed to the support or the care of the child.<sup>11</sup> The Commission recommends that two revisions be made in this provision:

(1) The provision should be revised to make clear that it does not preclude the issue of the child or the brother or sister of the child or the issue of a brother or sister from inheriting from or through the child.<sup>12</sup>

(2) The portion of the provision that permits inheritance where the parent acknowledged the child and contributed to the support or the care of the child should be expanded to cover the case where a relative of the parent acknowledged the child or contributed to the support or the care of the child. This would expand the provision to cover the case where a grandparent acknowledges the child as a grandchild and assumes the responsibility for the support or the care of the child.

### **Preserving Judicial Doctrine of Equitable Adoption**

Under the judicial doctrine of equitable adoption, a child who has not been formally adopted may nonetheless be treated as having been adopted for the purpose of

<sup>11</sup> Prob. Code § 6408.5(c).

<sup>12</sup> This clarification would make subdivisions (b) and (c) of Probate Code Section 6408.5 consistent.

inheritance if the child has been told that he or she was adopted and the child uses the family name and is treated in all respects as a natural child.<sup>13</sup> This doctrine permits the court to reach just results by allowing inheritance in cases that do not come within the literal terms of the intestate succession statutes.

The new statute concerning the effect of adoption on inheritance makes no reference to equitable adoption.<sup>14</sup> The Commission recommends that the statute be amended to make clear that it does not affect or limit the doctrine of equitable adoption for the benefit of the child or the child's descendants.

### Class Gift to "Lawful" Issue

If the will does not provide otherwise, halfbloods, adopted persons, persons born out of wedlock, stepchildren, and foster children are in most cases included in class gift terminology in accordance with the rules for determining relationship and inheritance rights for purposes of intestate succession.<sup>15</sup> If the class gift is to "lawful" children, issue, or descendants, the will may be construed to exclude persons born out of wedlock.<sup>16</sup>

Public policy favors treating children born out of wedlock the same as children born of a marital relationship, both for the purpose of intestate succession<sup>17</sup> and for the purpose of construing class gift terminology in wills.<sup>18</sup> The term

<sup>13</sup> Estate of Wilson, 111 Cal. App.3d 242, 168 Cal. Rptr. 533 (1980).

<sup>14</sup> See Prob. Code § 6408; see also Prob. Code § 6408.5.

<sup>15</sup> See Prob. Code § 6152. Under the rules for intestate succession, halfbloods are treated equally with wholebloods (Prob. Code § 6406), adopted persons inherit from their adoptive parents (Prob. Code § 6408), persons born out of wedlock inherit from their natural parents (*id.*), and stepchildren and foster children inherit from their stepparents or foster parents if the relationship began during the child's minority, continued throughout the parties' joint lifetimes, and it is established by clear and convincing evidence that the stepparent or foster parent would have adopted the child but for a legal barrier (*id.*).

<sup>16</sup> See Estate of White, 69 Cal. App.2d 749, 754, 160 P.2d 204 (1945) ("lawful issue" refers to "legitimate lineal descendants"). See generally 7 B. Witkin, Summary of California Law *Wills and Probate* §§ 197-199, at 5708-11 (8th ed. 1974). A class gift to "lawful" issue is construed to include adopted children. Estate of Heard, 49 Cal.2d 514, 522-23, 319 P.2d 637 (1957). It is unclear whether a stepchild or foster child that was not legally adopted but is treated for inheritance purposes as if he or she were adopted would be treated under the will as "lawful" issue of the stepparent or foster parent.

<sup>17</sup> See Prob. Code § 6408(a)(1); Uniform Probate Code § 2-109; 7 B. Witkin, *supra* note 16, §§ 64-68, at 5587-89.

<sup>18</sup> See Prob. Code § 6152(a); Uniform Probate Code § 2-611. *But see* 7 B. Witkin, *supra* note 16, § 197, at 5708-09.

“lawful” or “legal” when applied to children, issue, or descendants is not such a clear expression of intent that it should exclude persons born out of wedlock from class gift terminology.<sup>19</sup>

The Commission recommends enactment of a constructional provision for wills that the term “lawful” or “legal,” without more, does not overcome the general rule that halfbloods, adopted persons and persons treated as adopted persons, and persons born out of wedlock are ordinarily included in class gift terminology.<sup>20</sup> This constructional provision would apply only where the will does not provide to the contrary by other appropriate language.

### **Recommended Legislation**

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

An act to amend Sections 6152, 6408, and 6408.5 of the Probate Code, relating to probate law.

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

#### **Probate Code § 6152 (amended). Halfbloods, adopted persons, and persons born out of wedlock**

SECTION 1. Section 6152 of the Probate Code is amended to read:

6152. Unless otherwise provided in the will:

(a) Except as provided in subdivision (b), halfbloods, adopted persons, persons born out of wedlock, stepchildren, foster children, and the issue of all such persons when appropriate to the class, are included in terms of class gift or relationship in accordance with the rules for determining relationship and inheritance rights for purposes of intestate succession.

(b) In construing a devise by a testator who is not the natural parent, a person born to the natural parent shall not

<sup>19</sup> For example, by using the term “lawful” the drafter may mean those who would take under the law of intestate succession. Persons born out of wedlock may take under the law of intestate succession if the parent-child relationship is established. See Prob. Code § 6408.

<sup>20</sup> See *supra* note 16.

be considered the child of that parent unless the person lived while a minor as a regular member of the household of the natural parent or of that parent's parent, brother, sister, *spouse*, or surviving spouse. In construing a devise by a testator who is not the adoptive parent, a person adopted by the adoptive parent shall not be considered the child of that parent unless the person lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent or of that parent's parent, brother, sister, or surviving spouse.

(c) *Subdivisions (a) and (b) apply, and a different construction is not "otherwise provided" for the purposes of this section, even though the class designation is modified by the word "lawful" or "legal."*

~~(c)~~ (d) Subdivisions (a) and (b) also apply in determining:

(1) Persons who would be kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator under Section 6147.

(2) Persons to be included as issue of a deceased devisee under Section 6147.

(3) Persons who would be the testator's or other designated person's heirs under Section 6151.

**Comment.** Section 6152 is amended to add "spouse" to the first sentence of subdivision (b), to add a new subdivision (c), and to redesignate former subdivision (c) as subdivision (d). The addition of the word "spouse" in subdivision (b) is consistent with the existing reference to the parent's "surviving spouse." Thus a child will be included in class gift terminology in the testator's will if the child lived while a minor as a regular member of the household of the parent's spouse or surviving spouse. This will usually result in the inclusion of a child born of a marital relationship, consistent with the testator's likely intent.

Under new subdivision (c), a reference in the will to "lawful" or "legal" issue does not by itself exclude from the designated class an adopted child, a stepchild or foster child who is treated as a child (see subdivision (b) of Section 6408), or a child born out of wedlock. With respect to adopted children, subdivision (c) is consistent with prior law. See *Estate of Heard*, 49 Cal.2d 514, 522-23, 319 P.2d 637 (1957); 7 B. Witkin, *Summary of California Law Wills and Probate* § 199, at 5711 (8th ed. 1974). With respect

to a child born out of wedlock, subdivision (c) may be a departure from prior law. See *Estate of White*, 69 Cal. App.2d 749, 754, 160 P.2d 204 (1945) (“lawful issue” refers to “legitimate lineal descendants”). Under subdivision (c) as under prior law, other provisions of the will may indicate an intent to include or exclude from the designated class adopted children, stepchildren, foster children or children born out of wedlock. See, e.g., *Estate of Clancy*, 159 Cal. App.2d 216, 222-24, 323 P.2d 763 (1958) (evidence of intent to include adoptee).

**Probate Code § 6408 (amended). Parent-child relationship**

SEC. 2. Section 6408 of the Probate Code is amended to read:

6408. (a) A relationship of parent and child is established for the purpose of determining intestate succession by, through, or from a person in the following circumstances:

(1) Except as provided in Section 6408.5, the relationship of parent and child exists between a person and his or her ~~other~~ natural parents, regardless of the marital status of the natural parents.

(2) The relationship of parent and child exists between an adopted person and his or her adopting parent or parents.

~~(3) The~~

(b) *For the purpose of determining intestate succession by a person or his or her descendants from or through a foster parent or stepparent, the relationship of parent and child exists between a that person and his or her foster parent or stepparent has the same effect as if it were an adoptive relationship if* ~~(A)~~ (1) the relationship began during the person’s minority and continued throughout the parties’ joint lifetimes and ~~(B)~~ (2) it is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.

~~(b)~~ (c) For the purpose of determining whether a person is a “natural parent” as that term is used in Section 6408 and 6408.5:

(1) A natural parent and child relationship is established where that relationship is presumed and not rebutted

pursuant to the Uniform Parentage Act, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code.

(2) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7006 of the Civil Code unless either (A) a court order was entered during the father's lifetime declaring paternity or (B) paternity is established by clear and convincing evidence that the father has openly and notoriously held out the child as his own.

*(d) Nothing in this section affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or his or her descendants.*

**Comment.** The amendment to Section 6408 makes the following changes:

(1) The word "other" is deleted in paragraph (1) of subdivision (a). This word was added by error when Section 6408 was amended in 1984.

(2) Former paragraph (3) of subdivision (a) is redesignated as subdivision (b) and the former language that the relationship between a person and his or her foster parent or stepparent "has the same effect as if it were an adoptive relationship" is deleted. This deleted language is replaced by new language that "[f]or the purpose of determining intestate succession by a person or his or her descendants from or through a foster parent or stepparent," the relationship "of parent and child exists" between them. The former language which treated the relationship "as if it were an adoptive relationship" had the possible undesirable effect of cutting off the right of inheritance of a natural parent who refused to consent to adoption of the child by a foster parent or stepparent. See Section 6408.5(b) (natural parent generally does not inherit from adopted child). Under the new language, even though the requirements of subdivision (b) are satisfied, the natural parent may continue to inherit from the child under paragraph (1) of subdivision (a). The foster parent or stepparent may not inherit from the child: Paragraph (2) of subdivision (a) does not apply because the adoption was not completed, and subdivision (b) does not apply because that subdivision applies only to inheritance by the foster child or stepchild or the child's issue "from" or "through" a foster parent or stepparent, not to

inheritance “by” a foster parent or stepparent. The child, however, may inherit both from the natural parent under paragraph (1) of subdivision (a), and from the foster parent or stepparent under subdivision (b).

Subdivision (d) is added to make clear that Section 6408 has no effect on the application of the judicial doctrine of equitable adoption for the benefit of the child or his or her descendants. See, e.g., *Estate of Wilson*, 111 Cal. App.3d 242, 168 Cal. Rptr. 533 (1980).

### **Probate Code § 6408.5 (amended). Nonexistence of parent-child relationship**

SEC. 3. Section 6408.5 of the Probate Code is amended to read:

**6408.5.** Notwithstanding *subdivisions (a) and (b) of Section 6408:*

(a) The relationship of parent and child does not exist between an adopted person and his or her natural parent unless *both of the following requirements are satisfied:*

(1) ~~the~~ *The natural parent and adopted person lived together at any time as parent and child, or the natural parent was married to or was cohabitating with the other natural parent at the time the child was conceived and died before the birth of the child and.*

(2) ~~the~~ *The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.*

(b) Neither a parent nor a relative of a parent (except for the issue of the child or a wholeblood brother or sister of the child or the issue of such brother or sister) inherits from or through a child on the basis of the relationship of parent and child if the child has been adopted by someone other than the spouse or surviving spouse of that parent.

(c) If a child is born out of wedlock, neither a parent nor a relative of a parent (*except for the issue of the child or a natural brother or sister of the child or the issue of such brother or sister*) inherits from or through ~~a~~ *the child* on the basis of the relationship of parent and child between that parent and child unless ~~the parent~~ *both of the following requirements are satisfied:*

(1) *The parent or a relative of the parent* acknowledged the child ~~and~~.

(2) *The parent or a relative of the parent* contributed to the support or the care of the child.

**Comment.** Subdivision (a) of Section 6408.5 is amended to add the language in paragraph (1) relating to the case where the natural parent dies before the birth of the child. Subdivision (a) determines when an adopted child remains a member of the natural parent's family. The effect of the amendment is to expand the situations where inheritance is allowed. The following examples indicate in various situations whether an adopted child or the issue of an adopted child may inherit from or through the child's natural parent.

*Example 1.* Child never lived with either mother or father; both parents relinquish child for adoption. The adopted child's relationship with both his natural parents' families is severed. The requirements of Section 6408.5(a) are not satisfied.

*Example 2.* Child's mother and father were married or lived together as a family. Child lives with mother and father. Father dies. Mother relinquishes child for adoption. The adopted child remains a member of both the deceased father's family and of the relinquishing mother's family. The requirement of Section 6408(a) (2) is satisfied because the adoption was "after the death of either of the natural parents."

*Example 3.* Child's mother and father were married or lived together as a family until father died. Child lives with mother but not father because father dies prior to child's birth. Mother relinquishes child for adoption. The adopted child remains a member of both the deceased father's family and of the relinquishing mother's family. Child remains a member of the deceased father's family because the father died before the birth of the child (satisfying the subdivision (a) (1) requirement) and the adoption was after the death of the father (satisfying the subdivision (a) (2) requirement).

*Example 4.* Child lives with father's family but not with mother or father because mother died shortly after child's birth. Father relinquishes child for adoption. Child is not a member of either the deceased mother's family nor the relinquishing father's family. This is the result even if the father is the legitimate or acknowledged father of the child and has supported the child, since the relationship fails to meet the requirement of subdivision (a) (1) that the natural parent (the father) and the adopted person "lived together." The child does not remain a

member of the deceased mother's family because the mother never lived as parent and child with the child and the mother died after the birth of the child.

Subdivision (c) is amended to permit inheritance from or through a child born out of wedlock if a relative of the parent acknowledges the child and contributes to the support or care of the child. In addition, subdivision (c) is amended to permit the issue of the child or a brother or sister of the child or the issue of such brother or sister to inherit from or through the child even though the requirements of paragraphs (1) and (2) of subdivision (c) are not satisfied. If the child born out of wedlock is adopted, inheritance from or through the child may be precluded under subdivision (a) or (b), even where the requirements of subdivision (c) are satisfied.



APPENDIX VIII  
STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Durable Powers of Attorney

January 1985

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

#### NOTE

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

Cite this Recommendation as *Recommendation Relating to Durable Powers of Attorney*, 18 Cal. L. Revision Comm'n Reports 305 (1986).

**CALIFORNIA LAW REVISION COMMISSION**

4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303  
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EDWIN K. MARZEC  
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ARTHUR K. MARSHALL

DAVID ROSENBERG

ANN E. STODDEN

January 24, 1985

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

The Commission has reviewed the four statutes recently enacted that relate to durable powers of attorney and recommends clarifying, technical, and substantive revisions in those statutes. This recommendation is submitted pursuant to 1979 Cal. Stats. res. ch. 19 (rights and disabilities of minors and incompetent persons).

Respectfully submitted,

**EDWIN K. MARZEC**  
*Chairperson*



# RECOMMENDATION

*relating to*

## DURABLE POWERS OF ATTORNEY

During recent years, four separate statutes relating to durable powers of attorney have been enacted upon recommendation of the Law Revision Commission.<sup>1</sup> The Commission has reviewed these statutes and the communications it has received concerning them. As a result of this review, the Commission recommends that a number of revisions, primarily technical or clarifying, be made in the statutes. These revisions are described below.<sup>2</sup>

### Protection of third person relying on power of attorney

A durable power of attorney will not be useful unless third persons are willing to accept and act in reliance on it. Existing law contains a number of provisions designed to protect a third person who acts in good faith reliance on a durable power of attorney.<sup>3</sup> But there is no general

<sup>1</sup> The four statutes are:

(1) Uniform Durable Power of Attorney Act (1981 Cal. Stats. ch. 511, adding Civil Code §§ 2400-2407 and 2410-2423, and 1984 Cal. Stats. ch. 312, §§ 1-3, amending Civil Code §§ 2410, 2416, and 2421). See *Recommendation Relating to Uniform Durable Power of Attorney Act*, 15 Cal. L. Revision Comm'n Reports 351 (1980). For additional legislative history, see 16 Cal. L. Revision Comm'n Reports 25, 43-46 (1982).

(2) Durable Power of Attorney for Health Care (1983 Cal. Stats. ch. 1204, adding Civil Code §§ 2430-2443 and 1984 Cal. Stats. ch. 312, §§ 4-7, amending Civil Code §§ 2433, 2434, and 2437 and adding Civil Code § 2432.5. See *Recommendation Relating to Durable Power of Attorney for Health Care Decisions*, 17 Cal. L. Revision Comm'n Reports 101 (1984). For additional legislative history, see 17 Cal. L. Revision Comm'n Reports 822, 889-95 (1984).

(3) Keene Health Care Agent Act—Statutory Form Durable Power of Attorney for Health Care (1984 Cal. Stats. ch. 312, adding Civil Code §§ 2500-2508). See *Recommendation Relating to Statutory Forms for Durable Power of Attorney*, 17 Cal. L. Revision Comm'n Reports 701 (1984).

(4) Statutory Short Form Power of Attorney (1984 Cal. Stats. ch. 602, adding Civil Code §§ 2450-2473). See *Recommendation Relating to Statutory Forms for Durable Power of Attorney*, 17 Cal. L. Revision Comm'n Reports 701 (1984).

<sup>2</sup> In addition to the revisions described in the text, other technical and clarifying revisions are recommended. These are noted in the Comments that follow the text of the recommended statutory provisions.

<sup>3</sup> See, e.g., Civil Code §§ 2403 (lack of knowledge of death of principal), 2404 (lack of knowledge of termination of power), 2437 (lack of knowledge that durable power

provision that protects a third person who relies in good faith on a durable power of attorney relating to property matters. Such a provision is needed to encourage third persons to act in reliance on the authority of the attorney in fact under a durable power of attorney.

The Commission recommends that a third person who acts in good faith reliance upon a durable power of attorney be protected against liability to the principal or to any other person for so acting if all of the following requirements are satisfied:<sup>4</sup>

(1) The durable power of attorney is presented to the third person by the attorney in fact named in the durable power of attorney. If the person purporting to be the attorney in fact is an imposter, the immunity would not apply.

(2) The durable power of attorney appears on its face to be valid.

(3) The durable power of attorney includes a notary public's certificate of acknowledgment. This requirement assures that the durable power of attorney was executed by the principal since the notary public must either personally know the principal or have satisfactory evidence that the person executing the document is the principal.<sup>5</sup>

### **Proof of identity of principal by "convincing evidence"**

The new Statutory Short Form Power of Attorney and the new Statutory Form Durable Power of Attorney for Health Care require that the document be signed by two

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of attorney for health care has been revoked), 2438 (immunities of health care provider). See also Prob. Code § 3720 ("Any person who acts in reliance upon the power of attorney [of an absentee as defined in Probate Code Section 1403] when accompanied by a copy of the certificate of missing status is not liable for relying or acting upon the power of attorney.").

<sup>4</sup> The proposed legislation includes a provision to make clear that the new immunity provision merely provides an immunity from liability if the requirements of the provision are satisfied. The new immunity provision has no relevance in determining whether or not a third person who acts in reliance upon a durable power of attorney is liable in a case where the requirements of the new immunity provision are not satisfied. For example, the new immunity provision does not apply unless the power of attorney includes a notary public's certificate of acknowledgment. If the power of attorney does not include such a certificate, whether the third person acting in reliance upon the power of attorney is or is not liable will be determined by the applicable law apart from the new immunity provision.

<sup>5</sup> Civil Code § 1185.

adult witnesses.<sup>6</sup> The declaration under penalty of perjury that each witness must sign includes a declaration that the person who signed or acknowledged the document “is personally known to me (or proved to me on the basis of convincing evidence) to be the principal.”<sup>7</sup> The statute does not define what constitutes “convincing evidence” for the purposes of this declaration, and the meaning of those words is unclear.

The Commission recommends that a statutory definition of “convincing evidence” be provided and that the instructions in the forms tell the witness what types of evidence of identity are “convincing evidence.” If the witness does not personally know the principal, the recommended legislation requires that the witness must be presented with and reasonably rely on any one or more of the following documents:<sup>8</sup>

(1) An identification card or driver’s license issued by the California Department of Motor Vehicles.

(2) A passport issued by the Department of State of the United States.

(3) Any of the following documents if the document contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

(i) A passport issued by a foreign government that has been stamped by the United States Immigration and Naturalization Service.

(ii) A driver’s license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers’ licenses.

(iii) An identification card issued by a state other than California.

(iv) An identification card issued by any branch of the armed forces of the United States.

<sup>6</sup> Civil Code §§ 2452 (Statutory Short Form Power of Attorney), 2502 (Statutory Form Durable Power of Attorney for Health Care).

<sup>7</sup> See the Statement of Witnesses in Civil Code Sections 2450 and 2500.

<sup>8</sup> The document must be current or have been issued within five years. In addition, the witness must not be aware of any information, evidence, or other circumstances that would lead the witness, as a reasonable person, to believe that the person signing or acknowledging the document as principal is not the individual he or she claims to be.

### **Voting of corporate shares**

The California Uniform Durable Power of Attorney Act<sup>9</sup> contains language not found in the official version of the Uniform Act:

For the purposes of this article, a durable power of attorney does not include a proxy given by a person to another person with respect to the exercise of voting rights that is governed by any other statute of California.

This language may create a problem by suggesting that one cannot give a durable power to vote corporate shares, thus requiring a cumbersome and expensive conservatorship for that purpose.<sup>10</sup> The Commission recommends that the statute be revised to make clear that a principal may give an attorney in fact the power to vote the principal's shares either in person or by giving a proxy to a third person.<sup>11</sup> The proxies themselves would continue to be governed by the Corporations Code, not the durable power of attorney statute.<sup>12</sup> This clarification would be consistent with the new statutory short form power of attorney which permits the attorney in fact to vote corporate shares "in person or by the granting of a proxy."<sup>13</sup>

### **Printed forms distributed for use by person without lawyer**

The new Statutory Form Durable Power of Attorney for Health Care requires that a "warning" (using the exact language contained in the statute) be included in any printed form sold "or otherwise distributed" for use by a

<sup>9</sup> Civil Code § 2400(a) (last sentence).

<sup>10</sup> See letter from Louis Naiditch, Los Angeles lawyer, dated August 27, 1984, to California Law Revision Commission (on file in office of Commission).

<sup>11</sup> The proposed legislation adds to Section 702 of the Corporations Code the following new subdivision:

(e) If authorized to vote the shares by the power of attorney by which the attorney in fact was appointed, shares held by or under the control of an attorney in fact may be voted and the corporation may treat all rights incident thereto as exercisable by the attorney in fact, in person or by proxy, without the transfer of the shares into the name of the attorney in fact.

<sup>12</sup> The proposed legislation adds the following new section to the Civil Code:

2400.5. Where a durable power of attorney gives an attorney in fact the power to exercise voting rights, a proxy given by the attorney in fact to another to exercise the voting rights is subject to all the provisions of law applicable to such proxy and is not a durable power of attorney subject to this article.

<sup>13</sup> Civil Code § 2462(a) (5) (H), enacted by 1984 Cal. Stats. ch. 602.

person who does not have the advice of legal counsel.<sup>14</sup> Other existing earlier enacted provisions require a similar warning only in forms “sold” for use by persons without a lawyer.<sup>15</sup> These provisions should be expanded to apply not only where the form is sold but also where it is “otherwise distributed” for use by a person without a lawyer. Requiring the warning in these forms, whether sold or “otherwise distributed,” will provide some assurance that a person who uses one of the forms will be aware of the important facts contained in the warning before he or she executes the document.

### **After-acquired property**

The Commission recommends that a new provision be added to the statutes to make clear that a power of attorney, whether or not durable, may by its terms apply to all or a portion of the real and personal property of the principal, whether owned by the principal at the time of the giving of the power of attorney or thereafter acquired, whether located in this state or elsewhere, without the need for a description of each item or parcel of property.<sup>16</sup>

### **Other conforming revisions**

Other conforming revisions are recommended to make the various provisions governing durable powers of attorney consistent with one another. These changes include:

(1) Conforming the language of the lawyer’s certificate in Civil Code Section 2432 to the language prescribed for the lawyer’s certificate under Civil Code Sections 2421, 2433(c) (2), 2451, and 2501.

(2) Conforming the requirements for the size of type required for the warning in a form by Civil Code Sections

<sup>14</sup> Civil Code § 2503. See also Civil Code § 2451 (absent a certificate signed by the principal’s lawyer, a Statutory Short Form Power of Attorney, to be valid, must include the warning contained in Section 2450).

<sup>15</sup> Civil Code §§ 2400(b) (printed form of a durable power of attorney), 2433(a) (introductory clause) (printed form of a durable power of attorney for health care).

<sup>16</sup> The new provision is consistent with the provisions of Civil Code Sections 2460-2472. It will remove any doubt created by language found in *Jay v. Dollarhide*, 3 Cal. App.3d 1001, 84 Cal. Rptr. 538 (1970), whether a durable power of attorney may cover after-acquired real property.

2400 and 2433 to the size of type requirements stated in Civil Code Sections 2451 (a) and 2501 (a).

(3) Making the warning required by Civil Code Section 2433 consistent with the warning required by Civil Code Section 2500.

### **Use of existing printed forms**

Although the proposed legislation recommended by the Commission will make changes in the form for the Statutory Short Form Power of Attorney<sup>17</sup> and the Statutory Form Durable Power of Attorney for Health Care,<sup>18</sup> the changes are made in the warning or informational portions of the form and not in the substance of the durable power of attorney itself. For this reason, the recommended legislation includes provisions that permit use of a form that complies with present law after the proposed legislation goes into effect. In addition, the proposed legislation includes a provision that makes clear that the validity of a power of attorney executed before the proposed legislation goes into effect is not affected by the enactment of the proposed legislation.

### **Recommended Legislation**

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

An act to amend Sections 2400, 2432, 2432.5, 2433, 2440, 2450, 2451, and 2500 of, to add Sections 2400.5, 2457, and 2503.5 to, and to add Chapter 5 (commencing with Section 2510) to Title 9 of Part 4 of Division 3 of, the Civil Code, and to amend Section 702 of the Corporations Code, relating to powers of attorney.

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

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<sup>17</sup> Civil Code § 2450.

<sup>18</sup> Civil Code § 2500.

**Civil Code § 2400 (amended). Durable power of attorney**

SECTION 1. Section 2400 of the Civil Code is amended to read:

2400. ~~(a)~~ A durable power of attorney is a power of attorney by which a principal designates another his or her attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity. ~~For the purposes of this article, a durable power of attorney does not include a proxy given by a person to another person with respect to the exercise of voting rights that is governed by any other statute of California.~~

~~(b)~~ A printed form of a durable power of attorney sold in this state for use by a person who does not have the advice of legal counsel shall include the following notice in 10/point bold face type:

**WARNING TO PERSON EXECUTING THIS  
DOCUMENT**

**This is an important legal document. It creates a durable power of attorney. Before executing this document, you should know these important facts:**

**1. This document may provide the person you designate as your attorney in fact with broad powers to dispose, sell, convey, and encumber your real and personal property.**

**2. These powers will exist for an indefinite period of time unless you limit their duration in this document. These powers will continue to exist notwithstanding your subsequent disability or incapacity.**

**3. You have the right to revoke or terminate this durable power of attorney at any time.**

~~(e) Nothing in subdivision (b) invalidates any transaction in which a third person relied in good faith upon the authority created by the durable power of attorney.~~

**Comment.** Section 2400 is amended to delete the last sentence of subdivision (a) and all of subdivisions (b) and (c). The last sentence of subdivision (a) is superseded by Section 2400.5. See also Corp. Code § 702(e). Subdivisions (b) and (c) are superseded by Section 2510.

**Civil Code § 2400.5 (added). Proxy given by attorney in fact**

**SEC. 2.** Section 2400.5 is added to the Civil Code, to read:

**2400.5.** Where a durable power of attorney gives an attorney in fact the power to exercise voting rights, a proxy given by the attorney in fact to another to exercise the voting rights is subject to all the provisions of law applicable to such proxy and is not a durable power of attorney subject to this article.

**Comment.** Section 2400.5 supersedes language formerly found in subdivision (a) of Section 2400. This revision is clarifying and more accurately states the original intent of the superseded language. See also Corp. Code § 702(e).

For the rules applicable to proxy voting in business corporations, see Corp. Code Section 705. For other statutes dealing with proxies, see Corp. Code §§ 178, 702, 5069, 5613, 7613, 9417, 12405, 13242.

**Civil Code § 2432 (technical amendment). Requirements for durable power of attorney for health care**

**SEC. 3.** Section 2432 of the Civil Code is amended to read:

**2432.** (a) An attorney in fact under a durable power of attorney may not make health care decisions unless ~~both~~ all of the following requirements are satisfied:

(1) The durable power of attorney specifically authorizes the attorney in fact to make health care decisions.

(2) The durable power of attorney contains the date of its execution ~~and~~.



personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

## NOTARY SEAL

\_\_\_\_\_  
(Signature of Notary Public)

(b) *Except as provided in Section 2432.5:*

(1) Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a community care facility nor an employee of an operator of a community care facility, may be designated as the attorney in fact to make health care decisions under a durable power of attorney.

(2) A health care provider or employee of a health care provider may not act as an attorney in fact to make health care decisions if the health care provider becomes the principal's treating health care provider.

(c) A conservator may not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care executed by a person who is a conservatee under the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, unless (1) the power of attorney is otherwise valid, (2) the conservatee is represented by legal counsel, and (3) the lawyer representing the conservatee signs a certificate stating *in substance*: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this ~~matter~~ power of attorney and the applicable law and the consequences of signing or not signing this ~~durable~~ power of attorney, and my client, after being so advised, has executed this ~~durable~~ power of attorney."

(d) None of the following may be used as a witness under subdivision (a):

- (1) A health care provider.
- (2) An employee of a health care provider.
- (3) The attorney in fact.
- (4) The operator of a community care facility.
- (5) An employee of an operator of a community care facility.

(e) At least one of the persons used as a witness under subdivision (a) shall be a person who is not one of the following:

(1) A relative of the principal by blood, marriage, or adoption.

(2) A person who would be entitled to any portion of the estate of the principal upon his or her death under any will or codicil thereto of the principal existing at the time of execution of the durable power of attorney or by operation of law then existing.

(f) A durable power of attorney for health care is not effective if the principal is a patient in a skilled nursing facility as defined in subdivision (c) of Section 1250 of the Health and Safety Code at the time of its execution unless one of the witnesses is a patient advocate or ombudsman as may be designated by the State Department of Aging for this purpose pursuant to any other applicable provision of law. The patient advocate or ombudsman shall include in the declaration required by subdivision

(a) ~~(2)(A)~~ a declaration that he or she is serving as a witness as required by this subdivision. It is the intent of this subdivision to recognize that some patients in skilled nursing facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willfully and voluntarily executing a durable power of attorney for health care.

**Comment.** Subdivision (c) of Section 2432 is amended to conform the certificate to the language used for the attorney's certificate in Sections 2421, 2433(c)(2), 2451, and 2501. The remaining revisions of Section 2432 are technical or clarifying.

Civil Code § 2432.5 (technical amendment). Relative of principal may be attorney in fact even though employed by health care provider or community care facility

SEC. 4. Section 2432.5 of the Civil Code is amended to read:

2432.5. ~~Notwithstanding subdivision (b) of Section 2432, an~~ An employee of the treating health care provider or an employee of an operator of a community care facility may be designated as the attorney in fact to make health care decisions under a durable power of attorney if (a) the employee so designated is a relative of the principal by blood, marriage, or adoption, and (b) the other requirements of this article are satisfied.

Comment. Section 2432.5 is amended to delete language that is unnecessary in view of the amendment to subdivision (b) of Section 2432.

Civil Code § 2433 (amended). Requirements for printed form; certificate of attorney in lieu of warning statements

SEC. 5. Section 2433 of the Civil Code is amended to read:

2433. (a) A printed form of a durable power of attorney for health care *that is sold or otherwise distributed* in this state for use by a person who does not have the advice of legal counsel shall provide no other authority than the authority to make health care decisions on behalf of the principal and shall ~~include the following notice in~~ *contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:*

#### WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. ~~It creates a durable power of attorney for health care.~~ Before executing this document, you should know these important facts:

This document gives the person you designate as your attorney in fact the power to make health care decisions for you, subject to any limitations or statement of your desires that you include in this document. The power to make health care decisions for you may include consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. You may state in this document any types of treatment or placements that you do not desire.

The person you designate in this document has a duty to act consistent with your desires as stated in this document or otherwise made known or, if your desires are unknown, to act in your best interests.

Except as you otherwise specify in this document, the power of the person you designate to make health care decisions for you may include the power to consent to your doctor not giving treatment or stopping treatment which would keep you alive.

Unless you specify a shorter period in this document, this power will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven/year period ends, this power will continue to exist until the time when you become able to make health care decisions for yourself.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped if you object.

You have the right to revoke the appointment of the person designated in this document by notifying that person of the revocation orally or in writing.

You have the right to revoke the authority granted to the person designated in this document to make health care decisions for you by notifying the treating physician, hospital, or other health care provider orally or in writing.

**The person designated in this document to make health care decisions for you has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.**

*This document gives the person you designate as your agent (the attorney in fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.*

*Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.*

*Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.*

*This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of your desires and any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent (1) authorizes anything that is illegal, (2) acts contrary to your known desires, or (3) where your desires are not known, does anything that is clearly contrary to your best interests.*

*Unless you specify a shorter period in this document, this power will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, this power will continue to exist until the time when you become able to make health care decisions for yourself.*

*You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.*

*Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.*

*Unless you otherwise specify in this document, this document gives your agent the power after you die to (1) authorize an autopsy, (2) donate your body or parts thereof for transplant or therapeutic or educational or scientific purposes, and (3) direct the disposition of your remains.*

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

(b) The printed form described in subdivision (a) shall also include the following notice: "This power of attorney will not be valid for making health care decisions unless it is either (1) signed by two qualified *adult* witnesses who are personally known to you and who are present when you sign or acknowledge your signature or (2) acknowledged before a notary public in California."

(c) A durable power of attorney prepared in this state that permits the attorney in fact to make health care decisions and that is not a printed form shall include one of the following:

(1) The substance of the statements provided for in subdivision (a) in capital letters.

(2) A certificate signed by the principal's lawyer stating: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

(d) If a durable power of attorney includes the certificate provided for in paragraph (2) of subdivision

(c) and permits the attorney in fact to make health care decisions for the principal, the applicable law of which the client is to be advised by the lawyer signing the certificate includes, but is not limited to, the matters listed in subdivision (a).

**Comment.** The introductory clause of subdivision (a) of Section 2433 is extended to apply to any printed form that is “otherwise distributed” in this state and the requirement that the statement be in 10-point boldface type is made more flexible by providing that the statement be “in not less than 10-point boldface type or a reasonable equivalent thereof.” These revisions conform Section 2433 to Section 2451(a) (Statutory Short Form Power of Attorney), Section 2501(a) (Statutory Form Durable Power of Attorney for Health Care), and Section 2510(b) (introductory clause).

A new warning statement is substituted for the one formerly provided by subdivision (a). The new warning statement is drawn from the warning statement prescribed in Section 2500 (Statutory Form Durable Power of Attorney for Health Care). See the Comment to that section.

**Civil Code § 2440 (technical amendment). Effect of principal objecting to not providing health care**

**SEC. 6.** Section 2440 of the Civil Code is amended to read:

**2440.** Nothing in this article authorizes an attorney in fact to consent to health care, or to consent to the withholding or withdrawal of health care necessary to keep the principal alive, if the principal objects to the health care or to the withholding or withdrawal of the health care. In such a case, the case is governed by the law that would apply if there were no durable power of attorney for ~~health~~ health care.

**Comment.** Section 2440 is amended to correct a typographical error.

**Civil Code § 2450 (amended). Statutory Short Form Power of Attorney**

**SEC. 7.** Section 2450 of the Civil Code is amended to read:

2450. The use of the following form in the creation of a power of attorney is lawful, and when used, the power of attorney shall be construed in accordance with the provisions of this chapter and, if the power of attorney is a durable power of attorney, shall be subject to the provisions of Article 3 (commencing with Section 2400) of Chapter 2:

**STATUTORY SHORT FORM POWER OF  
ATTORNEY**

(California Civil Code Section 2450)

**WARNING. UNLESS YOU LIMIT THE POWER IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER TO ACT FOR YOU IN ANY WAY YOU COULD ACT FOR YOURSELF. FOR EXAMPLE, YOUR AGENT CAN:**

**---BUY, SELL, AND MANAGE REAL AND PERSONAL PROPERTY FOR YOU. THIS MEANS THAT YOUR AGENT CAN SELL YOUR HOME, YOUR SECURITIES, AND YOUR OTHER PROPERTY.**

**---DEPOSIT AND WITHDRAW MONEY FROM YOUR CHECKING AND SAVINGS ACCOUNTS.**

**---BORROW MONEY USING YOUR PROPERTY AS SECURITY FOR THE LOAN.**

**---PUT THINGS IN AND TAKE THINGS OUT OF YOUR SAFETY DEPOSIT BOX.**

**---OPERATE YOUR BUSINESS FOR YOU.**

**---PREPARE AND FILE TAX RETURNS FOR YOU AND ACT FOR YOU IN TAX MATTERS.**

**---ESTABLISH TRUSTS FOR YOU AND TAKE OTHER ACTIONS FOR YOU IN CONNECTION WITH PROBATE AND ESTATE PLANNING MATTERS.**

**---PROVIDE FOR THE SUPPORT AND WELFARE OF YOUR SPOUSE, CHILDREN, AND DEPENDENTS.**

**---CONTINUE PAYMENTS TO THE CHURCH AND OTHER ORGANIZATIONS OF WHICH YOU ARE A MEMBER AND MAKE GIFTS TO YOUR SPOUSE, DESCENDANTS, AND CHARITIES.**

**THIS DOCUMENT DOES NOT AUTHORIZE YOUR AGENT TO MAKE MEDICAL AND OTHER HEALTH**

CARE DECISIONS FOR YOU. YOU CAN DESIGNATE AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU ONLY BY A SEPARATE DOCUMENT.

IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN SECTIONS 2460 TO 2473, INCLUSIVE, OF THE CALIFORNIA CIVIL CODE.

THE POWERS GRANTED BY THIS DOCUMENT WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS DOCUMENT. THESE POWERS WILL CONTINUE TO EXIST NOTWITHSTANDING YOUR SUBSEQUENT DISABILITY OR INCAPACITY UNLESS YOU INDICATE OTHERWISE IN THIS DOCUMENT.

YOU CAN ELIMINATE POWERS OF YOUR AGENT BY CROSSING OUT ANY ONE OR MORE OF THE POWERS LISTED IN PARAGRAPH 3 OF THIS FORM. YOU CAN WRITE OTHER LIMITATIONS AND SPECIAL PROVISIONS IN PARAGRAPH 4 OF THIS FORM. HOWEVER, IF YOU DO NOT WANT TO GRANT YOUR AGENT THE POWER TO ACT FOR YOU IN ANY WAY YOU COULD ACT FOR YOURSELF, IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A LAWYER INSTEAD OF USING THIS FORM.

THIS DOCUMENT MUST BE SIGNED BY TWO WITNESSES AND BE NOTARIZED TO BE VALID.

YOU HAVE THE RIGHT TO REVOKE OR TERMINATE THIS POWER OF ATTORNEY.

YOU ARE NOT REQUIRED TO USE THIS FORM; YOU MAY USE A DIFFERENT POWER OF ATTORNEY IF THAT IS DESIRED BY THE PARTIES CONCERNED.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

**1. DESIGNATION OF AGENT.**

I, \_\_\_\_\_

(Insert your name and address)

do hereby appoint \_\_\_\_\_

(Insert name and address of your agent, or each agent  
if you want to designate more than one)as my ~~attorney(s) in fact~~ *attorney(s) in fact* (agent) to  
act for me and in my name as authorized in this  
document.**2. CREATION OF DURABLE POWER OF  
ATTORNEY.** By this document I intend to create a  
general power of attorney under Sections 2450 to 2473,  
inclusive, of the California Civil Code. Subject to any  
limitations in this document, this power of at'orney is a  
durable power of attorney and shall not be affected by my  
subsequent incapacity.(If you want this power of attorney to terminate automatically  
when you lack capacity, you must so state in paragraph 4 ("Special  
Provisions and Limitations") below.)**3. STATEMENT OF AUTHORITY GRANTED.**  
Subject to any limitations in this document, I hereby  
grant to my agent(s) full power and authority to act for  
me and in my name, in any way which I myself could act,  
if I were personally present and able to act, with respect  
to the following matters as each of them is defined in  
Chapter 3 (commencing with Section 2450) of Title 9 of  
Part 4 of Division 3 of the California Civil Code to the  
extent that I am permitted by law to act through an  
agent:

- (1) Real estate transactions.
- (2) Tangible personal property transactions.
- (3) Bond, share, and commodity transactions.
- (4) Financial institution transactions.
- (5) Business operating transactions.
- (6) Insurance transactions.
- (7) Retirement plan transactions.
- (8) Estate transactions.
- (9) Claims and litigation.
- (10) Tax matters.

- (11) Personal relationships and affairs.
- (12) Benefits from military service.
- (13) Records, reports, and statements.
- (14) Full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) shall select.
- (15) All other matters.

(Strike out any one or more of the items above to which you do NOT desire to give your agent authority. Such elimination of any one or more of items (1) to (14), inclusive, automatically constitutes an elimination of item (15). TO STRIKE OUT AN ITEM, YOU MUST DRAW A LINE THROUGH THE TEXT OF THAT ITEM.)

**4. SPECIAL PROVISIONS AND LIMITATIONS.** In exercising the authority under this power of attorney, my agent(s) is subject to the following special provisions and limitations:

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(Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of Section 2455 of the California Civil Code.)

**5. EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED.** If I have designated more than one agent, the agents are to act

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(If you designate more than one agent and wish each agent alone to be able to exercise this power, insert in this blank the word "severally." Failure to make an insertion or the insertion of the word "jointly" will require that the agents act jointly.)

**6. DURATION.**

(The powers granted by this document will exist for an indefinite period of time unless you limit their duration below.)

This power of attorney expires on \_\_\_\_\_

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(Fill in this space ONLY if you want the authority of your agent to terminate before your death.)

**7. NOMINATION OF CONSERVATOR OF ESTATE.**

(A conservator of the estate may be appointed for you if a court decides that one should be appointed. The conservator is responsible for the management of your financial affairs and your property. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your agent. You may nominate a person as your conservator by completing the space below.)

If a conservator of the estate is to be appointed for me, I nominate the following person to serve as conservator of the estate \_\_\_\_\_

(Insert name and address of person nominated as conservator of the estate)

**DATE AND SIGNATURE OF PRINCIPAL**

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Short Form Power of Attorney on

\_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_\_  
 (Date) (City) (State)

\_\_\_\_\_  
 (You sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS BOTH (1) SIGNED BY TWO ADULT WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE AND (2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC IN CALIFORNIA.)

**STATEMENT OF WITNESSES**

*(READ CAREFULLY BEFORE SIGNING. You can sign as a witness only if you personally know the principal*

or the identity of the principal is proved to you by convincing evidence.)

(To have convincing evidence of the identity of the principal, you must be presented with and reasonably rely on any one or more of the following:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles that is current or has been issued within five years.

(2) A passport issued by the Department of State of the United States that is current or has been issued within five years.

(3) Any of the following documents if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

(a) A passport issued by a foreign government that has been stamped by the United States Immigration and Naturalization Service.

(b) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.

(c) An identification card issued by a state other than California.

(d) An identification card issued by any branch of the armed forces of the United States.)

(Other kinds of proof of identity are not allowed.)

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this power of attorney in my presence, and that the principal appears to be of sound mind and under no duress, fraud, or undue influence.

Signature: \_\_\_\_\_ Residence Address: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**CERTIFICATE OF ACKNOWLEDGEMENT OF  
NOTARY PUBLIC**

State of California        }  
County of \_\_\_\_\_    } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
before me, \_\_\_\_\_,  
(Insert name of notary public),  
personally appeared \_\_\_\_\_,  
(Insert name of principal)

personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person whose name is  
subscribed to this instrument, and acknowledged that he  
or she executed it.

**NOTARY SEAL**

\_\_\_\_\_  
(Signature of Notary Public)

**Comment.** Section 2450 is amended to add an informational statement that alerts the witnesses to the requirements of Section 2511 as to what constitutes "convincing evidence." Forms that comply with prior law may still be used after the time the amendment to Section 2450 goes into effect. See Section 2457.

**Civil Code § 2451 (technical amendment).** Form must contain "warning" or lawyer's certificate

**SEC. 8.** Section 2451 of the Civil Code is amended to read:

**2451. (a) ~~Notwithstanding Section 2400, except~~ Except as provided in subdivision (b), a statutory short form power of attorney, to be valid, shall contain, in not less than 10-point bold-face type or a reasonable**

equivalent thereof, the warning which is printed in capital letters at the beginning of Section 2450.

(b) Subdivision (a) does not apply if the statutory short form power of attorney contains a certificate signed by the principal's lawyer stating in substance: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time when this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

**Comment.** Section 2451 is amended to delete the reference to Section 2400. This reference becomes unnecessary in view of the amendment of Section 2400 and the enactment of Section 2510.

**Civil Code § 2457 (added). Use of form prescribed by prior law**

**SEC. 9.** Section 2457 is added to the Civil Code, to read:

**2457.** A statutory short form power of attorney executed on or after January 1, 1986, using a form that complied with Section 2450 as originally enacted is as valid as if it had been executed using a form that complied with Section 2450, as amended.

**Comment.** Section 2457 permits continued use of the form prescribed for a statutory short form power of attorney under Section 2450 before the amendment to that section added the informational statement for the Statement of Witnesses. Section 2457 permits use of the original form even after the amendment takes effect. Accordingly, after the amendment to Section 2450 takes effect, either the form set forth in Section 2450 as originally enacted or the form set forth in Section 2450 as amended may be used. This avoids the need to discard existing printed forms on the date the amendment to Section 2450 takes effect.

**Civil Code § 2500 (amended). Statutory Form Durable Power of Attorney for Health Care**

**SEC. 10.** Section 2500 of the Civil Code is amended to read:

**2500.** The use of the following form in the creation of a durable power of attorney for health care under Article 5 (commencing with Section 2430) of Chapter 2 is lawful, and when used, the power of attorney shall be construed in accordance with the provisions of this chapter and shall be subject to the provisions of Article 5 (commencing with Section 2430) of Chapter 2.

**STATUTORY FORM DURABLE POWER OF  
ATTORNEY FOR HEALTH CARE  
(California Civil Code Section 2500)**

**WARNING TO PERSON EXECUTING THIS  
DOCUMENT**

**THIS IS AN IMPORTANT LEGAL DOCUMENT WHICH IS AUTHORIZED BY THE KEENE HEALTH CARE AGENT ACT. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

**THIS DOCUMENT GIVES THE PERSON YOU DESIGNATE AS YOUR AGENT (THE ATTORNEY IN FACT) THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU. YOUR AGENT MUST ACT CONSISTENTLY WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE MADE KNOWN.**

**EXCEPT AS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER TO CONSENT TO YOUR DOCTOR NOT GIVING TREATMENT OR STOPPING TREATMENT NECESSARY TO KEEP YOU ALIVE.**

**NOTWITHSTANDING THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOURSELF SO LONG AS YOU CAN GIVE INFORMED CONSENT**

WITH RESPECT TO THE PARTICULAR DECISION. IN ADDITION, NO TREATMENT MAY BE GIVEN TO YOU OVER YOUR OBJECTION AT THE TIME, AND HEALTH CARE NECESSARY TO KEEP YOU ALIVE MAY NOT BE STOPPED OR WITHHELD IF YOU OBJECT AT THE TIME.

THIS DOCUMENT GIVES YOUR AGENT AUTHORITY TO CONSENT, TO REFUSE TO CONSENT, OR TO WITHDRAW CONSENT TO ANY CARE, TREATMENT, SERVICE, OR PROCEDURE TO MAINTAIN, DIAGNOSE, OR TREAT A PHYSICAL OR MENTAL CONDITION. THIS POWER IS SUBJECT TO ANY STATEMENT OF YOUR DESIRES AND ANY LIMITATIONS THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TYPES OF TREATMENT THAT YOU DO NOT DESIRE. IN ADDITION, A COURT CAN TAKE AWAY THE POWER OF YOUR AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOUR AGENT (1) AUTHORIZES ANYTHING THAT IS ILLEGAL, (2) ACTS CONTRARY TO YOUR KNOWN DESIRES, OR (3) WHERE YOUR DESIRES ARE NOT KNOWN, DOES ANYTHING THAT IS CLEARLY CONTRARY TO YOUR BEST INTERESTS.

UNLESS YOU SPECIFY A SHORTER PERIOD IN THIS DOCUMENT, THIS POWER WILL EXIST FOR SEVEN YEARS FROM THE DATE YOU EXECUTE THIS DOCUMENT AND, IF YOU ARE UNABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF AT THE TIME WHEN THIS SEVEN-YEAR PERIOD ENDS, THIS POWER WILL CONTINUE TO EXIST UNTIL THE TIME WHEN YOU BECOME ABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF.

YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY OF YOUR AGENT BY NOTIFYING YOUR AGENT OR YOUR TREATING DOCTOR, HOSPITAL, OR OTHER HEALTH CARE PROVIDER ORALLY OR IN WRITING OF THE REVOCATION.

YOUR AGENT HAS THE RIGHT TO EXAMINE YOUR MEDICAL RECORDS AND TO CONSENT TO

THEIR DISCLOSURE UNLESS YOU LIMIT THIS RIGHT IN THIS DOCUMENT.

UNLESS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER AFTER YOU DIE TO (1) *AUTHORIZE AN AUTOPSY*, (2) *DONATE YOUR BODY OR PARTS THEREOF FOR TRANSPLANT OR THERAPEUTIC OR EDUCATIONAL OR SCIENTIFIC PURPOSES*, AND (3) *DIRECT THE DISPOSITION OF YOUR REMAINS*.

THIS DOCUMENT REVOKES ANY PRIOR DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS FORM. THIS DOCUMENT WILL NOT BE VALID UNLESS YOU COMPLY WITH THE WITNESSING PROCEDURE.

IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

YOUR AGENT MAY NEED THIS DOCUMENT IMMEDIATELY IN CASE OF AN EMERGENCY THAT REQUIRES A DECISION CONCERNING YOUR HEALTH CARE. EITHER KEEP THIS DOCUMENT WHERE IT IS IMMEDIATELY AVAILABLE TO YOUR AGENT AND ALTERNATE AGENTS OR GIVE EACH OF THEM AN EXECUTED COPY OF THIS DOCUMENT. YOU MAY ALSO WANT TO GIVE YOUR DOCTOR AN EXECUTED COPY OF THIS DOCUMENT.

DO NOT USE THIS FORM IF YOU ARE A CONSERVATEE UNDER THE LANTERMAN-PETRIS-SHORT ACT AND YOU WANT TO APPOINT YOUR CONSERVATOR AS YOUR AGENT. YOU CAN DO THAT ONLY IF THE APPOINTMENT DOCUMENT INCLUDES A CERTIFICATE OF YOUR ATTORNEY.

1. DESIGNATION OF HEALTH CARE AGENT. I,

---

(Insert your name and address)

do hereby designate and appoint \_\_\_\_\_

(Insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: (1) your treating health care provider, (2) a nonrelative employee of your treating health care provider, (3) an operator of a community care facility, or (4) a nonrelative employee of an operator of a community care facility.) as my attorney in fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

**2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE.** By this document I intend to create a durable power of attorney for health care under Sections 2430 to 2443, inclusive, of the California Civil Code. This power of attorney is authorized by the Keene Health Care Agent Act and shall be construed in accordance with the provisions of Sections 2500 to 2506, inclusive, of the California Civil Code. This power of attorney shall not be affected by my subsequent incapacity.

**3. GENERAL STATEMENT OF AUTHORITY GRANTED.** Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

**4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.**

(Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

(a) Statement of desires concerning life-prolonging care, treatment, services, and procedures:

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(b) Additional statement of desires, special provisions, and limitations: \_\_\_\_\_

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(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.)

**5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.** Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records.

(b) Execute on my behalf any releases or other documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 (“Statement of Desires, Special Provisions, and Limitations”) above.)

**6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES.** Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

(a) Documents titled or purporting to be a “Refusal to Permit Treatment” and “Leaving Hospital Against Medical Advice.”

(b) Any necessary waiver or release from liability required by a hospital or physician.

**7. UNIFORM ANATOMICAL GIFT ACT; AUTOPSY; ANATOMICAL GIFTS; DISPOSITION OF REMAINS.** Subject to any limitations in this document, my agent has the power and authority to ~~make~~ do all of the following:

(a) Authorize an autopsy under Section 7113 of the Health and Safety Code.

(b) Make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act (Chapter 3.5

(commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

*(c) Direct the disposition of my remains under Section 7100 of the Health and Safety Code.*

(If you want to limit the authority of your agent to ~~make a disposition under the Uniform Anatomical Gift Act~~, consent to an autopsy, make an anatomical gift, or direct the disposition of your remains, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

## 8. DURATION.

(Unless you specify a shorter period in the space below, this power of attorney will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, the power will continue to exist until the time when you become able to make health care decisions for yourself.)

This durable power of attorney for health care expires on \_\_\_\_\_

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(Fill in this space ONLY if you want the authority of your agent to end EARLIER than the seven-year period described above.)

## 9. DESIGNATION OF ALTERNATE AGENTS.

(You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

**A. First Alternate Agent** \_\_\_\_\_

(Insert name, address, and telephone number of first alternate agent)

**B. Second Alternate Agent** \_\_\_\_\_

(Insert name, address, and telephone number of second alternate agent)

**10. NOMINATION OF CONSERVATOR OF PERSON.**

(A conservator of the person may be appointed for you if a court decides that one should be appointed. The conservator is responsible for your physical care, which under some circumstances includes making health care decisions for you. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your health care agent. You can nominate an individual as your conservator by completing the space below.)

If a conservator of the person is to be appointed for me, I nominate the following individual to serve as conservator of the person \_\_\_\_\_

(Insert name and address of person nominated as conservator of the person)

**11. PRIOR DESIGNATIONS REVOKED.** I revoke any prior durable power of attorney for health care.

**DATE AND SIGNATURE OF PRINCIPAL**  
(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Form Durable Power of Attorney for Health Care on \_\_\_\_\_ at  
(Date)

\_\_\_\_\_, \_\_\_\_\_  
(City) (State)

\_\_\_\_\_  
(You sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS POWER OF ATTORNEY.)

### STATEMENT OF WITNESSES

(This document must be witnessed by two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as your agent or alternate agent, (2) a health care provider, (3) an employee of a health care provider, (4) the operator of a community care facility, (5) an employee of an operator of a community care facility. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

*(READ CAREFULLY BEFORE SIGNING. You can sign as a witness only if you personally know the principal or the identity of the principal is proved to you by convincing evidence.)*

*To have convincing evidence of the identity of the principal, you must be presented with and reasonably rely on any one or more of the following:*

*(1) An identification card or driver's license issued by the California Department of Motor Vehicles that is current or has been issued within five years.*

*(2) A passport issued by the Department of State of the United States that is current or has been issued within five years.*

*(3) Any of the following documents if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:*

*(a) A passport issued by a foreign government that has been stamped by the United States Immigration and Naturalization Service.*

*(b) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.*

*(c) An identification card issued by a state other than California.*

*(d) An identification card issued by any branch of the armed forces of the United States.)*

*(Other kinds of proof of identity are not allowed.)*

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, nor an employee of an operator of a community care facility.

Signature: \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION.)

I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

## STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

(If you are a patient in a skilled nursing facility, one of the witnesses must be a patient advocate or ombudsman. The following statement is required only if you are a patient in a skilled nursing facility--a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign both parts of the "Statement of Witnesses" above AND must also sign the following statement.)

I further declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by subdivision (f) of Section 2432 of the Civil Code.

Signature: \_\_\_\_\_

**Comment.** Section 2500 is amended to add an additional informational statement that alerts the witnesses to the requirements of Section 2511 as to what constitutes "convincing evidence." The revisions in the Warning Statement and in paragraph 7 of the form merely provide additional information concerning the power and authority of the agent and make no change in applicable law. Forms that comply with prior law may still be used after the time the amendment to Section 2500 goes into effect. See Section 2503.5.

**Civil Code § 2503.5 (added). Use of form prescribed by prior law**

**SEC. 11.** Section 2503.5 is added to the Civil Code, to read:

**2503.5.** (a) A statutory form durable power of attorney for health care executed on or after January 1, 1986, using a form that complied with Section 2500 as originally enacted is as valid as if it had been executed using a form that complied with Section 2500 as amended.

(b) Notwithstanding Section 2501, a statutory form durable power of attorney for health care executed on or after January 1, 1986, is not invalid if it contains the warning using the language set forth in Section 2500 as originally enacted instead of the warning using the language set forth in that section as amended.

(c) For the purposes of subdivision (c) of Section 2503, on and after January 1, 1986, a printed statutory form durable power of attorney for health care may be sold or otherwise distributed if it contains the exact wording of the form set out in Section 2500 as originally enacted, or the exact wording of the form set out in Section 2500 as amended, including the warning and instructions, and nothing else; but any printed statutory form durable power of attorney for health care printed on or after January 1, 1986, that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain the exact wording of the form set out in Section 2500 as amended, including the warning and instructions, and nothing else.

**Comment.** Section 2503.5 permits continued use of the form prescribed for a statutory form durable power of attorney for health care under Section 2500 as originally enacted. Section 2503.5 permits use of the original form even after the amendment to Section 2500 takes effect. Accordingly, after the amendment to Section 2500 takes effect, either the form set forth in Section 2500 as originally enacted or the form set forth in Section 2500 as amended may be used. This avoids the need to discard existing printed forms on the date the amendment to Section 2500 takes effect. However, forms printed on or after January 1, 1986, must contain the exact wording of the form set out in Section 2500 as amended, including the warning and instructions, and nothing else.

### **Civil Code §§ 2510-2513 (added)**

**SEC. 12.** Chapter 5 (commencing with Section 2510) is added to Title 9 of Part 4 of Division 3 of the Civil Code, to read:

## CHAPTER 5. MISCELLANEOUS PROVISIONS RELATING TO POWERS OF ATTORNEY

### § 2510 (added). Warning statement in printed form

2510. (a) This section does not apply to either of the following:

- (1) A durable power of attorney for health care.
- (2) A Statutory Short Form Power of Attorney that satisfies the requirements of Chapter 3 (commencing with Section 2450).

(b) A printed form of a durable power of attorney that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statement:

### WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. It creates a durable power of attorney. Before executing this document, you should know these important facts:

This document may provide the person you designate as your attorney in fact with broad powers to manage, dispose, sell, and convey your real and personal property and to borrow money using your property as security for the loan.

These powers will exist for an indefinite period of time unless you limit their duration in this document. These powers will continue to exist notwithstanding your subsequent disability or incapacity.

You have the right to revoke or terminate this power of attorney.

If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

(c) Nothing in subdivision (b) invalidates any transaction in which a third person relied in good faith upon the authority created by the durable power of attorney.

**Comment.** Section 2510 continues the substance of former subdivisions (b) and (c) of Section 2400 with the following revisions:

(1) Subdivision (a) of Section 2510 is a new provision that recognizes that other provisions prescribe the content of the warning statement for particular types of durable powers of attorney. See Sections 2433 and 2500 (durable power of attorney for health care); Sections 2450 and 2451 (Statutory Short Form Power of Attorney). See also Section 2433(a) (introductory clause) (printed form of a durable power of attorney for health care to provide only authority to make health care decisions).

(2) The warning statement requirement is extended to apply to a printed form that is “otherwise distributed” in this state and the requirement that the statement be in 10-point boldface type is made more flexible by providing that the statement be “in not less than 10-point boldface type or a reasonable equivalent thereof.” These changes make Section 2510 consistent with portions of Section 2433(a) (introductory clause), Section 2451(a) (Statutory Short Form Power of Attorney), and Sections 2501(a) and 2503(c) (Statutory Form Durable Power of Attorney For Health Care).

(3) The last paragraph of the warning statement is added. A comparable provision is included in other required warning statements. See Sections 2433, 2450, and 2500.

**§ 2511 (added). What constitutes “convincing evidence” of the identity of person executing power of attorney**

**2511.** For the purposes of the declaration of witnesses required by Section 2450 or 2500, “convincing evidence” means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person signing or acknowledging the power of attorney as principal is not the individual he or she claims to be and any one of the following:

(a) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years:

(1) An identification card or driver’s license issued by the California Department of Motor Vehicles.

(2) A passport issued by the Department of State of the United States.

(b) Reasonable reliance on the presentation of any one of the following, if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, bears a serial or other identifying number, and, in the event that the document is a passport, has been stamped by the United States Immigration and Naturalization Service:

- (1) A passport issued by a foreign government.
- (2) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.
- (3) An identification card issued by a state other than California.
- (4) an identification card issued by any branch of the armed forces of the United States.

**Comment.** Section 2511 is drawn from Section 1185 (acknowledgment of instrument by notary public) but is more restrictive than that section because Section 2511 does not include the substance of subdivision (c) (1) of Section 1185.

**§ 2512 (added). Protection of person relying in good faith on durable power of attorney**

2512. (a) Except as provided in Section 2438, a person who acts in good faith reliance upon a durable power of attorney is not liable to the principal or to any other person for so acting if all of the following requirements are satisfied:

- (1) The durable power of attorney is presented to the person by the attorney in fact named in the durable power of attorney.
- (2) The durable power of attorney appears on its face to be valid.
- (3) The durable power of attorney includes a notary public's certificate of acknowledgment.

(b) Nothing in this section is intended to create an implication that a person is liable for acting in reliance upon a durable power of attorney under circumstances where the requirements of subdivision (a) are not satisfied. Nothing in this section affects any immunity that may otherwise exist apart from this section.

**Comment.** Section 2512 is a new provision designed to assure that a durable power of attorney will be accepted and relied upon by third persons. The section gives a third person immunity from liability only if all of the following requirements are satisfied:

(1) The third person must act in good faith reliance upon the durable power of attorney.

(2) The person presenting the power of attorney must actually be the attorney in fact named in the power of attorney. If the person purporting to be the attorney in fact is an imposter, the immunity does not apply.

(3) The durable power of attorney must appear to be valid on its face and must include a notary public's certificate of acknowledgment. The third person can rely in good faith upon the notary public's certificate of acknowledgment that the person who executed the power of attorney was the principal.

Subdivision (b) makes clear that this section merely provides an immunity from liability if the requirements of the section are satisfied. This section has no relevance in determining whether or not a third person who acts in reliance upon a durable power of attorney is liable under the circumstances where, for example, the power of attorney does not include a notary public's certificate of acknowledgment. The immunity of a health care provider who relies upon a health care decision of the attorney in fact is determined under Section 2438, not under this section. Other immunity provisions are not limited by this section. See, e.g., Sections 2403 (lack of knowledge of death of principal), 2404 (lack of knowledge of termination of power), 2437 (lack of knowledge that durable power of attorney for health care has been revoked), 2438 (immunities of health care provider). See also Prob. Code § 3720 ("Any person who acts in reliance upon the power of attorney [of an absentee as defined in Probate Code Section 1403] when accompanied by a copy of the certificate of missing status is not liable for relying or acting upon the power of attorney.").

**§ 2513 (added). Specific description of property in power of attorney not required**

2513. A power of attorney, whether or not a durable power of attorney, may by its terms apply to all or a portion of the real and personal property of the principal, whether owned by the principal at the time of the giving of the power of attorney or thereafter acquired, whether

located in this state or elsewhere, without the need for a description of each item or parcel of property.

**Comment.** Section 2513 is a new provision that makes clear that a power of attorney may by its terms apply to all real property of the principal, including after-acquired property, without the need for a specific description of the real property to which the power applies. The section is consistent with the provisions of Article 2 (commencing with Section 2460) of Chapter 3.

**Corporations Code § 702 (amended). Who may vote corporate shares**

**SEC. 13.** Section 702 of the Corporations Code is amended to read:

**702.** (a) Subject to subdivision (c) of Section 703, shares held by an administrator, executor, guardian, conservator or custodian may be voted by such holder either in person or by proxy, without a transfer of such shares into the holder's name; and shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held by such trustee without a transfer of such shares into the trustee's name.

(b) Shares standing in the name of a receiver may be voted by such receiver; and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the receiver's name if authority to do so is contained in the order of the court by which such receiver was appointed.

(c) Subject to the provisions of Section 705 and except where otherwise agreed in writing between the parties, a shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(d) Shares standing in the name of a minor may be voted and the corporation may treat all rights incident thereto as exercisable by the minor, in person or by proxy, whether or not the corporation has notice, actual or constructive, of the nonage, unless a guardian of the

minor's property has been appointed and written notice of such appointment given to the corporation.

*(e) If authorized to vote the shares by the power of attorney by which the attorney in fact was appointed, shares held by or under the control of an attorney in fact may be voted and the corporation may treat all rights incident thereto as exercisable by the attorney in fact, in person or by proxy, without the transfer of the shares into the name of the attorney in fact.*

**Comment.** Subdivision (e) is added to Section 702 to make clear that an attorney in fact may vote shares without transfer of the shares into the name of the attorney in fact if authorized by the power of attorney.

### **Savings Clause**

**SEC. 14.** Nothing in this act affects the validity of a power of attorney executed prior to the date this act becomes operative.

APPENDIX IX  
STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Litigation Expenses in  
Family Law Proceedings

March 1985

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

#### NOTE

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

**Cite this Recommendation as *Recommendation Relating to Litigation Expenses in Family Law Proceedings*, 18 Cal. L. Revision Comm'n Reports 351 (1986).**

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## CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2  
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(415) 494-1335

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DAVID ROSENBERG

ANN E. STODDEN

March 21, 1985

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

The Law Revision Commission herewith submits its recommendation to make clear the authority of the court to consider all assets of the parties, as well as the conduct of litigation by the parties, in making an award of litigation expenses in family law proceedings. This recommendation is made pursuant to 1983 Cal. Stats. res. ch. 40 (family law).

Respectfully submitted,

EDWIN K. MARZEC  
*Chairperson*



# RECOMMENDATION

*relating to*

## LITIGATION EXPENSES IN FAMILY LAW PROCEEDINGS

The court in a dissolution proceeding has discretion to order a party "to pay such amount as may be reasonably necessary for the cost of maintaining or defending the proceeding and for attorneys' fees."<sup>1</sup> The purpose of an award of attorneys' fees is to enable a party to have sufficient resources to adequately present the party's case.<sup>2</sup> In order to be entitled to an award the party must demonstrate that his or her resources are not sufficient to meet the expenses of litigation.<sup>3</sup>

Although the court has discretion to award litigation expenses, the discretion is limited by the principle that a wife may not be required to impair the capital (as opposed to income) of her separate estate in order to defray litigation expenses.<sup>4</sup> This rule appears to be a relic of the era before equal management and control: because the husband had management and control of the community property and could pay his own attorney's fees out of the community, the wife was not required to bear her own attorney's fees but could require payment out of the community or out of the husband's separate property.<sup>5</sup>

This rule is now obsolete and unduly limits the discretion of the court. It results in cases requiring one party to finance the litigation of the other even though there may be substantial amounts of community assets available to defray the litigation expenses.<sup>6</sup> The court should be able to review

<sup>1</sup> Civil Code § 4370.

<sup>2</sup> See, e.g., *Bernheimer v. Bernheimer*, 103 Cal. App.2d 643, 230 P.2d 17 (1951); *Avnet v. Bank of America*, 232 Cal. App.2d 191, 42 Cal. Rptr. 616 (1965).

<sup>3</sup> See, e.g., *Martins v. Superior Court*, 12 Cal. App.3d 870, 90 Cal. Rptr. 898 (1970).

<sup>4</sup> See, e.g., *In re Marriage of Stachon*, 77 Cal. App.3d 506, 143 Cal. Rptr. 599 (1978); *In re Marriage of Hopkins*, 74 Cal. App.3d 591, 141 Cal. Rptr. 597 (1977); *In re Marriage of Jafeman*, 29 Cal. App.3d 244, 105 Cal. Rptr. 483 (1972).

<sup>5</sup> Cf. *Weinberg v. Weinberg*, 67 Cal.2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967).

<sup>6</sup> See, e.g., *In re Marriage of Folb*, 53 Cal. App.3d 862, 126 Cal. Rptr. 306 (1975).

the circumstances of the parties and the litigation, and should be able to award or deny litigation expenses based on such factors as the needs of the parties and their ability to pay, the conduct of the litigation, and other relevant considerations.<sup>7</sup> An award should be made out of any appropriate assets—community or separate property, principal or income—and in such an amount as appears just.

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

An act to add Section 4370.5 to the Civil Code, relating to family law proceedings.

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

**Civil Code § 4370.5 (added). Standard for award of costs and attorney's fees**

SECTION 1. Section 4370.5 is added to the Civil Code, to read:

4370.5. (a) The court may make an award under this chapter where the making of the award, and the amount of the award, is just and reasonable under the circumstances of the respective parties.

(b) In determining what is just and reasonable under the circumstances, the court shall take into consideration both of the following:

(1) The need for the award to enable each party, to the extent practical, to have sufficient financial resources to adequately present his or her case, taking into consideration to the extent relevant the circumstances of the respective parties described in subdivision (a) of Section 4801.

(2) The extent to which the conduct of each party and attorney furthers or frustrates the policy of the law to promote settlement of litigation, and, where possible, to

<sup>7</sup> The proposed legislation expressly incorporates the considerations used when the court makes an award of spousal support. See Civil Code Section 4801.

reduce the cost of litigation by encouraging cooperation between the parties and attorneys.

(c) The court may order payment of the award from any type of property, whether community or separate, principal or income.

**Comment.** Subdivision (a) of Section 4370.5 states the general standard for an award of costs and attorney's fees in family law proceedings. Subdivision (b) lists two important factors the court should consider in making such an award. The factors listed in subdivision (b) are not exclusive, and the court may consider any other proper factors, including the likelihood of collection, tax considerations, and other factors announced in the cases. See, e.g., *In re Marriage of Lopez*, 38 Cal. App.3d 93, 113 Cal. Rptr. 58 (1974).

Subdivision (c) broadens the court's ability to make an appropriate award of costs and attorney's fees by expressly authorizing the court to order payment from any source that appears proper, including the community and separate estates of the parties. This overrules language in the cases holding, for example, that the court may not require a wife to impair the capital of her separate estate in order to defray her litigation expenses. See, e.g., *In re Marriage of Jafeman*, 29 Cal. App.3d 244, 105 Cal. Rptr. 483 (1972); *In re Marriage of Hopkins*, 74 Cal. App.3d 591, 141 Cal. Rptr. 597 (1977).



## APPENDIX X

### COMMUNICATION FROM CALIFORNIA LAW REVISION COMMISSION CONCERNING ASSEMBLY BILL 96

[Extract from Senate Journal for June 13, 1985 (1984-85 Regular Session)]

#### MOTION TO PRINT IN JOURNAL

Senator Lockyer moved that the following report be printed in the Journal.

Motion carried.

Assembly Bills 96 and 150 were amended after the bills had passed the Assembly. The following comments have been revised to reflect these amendments. They supersede the original comments contained in the commission's recommendation and the revised commission comment printed in the Assembly Journal for April 23, 1985.

#### ASSEMBLY BILL 96

*Civil Code § 683.2 (amended)*

*Comment.* Subdivision (b) of Section 683.2 is amended to make clear that nothing in the subdivision affects any rights of a bona fide purchaser or encumbrancer. For purposes of the subdivision, "knowledge" of a written agreement of the joint tenants includes both actual knowledge and constructive knowledge through recordation of the agreement.

Subdivision (c) is added to Section 683.2 to require that, in the case of a recorded real property joint tenancy, severance by written declaration or by other instrument must be recorded as required by subdivision (c) to be effective to terminate the right of survivorship of the other joint tenants. Subdivision (d) permits joint tenants to agree among themselves concerning the manner or effect of a severance, to join in the severance, or to make a deed from one to another, without being subject to the requirements of subdivision (c). Subdivision (e) is amended so that the new recording requirement will not make ineffective a nonrecorded severance where the severance was made before January 1, 1986.

Severance of a joint tenancy terminates the right of survivorship, leaving the parties in a tenancy in common relationship. A conveyance of a joint tenant's interest both severs the joint tenancy and substitutes the transferee as a new party in the tenancy in common relationship. If the instrument effecting the severance is not recorded as required by subdivision (c), that subdivision provides that the severance of the joint tenancy is not effective to terminate the survivorship right of the nonsevering joint tenant. Thus, if a conveyance by a joint tenant is not recorded as required, the transferee holds the interest conveyed as a tenant in common, subject to a right of survivorship in the nonsevering joint tenant. In

effect, the transferee takes a contingent or defeasible interest subject to divestment if the nonsevering joint tenant survives the severing joint tenant. The transferee may avoid this result under the statute simply by recording the conveyance as required by subdivision (c), thereby terminating the right of survivorship of the nonsevering joint tenant.

The practical consequences for the parties of failure to record the conveyance of a joint tenant as required by subdivision (c) depends upon the order of their death and may be summarized as follows. If the severing joint tenant is first to die, the nonsevering joint tenant takes the interest of the transferee because the nonsevering joint tenant's right of survivorship continues, the severing instrument not having been recorded as required. If the nonsevering joint tenant is first to die, the nonsevering joint tenant's right of survivorship thereupon fails, the nonsevering joint tenant's heirs or devisees take the share of the nonsevering joint tenant, and the transferee's ownership of the interest conveyed to the transferee becomes absolute. If the transferee is first to die, the survivorship right of the nonsevering joint tenant continues, and the heirs or devisees of the transferee take the property subject to the survivorship right in the nonsevering joint tenant—the survivorship issue is resolved only upon the death of the nonsevering or severing joint tenant. Of course, the survivorship right can be terminated at any time by recordation of the severing instrument as required by subdivision (c).

If the joint tenancy is held by husband and wife, the property may actually be community property notwithstanding the joint tenancy form of title. Civil Code § 4800.1; Sterling, *Joint Tenancy and Community Property in California*, 14 Pac.L.J. 927 (1983), reprinted 10 *Comm.Prop.J.* 157 (1983). If it is established that the apparent joint tenancy is actually community property, each spouse may dispose of his or her interest in the property by will, whether or not a severance of the apparent joint tenancy has been recorded as required by subdivision (c). See *Estate of Wilson*, 64 Cal. App.3d 786, 134 Cal. Rptr. 749 (1976); *Sandrini v. Ambrosetti*, 111 Cal. App.2d 439, 244 P.2d 742 (1952); *Chase v. Leiter*, 96 Cal. App.2d 439, 215 P.2d 756 (1950); *Estate of Jameson*, 93 Cal. App.2d 35, 208 P.2d 54 (1949).

## APPENDIX XI

### CALIFORNIA LAW REVISION COMMISSION COMMENTS TO AB 98 (1985) (1985 Cal. Stats. ch. 41)

Assembly Bill 98 was drafted and recommended by the California Law Revision Commission. The Comments set out below have been prepared by the Commission to explain the provisions of Assembly Bill 98 as enacted.

#### **Code of Civil Procedure § 488.450 (technical amendment). Attachment of securities**

Section 488.450 is amended to correct a technical defect. Chapter 927 of the Statutes of 1984 amended Section 488.450 in connection with a revision of the Commercial Code provisions relating to uncertificated securities. The second sentence, as added to Section 488.450, erroneously referred to a writ of *execution* and notice of *levy* whereas the correct reference under the Attachment Law is to a writ of *attachment* and notice of *attachment*.

#### **Code of Civil Procedure § 489.010 (added). Application of Bond and Undertaking Law**

Section 489.010 makes clear that the Bond and Undertaking Law applies in attachment. This makes no change in the law. See the Comment to the repeal of former Sections 489.010-489.050.

#### **Code of Civil Procedure § 681.030 (technical amendment). Rules for practice and procedure; forms**

Subdivision (b) of Section 681.030 is amended to provide a rule on the effect of the use of an official form in a language other than English. This amendment continues the substance of former Section 693.060(b) which related to the use of a Spanish language form in connection with the dwelling exemption.

#### **Code of Civil Procedure § 683.160 (technical amendment). Service of notice of renewal of judgment**

Subdivision (a) of Section 683.160 is amended to delete the reference to a repealed statutory form and substitute a reference to the form prepared by the Judicial Council.

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

Subdivision (f) of Section 697.590 is amended to state directly the two requirements that must be satisfied before a secured party may be deemed to have knowledge of the judgment lien on personal property. This amendment makes no substantive change in prior law.

**Code of Civil Procedure § 701.680 (technical amendment).  
Sales absolute; liability**

Subdivision (c) (1) of Section 701.680 is amended to make clear that where a sale is improper the judgment debtor (or successor in interest) is permitted to bring an action to set aside the sale within six months if the property was purchased by the judgment creditor, but not if it was purchased by a third person. The limitation of this right to the judgment debtor (and the judgment debtor's successor in interest) was not clearly stated in the former statute. The amendment of subdivision (c) (1) makes this limitation clear.

Subdivision (c) is also amended to make clear that a successor in interest of the judgment debtor may seek to overturn a sale, or seek to recover damages caused by the impropriety, pursuant to this section. This provision is consistent with Section 729.020 which determines who may redeem from a foreclosure sale.

**Code of Civil Procedure § 704.770 (technical amendment).  
Notice of hearing on homestead exemption**

Subdivision (b) (1) of Section 704.770 is amended to delete the reference to a repealed statutory form and substitute a reference to the form prepared by the Judicial Council.

**Code of Civil Procedure § 704.790 (technical amendment).  
Procedure after order of sale of dwelling upon default**

Subdivision (b) of Section 704.790 is amended to delete the reference to a repealed statutory form and substitute a reference to the form prepared by the Judicial Council.

**Code of Civil Procedure § 708.310 (technical amendment).  
Enforcement by charging order**

Section 708.310 is amended to delete the reference to former Corporations Code Section 15573 and substitute a reference to Corporations Code Section 15673 which superseded the former statute. See 1983 Cal. Stats. ch. 1223, §§ 9-10.

**Code of Civil Procedure § 720.160 (technical amendment).  
Effect, amount, and contents of creditor's undertaking**

Subdivision (b) of Section 720.160 is amended to refer to Section 996.010 in the Bond and Undertaking Law which supersedes material formerly included in Section 720.770.

**Code of Civil Procedure § 720.260 (technical amendment).  
Effect, amount, and contents of undertaking**

Subdivision (b) of Section 720.260 is amended to refer to Section 996.010 in the Bond and Undertaking Law which supersedes material formerly included in Section 720.770.

**Code of Civil Procedure § 720.660 (technical amendment).  
Release of property pursuant to undertaking**

Section 720.660 is amended to delete a reference to former subdivision (b) of Section 720.760 which is superseded by a provision of the Bond and Undertaking Law. See Section 995.930(b) (time for objecting to undertaking).

**Code of Civil Procedure § 720.710 (added). Application of  
Bond and Undertaking Law**

Section 720.710 makes clear that the Bond and Undertaking Law applies under the Enforcement of Judgments Law. This makes no change in the law. See the Comment to the repeal of former Sections 720.710-720.750.

**Code of Civil Procedure §§ 2067-2070 (repealed). Civil  
arrest of witnesses**

Sections 2067-2070 are repealed because they are obsolete, the remedy of civil arrest having been abolished. See Section 501; see also *Recommendation and Study Relating to Civil Arrest*, 11 Cal. L. Revision Comm'n Reports 1 (1973). Sections 2067-2070 were designed to prevent interference with a witness by an officer attempting to execute a writ for the civil arrest of the witness.



## APPENDIX XII

### COMMUNICATION FROM CALIFORNIA LAW REVISION COMMISSION CONCERNING ASSEMBLY BILL 150

[Extract from Senate Journal for June 13, 1985 (1984-85 Regular Session)]

#### MOTION TO PRINT IN JOURNAL

Senator Lockyer moved that the following report be printed in the Journal.

Motion carried.

Assembly Bills 96 and 150 were amended after the bills had passed the Assembly. The following comments have been revised to reflect these amendments. They supersede the original comments contained in the commission's recommendation and the revised commission comment printed in the Assembly Journal for April 23, 1985.

#### ASSEMBLY BILL 150

*Civil Code § 4800.4 (added)*

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

Subdivision (a) supplements Section 4800 by giving the court express jurisdiction over joint tenancy or tenancy in common separate property submitted by a party in a property division proceeding under the Family Law Act. Property subject to division

includes property acquired by the parties either before or during marriage. It also includes property acquired or situated either in this state or elsewhere. For a special rule governing treatment of real property situated in another state, see Section 4800.5 (community and quasi-community property). See also Section 4813 (jurisdiction where service is by publication). The jurisdiction of the court extends only to the interests of the spouses, whether equal or unequal, and the court may not affect interests of third parties in the property. The interests of third parties may be subject to partition pursuant to Title 10.5 (commencing with Section 872.010) of the Code of Civil Procedure.

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

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

## APPENDIX XIII

### COMMUNICATION CONCERNING ASSEMBLY BILL 196

#### REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

[Extract from Assembly Journal for July 15, 1985 (1984-85 Regular Session)]

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

California Law Revision Commission  
Palo Alto, July 9, 1985

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

Communication from California Law Revision Commission  
Concerning Assembly Bills 196 and 1030

Dear Mr. Driscoll: Assembly Bills 196 and 1030 were introduced to effectuate recommendations of the California Law Revision Commission. The bills were amended after introduction. The Comments contained in the Law Revision Commission recommendations to the various sections of the bills remain applicable except to the extent they are superseded by the new and revised Comments set out in the "Communication From California Law Revision Commission Concerning Assembly Bill 196" and the "Communication From the California Law Revision Commission Concerning Assembly Bill 1030," both on file with the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and the office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

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#### Communication From California Law Revision Commission Concerning Assembly Bill 196

Assembly Bill 196 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Transfer Without Probate of Certain Property Registered by the State*, 18 Cal. L. Revision Comm'n Reports 129 (1986), *Recommendation Relating to Distribution Under a Will or Trust (January 1985)*, and *Recommendation Relating to Effect of*

*Adoption or Out of Wedlock Birth on Rights at Death* (January 1985). The Comments in the Commission's recommendations to the sections contained in Assembly Bill 196 remain applicable except to the extent they are replaced or supplemented by the revised and new Comments set out below.

**Civil Code § 1134.5 (amended). Statement concerning structural alterations**

**Comment.** Paragraph (4) of subdivision (b) of Section 1134.5 is amended to make clear that the section does not apply to transfers by a fiduciary in the course of administration of a probate estate. This amendment is consistent with the purpose of that paragraph.

**Health & Safety Code § 13113.8 (amended). Statement concerning smoke detectors**

**Comment.** Paragraph (4) of subdivision (d) of Section 13113.8 is amended to make clear that the section does not apply to transfers by a fiduciary in the course of administration of a probate estate. This amendment is consistent with the purpose of that paragraph.

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

**Comment.** Section 18102 is amended to add the provision for a 40-day delay after the decedent's death, and to make clear that a beneficiary who takes a manufactured home, mobilehome, commercial coach, or truck camper under the decedent's will (whether or not the beneficiary is related to the decedent) may secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. This is consistent with the practice of the department. Since Section 18102 applies only where the decedent left no other property necessitating probate, the amendment to Section 18102 avoids the need to probate the decedent's estate merely to secure a transfer of registration of the title or interest of the decedent. The amendment makes Section 18102 consistent with Section 630 of the Probate Code which permits a beneficiary under the decedent's will to have record title to a right or interest transferred to the beneficiary upon furnishing the registrar or transfer agent with an affidavit (or declaration under penalty of perjury) showing the beneficiary's right to have the transfer made.

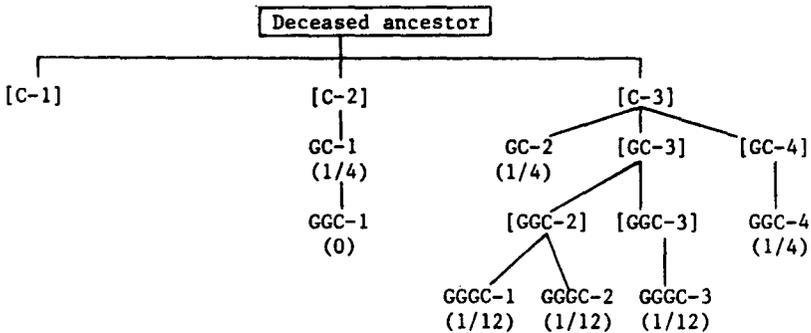
Section 18102 is also amended so that the requirement that creditors of the decedent have been paid is limited to unsecured creditors.

For other provisions comparable to Section 18102, see Veh. Code §§ 5910 (vehicle), 9916 (vessel).

**Probate Code § 245 (new). Distribution according to intestate distribution system**

**Comment.** Section 245 is new and gives one drafting a will or trust the option of selecting the distribution system provided in Section 240. Section 240 is the distribution system used in case of intestate succession. Under Section 240, if the first generation of issue of the deceased ancestor are themselves all deceased, the initial division of the property is not made at that generation, but is instead made at the first descending generation of issue having at least one living member. See generally Fellows, Simon & Rau, *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 Am. B. Found. Research J. 321, 380.

For example, if there have been four generations of descendants of the deceased ancestor but all of the deceased ancestor's children are dead, distribution under Section 240 is made as follows (brackets indicate those who are dead when distribution is made):



If GGGC-3 in the above example were deceased, leaving three surviving children, each of the surviving children would take a  $\frac{1}{36}$  share.

The language in subdivision (a) that “when a will or trust that expresses no contrary intention provides for issue or descendants to take without specifying the manner”, it is governed by Section 240 continues a provision formerly found in Section 240.

Subdivision (b) provides that certain language is not an expression of a contrary intention sufficient to negate application of Section 245. For example, if property in a testamentary trust is to be distributed when the trust terminates to "the descendants of the testator per capita" and at the time of distribution the testator's three children survive and one of the surviving children has five children, each of the surviving children takes a one-third share; the five grandchildren of the testator take nothing since their parent survives. This results from applying the distribution scheme of Section 240. Under paragraph (1) of subdivision (b) of Section 245, this scheme is not negated by use of the term "per capita," since the living members of the designated class ("descendants of the testator") are not all of the same generation. In this context, it is reasonable to assume that the use of the term "per capita" is not intended to provide a share for a class member whose parent or other ancestor is still living and takes a share, although the drafter of the instrument may provide for such a result by appropriately clear language. In order for the testator's grandchildren in the above example to take under Section 245, their parent (the testator's child) must be dead at the time of distribution. In such a case, the testator's two living children each take a one-third share and the five children of the deceased child share equally in the one-third share their deceased parent would have taken.

**Probate Code § 591.1 (repealed and added). Petition for independent administration**

**Comment.** Section 591.1 is added to replace former Section 591.1. The new section restates the substance of the old section, with the addition of the authority in paragraph (2) of subdivision (b) for the petitioner to request authority to administer the estate under this article without authority to sell or exchange real property or to grant an option to purchase real property under this article. A new provision is also added in subdivision (g) requiring an endorsement on the letters when such limited authority has been granted, the endorsement indicating that the independent administration authority is so limited. If the court grants such limited authority, sales or exchanges of real property or the granting of an option to purchase real property must be accomplished under the provisions of this code for supervised administration. See Sections 584.3 (granting options to purchase real property), 750-764, 780-814 (real property sales), 860 (exchange of property).

**Probate Code § 591.2 (amended). Matters for which court supervision required**

**Comment.** Section 591.2 is amended to add paragraph (4) to subdivision (a) and to delete the last portion of the second sentence of subdivision (b). Paragraph (4) is added in view of the new provision in Section 591.1 for the court to exclude authority for the executor or administrator to sell or exchange real property or grant options to purchase real property without court supervision. The deletion of the last portion of the second sentence of subdivision (b) (“no publication of notice of hearing is required”) has the effect of broadening that sentence so that notice of sale need not be published when the sale is to be accomplished without court supervision, consistent with Section 591.9(a).

**Probate Code § 591.3 (amended). When advice of proposed action is required; waiver**

**Comment.** Section 591.3 is amended to add subdivisions (c) and (d) to permit a person otherwise entitled to receive advice of proposed action either to consent to the proposed action, to waive the advice, or to waive particular aspects of the advice. This codifies existing practice. See McCarroll, 1 California Decedent Estate Administration Supplement § 7.130, at 202 (Cal. Cont. Ed. Bar 1984).

**Probate Code § 591.4 (amended). Advice of proposed action**

**Comment.** Section 591.4 is amended as follows:

(1) A requirement is added that the advice of proposed action be accompanied by a copy of the form prepared by the Judicial Council for objecting to a proposed action (see Section 591.8(b)).

(2) A requirement is added that the advice of proposed action be in substantially the form prescribed in Section 591.8.

(3) A requirement is added that, when the proposed action involves the sale or exchange of real property or the granting of an option to purchase real property, the advice of proposed action include, if applicable, the amount of or method of calculating any commission or compensation paid or to be paid to an agent or broker in connection with the transaction.

**Probate Code § 591.5 (amended). Objection to proposed action**

**Comment.** Section 591.5 is amended to do the following:

(1) The second sentence is added to subdivision (b) to make clear that an executor or administrator who takes the proposed action without court supervision after notice of a restraining order or written objection has violated his or her fiduciary duty and may be removed from office. He or she may also be surcharged by the court.

(2) Subdivision (d) is revised to make clear that one who consents to the proposed action or waives his or her right to receive advice of proposed action may not later seek a court review of the action.

(3) Subdivision (e) is added to provide that any person who objects to the proposed action is entitled to notice of hearing of a petition for court authorization or confirmation of the proposed action.

**Probate Code § 591.8 (added). Form for advice of proposed action**

**Comment.** Section 591.8 is added to prescribe a statutory form for the advice of proposed action, to authorize the Judicial Council to prescribe an alternate form, and to require the Judicial Council to prepare a form for objecting to the proposed action. See also Section 591.4 (requirement that advice of proposed action, accompanied by copy of Judicial Council form for objecting to proposed action, be given).

**Probate Code § 591.9 (added). Sales of property**

**Comment.** Subdivision (a) of Section 591.9 makes clear that a sale of property under this article is not subject to the provisions that apply to sales subject to court confirmation. Subject to the applicable fiduciary duties of the executor or administrator, the property may be sold either at public auction or private sale, and with or without notice, as the executor or administrator may determine. This provision is comparable to the provision governing the authority of the executor under Section 757 when property is directed by the will to be sold or authority is given in the will to sell property. Subdivision (a) makes clear that notice of sale need not be published, and that the 90-percent-of-appraised-value requirement for sales of real property that must be confirmed by the court does not apply to

a sale under this article. The property may be sold at a price that the executor finds acceptable and on such terms and conditions as the executor determines if no person given advice of the proposed action objects. Subdivision (a) also makes clear that the executor or administrator need not obtain court approval of the commission for the services to the estate of the agent, if any, used for the sale. This is consistent with the provision of Section 591.2 that the sale may be made without obtaining judicial authorization, approval, confirmation, or instructions. The last sentence of subdivision (a) makes the subdivision applicable to any sale made under this article on or after January 1, 1985. This will eliminate any problem that might otherwise exist with respect to such a sale because of the uncertainty as to the possible applicability of various provisions relating to sales of real property.

Subdivision (b) makes clear that, in cases where a bond is otherwise required (where, for example, the bond is not waived in the will or by the heirs or devisees), the estimated net proceeds of the real property are included in fixing the amount of the bond if the executor or administrator is authorized to sell the real property under this article. If the executor or administrator is not authorized to sell the real property under this article (see subdivision (b) (2) of Section 591.1), subdivision (b) of Section 591.9 does not apply and the amount of the bond is determined in the same manner as if independent administration authority had not been granted.

### **Probate Code § 6124 (added). Lost will presumed revoked**

**Comment.** Section 6124 codifies existing case law. See *Estate of Obernolte*, 91 Cal. App.3d 124, 153 Cal. Rptr. 798 (1979); 7 B. Witkin, *Summary of California Law Wills and Probate* § 381, at 5844 (8th ed. 1974). For a discussion of the showing required to overcome the case law presumption codified in Section 6124, see *Estate of Moramarco*, 86 Cal. App.2d 326, 194 P.2d 740 (1948); 7 B. Witkin, *supra* § 382, at 5845. The repeal of former Section 350 did not affect the case law presumption codified in Section 6124.

The presumption codified in Section 6124 does not apply if a duplicate original of the will is found after the testator's death. For example, if a duplicate original is in possession of the testator's attorney, it is less likely that the testator will preserve his or her duplicate original with the same care as if it were the only such instrument.

**Probate Code § 6147 (amended). Anti-lapse**

**Comment.** Section 6147 is amended to do the following:

(1) The reference to Section 240 is substituted for the former reference to taking “by representation.” This change is nonsubstantive.

(2) The second and third sentences of subdivision (c) are added to make clear that the anti-lapse provisions of Section 6147 do not apply when the will requires that the devisee survive for a specified period of time after the death of the testator or until a future time related to probate of the will or administration of the estate. Wills often require that a devisee survive for periods ranging from 30 to 180 days after the death of the testator. See Johnston, *Outright Bequests and Devises*, in *California Will Drafting* § 11.48, at 378 (Cal. Cont. Ed. Bar 1965). The amendment to subdivision (c) ensures that such provisions will negate application of the anti-lapse statute as the drafter likely intended. See *id.* § 11.12, at 360.

**Probate Code § 6152 (amended). Halfbloods, adopted persons, and persons born out of wedlock**

**Comment.** Section 6152 is amended to add “spouse” to the first sentence of subdivision (b), consistent with the existing reference to the parent’s “surviving spouse.” Thus, a child will be included in class gift terminology in the testator’s will if the child lived while a minor as a regular member of the household of the parent’s spouse or surviving spouse. As a result, a child born of a marital relationship will almost always be included in the class, consistent with the testator’s likely intent.

**Probate Code § 6205 (amended). Descendants**

**Comment.** Section 6205 is amended to substitute the reference to Section 6152 (rules of construction for wills) for the former reference to the definitions of child and parent in Sections 26 and 54. Formerly Section 6205 applied the intestate succession rules for determining the parent-child relationship (see Sections 6408, 6408.5) because Sections 26 and 54 incorporate those rules. As amended, Section 6205 applies the rules of construction of wills for determining the parent-child relationship. This makes the construction of a California statutory will consistent with the construction of wills generally.

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

**Comment.** Subdivision (d) of Section 6402 as originally enacted and as it now exists is consistent with former Section 226 pursuant to which the estate went to the next of kin, except that under subdivision (d) grandchildren or more remote lineal descendants of the grandparents of the deceased take ahead of great-grandparents. By way of contrast, under former Section 226 great-grandparents (related in the third degree) took ahead of grandchildren of the deceased's grandparents (fourth degree).

Subdivision (d) does not adopt the scheme of paragraph (4) of Section 2-103 of the Uniform Probate Code. (Under that provision of the Uniform Probate Code, half of the estate goes to paternal grandparents or to the issue of the paternal grandparents if both are deceased, and the other half goes to maternal grandparents or to the issue of the maternal grandparents if both are deceased.)

The 1985 amendment to Section 6402 substitutes the references to Section 240 for the former references to taking "by representation." This change is nonsubstantive.

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

**Comment.** New Section 5910 continues former Section 5910 with a revision that permits a beneficiary who takes a vehicle under the decedent's will (whether or not the beneficiary is related to the decedent) to secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. Since Section 5910 applies only where the decedent left no other property necessitating probate, this revision avoids the need to probate the decedent's estate merely to secure a transfer of registration of the title or interest of the decedent in the vehicle. This revision also makes new Section 5910 consistent with Section 630 of the Probate Code which permits a beneficiary under the decedent's will to have record title to a right or interest transferred to the beneficiary upon furnishing the registrar or transfer agent with an affidavit (or declaration under penalty of perjury) showing the beneficiary's right to have the transfer made.

Section 5910 is also amended so that the requirement that creditors of the decedent have been paid is limited to unsecured creditors.

For other provisions comparable to Section 5910, see Health & Safety Code § 18102 (manufactured home, mobilehome, commercial coach, or truck camper), Veh. Code § 9916 (vessel).

Subdivision (c) of Section 5910, which permits a combined form, is consistent with the prior practice pursuant to which a combined form was used.

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

**Comment.** New Section 9916 continues former Section 9916 with revisions that (1) add the provision for a 40-day delay after the decedent's death, (2) permit a beneficiary who takes a vessel under the decedent's will (whether or not the beneficiary is related to the decedent) to secure a transfer of ownership of the title or interest of the decedent without the need to probate the decedent's estate, (3) eliminate the provision that made the section not applicable if the total value of the decedent's property in this state exceeds the amount specified in Section 630 of the Probate Code, and (4) limit to unsecured creditors the requirement that creditors of the decedent have been paid.

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

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

## APPENDIX XIV

### COMMUNICATION CONCERNING ASSEMBLY BILL 1030

#### REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

[Extract from Assembly Journal for July 15, 1985 (1984-85 Regular Session)]

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

California Law Revision Commission  
Palo Alto, July 9, 1985

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

Communication from California Law Revision Commission  
Concerning Assembly Bills 196 and 1030

Dear Mr. Driscoll: Assembly Bills 196 and 1030 were introduced to effectuate recommendations of the California Law Revision Commission. The bills were amended after introduction. The Comments contained in the Law Revision Commission recommendations to the various sections of the bills remain applicable except to the extent they are superseded by the new and revised Comments set out in the "Communication From California Law Revision Commission Concerning Assembly Bill 196" and the "Communication From the California Law Revision Commission Concerning Assembly Bill 1030," both on file with the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and the office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

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#### Communication From California Law Revision Commission Concerning Assembly Bill 1030

Assembly Bill 1030 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Protection of Mediation Communications* (January 1985). The Comment set out below supersedes the Comment set out in the Commission's recommendation.

**Evidence Code § 1152.5 (added). Mediation for the purpose of resolving dispute**

**Comment.** Subject to the conditions and exceptions discussed below, Section 1152.5 gives effect to a written agreement that oral and written information disclosed in a mediation will not later be disclosed in a civil action (defined in Section 120 to include civil proceedings). Nothing in Section 1152.5 prohibits consideration of information disclosed in a mediation if the evidence is received without objection. Thus, information made inadmissible by the section should be considered to the extent it is relevant when it is presented to the trier of fact without objection. This is consistent with the protection given to an offer to compromise under Section 1152. See the Comment to Section 1152 as originally enacted. In addition, subdivision (b) permits admission of evidence when all the persons participating in the mediation consent to the disclosure.

Section 1152.5 provides protection to information disclosed during mediation to encourage this alternative to a judicial determination of the action. The same policy that protects offers to compromise (Section 1152) justifies protection to information disclosed in a mediation.

Because of the variety of means and methods of mediation, Section 1152.5 does not attempt to define "mediation." Instead, the applicability of the section is limited to a case where the persons who will participate in the mediation (including the mediator) execute a written agreement before the mediation begins stating that Section 1152.5 of the Evidence Code applies to the mediation. The agreement must set out the full text of subdivisions (a) and (b) of Section 1152.5.

Subdivision (d) makes clear that in a case where Section 4351.5 or 4607 of the Civil Code or Section 1747 of the Code of Civil Procedure is applicable, the admissibility of communications is determined under that section and not under Section 1152.5.

Subdivision (e) makes clear that Section 1152.5 has no effect on the protection afforded under Section 1152 (offer to compromise, and conduct and statements made in negotiation thereof, inadmissible) or under any other statutory provision. Accordingly, for example, even though a communication is not made inadmissible by Section 1152.5, the communication is protected if it is protected under Section 1152.

## APPENDIX XV

### COMMUNICATION FROM CALIFORNIA LAW REVISION COMMISSION CONCERNING SENATE BILL 1270

[Extract from Senate Journal for July 15, 1985 (1984-85 Regular Session)]

#### MOTION TO PRINT IN JOURNAL

Senator Lockyer moved that the following report be printed in the Journal.

Motion carried.

California Law Revision Commission  
June 20, 1985

*Darryl R. White, Secretary of Senate*

Dear Mr. White: SB 1270 was introduced to effectuate a recommendation of the California Law Revision Commission. The bill was amended after introduction. The comments contained in the Law Revision Commission recommendation to the various sections of the bill remain applicable except to the extent they are superseded by the new and revised Comments set out in the "Communication From California Law Revision Commission Concerning SB 1270" on file with the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and the office of the Legislative Counsel.

Sincerely,

John H. DeMouly, Executive Secretary

#### Communication Concerning Senate Bill 1270

SB 1270 was introduced to effectuate the California Law Revision Commission's Recommendation Relating to Durable Powers of Attorney (January 1985). The comments contained in the Law Revision Commission recommendation to the various sections of the bill remain applicable except to the extent they are superseded by the revised and new comments set out below.

*Civil Code § 2400 (amended). Durable power of attorney*

*Comment.* Section 2400 is amended to delete the last sentence of subdivision (a) and all of subdivisions (b) and (c). The last sentence of subdivision (a) is superseded by Section 2400.5. See also Corp. Code § 702(e). Subdivisions (b) and (c) are superseded by Section 2510. See also Section 2512 (protection of third person relying in good faith upon power of attorney).

*Civil Code § 2400.5 (added). Proxy given by attorney in fact*

*Comment.* Section 2400.5 supersedes language formerly found in subdivision (a) of Section 2400. This revision is clarifying and more accurately states the original intent of the superseded language.

For the rules applicable to proxy voting in business corporations, see Corp. Code § 705. For other statutes dealing with proxies, see Corp. Code §§ 178, 702, 5069, 5613, 7613, 9417, 12405, 13242; Fin. Code §§ 5701, 5702, 5710, 6005.

*Civil Code § 2432 (technical amendment). Requirements for durable power of attorney for health care*

*Comment.* Subdivision (c) of Section 2432 is amended to conform the certificate to the language used for the attorney's certificate in Sections 2421, 2433(c)(2), 2451, and 2501. The remaining revisions of Section 2432 are technical or clarifying. As to the use of forms printed before January 1, 1986, see Section 2444.

*Civil Code § 2433 (amended). Requirements for printed form, certificate of attorney in lieu of warning statements*

*Comment.* The introductory clause of subdivision (a) of Section 2433 is extended to apply to any printed form that is "otherwise distributed" in this state and the requirement that the statement be in 10-point boldface type is made more flexible by providing that the statement be "in not less than 10-point boldface type or a reasonable equivalent thereof." These revisions conform Section 2433 to Section 2451 (a) (Statutory Short Form Power of Attorney), Section 2501 (a) (Statutory Form Durable Power of Attorney for Health Care), and Section 2510 (b) (introductory clause).

A new warning statement is substituted for the one formerly provided by subdivision (a). The new warning statement is drawn from the warning statement prescribed in Section 2500 (Statutory Form Durable Power of Attorney for Health Care). See the Comment to that section.

As to the use of forms printed before January 1, 1986, see Section 2444.

The introductory clause of subdivision (c) is revised so that the subdivision applies to a durable power of attorney prepared for execution by a person resident in this state, without regard to where the durable power of attorney is prepared. Formerly, subdivision (c) applied to a durable power of attorney "prepared in this state," without regard to whether the durable power of attorney was prepared for execution by a person resident in this state or by a person not resident in this state.

*Civil Code § 2444 (added). Use of form printed under prior law*

*Comment.* Section 2444 permits a printed form of a durable power of attorney for health care to be used after the amendments to Sections 2432 and 2433 go into effect if the form complies with prior law. The amendments to Sections 2432 and 2433 make revisions to the contents of a durable power of attorney for health care. Section 2444 avoids the need to discard the existing supply of printed forms when the amendments go into effect. But a form printed after the amendments go into effect may be sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel only if the form complies with the requirements of Sections 2432 and 2433 as amended.

*Civil Code § 2510 (added). Warning statement in printed form*

*Comment.* Section 2510 continues the substance of former subdivisions (b) and (c) of Section 2400 with the following revisions:

(1) Subdivision (a) of Section 2510 is a new provision that recognizes that other provisions prescribe the content of the warning statement for particular types of durable powers of attorney. See Sections 2433 and 2500 (durable power of attorney for health care); Sections 2450 and 2451 (Statutory Short Form Power of Attorney). See also Section 2433(a) (introductory clause) (printed form of a durable power of attorney for health care to provide only authority to make health care decisions).

(2) The warning statement requirement is extended to apply to a printed form that is "otherwise distributed" in this state and the requirement that the statement be in 10-point boldface type is made more flexible by providing that the statement be "in not less than 10-point boldface type or a reasonable equivalent thereof." These changes make Section 2510 consistent with portions of Section 2433(a) (introductory clause), Section 2451(a) (Statutory Short Form Power of Attorney), and Sections 2501(a) and 2503(c) (Statutory Form Durable Power of Attorney For Health Care).

(3) The last paragraph of the warning statement is added. A comparable provision is included in other required warning statements. See Sections 2433, 2450, and 2500.

Section 2510.5 permits a printed form to be used after January 1, 1986, if the form complies with prior law. But a form printed after January 1, 1986, may be sold or otherwise distributed in this state only if it complies with the requirements of Section 2510. See Section 2510.5

*Civil Code § 2510.5 (added). Use of form printed under prior law*

*Comment.* Section 2510.5 permits continued use of a printed form that complies with the form prescribed by subdivision (b) of Section 2400 as originally enacted. Section 2400 has been amended to eliminate former subdivision (b). Section 2510.5 permits use of the form prescribed by subdivision (b) of Section 2400 even after the amendment to that section takes effect. Accordingly, after Section 2510 takes effect, either the form set forth in Section 2400 as originally enacted or the form set forth in Section 2510 may be used. This avoids the need to discard existing printed forms on the date Section 2510 takes effect. However, a form printed on or after January 1, 1986, may be sold or distributed in this state for use by a person who does not have the advice of legal counsel only if the form satisfies the requirements of Section 2510.

*Civil Code § 2512 (added). Protection of person relying in good faith on power of attorney*

*Comment.* Section 2512 is a new provision designed to assure that a power of attorney, whether or not durable, will be accepted and relied upon by third persons. The section gives a third person immunity from liability only if all of the following requirements are satisfied:

(1) The third person must act in good faith reliance upon the power of attorney.

(2) The person presenting the power of attorney must actually be the attorney in fact named in the power of attorney. If the person purporting to be the attorney in fact is an imposter, the immunity does not apply.

(3) The power of attorney must appear to be valid on its face and must include a notary public's certificate of acknowledgment. The third person can rely in good faith upon the notary public's certificate of acknowledgment that the person who executed the power of attorney is the principal.

Subdivision (b) makes clear that this section merely provides an immunity from liability if the requirements of the section are satisfied. This section has no relevance in determining whether or not a third person who acts in reliance upon a power of attorney is liable under the circumstances where, for example, the power of attorney does not include a notary public's certificate of acknowledgment. The immunity of a health care provider who relies upon a health care decision of the attorney in fact is determined under Section 2438, not under this section. Other immunity provisions are not limited by this section. See, e.g., Sections 2403 (lack of knowledge of death of principal), 2404 (lack of knowledge of termination of power), 2437 (lack of knowledge that durable power of attorney for health care has been revoked), 2510 (reliance in good faith upon durable power of attorney not containing "warning" statement required by Section 2510). See also Prob. Code § 3720 ("Any person who acts in reliance upon the power of attorney [of an absentee as defined in Probate Code Section 1403] when accompanied by a copy of a certificate of missing status is not liable for relying or acting upon the power of attorney.").

**APPENDIX XVI  
STATE OF CALIFORNIA**

**CALIFORNIA LAW  
REVISION COMMISSION**

**RECOMMENDATION**

*relating to*

**Civil Code Sections 4800.1 and 4800.2**

**December 1985**

**CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739**

#### 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 Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986).

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**CALIFORNIA LAW REVISION COMMISSION**

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EDWIN K. MARZEC

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*Vice Chairperson*

SENATOR BILL LOCKYER

ASSEMBLYMAN ALISTER McALISTER

ROGER ARNEBERGH

BION M. GREGORY

ANN E. STODDEN

December 5, 1985

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

The Law Revision Commission herewith submits its recommendation to deal with problems caused by the opinion of the California Supreme Court in *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985) (1983 statute governing division of joint tenancy property at dissolution of marriage cannot constitutionally be applied to pending proceedings).

The recommendation proposes enactment of two bills:

(1) An urgency measure designed to give guidance to courts and lawyers by making clear that the 1983 statute is to be applied only to proceedings commenced on or after its operative date (January 1, 1984).

(2) A measure reserving to the Legislature the power to determine the extent to which legislation governing division of property at dissolution of marriage should apply to pending proceedings.

Respectfully submitted,

EDWIN K. MARZEC  
*Chairperson*



# RECOMMENDATION

*relating to*

## CIVIL CODE SECTIONS 4800.1 AND 4800.2

Civil Code Sections 4800.1 and 4800.2 were enacted in 1983 upon joint recommendation of the Law Revision Commission and the State Bar Conference of Delegates.<sup>1</sup> The purpose of the enactment was to correct major problems that had developed in the law governing division of community property held by the spouses in joint tenancy form.<sup>2</sup>

The Legislature in 1965, after careful study,<sup>3</sup> had acted to strengthen the community property system and ensure an equitable property division at dissolution of marriage by creating a presumption for purposes of dissolution that a single family residence taken by the spouses as joint tenants is in fact community property.<sup>4</sup> The salutary purpose of this legislation was frustrated by the rule that community property in joint tenancy form could be transmuted to separate property by an oral agreement. This rule generated substantial litigation over alleged informal agreements and undermined the strong public policy favoring community ownership of marital property. More serious problems were created by the Supreme Court's construction of the community property presumption in the 1980 case of *In re Marriage of Lucas*.<sup>5</sup> *Lucas* held that because of the presumption, a spouse who contributes separate funds to the acquisition of a joint tenancy single family residence is deemed to have made a gift to the community for purposes of division at dissolution, absent an express agreement to the contrary. The *Lucas* doctrine was widely perceived as unfair by the public as well as by family law professionals.

<sup>1</sup> 1983 Cal. Stats. ch. 342, §§ 1, 2.

<sup>2</sup> See California Law Revision Commission Report Concerning Assembly Bill 26, 83 Senate Journal 4865 (July 14, 1983).

<sup>3</sup> Final Rep. of Assem. Interim Com. on Judiciary Relating to Domestic Relations (1965) at 121-22, 2 Appen. to Assem. J. (1965 Reg. Sess.).

<sup>4</sup> 1965 Cal. Stats. ch. 1710, § 1.

<sup>5</sup> 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980).

In response to these problems, the Legislature in 1983 enacted Civil Code Sections 4800.1 and 4800.2 to provide that (1) all property held in joint tenancy form by the spouses is presumed community absent a written agreement otherwise and (2) all community property is divided subject to a right of reimbursement for separate property contributions absent an express agreement otherwise. The corrective legislation strengthens the community property presumption and at the same time tempers the presumption with a measure of fairness by requiring reimbursement of the separate property contribution to the community when the marriage is dissolved.<sup>6</sup> Because of the importance of this area of the law and the number of persons substantially and adversely affected by the problems in the law, the corrective legislation was made applicable in all cases not yet final on January 1, 1984, the operative date of the legislation.<sup>7</sup>

The Supreme Court has now held in the 1985 case of *In re Marriage of Buol*<sup>8</sup> that the corrective legislation cannot constitutionally be applied retroactively to preclude proof of an oral separate property agreement. The precise scope of the decision is not clear; the opinion can be interpreted to allow proof of an oral agreement in cases tried before the operative date of the new legislation, in cases commenced before the operative date of the new legislation, or in cases in which the alleged agreement was made before the operative date of the new legislation. The opinion is even susceptible of the interpretation that no aspect of the new legislation may be applied to any case where property was acquired before the operative date.<sup>9</sup>

The *Buol* decision, besides negating important and strongly-expressed public policy, has caused major disruption and confusion among the substantial numbers of judges, lawyers, and litigants affected by this fundamental

<sup>6</sup> These provisions apply only to the division of property upon dissolution of marriage. The provisions do not, for example, determine the nature of property as community or separate for application of the statutory rules governing the right to manage and control the property, the rights of creditors, or the rights of a surviving spouse upon death of the other spouse.

<sup>7</sup> 1983 Cal. Stats. ch. 342, § 4.

<sup>8</sup> 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985).

<sup>9</sup> See, e.g., *In re Marriage of Kahan*, 174 Cal. App. 3d 63, 219 Cal. Rptr. 700 (1985); *In re Marriage of Lachenmyer*, 85 Daily Journal D.A.R. 3834 (filed Nov. 18, 1985).

area of family law. Without further legislative action to clean up the problems created, extensive litigation, at substantial cost to the parties and to the judicial system, will be required to straighten out matters on a piecemeal basis for years to come. Legislation should be enacted that will clarify what law applies to what case, that will avoid adding further transitional complexities to the law, that will be fair to the parties, and that will satisfy constitutional standards as announced in *Buol*.

To this end, the Law Revision Commission recommends enactment of an urgency measure (to take effect immediately) to provide that the new legislation applies to cases commenced on or after January 1, 1984, the operative date of the new legislation. The urgency measure should also reaffirm the Legislature's intention, backed by an express statement of the strong public policy involved, that the new legislation should apply to such proceedings regardless whether property was acquired or an agreement affecting the property was made before that date. This approach is consistent with a reasonable reading of the opinion in *Buol*. It is also consistent with the reasonable expectations of the parties who, until *Buol*, were proceeding under the new legislation. And it treats fairly parties who may have made an oral agreement before the operative date of the new legislation.<sup>10</sup>

One other aspect of *Buol* requires attention. The decision casts doubt on the general rule that the Legislature may

<sup>10</sup> Section 4800.1 does not affect the validity of an oral agreement for any purpose other than division of property at dissolution of marriage, and for purposes of division it, together with Section 4800.2, recognizes and reimburses separate property contributions. This treatment of an oral agreement for purposes of division is fair because an oral agreement, whatever other purpose it might have (management and control, disposition at death, etc.), is not ordinarily intended to affect rights at dissolution or to make a present gift for that purpose. Casual statements made during marriage as a rule are not made with full knowledge of their consequences or with the intention that they change the rights of the parties if the marriage is dissolved.

The practice of permitting oral statements to defeat the community property presumption for purposes of dissolution of marriage frustrates the strong public policy favoring community ownership of property acquired during marriage. The requirement of a writing is important to help ensure that a party waives his or her community property rights only upon mature consideration. It is appropriate to require that the parties reconfirm an oral agreement in writing before litigation is commenced to dissolve the marriage and divide the property. Where written reconfirmation is not possible because a party lacks legal capacity, the danger of fraud is sufficiently great and the public policy favoring a community of interest in property is sufficiently strong that a statute of frauds should be applied to preclude recognition of an alleged oral agreement.

enact legislation to improve family law and, in the interest of the general welfare of the public, apply the legislation to govern the manner of division at dissolution of property acquired before enactment of the legislation.<sup>11</sup> In essence, the *Buol* decision seeks to substitute the Court's judgment for that of the Legislature in the determination whether the general welfare requires immediate application of corrective family law legislation.

To help avoid this sort of problem from arising in the future, the Commission recommends a second measure that would add to the Family Law Act a declaration of the fundamental state interest in achieving an equitable marriage dissolution. The declaration would state the reserved power of the Legislature to apply legislation for this purpose to pending marital dissolution proceedings, if it appears appropriate, and would make clear that parties to a marriage do not acquire vested rights in property for the purpose of division at dissolution of marriage.<sup>12</sup>

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The Commission's recommendation would be effectuated by enactment of the following measures.

### **Application of Civil Code §§ 4800.1 and 4800.2**

An act to amend Section 4 of Chapter 342 of the Statutes of 1983, relating to family law, and declaring the urgency thereof, to take effect immediately.

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

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<sup>11</sup> See, e.g., *In re Marriage of Bouquet*, 16 Cal. 3d 583, 546 P.2d 1371, 128 Cal. Rptr. 427 (1976); *Addison v. Addison*, 62 Cal. 2d 558, 399 P.2d 897, 43 Cal. Rptr. 97 (1965); *Reppy*, *Retroactivity of the 1975 California Community Property Reforms*, 48 So. Cal. L. Rev. 977 (1975).

<sup>12</sup> Express statement of the reserved power of the Legislature with respect to division of marital property is not intended to limit the ability of the Legislature to make retroactive changes in the law in any other family law matter, including but not limited to changes in the law affecting child or spousal support, the management and control rights of the spouses, and rights upon death.

**1983 Cal. Stat. ch. 342, § 4 (amended). Application of Civil Code Sections 4800.1 and 4800.2**

SECTION 1. Section 4 of Chapter 342 of the Statutes of 1983 is amended to read:

SEC. 4. This act applies to ~~the following proceedings:~~

~~(a) Proceedings commenced on or after January 1, 1984, regardless of the date of acquisition of the property or the date of any agreement affecting the property.~~

~~(b) Proceedings commenced before January 1, 1984, to the extent proceedings as to the division of the property are not yet final on January 1, 1984.~~

Comment. Section 4 of Chapter 342 of the Statutes of 1983 is amended to recognize legislatively the holding of *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985), that Section 4800.1 of the Civil Code cannot constitutionally be applied to preclude proof of an oral agreement as to the separate character of marital property in a proceeding commenced before January 1, 1984.

The amendment goes beyond the situation that was the subject of the *Buol* case to provide that no aspect of either Civil Code Section 4800.1 or Civil Code Section 4800.2 may be applied to a proceeding commenced before January 1, 1984. In order to achieve an equitable dissolution of the marital relationship, the Legislature finds it is important that the rules embodied in Sections 4800.1 and 4800.2 be applied to all proceedings commenced on or after January 1, 1984, regardless of the date of acquisition of property or the date of any agreement as to the character of the property or the interests of the spouses in the property, with the effect that (1) all property held in joint tenancy form by the spouses is presumed to be community absent a written agreement otherwise and (2) all community property is divided subject to a right of reimbursement for separate property contributions absent an express agreement otherwise.

These rules are necessary to remedy the rank injustice in former law that resulted from the following two factors:

(1) The Supreme Court's interpretation of the community property presumption of former law in the case of *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980), that found a gift of separate funds used to acquire a community asset absent an express agreement otherwise. The injustice to

persons who contributed their separate funds for use by the community with the end result of losing the funds entirely to the community at dissolution of marriage is so great and so widespread, and such a substantial cause of public concern, that immediate corrective action is necessary.

(2) The rule that a spouse could disprove the community property presumption for a joint tenancy single-family residence by evidence of an oral agreement that the residence is separate property. This rule has promoted actions characterized by conflicting and inconsistent testimony, with each side offering different explanations for the effect of a joint tenancy deed. Often the intent of the parties who long ago filed a joint tenancy deed may be confused by faded memories or altered to self-serving testimony. The requirement of a writing provides a reliable test by which to determine the understanding of the parties; it seeks to prevent the abuses and unpredictability that have resulted from the oral agreement standard. See discussion in *In re Marriage of Martinez*, 156 Cal. App. 3d 20, 30, 202 Cal. Rptr. 646 (1984) (disapproved in *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985)). Immediate application of the writing requirement is necessary to prevent these serious problems from continuing in every case in which property was acquired or an alleged agreement was made before the operative date.

Section 4800.1 does not affect the validity of an oral agreement for any purpose other than division of property at dissolution of marriage, and for purposes of division it, together with Section 4800.2, recognizes and reimburses separate property contributions. This treatment of an oral agreement for purposes of division is fair because an oral agreement, whatever other purpose it might have (management and control, disposition at death, etc.), is not ordinarily intended to affect rights at dissolution or to make a present gift for that purpose. Casual statements made during marriage as a rule are not made with full knowledge of their consequences or with the intention that they change the rights of the parties if the marriage is dissolved.

The practice of permitting oral statements to defeat the community property presumption for purposes of dissolution of marriage frustrates the strong public policy favoring community ownership of property acquired during marriage. The requirement of a writing is important to help ensure that a party waives his or her community property rights only upon mature consideration. It is appropriate to require that the parties reconfirm an oral agreement in writing before litigation is

commenced to dissolve the marriage and divide the property. Where written reconfirmation is not possible because a party lacks legal capacity, the danger of fraud is sufficiently great and the public policy favoring a community of interest in property is sufficiently strong that a statute of frauds should be applied to preclude recognition of an alleged oral agreement.

Apart from correction of the rank injustice of former law and furtherance of social policy that immediate application of Sections 4800.1 and 4800.2 seeks to achieve, failure to apply the corrective rules to all litigation commenced after their effective date will result in unequal treatment of parties and will preserve two different bodies of law for many years to come, whose application will depend upon such factors as the time of acquisition of property and the time of an alleged oral agreement. In the interest of equality and for the purpose of having available to the public a manageable and understandable body of family law, the Legislature finds that application of the legislation to all cases commenced on or after January 1, 1984, serves important public policies.

### **Urgency Clause (added)**

**SEC. 2.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

Civil Code Sections 4800.1 and 4800.2 were enacted by Chapter 342 of the Statutes of 1983 and applied immediately to all family law proceedings not yet final on its effective date (January 1, 1984) in order to cure a serious problem in the law governing division of assets at dissolution of marriage. See Report of Senate Committee on Judiciary on Assembly Bill 26, 83 Senate Journal 4865 (July 14, 1983). The Supreme Court in *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985), has held that this legislation cannot be applied to pending litigation in some circumstances, but the precise scope of the opinion is unclear.

The *Buol* decision has caused confusion among family law judges and lawyers as to what law governs in a heavily litigated area in which important property rights are affected. The decision also frustrates the intent of the

Legislature to correct a serious problem in the law that is causing inequitable treatment of many parties.

This act is intended to resolve the confusion caused by *Buol* and to reaffirm the need for immediately applicable legislation, to the extent constitutionally permissible, in order to assure all litigants of equitable treatment at dissolution of marriage. Any further delay will accentuate unreasonably the current confusion and problems in this area of the law.

### **Reserved Power of Legislature**

An Act to add Section 4800.10 to the Civil Code, relating to family law.

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

**Civil Code § 4800.10 (added). Reserved power of Legislature to make changes affecting division of property applicable to pending proceedings**

SECTION 1. Section 4800.10 is added to the Civil Code, to read:

4800.10. The Legislature finds and declares that a fair and just division of marital property is of fundamental importance and that the fairness and justice of the manner of division may change with changes in social conditions, as indicated by experience in the application of the law. For this reason the Legislature reserves the power to revise the laws governing division of marital property, whether community, quasi-community, separate, or mixed, at any time and to apply the revised laws immediately if appropriate, in the interest of fairness, justice, and equality of treatment for all litigants, regardless of the date of marriage, the date of acquisition of the property, the date of any agreement affecting the property, the date of commencement of a proceeding for dissolution or legal separation, or the date of trial. The parties to a marriage acquire property and make agreements affecting the property subject to this reserved power of the Legislature, and do not, by virtue of the law in effect at the time of acquisition of the property or at the time of an agreement

affecting the property or at any other time, acquire any vested rights in property for purposes of division of property upon dissolution or legal separation.

**Comment.** Section 4800.10 is added to state expressly the reserved power of the Legislature to make immediately applicable changes in the law governing division of marital property. The parties to a marriage cannot acquire “vested” rights in marital property for the purpose of division of the property at dissolution or legal separation or otherwise, notwithstanding language to that effect in earlier cases. See, e.g., *In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985).

Section 4800.10 expresses but one aspect of the authority of the Legislature to make immediately applicable changes in the law that affect family law property rights for the general welfare. See, e.g., *In re Marriage of Bouquet*, 16 Cal. 3d 583, 546 P.2d 1371, 128 Cal. Rptr. 427 (1976); *Addison v. Addison*, 62 Cal. 2d 558, 399 P.2d 897, 43 Cal. Rptr. 97 (1965). The section deals only with the reserved power of the Legislature with respect to division of marital property. Nothing in the section should be deemed to limit the ability of the Legislature to make retroactive changes in the law in any other family law matter for the general welfare, including but not limited to changes in the law affecting child or spousal support, the management and control rights of the spouses, and rights at death.



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### VOLUME 1 (1957)

[Out of Print]

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)

[Out of Print]

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]

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)

[Out of Print]

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]

A Study Relating to Sovereign Immunity

### VOLUME 6 (1964)

[Out of Print]

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)

[Out of Print]

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 the 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]

- Annual Report (December 1968) includes the 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 the 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 the 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 the 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 the 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 the 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 the 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)**

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

**Part I**

Annual Report (December 1979) includes the 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

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

Recommendation Relating to:

- Enforcement of Judgments: Interest Rate on Judgments; Married Women as Sole Traders; State Tax Liens
- Application of Evidence Code Property Valuation Rules in Noncondemnation Cases
- Uniform Durable Power of Attorney Act
- Probate Homestead

**Part II**

Annual Report (December 1980) includes the following recommendation:

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

Recommendations Relating to Probate and Estate Planning:

- Non-Probate Transfers; Revision of the Powers of Appointment Statute

Tentative Recommendation Proposing the Enforcement of Judgments Law

**VOLUME 16 (1982)**

- Annual Report (December 1981) includes the following recommendation:  
 Federal Military and Other Federal Pensions as Community Property
- Annual Report (December 1982) includes the following recommendations:  
 Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage  
 Creditors' Remedies: Amount Secured by Attachment; Execution of Writs by Registered Process Servers; Technical Amendments  
 Dismissal for Lack of Prosecution  
 Conforming Changes to the Bond and Undertaking Law  
 Notice of Rejection of Late Claim Against Public Entity
- Recommendation Relating to:  
 Holographic and Nuncupative Wills  
 Marketable Title of Real Property  
 Statutory Bonds and Undertakings  
 Attachment  
 Probate Law and Procedure: Missing Persons; Nonprobate Transfers; Emancipated Minors; Notice in Limited Conservatorship Proceedings; Disclaimer of Testamentary and Other Interests
- 1982 Creditors' Remedies Legislation [out of print]  
 Tentative Recommendation Relating to Wills and Intestate Succession

**VOLUME 17 (1984)**

- Annual Report (December 1983) includes the following recommendations:  
 Effect of Death of Support Obligor  
 Dismissal for Lack of Prosecution  
 Severance of Joint Tenancy  
 Effect of Quiet Title and Partition Judgments  
 Dormant Mineral Rights  
 Creditors' Remedies: Levy on Joint Deposit Accounts; Issuance of Earnings Withholding Orders by Registered Process Servers; Protection of Declared Homestead After Owner's Death; Jurisdiction of Condominium Assessment  
 Lien Enforcement; Technical Amendments  
 Rights Among Cotenants in Possession and Out of Possession of Real Property
- Recommendation Relating to:  
 Liability of Marital Property for Debts  
 Durable Power of Attorney for Health Care Decisions  
 Statutory Forms For Durable Powers of Attorney  
 Family Law: Marital Property Presumptions and Transmutations; Disposition of Community Property; Reimbursement of Educational Expenses; Special Appearance in Family Law Proceedings; Liability of Stepparent for Child Support; Awarding Temporary Use of Family Home  
 Probate Law: Independent Administration of Decedent's Estates; Distribution of Estates Without Administration; Execution of Witnessed Wills; Simultaneous Deaths; Notice of Will; Garnishment of Amounts Payable to Trust Beneficiary; Bonds for Personal Representatives; Revision of Wills and Intestate Succession Law; Recording Affidavit of Death  
 Statutes of Limitation for Felonies  
 Uniform Transfers to Minors Act

**VOLUME 18 (1986)**

[Volume expected to be available September 1986]

Annual Report (March 1985) includes the following recommendations:

Provision for Support if Support Obligor Dies  
Transfer Without Probate of Certain Property Registered by the State  
Dividing Jointly Owned Property Upon Marriage Dissolution

Annual Report (December 1985) includes the following recommendations:

Protection of Mediation Communications  
Recording Severance of Joint Tenancy  
Abandoned Easements  
Distribution Under a Will or Trust  
Effect of Adoption or Out of Wedlock Birth on Rights at Death  
Durable Powers of Attorney  
Litigation Expenses in Family Law Proceedings  
Civil Code Sections 4800.1 and 4800.2

Recommendation Proposing The Trust Law

Recommendations Relating to Probate Law: Disposition of Estates Without Administration; Small Estate Set-Aside; Proration of Estate Taxes