

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

## **Annual Report**



December 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

# THE CALIFORNIA LAW REVISION COMMISSION

## COMMISSION MEMBERS

ROGER ARNEBERGH  
*Chairperson*

EDWIN K. MARZEC  
*Vice Chairperson*

BION M. GREGORY  
*Member*

ELIHU M. HARRIS  
*Member of Assembly*

BRAD R. HILL  
*Member*

BILL LOCKYER  
*Member of Senate*

ARTHUR K. MARSHALL  
*Member*

FORREST A. PLANT  
*Member*

SANFORD M. SKAGGS  
*Member*

ANN E. STODDEN  
*Member*

## COMMISSION STAFF

### Legal

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*Executive Secretary*

NATHANIEL STERLING  
*Assistant Executive Secretary*

ROBERT J. MURPHY III  
*Staff Counsel*

STAN ULRICH  
*Staff Counsel*

### Administrative-Secretarial

STEPHEN F. ZIMMERMAN  
*Administrative Assistant*

EUGENIA AYALA  
*Office Technician*

VICTORIA MATIAS  
*Composing Technician*

## NOTE

The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 20 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1991.

Cite this pamphlet as *Annual Report*, 20 Cal. L. Revision Comm'n Reports 2201 (1990).

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4000 Middlefield Road, Suite D-2  
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## **SUMMARY OF WORK OF COMMISSION**

### **Recommendations to the 1991 Legislative Session**

Most of the recommendations the Commission plans to submit to the 1991 legislative session relate to probate law and procedure:

- Debts That Are Contingent, Disputed, or Not Due
- Remedies of Creditor Where Personal Representative Fails to Give Notice
- Repeal of Civil Code Section 704 (Passage of Ownership of U. S. Bonds on Death)
- Repeal of Probate Code Section 6402.5 (In-Law Inheritance Statute)
- Disposition of Small Estate Without Probate
- Right of Surviving Spouse to Dispose of Community Property
- Litigation Involving Decedents
- Compensation in Guardianship and Conservatorship Proceedings
- Recognition of Trustees' Powers
- Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care
- Recognition of Agent's Authority Under Statutory Form Power of Attorney
- Access to Decedent's Safe Deposit Box
- Gifts in View of Impending Death
- TOD Registration of Vehicles and Certain Other State Registered Property

The Commission plans to submit to the 1991 legislative session two recommendations relating to commercial real property leases:

- Remedies for Breach of Assignment or Sublease Covenant
- Use Restrictions

The Commission will recommend to the 1991 Legislature that California enact the Uniform Statutory Rule Against Perpetuities.

The Commission also plans to recommend legislation to make any needed technical or corrective revisions in the new Probate Code.

### **Recommendations Enacted by the 1990 Legislative Session**

In 1990, the new Probate Code recommended by the Commission was enacted. Other Commission-recommended legislation enacted in 1990 related to:

- Notice to Creditors in Estate Administration
- Disposition of Small Estate by Public Administrator
- Court-Authorized Medical Treatment

- Survival Requirement for Beneficiary of Statutory Will
- Execution or Modification of Lease Without Court Order
- Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding
- Priority of Conservator or Guardian for Appointment as Administrator
- Uniform Statutory Form Power of Attorney Act
- Springing Powers of Attorney
- Uniform Management of Institutional Funds Act
- Trustee Fees
- Compensation of Personal Representative
- Notice in Probate Where Address Unknown
- Jurisdiction of Superior Court in Trust Matters

### **Commission Plans for 1991**

During 1991, the Commission will work primarily on two major projects—administrative law and drafting a Family Code. The Commission also will consider some probate law matters and will review experience under the new Probate Code to determine whether any corrective legislation is necessary. The Commission may also consider other matters if time permits.

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

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**CALIFORNIA LAW REVISION COMMISSION**

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**ROGER ARNEBERGH**

CHAIRPERSON

**EDWIN K. MARZEC**

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**BION M. GREGORY**

ASSEMBLYMAN ELIHU M. HARRIS

**BRAD R. HILL**

SENATOR BILL LOCKYER

**ARTHUR K. MARSHALL**

FORREST A. PLANT

**SANFORD M. SKAGGS****ANN E. STODDEN**

December 1, 1990

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 1990.

Six of the eight bills introduced in 1990 to effectuate Commission recommendations were enacted. A concurrent resolution recommended by the Commission was adopted. More than 4,000 sections of the California statutes were affected by legislation enacted in 1990 upon Commission recommendation.

The Commission is grateful to the members of the Legislature who carried Commission-recommended bills:

—Assembly Member Friedman (bill proposing new Probate Code enacted in 1990).

—Senator Lockyer (two probate bills enacted in 1990 and also the concurrent resolution adopted in 1990 continuing the Commission's authority to study previously authorized topics).

—Senator Beverly (bill proposing Uniform Statutory Form Power of Attorney Act and bill relating to creditors of decedent, both enacted in 1990).

—Senator Morgan (bill proposing revisions of Uniform Management of Institutional Funds Act, enacted in 1990).

—Assembly Member Sher (bill repealing Probate Code Section 6402.5).

—Assembly Member Harris (bill relating to probate attorney fees).

The Commission held seven two-day meetings during 1990. Meetings were held in Concord, Los Angeles, Sacramento, San Diego, and Santa Barbara.

Respectfully submitted,

Roger Arnebergh  
*Chairperson*



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## ANNUAL REPORT FOR 1990

### 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 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 26 topics.<sup>3</sup>

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1. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission).

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

3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 1 *infra*.

Commission recommendations have resulted in the enactment of legislation affecting 15,117 sections of the California statutes: 6,949 sections have been added, 2,510 sections amended, and 5,658 sections repealed. Of the 253 Commission recommendations submitted to the Legislature, 232 (92%) have been enacted in whole or in substantial part.<sup>4</sup>

The Commission's recommendations are published in softcover and later are collected in hardcover volumes. A list of past publications and information on obtaining copies is at the end of this Report.

### **1991 Legislative Program**

#### **Probate law recommendations**

The Commission plans to submit the following recommendations for enactment by the 1991 legislative session:<sup>5</sup>

- Debts That Are Contingent, Disputed, or Not Due
- Remedies of Creditor Where Personal Representative Fails to Give Notice
- Repeal of Civil Code Section 704
- Disposition of Small Estate Without Probate
- Right of Surviving Spouse to Dispose of Community Property
- Litigation Involving Decedents
- Compensation in Guardianship and Conservatorship Proceedings
- Recognition of Trustees' Powers
- Access to Decedent's Safe Deposit Box
- Gifts in View of Impending Death
- TOD Registration of Vehicles and Certain Other State Registered Property

The Commission also plans to recommend enactment of its earlier submitted recommendation that Probate Code Section 6402.5 be repealed<sup>6</sup> and will recommend legislation to make needed technical and minor substantive revisions in the new Probate Code.

#### **Powers of attorney**

The Commission plans to submit two recommendations relating to powers of attorney:<sup>7</sup>

4. See list of recommendations and legislative action in Appendix 2 *infra*.

5. The recommendations listed in the text will be collected and published in *Recommendations Relating to Probate Law*, 20 Cal. L. Revision Comm'n Reports 2701 (1990).

6. See *Recommendation Relating to Repeal of Probate Code Section 6402.5 (In-Law Inheritance)*, 20 Cal L. Revision Comm'n Reports 571 (1990).

7. See *Recommendations Relating to Powers of Attorney*, 20 Cal. L. Revision Comm'n Reports 2601 (1990).

- Recognition of Agent's Authority Under Statutory Form Power of Attorney
- Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care

### **Uniform Statutory Rule Against Perpetuities**

The Commission plans to submit a recommendation proposing enactment of the Uniform Statutory Rule Against Perpetuities.<sup>8</sup>

### **Commercial real property leases**

The Commission will submit two recommendations relating to commercial real property leases:<sup>9</sup>

- Remedies for Breach of Assignment or Sublease Covenant
- Use Restrictions

### **Major Studies in Progress**

During 1991, the Commission plans to work on three major topics: administrative law, Family Code, and probate law. The Commission will consider other matters to the extent time permits.

#### **Administrative Law**

The Commission is giving priority to the study of administrative law. The Commission has divided the study into four phases: (1) administrative adjudication, (2) judicial review, (3) administrative rulemaking, and (4) nonjudicial oversight.

The Commission retained a consultant, Professor Michael Asimow of UCLA Law School, to prepare a background study of administrative adjudication. Professor Asimow has delivered two installments of the background study—"Structural Issues" and "Appeals Within the Agency: The Relationship Between Agency Heads and ALJs."

The Commission's objective is to prepare a new Administrative Procedure Act to govern constitutionally and statutorily required administrative hearings of all state agencies, with the exception of the Legislature, the courts and judicial branch, the Governor and Governor's office, and the University of California.

The Commission has devoted substantial resources to studying the concept of expansion of the Office of Administrative Hearings to provide administrative law judge services for all state agencies, but

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8. See *Recommendation Relating to Uniform Statutory Rule Against Perpetuities*, 20 Cal. L. Revision Comm'n Reports 2501 (1990).

9. See *Recommendations Relating to Commercial Real Property Leases*, 20 Cal. L. Revision Comm'n Reports 2401 (1990).

has initially concluded this should only be done on a case-by-case basis.

During 1991 the Commission will continue to give consideration to these and other administrative adjudication issues on a priority basis, with the intent to prepare a tentative recommendation on the matter.

### **Family Code**

The 1989 Legislature directed the Commission to review the statutes relating to the adjudication of child and family civil proceedings and to make recommendations to the Legislature regarding the establishment of a Family Relations Code.<sup>10</sup> The Legislature directed that this topic be given equal priority with the administrative law study.

The first policy issue for Commission decision was whether there should be a new code containing family law. The Commission prepared a Questionnaire which was distributed to interested persons to obtain their views concerning whether there should be a new code (or a new separate act compiled in an existing code) and, if so, what should be contained in the new code or act.<sup>11</sup>

The Questionnaire was distributed to approximately 4,000 individuals. Distribution was made to all persons who receive Commission reports, to all certified family law specialists, to all members of the State Bar Family Law Section, to some social workers, and to other persons who requested a copy. A notice was published in legal newspapers that the Commission was studying this topic and that the Questionnaire was available. Other methods were used to obtain the names of persons who might be interested in responding to the Questionnaire.

The overwhelming majority (89%) of the 666 responses to the Questionnaire came from lawyers who practice in the family law field. Others responding included judges (19), court commissioners (13), and paralegals (5). The great majority of those who responded believe that there should be a new code or act in which the family law statutory provisions are compiled.<sup>12</sup>

The Commission has decided to commence the preparation of a Family Code. The Commission's objective is to prepare a well-

10. 1989 Cal. Stat. res. ch. 70.

11. A copy of the Questionnaire is on file in the office of the California Law Revision Commission.

12. Eighty-three percent of those who responded to the Questionnaire favored a new code or act (532 vs. 108). Only 17 percent wanted neither a new code nor a new act.

organized and well-drafted code. No attempt will be made to review the substantive policy issues presented by the various provisions that will be compiled in the new code, although technical and minor clarifications and minor substantive revisions may be recommended.<sup>13</sup> Procedural provisions will be carefully reviewed with a view to making them consistent. The Commission has tentatively concluded that the new code should bring together family law provisions now found in the Civil Code, Code of Civil Procedure, and Welfare and Institutions Code.

In 1990, the Commission started drafting the new code. The new code will be prepared over a number of years, with each substantial portion of the new code recommended for enactment as work on that portion is completed. It is likely that a recommendation proposing enactment of the first portion of the new code will be submitted to the Legislature in 1992.

### **Probate Law**

During the last few years, the Commission has been devoting its time and resources almost exclusively to the study of probate law and procedure. A new Probate Code was enacted in 1990 upon recommendation of the Commission.<sup>14</sup> The new code will become operative on July 1, 1991, and will replace the existing Probate Code.

Despite the enactment of the new Probate Code, the Commission will continue to devote a limited amount of its time and resources to work in this field. The Commission will monitor the experience under the new code and make recommendations needed to correct any technical or substantive defects that come to its attention.<sup>15</sup> The Commission also will study some probate matters on which work was deferred pending completion of the new code.<sup>16</sup>

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13. In some areas, the law may be unclear or the relevant statutory provisions may be inconsistent. In these areas, the Commission will seek to provide a clear statement of the law in the new code.

14. 1990 Cal. Stat. ch. 79. See also 1990 Cal. Stat. ch. 710, § 46 (amending 1990 Cal. Stat. ch. 79, § 37). See also *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990); *Revised and Supplemental Comments to the New Probate Code*, 20 Cal. L. Revision Comm'n Reports 2001 (1990).

15. Any defect believed to exist in the new code should be brought to the attention of the Commission so that the Commission can study the matter and present any necessary corrections for legislative consideration.

16. For example, the Commission has retained Professor Jerry Kasner, Santa Clara University Law School, to prepare a background study on the topic of donative transfers of community property.

### **Calendar of Topics for Study**

The Commission's calendar of topics is set out in Appendix 1 to this Report. Each of these topics has been authorized for Commission study by the Legislature.<sup>17</sup> Because of the number and scope of the topics already on its calendar, the Commission does not at this time recommend any additional topics for Commission study.

### **Function and Procedure of Commission**

The principal duties of the Commission<sup>18</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>19</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.

(3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>20</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>21</sup>

The Commission's work on a recommendation is commenced after a background study has been prepared. The background study may

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17. 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.

18. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission).

19. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

20. See Gov't Code § 8288. 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 United States Supreme Court. Gov't Code § 8290.

21. See Gov't Code § 8293. However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution. See Gov't Code § 8298. 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. See also 1990 Cal. Stat. ch. 943 § 3 which provides: "The California Law Revision Commission shall study the impacts of the changes in Sections 483.010 and



be prepared by a member of the Commission's staff or by a specialist in the field of law involved who is retained as a consultant. Using expert consultants provides the Commission with invaluable assistance and is economical because the attorneys and law professors who serve as 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.

After making its preliminary decisions on a 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.<sup>22</sup> The background study is sometimes published with the recommendation published by the Commission or in a law review.<sup>23</sup>

The Commission ordinarily prepares a Comment explaining each section it recommends. These Comments are included in the Commission's report and are frequently revised by legislative committee or Commission reports to reflect amendments made after the recommended legislation has been introduced in the Legislature.<sup>24</sup> These reports, which are sometimes printed or noted in the legislative journals, provide background with respect to the Commission intent

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483.015 of the Code of Civil Procedure made by Sections 1 and 2 of this act during the period from January 1, 1991, to and including December 31, 1993, and shall report the results of its study, together with recommendations concerning continuance or modification of these changes, to the Legislature on or before December 31, 1994."

22. 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.

23. For a background study published in a law review in 1989, see Coskran, *Assignment and Sublease: The Tribulations of Leasehold Transfers*, 22 Loy. L.A.L. Rev. 405 (1989). For a list of background studies published in law reviews prior to 1989, 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), 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984), 18 Cal. L. Revision Comm'n Reports 212 n.17 & 1713 n.20 (1986), 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988).

24. Many amendments are made on 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.

in proposing the enactment, such intent being reflected in the Comments to the various sections of the bill contained in the Commission's recommendation except to the extent that new or revised Comments are set out in the legislative committee report itself or in a report on file with the legislative committee.<sup>25</sup> The Comment indicates the derivation of the section and often explains its purpose, its relation to other sections, and potential problems as to its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.<sup>26</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>27</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>28</sup>

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.<sup>29</sup> Thus, a large and representative number of interested persons is given an opportunity to study and comment on

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25. For examples of such reports, see Appendices 6 and 7 to this Report. All of the reports are printed in the Annual Report of the Law Revision Commission published for the year in which the report was submitted. 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).

26. 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 the Bancroft-Whitney Company and the West Publishing Company in their editions of the annotated codes.

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

28. 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. Stat. ch. 227.

29. See Gov't Code § 8291.

the Commission's work before it is considered for enactment by the Legislature.<sup>30</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>31</sup>

### Personnel of Commission

As of December 1, 1990, the membership of the Law Revision Commission is:

	<i>Term Expires</i>
Roger Arnebergh, Van Nuys, <i>Chairperson</i> .....	October 1, 1991
Edwin K. Marzec, Santa Monica, <i>Vice Chairperson</i> .....	October 1, 1991
Bion M. Gregory, Sacramento, <i>Legislative Counsel, ex officio Member</i>	
Elihu M. Harris, Oakland, <i>Assembly Member</i> .....	*
Brad R. Hill, Fresno, <i>Member</i> .....	October 1, 1993
Bill Lockyer, Hayward, <i>Senate Member</i> .....	*
Arthur K. Marshall, Los Angeles, <i>Member</i> .....	October 1, 1991
Forrest A. Plant, Sacramento, <i>Member</i> .....	October 1, 1993
Sanford M. Skaggs, Walnut Creek, <i>Member</i> .....	October 1, 1993
Ann E. Stodden, Los Angeles, <i>Member</i> .....	October 1, 1991

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

Effective September 1, 1990, the Commission elected Roger Arnebergh as Chairperson (succeeding Edwin K. Marzec) and Edwin K. Marzec as Vice Chairperson (succeeding Roger Arnebergh). The terms of the new officers end August 31, 1991.

30. 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). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

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

As of December 1, 1990, the staff of the Commission is:

*Legal*

John H. DeMouilly  
*Executive Secretary*

Robert J. Murphy III  
*Staff Counsel*

Nathaniel Sterling  
*Assistant Executive Secretary*

Stan Ulrich  
*Staff Counsel*

*Administrative-Secretarial*

Stephen F. Zimmerman  
*Administrative Assistant*

Eugenia Ayala  
*Office Technician*

Victoria V. Matias  
*Composing Technician*

During 1990, Constance Hilscher, a student at McGeorge University Law School, Robert S. Hanna, a student at Hastings Law School, and Michael Cavanaugh, a student at Santa Clara University Law School, were employed as student legal assistants.

**Legislative History of Recommendations  
Submitted to 1990 Legislative Session**

The Commission recommended eight bills<sup>32</sup> and one concurrent resolution for enactment at the 1990 legislative session. The concurrent resolution was adopted and six of the eight bills were enacted.

**New Probate Code**

Assembly Bill 759, which became Chapter 79 of the Statutes of 1990, was introduced by Assembly Member Friedman to effectuate the Commission recommendation proposing the enactment of the new Probate Code. See *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990). See also *Revised and Supplemental Comments to the New Probate Code*, 20 Cal. L. Revision Comm'n Reports 2001 (1990). The bill also effectuated several other recommendations. See *Recommendation Relating to Compensation of Personal Representatives*, 20 Cal. L. Revision Comm'n Reports 31 (1990); *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 279 (1990). The bill was enacted after amendments were made to the bill.

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32. Two of these bills, Assembly Bills 759 and 831, were carryovers from the 1989 session.

### **Major Probate Bill**

Senate Bill 1775, which became Chapter 710 of the Statutes of 1990, was introduced by Senator Lockyer to effectuate a number of Commission recommendations relating to probate law. As enacted, the bill effectuated the following Commission recommendations: *Recommendation Relating to Court-Authorized Medical Treatment*, 20 Cal. L. Revision Comm'n Reports 537 (1990); *Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will*, 20 Cal. L. Revision Comm'n Reports 549 (1990); *Recommendation Relating to Execution or Modification of Lease Without Court Order*, 20 Cal. L. Revision Comm'n Reports 557 (1990); *Recommendation Relating to Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding*, 20 Cal. L. Revision Comm'n Reports 565 (1990); *Recommendation Relating to Priority of Conservator or Guardian for Appointment as Administrator*, 20 Cal. L. Revision Comm'n Reports 607 (1990); *Recommendation Relating to Notice in Probate Where Address Unknown* (April 1990), published as Appendix 3 to this Report; *Recommendation Relating to Jurisdiction of Superior Court in Trust Matters* (April 1990), published as Appendix 4 to this Report. The bill was enacted after amendments were made to the bill.

The bill that enacted the new Probate Code (Assembly Bill 759) included a provision that the new code would not become operative unless Assembly Bill 831 was enacted. Assembly Bill 831 would have enacted the Commission recommended provisions relating to compensation of probate attorneys. When it became apparent that Assembly Bill 831 would not be enacted, Senate Bill 1775 was amended to add the following provisions to the new Probate Code:

(1) A provision that the new Probate Code (enacted by Assembly Bill 759) becomes operative notwithstanding that Assembly Bill 831 was not enacted.

(2) A new section (Section 10810) which continues the substance of the language of Section 910 of the repealed Probate Code (relating to compensation of the probate attorney).

Senate Bill 1775 also would have effectuated another Commission recommendation. See *Recommendation Relating to Access to Decedent's Safe Deposit Box*, 20 Cal. L. Revision Comm'n Reports

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33. See *Recommendation Relating to Access to Decedent's Safe Deposit Box*, published in *Recommendations Relating to Probate Law*, 20 Cal. L. Revision Comm'n Reports 2701 (1990).

597 (1990). However, the provision of the bill that would have effectuated this recommendation was amended out of the bill, the Commission having decided to give this matter further study. The Commission plans to submit a new recommendation on this matter to the 1991 legislative session.<sup>33</sup>

#### **Notice to Creditors in Estate Administration**

Senate Bill 1855, which became Chapter 140 of the Statutes of 1990, was introduced by Senator Beverly to effectuate the Commission's *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990). The bill was enacted after amendments were made to the bill.

#### **Probate Cleanup Bill**

Senate Bill 1774, which became Chapter 324 of the Statutes of 1990, was introduced by Senator Lockyer to make a technical correction in Section 40 of Chapter 397 of the Statutes of 1989, and to effectuate a Commission recommendation—*Recommendation Relating to Disposition of Small Estate by Public Administrator*, 20 Cal. L. Revision Comm'n Reports 529 (1990). The bill was enacted after amendments were made to the bill.

#### **Powers of Attorney**

Senate Bill 1777, which became Chapter 986 of the Statutes of 1990, was introduced by Senator Beverly to effectuate two Commission recommendations. See *Recommendations Relating to Powers of Attorney (Springing Powers of Attorney; Uniform Statutory Form Power of Attorney Act)*, 20 Cal. L. Revision Comm'n 401 (1990). The bill was enacted after amendments were made to the bill.

#### **Uniform Management of Institutional Funds Act**

Senate Bill 2649, which became Chapter 1307 of the Statutes of 1990, was introduced by Senator Morgan to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Uniform Management of Institutional Funds Act* (March 1990), published as Appendix 5 to this Report. The bill was enacted after amendments were made to the bill.

#### **Repeal of Probate Code Section 6402.5 (In-Law Inheritance)**

Assembly Bill 2589 was introduced by Assembly Member Sher to effectuate the Commission's *Recommendation Relating to Repeal of Probate Code Section 6402.5 (In-Law Inheritance)*, 20 Cal. L. Revision Comm'n Reports 571 (1990). The bill passed the Assembly

but failed to obtain approval of the Senate Committee on Judiciary. The Commission plans to propose this recommendation for enactment in 1991.

### **Probate Attorney Fees**

Assembly Bill 831, introduced by Assembly Member Harris, was carried over from the 1989 session. This bill would have effectuated the Commission's recommendation relating to probate attorney fees. See *Recommendations Relating to Probate Law (Hiring and Paying Attorneys, Advisors, and Others)*, 20 Cal. L. Revision Comm'n Reports 31 (1990). The recommended legislation relating to probate attorney fees was amended into the bill after it passed the Assembly. The bill died in the Senate Committee on Judiciary, never having been voted on by the members of the Committee.

### **Resolution Regarding Topics for Study**

Senate Concurrent Resolution 76, introduced by Senator Lockyer and adopted as Resolution Chapter 53 of the Statutes of 1990, continues the Commission's authority to study 26 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 reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared<sup>34</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 held a statute of

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34. This study has been carried through 51 Cal. 3d 608 (Advance Sheet No. 30, November 6, 1990) and 110 S. Ct. 3309 (Advance Sheet No. 18, July 15, 1990).

this state unconstitutional.<sup>35</sup>

In *People v. Sanders*, 51 Cal. 3d 471, 520 (1990), the court reaffirmed its holding in *People v. Superior Court (Engert)*, 31 Cal. 3d 797 (1982), that the "heinous, atrocious, or cruel" special circumstance for imposing the death penalty under Penal Code Section 190.2(a)(14) is unconstitutionally vague.

### **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 1 to this Report).

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provision referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," supra, to the extent that that provision has been held unconstitutional and has not been amended or repealed.

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35. One decision of the California Supreme Court imposed constitutional limitations upon the application of a state statute. In *People v. Prather*, 50 Cal. 3d 428, 787 P.2d 1012, 267 Cal. Rptr. 605 (1990), the court held that Section 28(f) of Article I of the California Constitution, which requires that prior felony convictions be used without limitation for the purpose of sentence enhancements, barred the application of Penal Code Section 1170.1(g) (sentence limited to twice the base term for the offense) to enhancements imposed for prior felony convictions.

One decision of the California Supreme Court imposed a procedural requirement in the application of a California statute. In *Mitchell v. Superior Court*, 49 Cal. 3d 1230, 783 P.2d 731, 265 Cal. Rptr. 144 (1990), the court held that Section 16 of Article I of the California Constitution requires that persons charged with contempt under the Red Light Abatement Law (Penal Code § 11229) be afforded a jury trial.



## APPENDIX 1

## CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics the topics listed below.<sup>36</sup> 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. Stat. res. ch. 40. See also 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. 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. Stat. 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 assignment, subletting, termination, or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic; expanded 1988 Cal Stat. res. ch. 81.)

**Family law.** Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1978 Cal. Stat. 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. Stat. res. ch. 75.)

**Class actions.** Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stat. 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. Stat. 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. Stat. 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. Stat. res. ch. 37.)

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36. For additional matters authorized for Commission study, see note 21 *supra*.

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

**Injunctions.** Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stat. 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. Stat. res. ch. 65. 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. Stat. 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. Stat. 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. Stat. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stat. 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. Stat. res. ch. 130.)

**Arbitration.** Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stat. 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. Stat. res. ch. 45. See also 1957 Cal. Stat. 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. Stat. res. ch. 17. See also 1957 Cal. Stat. 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. Stat. res. ch. 74. See also 1970 Cal. Stat. res. ch. 46; 1965 Cal. Stat. res. ch. 130.)

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

**Parol evidence rule.** Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stat. 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. Stat. res. ch. 37.)

**Administrative law.** Whether there should be changes to administrative law. (Authorized by 1987 Cal. Stat. res. ch. 47.)

**Attorneys' fees.** Whether there should be changes in the law relating to the payment and the shifting of attorneys' fees between litigants. (Authorized by 1988 Cal. Stat. res. ch. 20.)

**Family Relations Code.** Conduct a careful review of all statutes relating to the adjudication of child and family civil proceedings, with specified exceptions, and make recommendations to the Legislature regarding the establishment of a Family Relations Code. (Authorized by 1989 Cal. Stat. res. ch. 70.)

## APPENDIX 2

### LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

(Cumulative)

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954 at 12 (1957)	Enacted. 1955 Cal. Stat. 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. Stat. 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. Stat. 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. Stat. 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. Stat. 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. § 612.5, 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. Stat. ch. 490
9. <i>The Marital "For and Against" Testimonial Privilege</i> , 1 Cal. L. Revision Comm'n Reports at F-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 970.

Recommendation	Action by Legislature
10. <i>Suspension of the Absolute Power of Alienation</i> , 1 Cal. L. Revision Comm'n Reports at G-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 14 (1959)	Enacted. 1959 Cal. Stat. 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. Stat. 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. Stat. 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. Stat. 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. Stat. ch. 1498
17. <i>Grand Juries</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 20 (1959)	Enacted. 1959 Cal. Stat. 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. Stat. 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. Stat. 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. Stat. ch. 425
22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports at C-1 (1959)	Enacted. 1959 Cal. Stat. ch. 528
23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports at D-1 (1959)	Enacted. 1959 Cal. Stat. 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. Stat. 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. Stat. 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. Stat. 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 Gov't 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. Stat. 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. Stat. ch. 1616
32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports at F-1 (1961)	Enacted. 1961 Cal. Stat. ch. 657
33. <i>Arbitration</i> , Cal. L. Revision Comm'n Reports at G-1 (1961)	Enacted. 1961 Cal. Stat. ch. 461

Recommendation	Action by Legislature
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. Stat. 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. Stat. 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. Stat. 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. Stat. 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. Stat. ch. 1682
41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963)	Enacted. 1963 Cal. Stat. 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. Stat. ch. 1527
43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 Cal. L. Revision Comm'n Reports 1501 (1963)	Enacted. 1963 Cal. Stat. 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. Stat. chs. 1685, 1686, 2029
45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965)	Enacted. 1965 Cal. Stat. ch. 299

Recommendation	Action by Legislature
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 653
47. <i>Evidence Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 101 (1967)	Enacted in part. 1967 Cal. Stat. ch. 650. Balance enacted. 1970 Cal. Stat. ch. 69.
48. <i>Evidence — Agricultural Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 201 (1967)	Enacted. 1967 Cal. Stat. ch. 262
49. <i>Evidence — Commercial Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 301 (1967)	Enacted. 1967 Cal. Stat. 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. Stat. 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. Stat. ch. 702
52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967)	Enacted. 1967 Cal. Stat. 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. Stat. ch. 89
54. <i>Good Faith Improver of Land Owned by Another</i> , 8 Cal. L. Revision Comm'n Reports 801 (1967); 8 Cal. L. Revision Comm'n Reports 1373 (1967)	Enacted. 1968 Cal. Stat. ch. 150
55. <i>Suit By or Against an Unincorporated Association</i> , 8 Cal. L. Revision Comm'n Reports 901 (1967)	Enacted. 1967 Cal. Stat. ch. 1324
56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967)	Enacted. 1968 Cal. Stat. 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. Stat. ch. 133

Recommendation	Action by Legislature
58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967)	Enacted. 1968 Cal. Stat. 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. Stat. ch. 104
60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969)	Enacted. 1969 Cal. Stat. ch. 115
61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969)	Enacted. 1969 Cal. Stat. ch. 114
62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969)	Enacted. 1970 Cal. Stat. ch. 312
63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969)	Enacted. 1970 Cal. Stat. ch. 417
64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969)	Enacted in part. 1970 Cal. Stat. ch. 69. See also 1970 Cal. Stat. chs. 1396, 1397; 1972 Cal. Stat. ch. 888
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 Cal. L. Revision Comm'n Reports 201 (1969)	Enacted. 1969 Cal. Stat. ch. 156
66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969)	Enacted. 1969 Cal. Stat. 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. Stat. chs. 1396, 1397
68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969)	Enacted. 1970 Cal. Stat. 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. Stat. ch. 720
70. <i>Revisions of Governmental Liability Act</i> , 9 Cal. L. Revision Comm'n Reports 801 (1969)	Enacted in part. 1970 Cal. Stat. chs. 662, 1099
71. <i>"Vesting" of Interests Under Rule Against Perpetuities</i> , 9 Cal. L. Revision Comm'n Reports 901 (1969)	Enacted. 1970 Cal. Stat. ch. 45



Recommendation	Action by Legislature
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. Stat. chs. 244, 950. See also 1973 Cal. Stat. 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. Stat. ch. 1133. See also 1979 Cal. Stat. ch. 66
74. <i>Proof of Foreign Official Records</i> , 10 Cal. L. Revision Comm'n Reports 1022 (1971)	Enacted. 1970 Cal. Stat. ch. 41
75. <i>Inverse Condemnation — Insurance Coverage</i> , 10 Cal. L. Revision Comm'n Reports 1051 (1971)	Enacted. 1971 Cal. Stat. ch. 140
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 Cal. L. Revision Comm'n Reports 1147 (1971)	Enacted. 1971 Cal. Stat. ch. 1607
77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973)	Enacted. 1973 Cal. Stat. ch. 20
78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973)	Enacted. 1973 Cal. Stat. 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. Stat. res. ch. 76. Legislation enacted. 1975 Cal. Stat. ch. 25.
80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973)	Enacted. 1974 Cal. Stat. ch. 211
81. <i>Prejudgment Attachment</i> , 11 Cal. L. Revision Comm'n Reports 701 (1973)	Enacted. 1974 Cal. Stat. ch. 1516. See also 1975 Cal. Stat. ch. 200.
82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973)	Enacted. 1974 Cal. Stat. chs. 331, 332
83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973)	Enacted. 1972 Cal. Stat. ch. 73

Recommendation	Action by Legislature
84. <i>Evidence—Judicial Notice</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1025 (1973)	Enacted. 1972 Cal. Stat. 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. Stat. 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. Stat. ch. 198
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 Cal. L. Revision Comm'n Reports 575 (1974)	Enacted. 1975 Cal. Stat. 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. Stat. ch. 301
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 Cal. L. Revision Comm'n Reports 601 (1974)	Enacted. 1975 Cal. Stat. ch. 318
91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974)	Enacted. 1974 Cal. Stat. ch. 426
92. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974)	Enacted. 1975 Cal. Stat. 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. Stat. 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. Stat. ch. 7; 1976 Cal. Stat. ch. 109
95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976)	Enacted. 1976 Cal. Stat. ch. 73

Recommendation	Action by Legislature
96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976)	Enacted. 1976 Cal. Stat. 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. Stat. ch. 145
100. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976)	Enacted. 1976 Cal. Stat. 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. Stat. ch. 994
102. <i>Transfer of Out-of-State Trusts to California</i> , 13 Cal. L. Revision Comm'n Reports 2101 (1976)	Enacted. 1976 Cal. Stat. ch. 144
103. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976)	Enacted. 1985 Cal. Stat. ch. 100
104. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976)	Enacted. 1976 Cal. Stat. ch. 888
105. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976)	Enacted. 1977 Cal. Stat. ch. 232
106. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976)	Enacted. 1977 Cal. Stat. 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. Stat. ch. 155

Recommendation	Action by Legislature
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. Stat. 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. Stat. 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. Stat. 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. Stat. 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. Stat. chs. 545 (licensed educational psychologist), 1077 (repeal of Evidence Code § 1028).
114. <i>Parole Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978)	Enacted. 1978 Cal. Stat. 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. Stat. ch. 273
116. <i>Powers of Appointment</i> (technical changes), 14 Cal. L. Revision Comm'n Reports 257 (1978)	Enacted. 1978 Cal. Stat. 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. Stat. ch. 31
118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978)	Enacted. 1980 Cal. Stat. 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. Stat. 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. Stat. ch. 177

Recommendation	Action by Legislature
121. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980)	Enacted. 1979 Cal. Stat. 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. Stat. ch. 122
123. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980)	Enacted. 1980 Cal. Stat. 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. Stat. ch. 1050
125. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980)	Enacted. 1980 Cal. Stat. ch. 44
126. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 Cal. L. Revision Comm'n Reports 1237 (1980)	Enacted. 1980 Cal. Stat. 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. Stat. ch. 381
128. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980)	Enacted. 1980 Cal. Stat. 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. Stat. ch. 215
130. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980)	Enacted. 1980 Cal. Stat. ch. 89
131. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980)	Enacted. 1980 Cal. Stat. ch. 124
132. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980)	Enacted. 1982 Cal. Stat. ch. 150
133. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980)	Enacted. 1980 Cal. Stat. ch. 123
134. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980)	Enacted. 1980 Cal. Stat. ch. 600

Recommendation	Action by Legislature
135. <i>Guardianship-Conservatorship</i> (technical change), 15 Cal. L. Revision Comm'n Reports 1427 (1980)	Enacted. 1980 Cal. Stat. ch. 246
136. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980)	Enacted. 1981 Cal. Stat. ch. 9
137. <i>The Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980)	Enacted. 1982 Cal. Stat. chs. 497, 1364
138. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)	Enacted. 1981 Cal. Stat. ch. 511
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. Stat. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stat. ch. 92. Substance of balance enacted. 1989 Cal. Stat. ch. 397 (banks and savings and loan associations) (item 229 <i>infra</i> )
140. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980)	Enacted. 1981 Cal. Stat. ch. 63
141. <i>State Tax Liens</i> (technical change), 16 Cal. L. Revision Comm'n Reports 24 (1982)	Enacted. 1981 Cal. Stat. 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. Stat. ch. 139
143. <i>Federal Pensions as Community Property</i> , 16 Cal. L. Revision Comm'n Reports 47 (1982)	Proposed resolution adopted. 1982 Cal. Stat. res. ch. 44
144. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982)	Enacted. 1982 Cal. Stat. ch. 187
145. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982)	Enacted. 1982 Cal. Stat. ch. 1268
146. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982)	Enacted. 1982 Cal. Stat. chs. 517, 998

Recommendation	Action by Legislature
147. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982)	Enacted. 1982 Cal. Stat. ch. 1198
148. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982)	Enacted. 1982 Cal. Stat. ch. 182
149. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982)	Enacted. 1983 Cal. Stat. ch. 201
150. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982)	Enacted. 1983 Cal. Stat. ch. 6
151. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982)	Enacted. 1983 Cal. Stat. ch. 72
152. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982)	Enacted. 1983 Cal. Stat. ch. 17
153. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982)	Enacted. 1983 Cal. Stat. 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), 17 Cal. L. Revision Comm'n Reports 863 (1984)	Enacted. 1983 Cal. Stat. ch. 342
155. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982)	Enacted. 1983 Cal. Stat. 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. Stat. 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. Stat. ch. 107
158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984)	Enacted. 1984 Cal. Stat. ch. 1671
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 17 Cal. L. Revision Comm'n Reports 101 (1984)	Enacted. 1983 Cal. Stat. 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. Stat. ch. 19. Balance enacted. 1985 Cal. Stat. ch. 362 (item 186 <i>infra</i> )

Recommendation	Action by Legislature
161. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984)	Enacted. 1983 Cal. Stat. 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. Stat. ch. 1733
163. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)	Enacted. 1984 Cal. Stat. ch. 1661
164. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984)	Enacted. 1984 Cal. Stat. ch. 156
165. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984)	Enacted. 1984 Cal. Stat. ch. 249
166. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984)	Enacted. 1984 Cal. Stat. 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. Stat. ch. 1270
169. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984)	Enacted. 1984 Cal. Stat. ch. 451
170. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984)	Enacted. 1984 Cal. Stat. ch. 451
171. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984)	Enacted in part. See 1989 Cal. Stat. ch. 544 (intestate succession) (item 227 <i>infra</i> ); 1990 Cal. Stat. ch. 710 (statutory will) (item 240 <i>infra</i> )
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. Stat. ch. 493



Recommendation	Action by Legislature
174. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984)	Enacted. 1984 Cal. Stat. ch. 451
175. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984)	Enacted. 1984 Cal. Stat. 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. Stat. ch. 892
178. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984)	Enacted. 1984 Cal. Stat. ch. 243
179. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 Cal. L. Revision Comm'n Reports 701 (1984)	Enacted. 1984 Cal. Stat. 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. Stat. ch. 1705
181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984)	Enacted. 1984 Cal. Stat. ch. 519
182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984)	Enacted. 1984 Cal. Stat. ch. 20
183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984)	Enacted. 1984 Cal. Stat. ch. 240
184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984)	Enacted. 1984 Cal. Stat. ch. 538
185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984)	Enacted. 1984 Cal. Stat. ch. 241
186. <i>Provision for Support if Support Obligor Dies</i> , 18 Cal. L. Revision Comm'n Reports 119 (1986)	Enacted. 1985 Cal. Stat. ch. 362
187. <i>Transfer of State Registered Property Without Probate</i> , 18 Cal. L. Revision Comm'n Reports 129 (1986)	Enacted. 1985 Cal. Stat. ch. 982

Recommendation	Action by Legislature
188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 Cal. L. Revision Comm'n Reports 147 (1986)	Enacted. 1985 Cal. Stat. ch. 362
189. <i>Probate Law</i> (clarifying revisions), 18 Cal. L. Revision Comm'n Reports 216 (1986)	Enacted. 1985 Cal. Stat. ch. 359
190. <i>Creditors' Remedies</i> (technical change), 18 Cal. L. Revision Comm'n Reports 217 (1986)	Enacted. 1985 Cal. Stat. ch. 41
191. <i>Uniform Transfers to Minors Act</i> (technical change), 18 Cal. L. Revision Comm'n Reports 218 (1986)	Enacted. 1985 Cal. Stat. ch. 90
192. <i>Protection of Mediation Communications</i> , 18 Cal. L. Revision Comm'n Reports 241 (1986)	Enacted. 1985 Cal. Stat. ch. 731
193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986)	Enacted. 1985 Cal. Stat. ch. 157
194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986)	Enacted. 1985 Cal. Stat. ch. 157
195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986)	Enacted. 1985 Cal. Stat. ch. 982
196. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> , 18 Cal. L. Revision Comm'n Reports 289 (1986)	Enacted. 1985 Cal. Stat. ch. 982
197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986)	Enacted. 1985 Cal. Stat. ch. 403
198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986)	Enacted. 1985 Cal. Stat. ch. 362
199. <i>Civil Code Sections 4800.1 and 4800.2</i> , 18 Cal. L. Revision Comm'n Reports 383 (1986)	One of two recommended measures enacted (Application of Civil Code Sections 4800.1 and 4800.2). 1986 Cal. Stat. ch. 49
200. <i>The Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986)	Enacted. 1986 Cal. Stat. ch. 820.
201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986)	Enacted. 1986 Cal. Stat. ch. 783

Recommendation	Action by Legislature
202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986)	Enacted. 1986 Cal. Stat. ch. 783
203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986)	Enacted. 1986 Cal. Stat. ch. 783
204. <i>Notice in Guardianship and Conservatorship</i> , 18 Cal. L. Revision Comm'n Reports 1793 (1986)	Enacted. 1987 Cal. Stat. ch. 923
205. <i>Preliminary Provisions and Definitions</i> , 18 Cal. L. Revision Comm'n Reports 1807 (1986)	Enacted. 1987 Cal. Stat. ch. 923
206. <i>Technical Revisions in the Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 1823 (1986)	Enacted. 1987 Cal. Stat. ch. 128
207. <i>Supervised Administration</i> , 19 Cal. L. Revision Comm'n Reports 5 (1988)	Enacted. 1987 Cal. Stat. ch. 923
208. <i>Independent Administration</i> , 19 Cal. L. Revision Comm'n Reports 205 (1988)	Enacted. 1987 Cal. Stat. ch. 923
209. <i>Creditor Claims Against Decedent's Estate</i> , 19 Cal. L. Revision Comm'n Reports 299 (1988)	Enacted. 1987 Cal. Stat. ch. 923
210. <i>Notice in Probate Proceedings</i> , 19 Cal. L. Revision Comm'n Reports 357 (1988)	Enacted. 1987 Cal. Stat. ch. 923
211. <i>Marital Deduction Gifts</i> , 19 Cal. L. Revision Comm'n Reports 615 (1988)	Enacted. 1987 Cal. Stat. ch. 923
212. <i>Estates of Missing Persons</i> , 19 Cal. L. Revision Comm'n Reports 637 (1988)	Enacted. 1987 Cal. Stat. ch. 923
213. <i>Public Guardians and Administrators</i> , 19 Cal. L. Revision Comm'n Reports 707 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
214. <i>Inventory and Appraisal</i> , 19 Cal. L. Revision Comm'n Reports 741 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
215. <i>Opening Estate Administration</i> , 19 Cal. L. Revision Comm'n Reports 787 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
216. <i>Abatement</i> , 19 Cal. L. Revision Comm'n Reports 865 (1988)	Enacted. 1988 Cal. Stat. ch. 1199

Recommendation	Action by Legislature
217. <i>Accounts</i> , 19 Cal. L. Revision Comm'n Reports 877 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
218. <i>Litigation Involving Decedents</i> , 19 Cal. L. Revision Comm'n Reports 899 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
219. <i>Rules of Procedure in Probate</i> , 19 Cal. L. Revision Comm'n Reports 917 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
220. <i>Distribution and Discharge</i> , 19 Cal. L. Revision Comm'n Reports 953 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
221. <i>Nondomiciliary Decedents</i> , 19 Cal. L. Revision Comm'n Reports 993 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
222. <i>Interest and Income During Administration</i> , 19 Cal. L. Revision Comm'n Reports 1019 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
223. <i>1988 Probate Cleanup Bill</i> , see 19 Cal. L. Revision Comm'n Reports 1167, 1191-1200 (1988)	Enacted. 1988 Cal. Stat. ch. 113
224. <i>Authority of the Law Revision Commission</i> , 19 Cal. L. Revision Comm'n Reports 1162 (1988)	Enacted. 1989 Cal. Stat. ch. 152
225. <i>Creditors' Remedies</i> , 19 Cal. L. Revision Comm'n Reports 1251 (1988)	Enacted. 1989 Cal. Stat. ch. 1416
226. <i>No Contest Clauses</i> , 20 Cal. L. Revision Comm'n Reports 7 (1990)	Enacted. 1989 Cal. Stat. ch. 544
227. <i>120-Hour Survival Requirement</i> , 20 Cal. L. Revision Comm'n Reports 21 (1990)	Enacted. 1989 Cal. Stat. ch. 544
228. <i>Compensation of Attorneys and Personal Representatives</i> , 20 Cal. L. Revision Comm'n Reports 31 (1990)	Enacted except for portion relating to compensation of attorneys. 1990 Cal. Stat. ch. 79
229. <i>Multiple-Party Accounts</i> , 20 Cal. L. Revision Comm'n Reports 95 (1990)	Enacted. 1989 Cal. Stat. ch. 397
230. <i>Notice to Creditors</i> , 20 Cal. L. Revision Comm'n Reports 165 (1990); 20 Cal. L. Revision Comm'n Reports 507 (1990)	Enacted in part. 1989 Cal. Stat. ch. 544 Remainder enacted. 1990 Cal. Stat. ch. 140

Recommendation	Action by Legislature
231. <i>1989 Probate Cleanup Bill, see 20 Cal. L. Revision Comm'n Reports 201, 227-232 (1990)</i>	Enacted. 1989 Cal. Stat. ch. 21
232. <i>Brokers' Commissions on Probate Sales, 20 Cal. L. Revision Comm'n Reports 237-242 (1990)</i>	Enacted. 1989 Cal. Stat. ch. 544
233. <i>Bonds of Guardians and Conservators, 20 Cal. L. Revision Comm'n Reports 235 (1990)</i>	Enacted. 1989 Cal. Stat. ch. 544
234. <i>Commercial Real Property Leases, 20 Cal. L. Revision Comm'n Reports 251 (1990)</i>	Enacted. 1989 Cal. Stat. ch. 982
235. <i>Trustees' Fees, 20 Cal. L. Revision Comm'n Reports 279 (1990)</i>	Enacted. 1990 Cal. Stat. ch. 79
236. <i>Springing Powers of Attorney, 20 Cal. L. Revision Comm'n Reports 405 (1990)</i>	Enacted. 1990 Cal. Stat. ch. 986
237. <i>Uniform Statutory Form Powers of Attorney Act, 20 Cal. L. Revision Comm'n Reports 415 (1990)</i>	Enacted. 1990 Cal. Stat. ch. 986
238. <i>Disposition of Small Estate by Public Administrator, 20 Cal. L. Revision Comm'n Reports 529 (1990)</i>	Enacted. 1990 Cal. Stat. ch. 324
239. <i>Court-Authorized Medical Treatment, 20 Cal. L. Revision Comm'n Reports 537 (1990)</i>	Enacted. 1990 Cal. Stat. ch. 710
240. <i>Survival Requirement for Beneficiary of Statutory Will, 20 Cal. L. Revision Comm'n Reports 549 (1990)</i>	Enacted. 1990 Cal. Stat. ch. 710
241. <i>Execution or Modification of Lease Without Court Order, 20 Cal. L. Revision Comm'n Reports 557 (1990)</i>	Enacted. 1990 Cal. Stat. ch. 710
242. <i>Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding, 20 Cal. L. Revision Comm'n Reports 565 (1990)</i>	Enacted. 1990 Cal. Stat. ch. 710
243. <i>Repeal of Probate Code Section 6402.5 (In-Law Inheritance), 20 Cal. L. Revision Comm'n Reports 571 (1990)</i>	Not enacted.

<b>Recommendation</b>	<b>Action by Legislature</b>
244. <i>Access to Decedent's Safe Deposit Box</i> , 20 Cal. L. Revision Comm'n Reports 597 (1990)	Not enacted.
245. <i>Priority of Conservator or Guardian for Appointment as Administrator</i> , 20 Cal. L. Revision Comm'n Reports 607 (1990)	Enacted. 1990 Cal. Stat. ch. 710
246. <i>New Probate Code</i> , 20 Cal. L. Revision Comm'n Reports 1001 (1990)	Enacted. 1990 Cal. Stat. ch. 79
247. <i>Notice in Probate Where Address Unknown</i> , 20 Cal. L. Revision Comm'n Reports 2245 (1990)	Enacted. 1990 Cal. Stat. ch. 710
248. <i>Jurisdiction of Superior Court in Trust Matters</i> , 20 Cal. L. Revision Comm'n Reports 2253 (1990)	Enacted. 1990 Cal. Stat. ch. 710
249. <i>Uniform Management of Institutional Funds Act</i> , 20 Cal. L. Revision Comm'n Reports 2265 (1990)	Enacted. 1990 Cal. Stat. ch. 1307

**APPENDIX 3**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

relating to

**Notice in Probate Where Address  
Unknown**

**April 1990**

**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 Notice in Probate Where Address Unknown*, 20 Cal. L. Revision Comm'n Reports 2245 (1990).



STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

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**ARTHUR K. MARSHALL**

**FORREST A. PLANT**

**ANN E. STODDEN**

April 26, 1990

To:    **The Honorable George Deukmejian**  
          *Governor of California*, and  
          **The Legislature of California**

This recommendation proposes to revise the Probate Code notice provision applicable where the address of a person is not known to conform to the general rules under the Code of Civil Procedure.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

**Edwin K. Marzec**  
*Chairperson*



## RECOMMENDATION

Under the general provisions of the Probate Code, if the address of a person to be given notice is not known, notice is to be given "to the person at the county seat where the proceedings are pending."<sup>1</sup> The meaning of "county seat" is not clear,<sup>2</sup> but whatever it means, this provision is not likely to result in actual notice. In practice, notice under the county seat provision is permitted only if the person giving notice describes the search made in an affidavit.<sup>3</sup>

Under the Trust Law, if the address of a person is unknown, the court may dispense with notice or order that notice be given under Code of Civil Procedure Section 413.30, which provides for notice in a manner reasonably calculated to give actual notice.<sup>4</sup> The Commission recommends that the general notice provisions in the Probate Code be revised to adopt the Trust Law scheme.

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1. Prob. Code §§ 1215(d) (mailing in general), 1220(a)(3) (mailing notice of hearing) [as enacted by 1990 Cal. Stat. ch. 79]. Both of these sections continue a provision found in former Section 1200.5(b), which continued nearly identical language in Section 1200 of the Probate Code as enacted in 1931 ("addressed to them . . . at the county seat of the county where the proceedings are pending").

2. The reference to the "county seat" originated in the 1873-74 amendments of Section 1304 of the Code of Civil Procedure, which added the language "addressed to them [heirs], and deposited in the Post Office at the county seat of the county where the proceedings are pending." 1873-74 Code Amend. ch. 383, § 164. On its face, this statute appears to provide for general delivery at the post office in the county seat. This language survived until 1929 when Section 1304 was amended to delete the reference to depositing the notice at the post office. 1929 Cal. Stat. ch. 78, § 1.

3. See, e.g., Ross & Moore, California Practice Guide: Probate ¶¶ 3:209-3:211, 3:472-3:472.1 (Rutter Group, rev. ed. #1, 1989).

4. Prob. Code § 17102.

## PROPOSED LEGISLATION

The Commission's recommendation would be implemented by enactment of the following amendments, additions, and repeals.

**Probate Code § 1212 (added). Manner of mailing notice of hearing**

1212. Unless the court dispenses with the notice, if the address of the person to whom a notice or other paper is required to be mailed or delivered is not known, notice shall be given as the court may require in the manner provided in Section 413.30 of the Code of Civil Procedure.

**Comment.** Section 1212 generalizes former Section 17102 (manner of giving notice under Trust Law where address is unknown) (enacted by 1990 Cal. Stat. ch. 79).

**Probate Code § 1215 (amended). Manner of mailing**

1215. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person, the notice or other paper shall be mailed as provided in this section or personally delivered as provided in Section 1216.

(b) The notice or other paper shall be sent by:

(1) First-class mail if the person's address is within the United States. First-class mail includes certified, registered, and express mail.

(2) Airmail if the person's address is not within the United States.

(c) The notice or other paper shall be deposited for collection in the United States mail, in a sealed envelope, with postage paid, addressed to the person to whom it is mailed.

(d) ~~In proceedings under this code concerning the administration of a decedent's estate,~~ *Subject to Section 1212,* the notice or other paper shall be addressed to the person at the person's place of business or place of residence, ~~if known,~~

~~or, if neither address is known, to the person at the county seat where the proceedings are pending.~~

(e) When the notice or other paper is deposited in the mail, mailing is complete and the period of notice is not extended.

**Comment.** Subdivision (d) of Section 1215 is amended to delete the authority to mail notice to the person at the county seat where the proceedings are pending and to provide a cross reference to Section 1212 governing the manner of giving notice to a person whose address is unknown).

**Probate Code § 1220 (amended). Manner of mailing notice of hearing**

1220. (a) When notice of hearing is required to be given as provided in this section:

(1) At least 15 days before the time set for the hearing, the petitioner or the person filing the report, account, or other paper shall cause notice of the time and place of the hearing to be mailed to the persons required to be given notice.

(2) Unless the statute requiring notice specifies the persons to be given notice, notice shall be mailed to all of the following:

(A) The personal representative.

(B) All persons who have given notice of appearance in the estate proceeding in person or by attorney. If the person appeared by attorney, the notice shall be mailed to the attorney.

(3) ~~The Subject to Section 1212, the notice shall be addressed to the person required to be given notice at the person's place of business or place of residence, if known, or, if neither address is known, to the person at the county seat where the proceedings are pending.~~

(b) Subject to subdivision (c), nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Article 6 (commencing with Section 1250).

(c) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section.

**Comment.** Subdivision (a)(3) of Section 1220 is amended to adopt the general rule in Section 1212 applicable where notice is required to be mailed to a person whose address is unknown. See the Comment to Section 1212.

**Probate Code § 17102 (repealed). Manner of notice where address is unknown**

~~17102. Unless the court dispenses with the notice, if the address of the person to whom a notice or other paper is required to be mailed or delivered is not known, notice shall be given as the court may require in the manner provided in Section 413.30 of the Code of Civil Procedure.~~

**Comment.** Former Section 17102 (enacted by 1990 Cal. Stat. ch. 79) is generalized in Section 1212 (manner of mailing notice where address is unknown). See Section 17100 (general notice provision apply to Trust Law).

**APPENDIX 4**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

relating to

**Jurisdiction of Superior Court  
in Trust Matters**

April 1990

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 Jurisdiction of Superior Court in Trust Matters*, 20 Cal. L. Revision Comm'n Reports 2253 (1990).**



STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

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FORREST A. PLANT

ANN E. STODDEN

April 26, 1990

To:     **The Honorable George Deukmejian**  
          *Governor of California*, and  
          **The Legislature of California**

This recommendation proposes to make clear that the court has jurisdiction and power under the Trust Law either to fully dispose of matters before it or to transfer the case to a more appropriate forum.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Edwin K. Marzec  
*Chairperson*



## RECOMMENDATION

The Trust Law grants full power and jurisdiction to the superior court to hear and determine questions concerning trusts. The new law sought to abolish the artificial limitations on the jurisdiction and power of the "probate court" and to eliminate the difficulties and confusion that have been caused by the concept of the probate court as a "court of limited and special jurisdiction."<sup>1</sup> Several sections in the Trust Law are directed to this end:

(1) Probate Code Section 17000 grants to the "superior court having jurisdiction over the trust" exclusive jurisdiction over internal trust affairs and concurrent jurisdiction over actions and proceedings to determine the existence of trusts, actions by or against creditors, and other actions and proceedings involving trustees and third persons.

(2) Probate Code Section 17001 provides that in "proceedings concerning the internal affairs of trusts commenced pursuant to this division, the court has all the powers of the superior court." The Comment to this section further states that, "while not intending to disrupt the traditional division of business among different departments of the superior court, this section rejects the limitation on the powers of the probate court that has been cited in appellate

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1. For additional background and analysis of this issue, see *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501, 575-82 (1986). California has not had a separate probate court since 1879. The so-called "probate court" (the court having jurisdiction over trust matters) is no longer an inferior court, nor are the decrees of the "probate court" accorded less finality. The intent was to abolish the concept of "the superior court sitting in probate." The jurisdictional basis of the "probate court" is now indistinguishable from that exercised by the superior court generally. Its jurisdiction is the full jurisdiction consistent with the state and federal constitutions. Its powers are that of the superior court, since the "probate court" is the superior court. The only limitation remaining is that the court system remains free to divide its work along appropriate lines, such as by organizing into separate divisions, or "courts" in common parlance. Thus we still speak of a "probate court," as we speak of a "criminal court" or a "civil court."

decisions. See, e.g., *Copley v. Copley*, 80 Cal. App. 3d 97, 106-07, 145 Cal. Rptr. 437 (1978)."<sup>2</sup>

(3) Probate Code Section 17004 provides that the court "may exercise jurisdiction in proceedings under [the Trust Law] on any basis permitted by Section 410.10 of the Code of Civil Procedure." The effect of this language is to grant full jurisdiction over the parties, consistent with the California and United States Constitutions.

Other provisions in the Probate Code are consistent with this approach.<sup>3</sup>

Two recent cases threaten to erode these principles concerning the jurisdiction and power of the superior court in hearing trust matters.<sup>4</sup>

### **Estate of Mullins**

In *Estate of Mullins*,<sup>5</sup> a niece of the decedent's predeceased husband sought imposition of a constructive trust on half of the estate based on an alleged oral agreement between the decedent and her predeceased husband. The trial court dismissed the petition for lack of jurisdiction and the court of appeal affirmed. A number of arguments are made in the opinion to support this disposition.

Both the trial court and the appellate court misapplied Probate Code Section 15003, which provides in part that "[n]othing in this division affects the law relating to

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2. In *Copley v. Copley*, 80 Cal. App. 3d 97, 106-07, 145 Cal. Rptr. 437 (1978), the court discussed the broadening of jurisdictional concepts, but still found it did not have authority to join one of the necessary parties or to grant the relief sought. Probate Code Sections 17001 and 17004 were intended to avoid the trap of this case, which encourages multiple filings and appeals, without resolving any disputes.

3. See Prob. Code § 7050 & Comment (jurisdiction of decedent's estates administration in superior court with full power and authority of court of general jurisdiction); see also Prob. Code § 2200 (jurisdiction in superior court under Guardianship and Conservatorship Law).

4. See *Estate of Mullins*, 206 Cal. App. 3d 924, 255 Cal. Rptr. 430 (1988); *Johnson v. Tate*, 215 Cal. App. 3d 1282, 264 Cal. Rptr. 68 (1989). For commentary on these cases, see 10 CEB Est. Planning R. 105 (Feb. 1989); 11 CEB Est. Planning R. 69-70 (Dec. 1989).

5. 206 Cal. App. 3d 924, 255 Cal. Rptr. 430 (1988).

constructive or resulting trusts.” The purpose of this provision is to preserve the *substantive* law relating to constructive trusts and resulting trusts.<sup>6</sup> Section 15003 simply reaffirms the principle that a constructive trust is a remedy, not an express trust, and thus that there is no intent to apply the multitude of rules in the Trust Law to this remedy. This provision has nothing to do with jurisdictional issues or the power of the court to dispose of matters before it. Hence, the “probate court” does have jurisdiction and power to impose a constructive trust, providing that the proceeding was properly before this division of the court.

Nor does the definition of “trust” in Probate Code Section 82 provide sufficient grounds to dismiss the petition in *Mullins*. Section 82 simply states the general understanding that a *constructive* trust is not an express trust.<sup>7</sup> Section 82 is not a limitation on the broad grant of jurisdiction and power in other sections.

In order to avoid these statutory interpretations, the recommended legislation revises Probate Code Section 15003 to make clear that nothing in the Trust law affects the *substantive* law relating to constructive and resulting trusts.<sup>8</sup>

### Johnson v. Tate

The second case is *Johnson v. Tate*,<sup>9</sup> in which another appellate court affirmed a dismissal for lack of jurisdiction in

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6. A constructive trust is an equitable remedy — a fraud and mistake rectifying device — by which the court imposes a “trust” on property for the purpose of requiring it to be conveyed to the rightful owner. See 7 B. Witkin, *Summary of California Law Trusts* § 131, at 5487-88 (8th ed. 1974). A resulting trust is an intention-enforcing device and arises where a transferor does not intend the transferee to take the beneficial interest in property transferred. See Restatement (Second) of Trusts § 404 & Introductory Note to Chapter 12 (1957).

7. Note, however, that Section 82 preserves the power of the court by recognizing that a constructive or resulting trust may be administered as an express trust to the extent the court orders.

8. *Estate of Mullins* also errs in drawing a negative implication from the full-power provision of Section 17001. See 206 Cal. App. 3d at 931.

9. *Johnson v. Tate*, 215 Cal. App. 3d 1282, 264 Cal. Rptr. 68 (1989).

the "probate court." *Johnson v. Tate* involved a petition by a person claiming rights under a trust. Miranda and Tate had executed revocable living trusts naming one another as beneficiaries and Johnson as the residuary beneficiary at the death of the survivor of Miranda and Tate. The trial court treated the petition as a claim for specific performance of an agreement between Miranda and Tate not to amend or revoke the trust, and found that the probate court did not have "independent jurisdiction" to hear the lawsuit. The trial court's decision is defensible, if we ignore the failure to transfer the case to an appropriate forum, instead of dismissing the petition outright. However, the court on appeal went beyond the issues that needed decision and, as in *Estate of Mullins*, recited jurisdictional limitations from old cases that were rejected by the new Trust Law.

The *Johnson* opinion suggests that the question in the case is essentially the same as that in *Mullins*, involving an oral agreement as to the effect of a trust.<sup>10</sup> This recommendation is concerned with the court's discussion, rather than the result in the case. Nothing in the Trust Law should have prevented the court from hearing this case. Since the courts have the power to organize their business, e.g., so that contract cases would not be filed and heard in the "probate court," transfer of this case from the "probate court" may be appropriate, assuming that there is another forum that is more appropriate.<sup>11</sup> Thus, where the gist of the action is enforcement of a contract, it is not appropriate to petition under Probate Code Section 17200. But this does not mean that any controversy that involves enforcement of a contract is outside the jurisdiction of the "probate court," since it has full power to join parties and dispose of the matter once jurisdiction is properly invoked under Section 17000 and 17200.

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10. *Johnson v. Tate*, 215 Cal. App. 3d 1282, 1286, 264 Cal. Rptr. 68 (1989).

11. See discussion in 11 CEB Est. Planning R. 69-70 (Dec. 1989).

The Court of Appeal also concluded that, at best, the petitioner was a beneficiary of a revocable trust, and so was not permitted to petition during the time the trust was revocable.<sup>12</sup> This assumes that the trust was truly revocable; in a properly argued case, that would have been one of the issues, and certainly one appropriate for "probate court" determination. If the trial court had heard this issue and determined that the trust was no longer revocable, then clearly the issues raised by the petitioner were internal trust affairs within the exclusive jurisdiction of the court.<sup>13</sup> In any event, this is not a jurisdictional issue, and was not the grounds on which the trial court dismissed the petition.

### Transfer to Appropriate Court

Another problem presented by *Estate of Mullins and Johnson v. Tate* is that the courts dismissed the petitions instead of transferring the cases to the appropriate court under Code of Civil Procedure Section 396.<sup>14</sup> This failure results in unnecessary delay and expense to the parties. In addition, it has been suggested that another "unfortunate byproduct of these cases is that practitioners must now consider the possible need to duplicate-file marginal cases, simultaneously filing a probate petition and a standard complaint, paying two filing fees, and then moving for consolidation."<sup>15</sup>

In order to alert the parties and the courts to the transfer provision in Code of Civil Procedure Section 396, the Commission has included a cross-reference to this section in the Comment to Probate Code Section 17001 in the proposed legislation.

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12. *Johnson v. Tate*, 215 Cal. App. 3d 1282, 1286, 264 Cal. Rptr. 68 (1989). See Prob. Code § 15800 (limits on rights of beneficiary of revocable trust).

13. See Prob. Code § 17000 (subject matter jurisdiction).

14. See 10 CEB Est. Planning R. 105 (Feb. 1989); 11 CEB Est. Planning R. 69 (Dec. 1989).

15. 11 CEB Est. Planning R. 69, 70 (Dec. 1989).

## PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following amendments.

**Probate Code § 15003 (amended). Substantive law of constructive and resulting trusts not affected**

15003. (a) Nothing in this division affects the *substantive* law relating to constructive or resulting trusts.

(b) The repeal of Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code as provided in the act that added this division to the Probate Code is not intended to alter the rules applied by the courts to fiduciary and confidential relationships, except as to express trusts governed by this division.

(c) Nothing in this division or in Section 82 is intended to prevent the application of all or part of the principles or procedures of this division to an entity or relationship that is excluded from the definition of "trust" provided by Section 82 where these principles or procedures are applied pursuant to statutory or common law principles, by court order or rule, or by contract.

**Comment.** Subdivision (a) of Section 15003 is amended to avoid any implication that this provision is a limitation on the jurisdiction of the superior court in proceedings under this division. This amendment is intended to reject dicta in *Estate of Mullins*, 206 Cal. App. 3d 924, 931, 255 Cal. Rptr. 430 (1988). For provisions governing jurisdiction in proceedings under this division, see Sections 17000, 17001, and 17004.

**Probate Code § 17001 (amended). Full-power court**

17001. In proceedings ~~concerning the internal affairs of trusts~~ commenced pursuant to this division, the court *is a court of general jurisdiction and* has all the powers of the superior court.

**Comment.** Section 17001 is amended to delete unnecessary language from which a negative implication could be drawn, i.e., that the court would not have "all the powers of the superior court" when exercising concurrent jurisdiction, as well as exclusive jurisdiction. This



amendment is needed to reject dicta in recent cases as to limitations on the power and jurisdiction of the court in proceedings properly commenced under this division. See *Estate of Mullins*, 206 Cal. App. 3d 924, 930-31, 255 Cal. Rptr. 430 (1988); *Johnson v. Tate*, 215 Cal. App. 3d 1282, 1285-87, 264 Cal. Rptr. 68 (1989). This amendment also reaffirms the original intent of this section, along with Sections 17000 and 17004, to eliminate any limitations on the power of the court hearing matters under this division, whether or not it is called the "probate court," to exercise jurisdiction over all parties constitutionally before it and completely dispose of the dispute. This section, along with Sections 17000 and 17004, is intended to eliminate any notion that the "probate court" is one of limited power or that it cannot dispose of matters properly brought before it, while preserving the power of the superior court in a particular county to organize itself into divisions for the efficient conduct of judicial business. If a court determines that it is not the appropriate forum or division of the court to hear a case, the court should transfer the matter to the appropriate court or division. See Code Civ. Proc. § 396.



**APPENDIX 5**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

**RECOMMENDATION**

relating to

**Uniform Management of Institutional  
Funds Act**

**March 1990**

**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 Uniform Management of Institutional Funds Act*, 20 Cal. L. Revision Comm'n Reports 2265 (1990).

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

**CALIFORNIA LAW REVISION COMMISSION**

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**ARTHUR K. MARSHALL****FORREST A. PLANT****ANN E. STODDEN**

March 8, 1990

To:    **The Honorable George Deukmejian**  
          *Governor of California*, and  
          **The Legislature of California**

**This recommendation proposes two revisions of the California version of the Uniform Management of Institutional Funds Act to be consistent with the policies of the official Uniform Act:**

(1) The existing statute applies only to private educational institutions accredited by the Association of Western Colleges and Universities. Under the proposed law, the act would apply to any incorporated or unincorporated educational, religious, charitable, or other eleemosynary institution and to any governmental organization holding funds for such purposes.

(2) Under the existing statute, an institution may base budgetary appropriations on realized net appreciation in assets. The proposed law would adopt the feature of the Uniform Act — applicable in 29 other states — permitting appropriations based on net appreciation, both realized and unrealized. This accords with modern investment principles and permits a balanced mix of equity investments and fixed-income investments in the institutions' endowments needed to keep pace with inflation.

This recommendation would also make other minor and technical changes. A comment follows each section of the proposed legislation. The

comment gives the source of the section and indicates the nature of the changes the section would make in existing law.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Edwin K. Marzec  
*Chairperson*

## RECOMMENDATION

California enacted the Uniform Management of Institutional Funds Act<sup>1</sup> in 1973 as a pilot study, subject to a five-year sunset provision and restricted to certain accredited private colleges and universities.<sup>2</sup> The official text of the Uniform Management of Institutional Funds Act<sup>3</sup> has a much broader scope, applying to private educational, religious, charitable, and eleemosynary institutions and to governmental organizations holding funds for such purposes.<sup>4</sup> Apparently, the pilot study was successful, since the sunset provision was repealed in 1978.<sup>5</sup> However, the restricted scope of the act was retained and the authority to use net appreciation, including both realized and unrealized gains and losses, was amended to refer only to "net appreciation, realized, in the fair value" of the institutional funds.<sup>6</sup>

### Expansion of Scope of UMIFA

The Commission recommends that the California version of UMIFA be revised to apply to the same organizations covered by the original uniform act. No persuasive reasons have been given for continuing the restrictions that applied under the original pilot study. None of the other 31 jurisdictions that have enacted UMIFA has so drastically restricted its scope.<sup>7</sup>

1. Hereinafter cited as UMIFA.

2. See 1973 Cal. Stat. ch. 950, § 1 (enacting Civ. Code §§ 2290.1-2290.12). The California version of the act applies only to private incorporated or unincorporated educational institutions accredited by the Association of Western Colleges and Universities. The sunset clause was enacted by 1973 Cal. Stat. ch. 950, § 3. The act was moved to Education Code Sections 94600-94610 when the Civil Code trust provisions were generally repealed in connection with enactment of the new Trust Law. See 1986 Cal. Stat. ch. 820, §§ 7, 24.

3. See UMIFA, 7A U.L.A. 714-27 (1985 & Supp. 1990).

4. See UMIFA § 1(1) (1972).

5. 1978 Cal. Stat. ch. 806, § 1.

6. 1978 Cal. Stat. ch. 806, § 2.

7. See annotations at 7A U.L.A. 714-27 (1985) & Supp. at 177-78 (1989). Indiana limits the uniform act to institutions of higher education. See Ind. Code Ann. § 30-2-12-5 (West Supp. 1989).

The problems faced by charitable organizations that are treated by UMIFA are not unique to private colleges and universities.<sup>8</sup> The effect of this recommendation would be to extend the benefits of UMIFA to all unincorporated educational, religious, charitable, and eleemosynary institutions in California.<sup>9</sup>

This extension of UMIFA provides more guidance and authority to institutions that are not currently governed by UMIFA. Specifically, these institutions would be able (1) to use net appreciation of endowment funds, subject to a fiduciary duty of care, (2) to delegate day-to-day investment management to committees and employees and to hire investment advisory and management services, and (3) to seek the release of obsolete or impracticable restrictions on the use of endowment funds by obtaining the donor's consent or on petition to a court with notice to the Attorney General.<sup>10</sup> Extending the application of UMIFA would also provide guidance as to an institutional board's power to invest and manage property and would clarify the standard of care governing the exercise of a board's powers<sup>11</sup> where the board is not governed by some other statute.<sup>12</sup>

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8. In addition, the Commission recommends that UMIFA be moved to the Probate Code. The Education Code is not an ideal location if the act's coverage is expanded beyond private colleges and universities. It is appropriate to place the expanded act with the Trust Law, since the Trust Law also applies to charitable trusts. See Prob. Code § 15004.

9. The act would not supplant the statutes governing the conduct of charitable corporations.

10. For the existing provisions that would apply under a broadened statute, see Educ. Code §§ 94602 (use of appreciation), 94605 (delegation of authority), 94607 (release of restrictions). See generally UMIFA Prefatory Note, 7A U.L.A. 706-09 (1985). The standard for releasing restrictions is similar to but distinct from the *cy pres* rule. See UMIFA § 7(d).

11. For the existing provisions that would apply under a broadened statute, see Educ. Code §§ 94604 (investment authority), 94606 (standard of care).

12. The proposed law includes a provision that UMIFA does not alter the duties and liabilities of governing boards under other laws. See, e.g., Corp. Code §§ 5231-5231.5 (directors of nonprofit public benefit corporations), 7231-7231.5 (directors of nonprofit mutual benefit corporations), 9240-9241 (directors of nonprofit religious corporations). Similarly, the proposed law would not displace any limitations on the expenditure of public funds by governmental organizations.



## **Appropriations Based on Net Appreciation**

The Commission recommends that the provision relating to appropriation of net appreciation in the budgeting process of the institutions covered by UMIFA be revised for consistency with the official text of the Uniform Act. A major purpose of UMIFA was to authorize the prudent use of the net appreciation of endowment funds over their historical dollar value in determining the budgets of tax-exempt institutions. As explained in the Prefatory Note of UMIFA:

The Act authorizes the appropriation of net appreciation. "Realization" of gains and losses is an artificial, meaningless concept in the context of a nontaxable eleemosynary institution. If gains and losses had to be realized before being taken into account, a major objective of the Act, to avoid distortion of sound investment policies, would be frustrated. If only realized capital gains could be taken into account, trustees or managers might be forced to sell their best assets, appreciated property, in order to produce spendable gains and conceivably might spend realized gains even when, because of unrealized losses, the fund has no net appreciation.

Thirty-one jurisdictions have enacted some version of Section 2 of UMIFA which, in its official form authorizes appropriation of net appreciation, both realized and unrealized; only California and Kansas omit the reference to unrealized appreciation.<sup>13</sup> The California provision is

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13. See Cal. Educ. Code § 94602; Kan. Stat. Ann. § 58-3602 (1983). Authority to use net appreciation, both realized and unrealized, is provided in the following 28 jurisdictions: Colo. Rev. Stat. § 15-1-1104 (1987); Conn. Gen. Stat. Ann. § 45-100j (West 1981); Del. Code Ann. tit. 12, § 4702 (1987); D.C. Code Ann. § 32-402 (1988); Ill. Ann. Stat. ch. 32, § 1103 (Smith-Hurd Supp. 1989); Ind. Code Ann. § 30-2-12-8 (West Supp. 1989); Ky. Rev. Stat. § 273.520 (1989); La. Rev. Stat. Ann. § 9:2337.2 (West Supp. 1989); Md. Est. & Trusts Code Ann. § 15-402 (1974); Mass. Ann. Laws ch. 180A, § 2 (Michie/Law. Co-op. 1987); Mich. Stat. Ann. § 26.1199(3) (Callaghan 1982); Minn. Stat. Ann. § 309.63 (West Supp. 1990); Mo. Ann. Stat. § 402.015 (Vernon 1979); Mont. Code Ann. § 72-30-201 (Supp. 1985); N.H. Rev. Stat. Ann. § 292-B:2 (1987); N.J. Rev. Stat. Ann. § 15:18-16 (West 1984); N.C. Gen. Stat. § 36B-2 (1989); N.D. Cent. Code § 15-67-02 (1981); N.Y. Not-for-Profit Corp. Law § 513(c) (Supp. 1990); Ohio Rev. Code Ann. § 1715.52 (Page 1985); Or. Rev. Stat. § 128.320 (1989); R.I. Gen. Laws Ann. § 18-12-2 (1988); Tenn. Code Ann. § 35-10-103 (1984); Tex. Prop. Code Ann. § 163.004 (Vernon Supp. 1990); Vt. Stat. Ann. tit.

outmoded. It is inconsistent with the portfolio approach to investments applicable under modern trust law.<sup>14</sup> Omitting half of the definition of "net appreciation" leads institutions to underutilize their assets by relying too heavily on fixed-income investments (e.g., bonds and certificates of deposit) instead of a more balanced portfolio that would include more equity investments (stocks). An overly cautious investment strategy both impairs the ability of an institution to spend in furtherance of its goals, thereby impeding the very purpose for which the endowment exists, and restricts the growth of its endowment and thus the future ability to spend to achieve the institution's purposes. Institutions with portfolios leaning more heavily on yield-oriented, fixed-income investments tend to spend a greater percentage of their income to meet their annual needs than institutions whose portfolios contain a better balance between equity and income.<sup>15</sup>

The existing California statute, if applied literally, encourages imprudence by requiring the sale of an institution's best assets to "realize" appreciation and by skewing portfolios toward yield-oriented, fixed-income investments. The statute ignores the need to keep pace with inflation by prudent equity investments.<sup>16</sup> Focusing only on *realized* net appreciation, the existing statute also ignores the fact that the assets retained may have depreciated, thereby leaving the institution in an even more perilous situation after sale of the appreciating asset.

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14, § 3402 (1974); Va. Code § 55-268.2 (1986); Wash. Rev. Code Ann. § 24.44.020 (Supp. 1989); W. Va. Code § 44-6A-3 (1982); Wis. Stat. Ann. § 112.10(2) (West 1988). Georgia law does not refer to appreciation, providing instead for authority to accumulate net annual income and add it to principal. See Ga. Code Ann. § 44-15-2 (Supp. 1989).

14. See Prob. Code § 16040 and its Comment; see also *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501, 539 (1986).

15. See letter from Daniel A. Wingerd, Associate Vice President, The Common Fund, to Yeoryios Apallas, Deputy Attorney General (Jan. 20, 1990), reproduced as Exhibit 1 to Commission Memorandum 90-21.

16. See also W. Cary & C. Bright, *The Law and the Lore of Endowment Funds* 5-6 (1969).

The experience in other jurisdictions over the last 15 years should have disclosed any problems that might have arisen under Section 2 of UMIFA. Research has not revealed any problems with this feature of UMIFA in other jurisdictions. Not only have those states authorizing use of net appreciation continued their statutes without enacting new restrictions, other states have added their names to the list of jurisdictions adopting the official text of the uniform act, Texas being the most recent.<sup>17</sup>

Finally, it should be noted that UMIFA does not force an institution to adopt an investment strategy that it might consider imprudent. In fact, prudence is still the standard by which the investment decisions are judged.<sup>18</sup> The proposed law would simply remove an artificial limitation on the prudent use of endowment funds in furtherance of the institutions' purposes. However, if a donor wishes to prevent the institution's use of net appreciation of an endowment gift,

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17. Tex. Prop. Code §§ 163.001-163.009 (Vernon Supp. 1990), enacted by 1989 Tex. Gen. Laws ch. 213, § 1. The Texas Legislature made the following finding in Section 163.002(a):

(1) privately supported educational, religious, and charitable organizations perform essential and needed services in the state;

(2) uncertainty regarding legal restrictions on the management, investment, and expenditure of endowment funds of the organizations has in many instances precluded obtaining the highest available return on endowment funds; and

(3) the organizations, their officers, directors, and trustees, and the citizens of this state will benefit from removal of the uncertainty and by permitting endowment funds to be invested for the long-term goals of achieving growth and maintaining purchasing power without adversely affecting availability of funds for current expenditure.

(b) The purpose of this chapter is to provide guidelines for the management, investment, and expenditure of endowment funds of privately supported educational, religious, and charitable organizations in order to eliminate the uncertainty regarding legal restrictions on the management, investment, and expenditure of the funds and to enable the organizations to maximize their resources.

The Rhode Island statute prefaces the authority to use net realized and unrealized appreciation with the proviso that it is "[i]n order to permit investments which do not have a high annual cash return while preserving the institution's right to a prudent amount of annual income . . . ." R.I. Gen. Laws Ann. § 18-12-2 (1988).

18. Education Code Section 18506, providing the standard of care which is based on the standard applicable to trustees generally under the Trust Law, would be continued without substantive change in the proposed law.

the donor can so provide in the gift instrument.<sup>19</sup> The intent of the donor, as expressed in the gift instrument, should be the guide to the use of net appreciation, not a blanket statutory restriction like that provided in existing California law.

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19. Educ. Code § 94603; UMIFA § 3.

## PROPOSED LEGISLATION

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

An act to amend Section 5240 of the Corporations Code, to add Part 7 (commencing with Section 18500) to Division 9 of the Probate Code, and to repeal Chapter 6 (commencing with Section 94600) of Part 59 of Division 10 of Title 3 of the Education Code, relating to the Uniform Management of Institutional Funds Act.

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

### **Corporations Code § 5240 (amended). Investments under Nonprofit Public Benefit Corporations Law**

**SECTION 1.** Section 5240 of the Corporations Code is amended to read:

5240. (a) This section applies to all assets held by the corporation for investment. Assets which are directly related to the corporation's public or charitable programs are not subject to this section.

(b) Except as provided in subdivision (c), in investing, reinvesting, purchasing, acquiring, exchanging, selling and managing the corporation's investment, the board shall do the following:

(1) Avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income, as well as the probable safety of the corporation's capital.

(2) Comply with additional standards, if any, imposed by the articles, bylaws or express terms of an instrument or agreement pursuant to which the assets were contributed to the corporation.

(c) No investment violates this section where it conforms to provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to the corporation. No investment violates this

section or Section 5231 where it conforms to provisions requiring such investment contained in an instrument or agreement pursuant to which the assets were contributed to the corporation.

(d) In carrying out duties under this section, each director shall act as required by subdivision (a) of Section 5231, may rely upon others as permitted by subdivision (b) of Section 5231, and shall have the benefit of subdivision (c) of Section 5231, and the board may delegate its investment powers as permitted by Section 5210.

(e) Nothing in this section shall be construed to preclude the application of the Uniform Management of Institutional Funds Act, ~~Chapter 3 (commencing with Section 2290.1) of Title 8 of Part 4 of Division 3 of the Civil Code~~ *Part 7 (commencing with Section 18500) of Division 9 of the Probate Code*, if that act would otherwise be applicable, *but nothing in the Uniform Management of Institutional Funds Act alters the status of governing boards, or the duties and liabilities of directors, under this part.*

**Comment.** Subdivision (e) of Section 5240 is revised to correct a cross-reference and to add language consistent with Probate Code Section 18508.

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**Education Code §§ 94600-94610 (repealed). Uniform Management of Institutional Funds Act**

**SEC. 2.** Chapter 6 (commencing with Section 94600) of Part 59 of the Education Code is repealed.

**Education Code § 94600 (repealed). Short title**

**Comment.** Former Section 94600 is continued in Probate Code Section 18500 without change. The Uniform Management of Institutional Funds Act has been moved from the Education Code since it has been expanded to apply to religious, charitable, and other eleemosynary institutions.

**Education Code § 94601 (repealed). Definitions**

**Comment.** Former Section 94601 is restated in Probate Code Section 18501 without substantive change, except that the definition of “institution” in subdivision (a) has been substantially expanded in the new provision. Additional technical changes have been made. See Prob. Code § 18501 and its Comment.

**Education Code § 94602 (repealed). Expenditure of asset net appreciation for current use**

**Comment.** The first sentence of former Section 94602 is superseded by Probate Code Section 18502. See the Comment to Prob. Code § 18502. The second sentence is omitted. See the Comment to Prob. Code § 18502. The third sentence is continued in the second sentence of Probate Code Section 18502 without change.

**Education Code § 94603 (repealed). Construction of gift instrument**

**Comment.** Former Section 94603 is restated in Probate Code Section 18503 without substantive change. See the Comment to Prob. Code § 18503.

**Education Code § 94604 (repealed). Authority of board to invest and reinvest**

**Comment.** Former Section 94604 is continued in Probate Code Section 18504 without change, except that the comma following the word “associations” in subdivision (a) is omitted.

**Education Code § 94605 (repealed). Delegation of authority**

**Comment.** Former Section 94605 is continued in Probate Code Section 18505 without change.

**Education Code § 94606 (repealed). Standard of care**

**Comment.** Former Section 94606 is restated in Probate Code Section 18506 without substantive change, except as noted in the Comment to Probate Code Section 18506.

**Education Code § 94607 (repealed). Release of restriction in gift instrument**

**Comment.** Former Section 94607 is restated in Probate Code Section 18507 without substantive change. See the Comment to Prob. Code § 18507.

**Education Code § 94608 (repealed). Severability**

**Comment.** Former Section 94608 is omitted because it is unnecessary. See Prob. Code § 11 (severability).

**Education Code § 94609 (repealed). Application and construction**

**Comment.** Former Section 94609 is omitted because it is unnecessary. See Prob. Code § 2(b) (interpretation of uniform acts).

**Education Code § 94610 (repealed). Status of governing boards**

**Comment.** Former Section 94610 is restated in Probate Code Section 18508 without substantive change. See the Comment to Prob. Code § 18508.

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**Probate Code §§ 18500-18509 (added). Uniform Management of Institutional Funds Act**

SEC. 3. Part 7 (commencing with Section 18500) is added to Division 9 of the Probate Code, to read:

**PART 7. UNIFORM MANAGEMENT OF  
INSTITUTIONAL FUNDS ACT****§ 18500. Short title**

18500. This part may be cited as the Uniform Management of Institutional Funds Act.

**Comment.** Section 18500 continues Education Code Section 94600 without change. The Uniform Management of Institutional Funds Act has been relocated from the Education Code, where it applied only to certain private institutions of higher education. See Section 18501(e) and its Comment. As to the construction of provisions drawn from uniform acts, see Section 2. See also Section 11 (severability).

**§ 18501. Definitions**

18501. As used in this part:

(a) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.



(b) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

(c) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(d) "Historic dollar value" means the aggregate fair value in dollars of (1) an endowment fund at the time it became an endowment fund, (2) each subsequent donation to the endowment fund at the time it is made, and (3) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the endowment fund.

(e) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(f) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include (1) a fund held for an institution by a trustee that is not an institution or (2) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

**Comment.** Section 18501 restates former Education Code Section 94601 without substantive change, except that the definition of "institution" has been substantially expanded. As revised, the definition of "institution" is the same as that provided in Section 1(1) of the Uniform Management of Institutional Funds Act (1972). Former Education Code Section 94601(a) defined "institution" as a "private incorporated or unincorporated organization organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities to the extent that it holds funds exclusively for any of such purposes."

Section 18501 lists the definitions in alphabetical order, unlike former Education Code Section 94601. The definition of "historic dollar value" in subdivision (d) has been revised by adding "endowment" preceding "fund" in the second and third clauses.

Section 18501 is the same in substance as Section 1 of the Uniform Management of Institutional Funds Act (1972), except for the omission of the provision in Section 2(5) of the uniform act making conclusive a good faith determination of historic dollar value. As to the construction of provisions drawn from uniform acts, see Section 2.

### **§ 18502. Expenditure of asset net appreciation for current use**

18502. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 18506. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

**Comment.** Section 18502 is the same in substance as Section 2 of the Uniform Management of Institutional Funds Act (1972). As to the construction of provisions drawn from uniform acts, see Probate Code Section 2. The provision in the first sentence permitting the appropriation of net appreciation, whether realized or unrealized, supersedes the first sentence of former Education Code Section 94602. The second sentence of Section 18502 continues the third sentence of former Education Code Section 94602 without change. The second sentence of former Education Code Section 94602, which provided a rolling five-year averaging rule, is not continued.

### **§ 18503. Construction of gift instrument**

18503. (a) Section 18502 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended.

(b) If the gift instrument includes a designation of the gift as an endowment or a direction or authorization to use only

“income,” “interest,” “dividends,” or “rents, issues, or profits,” or “to preserve the principal intact,” or a direction or authorization that contains other words of similar meaning:

(1) A restriction on the expenditure of net appreciation need not be implied solely from the designation, direction, or authorization, if the gift instrument became effective before the Uniform Management of Institutional Funds Act became applicable to the institution.

(2) A restriction on the expenditure of net appreciation may not be implied solely from the designation, direction, or authorization, if the gift instrument becomes effective after the Uniform Management of Institutional Funds Act became applicable to the institution.

(c) The effective dates of the Uniform Management of Institutional Funds Act are the following:

(1) January 1, 1974, with respect to a private incorporated or unincorporated organization organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities.

(2) January 1, 1991, with respect to an institution not described in paragraph (1).

**Comment.** Subdivision (a) of Section 18503 restates former Education Code Section 94603(a) without substantive change. Subdivisions (b) and (c)(1) restate former Education Code Section 94603(b) without substantive change. Subdivision (c)(2) applies a consistent rule of construction to institutions (as defined in Section 18501(e)) that were not covered by the former law. See the Comment to Section 18501.

Subdivisions (a) and (b) are the same in substance as the first two sentences of Section 3 of the Uniform Management of Institutional Funds Act (1972). As to the construction of provisions drawn from uniform acts, see Section 2.

#### **§ 18504. Investment authority**

18504. In addition to an investment otherwise authorized by law or by the applicable gift instrument, the governing board, subject to any specific limitations set forth in the

applicable gift instrument, may do any or all of the following:

(a) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, deeds of trust, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations or partnerships, and obligations of any government or subdivision or instrumentality thereof.

(b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

(c) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution.

(d) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

**Comment.** Section 18504 continues former Education Code Section 94604 without change, except that in subdivision (a) a reference to deeds of trust has been added and an unnecessary comma following the word "associations" has been omitted. The forms of investment listed in subdivisions (a) and (d) following the word "including" are illustrations and not limitations on the general authority provided in these subdivisions. As to the construction of provisions drawn from uniform acts, see Section 2.

### **§ 18505. Delegation of investment management**

18505. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may do the following:

(a) Delegate to its committees, officers, or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds.

(b) Contract with independent investment advisers, investment counsel or managers, banks, or trust companies, so to act.

(c) Authorize the payment of compensation for investment advisory or management services.

**Comment.** Section 18505 continues former Education Code Section 94605 without change. This section is the same in substance as Section 5 of the Uniform Management of Institutional Funds Act (1972). As to the construction of provisions drawn from uniform acts, see Section 2.

### **§ 18506. Standard of care**

18506. (a) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property, appropriating appreciation, and delegating investment management for the benefit of an institution, the members of the governing board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the institution. In the course of administering the fund pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(b) In exercising judgment under this section, the members of the governing board shall consider the long- and short-term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, general economic conditions, the appropriateness of a reasonable proportion of higher risk investment with respect to institutional funds as a whole, income, growth, and long-term net appreciation, as well as the probable safety of funds.

**Comment.** Section 18506 restates former Education Code Section 94606 without substantive change. See the Comment to Section 18500. The standard of care in subdivision (a) is consistent with the general standard of care provided by Section 16040.

**§ 18507. Release of restriction in gift instrument**

18507. (a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the superior court of the county in which the principal activities of the institution are conducted, or other court of competent jurisdiction, for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. No court has jurisdiction to release a restriction on an institutional fund under this part unless the Attorney General is a party to the proceedings. If the court finds that the restriction is obsolete or impracticable, it may by order release the restriction in whole or in part. A release under this subdivision may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of cy pres.

**Comment.** Section 18507 restates former Education Code Section 94607 without substantive change. In the second sentence of subdivision (b), the phrase "release a restriction on" has been substituted for the phrase "modify any use of" in former Education Code Section 94607(b) for consistency with the remainder of this section. Section 18507 is the same in substance as Section 7 of the Uniform Management of Institutional Funds Act (1972), except for some variations in subdivision (b). As to the construction of provisions drawn from uniform acts, see Section 2.

**§ 18508. Status of governing boards**

18508. Nothing in this part alters the status of governing boards, or the duties and liabilities of directors, under other laws of this state.

**Comment.** Section 18508 continues former Education Code Section 94610 without change, except that the language relating to duties and liabilities of directors is new. The purpose of the new language is to make clear that the duties and liabilities of directors of incorporated institutions are governed by the relevant statute and not by this part. See, e.g., Corp. Code §§ 5231-5231.5 (directors of nonprofit public benefit corporations), 7231-7231.5 (directors of nonprofit mutual benefit corporations), 9240-9241 (directors of nonprofit religious corporations).

**§ 18509. Laws relating to expenditure of public funds**

18509. Nothing in this part limits the application of any law relating to the expenditure of public funds.

**Comment.** Section 18509 is a new provision that makes clear the relation of the Uniform Management of Institutional Funds Act to any other law concerning expenditure of public funds. See, e.g., Gov't Code § 53601. Thus, under Section 18509, if other law provides greater limitations on the expenditure of public funds, that law prevails over any provision of this part that might otherwise have been applicable.





**APPENDIX 6**  
**REPORT OF**  
**THE CALIFORNIA LAW REVISION COMMISSION**  
**ON CHAPTER 140 OF THE STATUTES OF 1990**  
**(SENATE BILL 1855)**

Chapter 140 of the Statutes of 1990 was introduced as Senate Bill 1855 by Senator Robert Beverly to enact the California Law Revision Commission's *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990). The Comments in the Commission's recommendation to the sections contained in Chapter 140 remain applicable except to the extent they are replaced or supplemented by the revised and new Comments set out below, to reflect amendments to the bill made in the Senate.

**Probate Code § 9050 (amended). Notice required**

**Comment.** Section 9050 is amended to require the personal representative to give notice to a creditor if the personal representative has knowledge of the creditor at any time during estate administration. If the personal representative first has knowledge of the creditor more than four months after letters were issued, the personal representative must give notice within 30 days after the personal representative first has knowledge of the creditor. Section 9051(c) (time of notice). Such a notice does not extend the creditor's time to file a claim. Section 9100 (claim period). However, the creditor may petition to file a late claim. Section 9103 (late claims).

**Probate Code § 9051 (amended). Time of notice**

**Comment.** Section 9051 is amended to require the personal representative to give notice to a creditor within 30 days after the personal representative first has knowledge of the creditor, in cases where the personal representative first has knowledge of the creditor more than four months after letters were issued. This implements the requirement of Section 9050 (notice required) that the personal representative must give notice to the creditor even if the personal representative first has knowledge of the creditor after expiration of the claim filing period. Such a notice does not extend the creditor's time to file a claim. Section 9100 (claim period). However, the creditor may petition to file a late claim. Section 9103 (late claims).

**Probate Code § 9052 (amended). Form of notice**

**Comment.** Section 9052 is amended to revise the form of notice of administration to inform the creditor of the opportunity to petition to file a late claim. This implements the requirement of Section 9050 (notice required) that the personal representative must give notice to the creditor even if the personal representative first has knowledge of the creditor after expiration of the claim filing period. Such a notice does not extend the creditor's time to file a claim. Section 9100 (claim period). However, the creditor may petition to file a late claim. Section 9103 (late claims).

**Probate Code § 9100 (amended). Claim period**

**Comment.** Section 9100 is amended to make clear that notice to a creditor given after expiration of the claim filing period under Sections 9050 (notice required) and 9051 (time of notice) does not extend the creditor's time to file a claim. However, the creditor may petition to file a late claim. Section 9103 (late claims).

**Probate Code § 9392 (added). Liability of distributee**

**Comment.** Section 9392 is new. It implements the rule of *Tulsa Professional Collection Services, Inc. v. Pope*, 108 S. Ct. 1340 (1988), that the claim of a known or reasonably ascertainable creditor whose claim is not merely conjectural but who is not given actual notice of administration may not be cut off by a short claim filing requirement. Section 9392 is intended as a limited remedy to cure due process failures only, and is not intended as a general provision applicable to all creditors.

A creditor who has knowledge of estate administration must file a claim or, if the claim filing period has expired, must petition for leave to file a late claim. See Sections 9100 (time for filing claims) and 9103 (late claims). This rule applies whether the creditor's knowledge is acquired through notification under Section 9050 (notice required), by virtue of publication under Section 8120 (publication required), or otherwise.

Under Section 9392, a creditor who has no knowledge of estate administration before an order is made for distribution of property has a remedy against distributees to the extent payment cannot be obtained from the estate. There is a one year statute of limitations, commencing with the date of the decedent's death, for an action under this section by the creditor. Code Civ. Proc. § 353. Subdivision (c) is a specific application of the general purpose of this section to subject a distributee to personal liability but not to require rescission of a distribution already made.

An omitted creditor may also have a cause of action against a personal representative who in bad faith fails to give notice to a known creditor. See Sections 9053 (immunity of personal representative) and Section 11429 (unpaid creditor).



**APPENDIX 7**  
**REPORT OF**  
**THE CALIFORNIA LAW REVISION COMMISSION**  
**ON CHAPTER 986 OF THE STATUTES OF 1990**  
**(SENATE BILL 1777)**

Senate Bill 1777, which was enacted as Chapter 986 of the Statutes of 1990, was introduced in the 1989-90 regular session by Senator Robert Beverly to enact the California Law Revision Commission's *Recommendations Relating to Powers of Attorney*, 20 Cal. L. Revision Comm'n Reports 401 (1990). The Comments in the Commission's recommendations remain applicable to the various sections of Chapter 986 except that the Comments set out below are revised to reflect amendments made to the bill during the legislative process and replace the corresponding Comments printed in the recommendations.

**Civil Code § 2475 (added). Statutory form**

**Comment.** Section 2475 is the same in substance as subsection (a) of Section 1 of the Uniform Statutory Form Power of Attorney Act (1988) with the addition of provisions to permit designation of co-agents. The added provisions are drawn from the former Statutory Short Form Power of Attorney statute. See former Section 2450. The acknowledgment portion of the form has been revised to be consistent with the form used under California law. The word "incapacitated" has been substituted for the words "disabled, incapacitated, or incompetent" used in the Uniform Act. This substitution conforms the statutory form to the California version of the Uniform Durable Power of Attorney Act. See Section 2400 (requirements to create a durable power of attorney).

Section 2475 provides the text of the form that is sufficient and necessary to bring this chapter into operation. A form used to create a power of attorney subject to this chapter should use the language provided in Section 2475. Minor variances in wording will not take it out of the scope of the chapter. For example, the use of the language of the official text of the Uniform Act in the last paragraph of the text of the statutory form (protection of third party who receives a copy of the statutory form power of attorney and acts in reliance on it) instead of the language provided in Section 2475 does not take the form out of the scope of this chapter. See Section 2476(a). Nor does the omission of the provisions relating to designation of co-agents take the form out of the scope of this chapter. See Section 2476(a).

After the introductory phrase, the term "agent" is used throughout the Uniform Act in place of the longer and less familiar "attorney in fact." Special effort is made throughout the Uniform Act to make the language as informal as possible without impairing its effectiveness.

The statutory form contains a list of powers. The powers listed relate to various separate classes of activities, except the last, which includes all the others. Health care matters are not included. For a durable power of attorney form for health care matters, see Sections 2500-2508.

Space is provided in the statutory form for "Special Instructions." In this space, the principal can add specially drafted provisions limiting or extending the powers granted to the agent. (If the space provided is not sufficient, a reference can be made in this space to an attached sheet or sheets, and the special provisions can be included on the attached sheet or sheets.)

The statutory form contains only a limited list of powers. If it is desired to give the agent the broadest possible powers, language similar to the following can be added under the "Special Instructions" portion of the form:

In addition to all of the powers listed in lines (A) to (M) above, I grant to my agent full power and authority to act for me, in any way which I myself could act if I were personally present and able to act, with respect to all other matters and affairs not listed in lines (A) to (M) above, but this authority does not include authority to make health care decisions.

Neither the form in this section, nor the constructional provisions in Sections 2485-2499, attempt to allow the grant of the power to make a will or to give the agent extensive estate planning authority, although several of the powers, especially lines (G), (H), and (L) of the statutory form, may be useful in planning the disposition of an estate. An individually tailored power of attorney can be used if the principal wants to give the agent extensive estate planning authority, or additional estate planning powers can be granted to the agent by stating those additional powers in the space provided in the form for "Special Instructions." For example, provisions like the following might be included under the special instructions portion of the statutory form:

In addition to the powers listed in lines (A) to (M) above, the agent is empowered to do all of the following:

(1) Establish a trust with property of the principal for the benefit of the principal and the spouse and descendants of the principal, or any one or more of them, upon such terms as the

agent determines are necessary or proper, and transfer any property in which the principal has an interest to the trust.

(2) Exercise in whole or in part, release, or let lapse any power the principal may have under any trust whether or not created by the principal, including any power of appointment, revocation, or withdrawal, but a trust created by the principal may only be modified or revoked by the agent as provided in the trust instrument.

(3) Make a gift, grant, or other transfer without consideration to or for the benefit of the spouse or descendants of the principal or a charitable organization, or more than one or all of them, either outright or in trust, including the forgiveness of indebtedness and the completion of any charitable pledges the principal may have made; consent to the splitting of gifts under Internal Revenue Code Section 2513, or successor sections, if the spouse of the principal makes gifts to any one or more of the descendants of the principal or to a charitable institution; pay any gift tax that may arise by reason of those gifts.

(4) Loan any of the property of the principal to the spouse or descendants of the principal, or their personal representatives or a trustee for their benefit, the loan bearing such interest, and to be secured or unsecured, as the agent determines advisable.

(5) In general, and in addition to all the specific acts enumerated, do any other act which the principal can do through an agent for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of other personal relationships of the principal to parents, relatives, friends, and organizations.

It should be noted that a trust may not be modified or revoked by an attorney in fact under a statutory form power of attorney unless it is expressly permitted by the instrument granting the power and by the trust instrument. See Section 2499.5. See also Prob. Code § 15401(b).

Section 2478 and the statutory form itself make the power of attorney a durable power of attorney, remaining in effect after the incapacity of the principal, unless the person executing the form strikes out the language in the form that makes the instrument a durable power of attorney.

The last paragraph of the text of the statutory form protects a third party who receives a copy of the statutory form power of attorney and acts in reliance on it. The statement in the statutory form—that revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation—is

consistent with Sections 2403 (good faith reliance upon power of attorney without actual knowledge of death or incapacity of principal) and 2404 (affidavit of lack of knowledge of termination of power). See also Section 2512 (protection of person who acts in good faith reliance upon power of attorney where specified requirements are satisfied). The protection provided by these sections and other immunities that may protect persons who rely on a power of attorney (see subdivision (b) of Section 2512) apply to a statutory form power of attorney.

The language of the last portion of the text of the statutory form set out in Section 2475 substitutes the phrase "has actual knowledge of the revocation" for the phrase "learns of the revocation" used in the Uniform Act form. This substitution does not preclude use of a form using the Uniform Act language. See Section 2476(a) (third sentence).

Neither this section, nor the chapter as a whole, attempts to provide an exclusive method for creating a power of attorney. Other forms may be used and other law employed to create powers of attorney. See Section 2481. However, this chapter should be sufficient for most purposes.

For provisions relating to court enforcement of the duties of the agent, see Sections 2410-2423.

The form provided by Section 2475 supersedes the former statutory short form power of attorney under former Chapter 3 (commencing with Section 2450). But older forms consistent with former Chapter 3 are still effective. See Section 2450 and the Comment to that section.

### **Civil Code § 2476 (added). Requirements for statutory form power of attorney**

**Comment.** Section 2476 is the same in substance as subsection (b) of Section 1 of the Uniform Statutory Form Power of Attorney Act (1988) with the addition of the second and third sentences of subdivision (a). The added sentences make clear that use of a form that complies with the requirements of the official text of the Uniform Act satisfies the requirements of this section, even though the form used does not include the provisions in Section 2475 for designation of co-agents and even though the form used contains the language "learns of the revocation."

### **Civil Code § 2478 (added). Durable power of attorney**

**Comment.** Section 2478 is the same in substance as Section 2 of the Uniform Statutory Form Power of Attorney Act (1988). The phrase "to the extent that durable powers are permitted by other law of this State," found in the Uniform Act, has been omitted as unnecessary. Durable powers of attorney are specifically authorized by Article 3 (commencing with Section 2400) of Chapter 2. The words "incapacitated" and



“incapacity” are used in Section 2478 to conform to the form used in Section 2475 and to Section 2400 (California version of the Uniform Durable Power of Attorney Act).

A durable power of attorney under this chapter continues in effect when the principal becomes incapacitated. The form in Section 2475 includes a provision for continuance under those circumstances. That provision may be used or stricken at the discretion of the principal. The provision is consistent with Section 2400 (Uniform Durable Power of Attorney Act). See also Sections 2401 (effect of acts by attorney in fact during incapacity of principal), 2403 (good faith reliance upon power of attorney after death or incapacity of principal). As to the effect of appointment of a conservator of the estate, guardian of the estate, or other fiduciary charged with the management of the principal's property, see Section 2402.

**Civil Code § 2480 (added). General provisions applicable to power under this chapter**

**Comment.** Section 2480 makes clear that the general provisions that apply to a power of attorney apply to a statutory form power of attorney under this chapter. Accordingly, the following provisions apply to a power of attorney under this chapter:

Section 2400 (requirements to create durable power of attorney). The statutory form set out in Section 2475 satisfies the requirements to create a durable power of attorney unless the provision making the power of attorney durable is struck out on the form.

Section 2400.5 (proxies given by attorney in fact to exercise voting rights).

Section 2401 (effect of acts by attorney in fact during incapacity of principal).

Section 2402 (effect of appointment of a conservator of the estate or other fiduciary charged with the management of the principal's property).

Section 2403 (good faith reliance upon power of attorney after death or incapacity of principal).

Section 2404 (good faith reliance upon affidavit of attorney in fact as conclusive proof of the nonrevocation or nontermination of the power).

Sections 2410-2423 (court enforcement of duties of attorney in fact).

Section 2512 (protection against liability of person acting in good faith reliance upon power of attorney).

Section 2513 (application of power of attorney to all or portion of property of principal; unnecessary to describe items or parcels of property).

**Civil Code § 2481 (added). Use of other forms**

**Comment.** Section 2481 makes clear that this chapter does not affect the use of other forms.

**APPENDIX 8**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

**RECOMMENDATION**

relating to

**Discovery After Judicial Arbitration**

**September 1990**

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

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 Discovery After Judicial Arbitration*, 20 Cal. L. Revision Comm'n Reports 2297 (1990).

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

**CALIFORNIA LAW REVISION COMMISSION**

4000 MIDDLEFIELD ROAD, SUITE D-2  
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September 14, 1990

**To:     The Honorable George Deukmejian**  
          *Governor of California*, and  
          **The Legislature of California**

The recommended legislation replaces a reference in the judicial arbitration statute to repealed Section 2037 of the Code of Civil Procedure with a reference to new Section 2034 of the Code of the Civil Procedure which deals with the same subject matter as the repealed section.

This recommendation is made pursuant to Section 8298 of the Government Code.

Respectfully submitted,

**Roger Arnebergh**  
*Chairperson*



## RECOMMENDATION

If trial de novo is sought after judicial arbitration, there may be no further discovery "other than that permitted by Section 2037" without leave of court for good cause.<sup>1</sup> Former Section 2037 of the Code of Civil Procedure provided for a demand for exchange of expert witness lists and reports and writings of experts, but the section has been repealed.<sup>2</sup> The new statute providing for a demand for exchange of expert witness lists and reports and writings of experts is Code of Civil Procedure Section 2034.

The judicial arbitration statute should be amended to refer to the new section for exchange of information concerning expert witnesses. This would preserve former law permitting the demand to be made without leave of court and without a showing of good cause. The policy of the arbitration statute is to limit discovery after the arbitration award and before trial de novo to force the parties to use arbitration as the primary forum to resolve their case.<sup>3</sup> But the scheme for demanding an exchange of information concerning expert witnesses does not work well for arbitration.<sup>4</sup>

The main reason to get an opponent's list of experts is so their depositions may be taken. But, as a practical matter, there is not enough time under the accelerated schedule for

1. Code Civ. Proc. § 1141.24. Judicial arbitration may be ordered where the amount in controversy is not more than \$50,000. Code Civ. Proc. § 1141.11. "Judicial Arbitration" is obviously an inapt term, for the system it describes is neither judicial nor arbitration. The hearing is not conducted by a judge, and the right to a trial de novo removes the finality of true arbitration. 'Extrajudicial mediation' would be closer to correct." *Dodd v. Ford*, 153 Cal. App. 3d 426, 432 n.7, 200 Cal. Rptr. 256 (1984).

2. 1986 Cal Stats. ch. 1336, § 3, operative July 1, 1987.

3. Practicing California Judicial Arbitration § 3.7, at 61 (Cal. Cont. Ed. Bar 1983). In judicial arbitration, the parties have full discovery rights. Cal. R. Ct. 1612; 6 B. Witkin, *California Procedure Proceedings Without Trial* §§ 320, 336, 341 (3d ed. 1985). Expert witnesses may be called, and their reports are admissible in evidence. Cal. R. Ct. 1613; 6 B. Witkin, *supra*, § 339.

4. Practicing California Judicial Arbitration § 3.35, at 80 (Cal. Cont. Ed. Bar 1983).

arbitration to discover the opponent's experts and to take their depositions: The arbitration hearing must be held not later than 60 days after the case is assigned to the arbitrator.<sup>5</sup> But the demand for exchange of expert witness lists must be served by the later of 10 days after the hearing date is set, or 70 days before the hearing.<sup>6</sup> The result is that the parties have an apparent right to obtain the names of experts and to take their depositions, but are denied a workable mechanism for doing so.<sup>7</sup>

The Law Revision Commission recommends that the reference in Code of Civil Procedure Section 1141.24 to former Section 2037 be replaced by a reference to Section 2034.

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5. Cal. R. Ct. 1611.

6. Code Civ. Proc. § 2034(b).

7. Practicing California Judicial Arbitration § 3.35, at 80 (Cal. Cont. Ed. Bar 1983). Because the demand for exchange of information on expert witnesses could not be used effectively in arbitration, Code of Civil Procedure Section 1141.24 was amended in 1985 to permit the demand to be made after arbitration without the usual requirement of good cause and court authorization. However, by referring only to Section 2037, the 1985 amendments were defective: The provision for demand for exchange in former Section 2037 could not work without the succeeding sections, which dealt with date of exchange (former Section 2037.1), duties of parties (former Section 2037.2), contents of witness list (former Section 2037.3), supplemental list (former Section 2037.4), prohibition against calling witness not on list (former Section 2037.5), permission of court to call witness not on list (former Section 2037.6), deposing expert (former Section 2037.7), and protective orders (former Section 2037.8). When former Section 2037 was repealed in 1987, Sections 2037.1 to 2037.9 were also repealed. The replacement section (Section 2034) now has all the provisions that were in former Sections 2037-2037.9. So by revising Section 1141.24 to replace the reference to former Section 2037 with a reference to Section 2034, the imperfectly-realized objective of the 1985 amendments will be achieved.



## **PROPOSED LEGISLATION**

The Commission's recommendation would be effectuated by enactment of the following amendment.

**Code of Civil Procedure § 1141.24 (amended). Discovery after judicial arbitration**

**1141.24.** In cases ordered to arbitration pursuant to subdivision (a) of Section 1141.16, absent a stipulation to the contrary, no discovery other than that permitted by Section ~~2037~~ 2034 is permissible after an arbitration award except by leave of court upon a showing of good cause.

**Comment.** Section 1141.24 is amended to correct a section reference. Although new Section 2034 includes matters covered by former Sections 2037.1 to 2037.9 as well as by former Section 2037, the reference to former Section 2037 apparently was also intended to incorporate those related sections.



**APPENDIX 9**  
**REPORT OF**  
**THE CALIFORNIA LAW REVISION COMMISSION**  
**ON CHAPTER 1270 OF THE STATUTES OF 1984**  
**(ASSEMBLY BILL 2764)**

Chapter 1270 of the Statutes of 1984 was introduced as Assembly Bill 2764 by Assembly Members Sher and La Follette to enact the California Law Revision Commission's *Recommendation Relating to Statutes of Limitations for Felonies*, 17 Cal. L. Revision Comm'n Reports 301 (1984). The Comments printed in the recommendation remain applicable to the various sections of the bill except that the Comments set out below are revised to reflect amendments made to the bill during the legislative process and replace the corresponding Comments printed in the recommendation.

**Penal Code § 799 (added). Crimes not subject to limitation period**

**Comment.** Section 799 replaces former Section 799 with the rule that there is no limitation period for capital crimes or crimes punishable by life imprisonment (with or without the possibility of parole), or for embezzlement of public money. This rule preserves former law as to murder (Section 187), kidnapping for ransom (Section 209), and embezzlement of public money (Section 424). See former Section 799.

Section 799 extends the limitation period for treason (Section 37), procuring execution by perjury (Section 128), train wrecking (Sections 218, 219), assault with a deadly weapon by a life term prisoner (Section 4500), bombing resulting in death or bodily injury (Section 12310), and making defective war materials that cause death (Military and Veterans Code Section 1672). These crimes are punishable by death or life imprisonment and therefore are subject to no limitation period under Section 799. Under former law they were subject to a three-year limitation period. See former Section 800(a).

Section 799 reduces the limitation period for falsification of public records (Government Code Section 6200). This crime is not punishable by death or life imprisonment and therefore is not subject to Section 799; it is subject to a three-year limitation period under Section 801 (three-year limitation period for felonies), which is tolled until discovery of the crime. Section 803 (tolling of limitation period). Under former law it was subject to no limitation period. Former Section 799.

A crime punishable by death or by life imprisonment (with or without parole) is a crime for which the maximum penalty that may be imposed is death or life imprisonment (with or without parole), disregarding enhancement of the penalty in the case of an habitual offender. See Section 805 (classification of offenses).

**Penal Code § 801 (added). Felonies subject to three-year limitation period**

**Comment.** Section 801 continues the substance of former Section 800(a), which provided a limitation period of three years applicable to all felonies not otherwise dealt with expressly. Section 801 does not apply to capital crimes or crimes punishable by life imprisonment, or to embezzlement of public money, for which there is no limitation period (Section 799), or to felonies punishable by eight years or more imprisonment, for which there is a six-year limitation period (Section 800). In addition, the three-year limitation period of Section 801 is tolled until discovery of crimes involving fraud or public officials (Section 803).

A crime punishable by imprisonment in the state prison within the meaning of Section 801 is a crime for which such imprisonment is the maximum penalty that may be imposed, disregarding enhancement of the penalty in the case of an habitual offender. See Section 805 (classification of offenses). For determination of the time prosecution is commenced within the meaning of this section, see Section 804.

**Penal Code § 803 (added). Tolling of limitation period**

**Comment.** Subdivision (a) of Section 803 supersedes former Section 802.

Subdivision (b) continues the substance of former Section 802.5. The limitation of former Section 802.5 that permitted recommencing the same "criminal action" is replaced by a broader standard of prosecution for the "same conduct," drawn from Model Penal Code § 1.06(6)(b). The former law that provided tolling only for a subsequent prosecution for the same offense was too narrow, since the dismissal may have been based upon a substantial variation between the previous allegations and the proof. The test of the "same conduct," involving as it does some flexibility of definition, states a principle that should meet the reasonable needs of prosecution, while affording the defendant fair protection against an enlargement of the charges after running of the statute. It should be noted that subdivision (b) provides tolling only for a prosecution pending in state, not federal, court.

Subdivision (c) continues the substance of former Section 800(c), with the exception of voluntary and involuntary manslaughter (Section 192), which are governed by Section 800 (felonies subject to six-year limitation period). Subdivision (c) also includes falsification of public records (Gov't Code §§ 6200-6201) (formerly subject to no limitation period) and acceptance of a bribe by a public official or public employee (Sections 68, 85, 93, 165; Elec. Code § 29421) (formerly subject to a six-year limitation period). See former Sections 799 and 800(b). Although subdivision (c) generally governs crimes involving fraud or breach of fiduciary duty, all types of grand theft are included within subdivision (c) in order to avoid the need to characterize the material elements of the particular crime in every case.

Subdivision (d) supersedes former Section 802. The statute of limitations may be satisfied as to a defendant absent from the state by issuing an arrest warrant. See Section 804 (commencement of prosecution).

#### **Penal Code § 804 (added). Commencement of prosecution**

**Comment.** Subdivision (a) of Section 804 continues the substance of portions of former Sections 800, 801, 802.5, and of former Section 803.

Subdivision (b) is drawn from former Section 802 (tolling while defendant out of state) and from Section 691(4) ("accusatory pleading" defined).

Subdivision (c) continues the substance of portions of former Section 800 (contingent version).

Subdivision (d) continues the substance of portions of former Sections 800 and 802.5, but adds the limitation that the warrant specify the name of the defendant or describe the defendant with particularity. Issuance of a "Doe" warrant does not reasonably inform a person that he or she is being prosecuted and therefore does not satisfy the statute of limitations. If the name specified in the warrant is not the precise name of the defendant, it is sufficient that the name identifies the defendant with reasonable certainty. See, e.g., *People v. McCrae*, 218 Cal. App. 2d 725, 32 Cal. Rptr. 500 (1963), *cert. den.* 376 U.S. 934 (1964); *People v. Erving*, 189 Cal. App. 2d 283, 11 Cal. Rptr. 203 (1961), *cert. den.* 368 U.S. 960 (1962); cf. Sections 959(4), 960 (sufficiency of accusatory pleading). Nothing in subdivision (d) limits the constitutional due process and speedy trial requirements that the warrant be executed without unreasonable delay. See, e.g., *Jones v. Superior Court*, 3 Cal. 3d 734, 478 P.2d 10, 91 Cal. Rptr. 578 (1970). The reference in subdivision (d) to a "bench warrant" in addition to "arrest warrant" codifies existing law. 66 Ops. Cal. Atty. Gen. 256 (1983).



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**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** [out of print]

**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** [out of print]

**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 [out of print]

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

**Annual Report (December 1977) includes the following recommendations:**

- Use of Keepers Pursuant to Writs of Execution
- Attachment Law includes the following recommendations:
  - 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 includes the following recommendations:
  - 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)****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**

**Recommendation Relating to:**

**Enforcement of Judgments includes the following recommendations:**

- 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**

**[Out of Print]**

**Annual Report (December 1980) includes the following recommendation:**

**Revision of the Guardianship-Conservatorship Law includes the following recommendations**

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

**Recommendations Relating to Probate and Estate Planning includes the following recommendations:**

- Non-Probate Transfers
- Revision of the Powers of Appointment Statute

**Tentative Recommendation Proposing the Enforcement of Judgments Law**

**VOLUME 16 (1982)**

**[Out of Print]**

**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 includes the following recommendations:**

- 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 includes the following recommendations:****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)****[Out of Print]****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 includes the following recommendations:****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 [out of print]****Family Law includes the following recommendations:****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 includes the following recommendations:****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)**

[Out of Print]

**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

**Annual Report (December 1986) includes the following recommendations:**

Notice in Guardianship and Conservatorship Proceedings  
Preliminary Provisions and Definitions of the Probate Code  
Technical Revisions in the Trust Law

**Recommendation Proposing the Trust Law**

**Recommendations Relating to Probate Law includes the following recommendations:**

Disposition of Estates Without Administration  
Small Estate Set-Aside  
Proration of Estate Taxes

**Selected 1986 Trust and Probate Legislation With Official Comments [out of print]**

## **VOLUME 19 (1988)**

**Recommendations Relating to Probate Law includes the following recommendations:**

Supervised Administration of Decedent's Estate  
Independent Administration of Estates Act  
Creditor Claims Against Decedent's Estate  
Notice in Probate Proceedings

**Annual Report (December 1987) includes the following recommendations:**

Marital Deduction Gifts  
Estates of Missing Persons  
The Uniform Dormant Mineral Interests Act

**Recommendations Relating to Probate Law includes the following recommendations:**

Public Guardians and Administrators

Inventory and Appraisal  
Opening Estate Administration  
Abatement  
Accounts  
Litigation Involving Decedents  
Rules of Procedure in Probate  
Distribution and Discharge  
Nondomiciliary Decedents  
Interest and Income During Administration

Annual Report (December 1988) includes the following recommendation:

Creditors' Remedies includes the following recommendations:

Revival of Junior Liens Where Execution Sale Set Aside  
Time for Setting Sale Aside  
Enforcement of Judgment Lien on Transferred Property After Death of  
Transferor-Debtor

## **VOLUME 20 (1990)**

[Volume expected to be available in September 1991]

Recommendations Relating to Probate Law includes the following recommendations:

No Contest Clauses  
120-Hour Survival Requirement  
Hiring and Paying Attorneys, Advisors and Others  
Compensation of Personal Representative  
Multiple-Party Accounts in Financial Institutions  
Notice to Creditors in Probate Proceedings

Annual Report (December 1989) includes the following recommendations:

Commercial Lease Law: Assignment and Sublease  
Trustees' Fees

Recommendation Relating to Powers of Attorney includes the following recommendations:

Springing Powers of Attorney  
Uniform Statutory Form Power of Attorney

Recommendations Relating to Probate Law includes the following recommendations:

Notice to Creditors in Estate Administration  
Disposition of Small Estate by Public Administrator  
Court-Authorized Medical Treatment  
Survival Requirement for Beneficiary of Statutory Will  
Execution or Modification of Lease Without Court Order  
Limitation Period for Action Against Surety in Guardianship or Conservatorship  
Proceeding

Repeal of Probate Code Section 6402.5 (In-Law Inheritance)

Access to Decedent's Safe Deposit Box

Priority of Conservator or Guardian for Appointment as Administrator

Recommendation Proposing the New Probate Code [Note: The price of this 996 page softcover publication is \$35.00. California residents add \$2.54 sales tax.]

Revised and Supplemental Comments to the New Probate Code

Annual Report (December 1990) includes the following recommendations:

Notice in Probate Where Address Unknown



**Jurisdiction of Superior Court in Trust Matters**

**Uniform Management of Institutional Funds Act**

**Discovery After Judicial Arbitration**

**Recommendations Relating to Commercial Real Property Leases includes the following recommendations:**

**Remedies for Breach of Assignment or Sublease Covenant**

**Use Restrictions**

**Recommendation Relating to Uniform Statutory Rule Against Perpetuities**

**Recommendations Relating to Powers of Attorney includes the following recommendations:**

**Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care**

**Recognition of Agent's Authority Under Statutory Form Power of Attorney**

**Recommendations Relating to Probate Law includes the following recommendations:**

**1991 Probate Urgency Clean-Up Bill**

**Debts That Are Contingent, Disputed, or Not Due**

**Remedies of Creditor Where Personal Representative Fails to Give Notice**

**Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)**

**Disposition of Small Estate Without Probate**

**Right of Surviving Spouse to Dispose of Community Property**

**Litigation Involving Decedents**

**Compensation in Guardianship and Conservatorship Proceedings**

**Recognition of Trustees' Powers**

**Access to Decedent's Safe Deposit Box**

**Gifts in View of Impending Death**

**TOD Registration of Vehicles and Certain Other State Registered Property**

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