

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Annual Report for 1995

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California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

CALIFORNIA LAW REVISION COMMISSION

COMMISSION MEMBERS

| | |
|--|--|
| COLIN W. WIED <i>Chairperson</i> | QUENTIN L. KOPP <i>Member of Senate</i> |
| ALLAN L. FINK <i>Vice Chairperson</i> | ARTHUR K. MARSHALL <i>Member</i> |
| CHRISTINE W.S. BYRD <i>Member</i> | EDWIN K. MARZEC <i>Member</i> |
| ROBERT E. COOPER <i>Member</i> | SANFORD M. SKAGGS <i>Member</i> |
| BION M. GREGORY <i>Member</i> | [Vacant] <i>Member of Assembly</i> |

COMMISSION STAFF

Legal

| | |
|---|--|
| NATHANIEL STERLING <i>Executive Secretary</i> | BARBARA S. GAAL <i>Staff Counsel</i> |
| STAN ULRICH <i>Assistant Executive Secretary</i> | ROBERT J. MURPHY <i>Staff Counsel</i> |

Secretarial

VICTORIA V. MATIAS

NOTE

The Commission's reports, recommendations, and studies are published in separate pamphlets that are later bound in hardcover form. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound, which permits citation to Commission publications before they are bound.

This report will appear in Volume 25 of the Commission's *Reports, Recommendations, and Studies*.

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Palo Alto, CA 94303-4739

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Comm'n Reports 615 (1995).

SUMMARY OF WORK OF COMMISSION

Recommendations Enacted in the 1995 Legislative Session

In 1995, four bills introduced to effectuate the Commission's recommendations were enacted. These bills amended 98 sections, added 119 sections, and repealed 9 sections of California statutes. Commission-recommended legislation enacted in 1995 concerned the following subjects:

- Administrative adjudication by state agencies
- Uniform Prudent Investor Act
- Exemptions from enforcement of money judgments
- Powers of attorney

Recommendations to the 1996 Legislative Session

In 1996, the Commission plans to submit recommendations on the following subjects to the Legislature:

- Administrative adjudication followup
- Statute of limitations in trust matters
- Inheritance from or through child born out of wedlock
- Inheritance from or through foster parent or stepparent
- Collecting estate of small value without probate
- Covenants that run with the land
- Tolling statute of limitation when defendant out of state
- Homestead exemption

Commission Plans for 1996

During 1996, the Commission will work on judicial review of agency action, administrative rulemaking, unfair competition litigation, health care decisions, the Uniform Unincorporated Non-profit Association Act, the business judgment rule and derivative actions, and trial court unification by attrition. The Commission will consider other subjects as time permits, including the best evidence rule, obsolete restrictive covenants, the mediation privilege, standing of parents to sue for wrongful death of child, and protective proceedings for federal benefits.

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STATE OF CALIFORNIA

PETE WILSON, Governor

CALIFORNIA LAW REVISION COMMISSION

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ARTHUR K. MARSHALL
EDWIN K. MARZEC
SANFORD M. SKAGGS

November 2, 1995

To: The Honorable Pete Wilson
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 1995.

All four of the bills introduced in 1995 to effectuate the Commission's recommendations were enacted. A concurrent resolution recommended by the Commission was adopted.

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

- Senator Beverly (Uniform Prudent Investor Act)
- Senator Campbell (Power of Attorney Law technical bill)
- Senator Kopp (administrative adjudication, debtor-creditor relations)
- Assembly Member Rainey (concurrent resolution continuing the Commission's authority to study previously authorized topics)

The Commission held four two-day meetings and four one-day meetings during 1995. Meetings were held in Los Angeles, Sacramento, San Diego, and San Francisco.

Respectfully submitted,

Colin W. Wied
Chairperson

ANNUAL REPORT FOR 1995

Introduction

The California Law Revision Commission¹ was created in 1953 as the permanent successor to the Code Commission and given responsibility for the continuing substantive review of California statutory and decisional law.² The Commission studies the law in order 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:

- Intensively studying complex and sometimes controversial subjects
- Identifying major policy questions for legislative attention
- Gathering the views of interested persons and organizations
- 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 implementing 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 Rules Committee
- 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

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

2. See *1955 Report* [Annual Report for 1954] at 7, 1 Cal. L. Revision Comm'n Reports (1957).

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 24 topics.³

Commission recommendations have resulted in the enactment of legislation affecting 18,742 sections of the California statutes: 8,700 sections have been added, 3,100 sections amended, and 6,842 sections repealed. The Commission has submitted more than 290 recommendations to the Legislature. About 96% of these recommendations have been enacted in whole or in substantial part.⁴

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 are at the end of this Annual Report.

1996 Legislative Program

In 1996, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

Administrative Law

Administrative adjudication followup. Major legislation was enacted on Commission recommendation in 1995 to reform state agency administrative adjudication procedure. The legislation is not operative until July 1, 1997, and before it becomes operative the Commission will recommend enactment of miscellaneous cleanup and related provisions.

Civil Procedure

Tolling statute of limitation when defendant out of state. The Commission will recommend repeal of Code of Civil Procedure Section 351 (tolling statute of limitation when defendant out of state), which predates California's long-arm jurisdiction process.

Debtor-Creditor Law

Homestead exemption. The Commission will recommend repeal of the declared homestead exemption and expansion of the claimed homestead exemption.

3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 2 *infra*.

4. See list of recommendations and legislative action in Appendix 3 *infra*.

Probate Law

Statute of limitations in trust matters. The Commission will recommend clarification of the statute of limitations for trust accountings in light of an incorrect case law interpretation of the existing statute.

Inheritance from or through child born out of wedlock. The Commission will propose correction of an anomaly in the inheritance statute governing inheritance from or through a child born out of wedlock.

Inheritance from or through foster parent or stepparent. The Commission will propose clarification of the statute governing inheritance from or through a foster parent or stepparent to resolve conflicting case law interpretations of the provision.

Collecting estate of small value without probate. The Commission will propose codification of the case law principle that a revocable living trust is excluded from the computation of the value of a decedent's estate for probate-avoidance purposes.

Property Law

Covenants that run with the land. The Commission will recommend repeal of Civil Code Section 1464, California's codification of the First Rule in Spencer's Case (covenant concerning thing not in being must refer to "assigns" in order to run with the land).

Major Studies in Progress

During 1996, the Commission plans to work on six major topics: judicial review of agency action, administrative rulemaking, unfair competition litigation, health care decisions, the Uniform Unincorporated Nonprofit Association Act, and the business judgment rule and derivative actions. The Commission will also consider other subjects to the extent time permits.

Judicial Review of Agency Action

Judicial review of agency action is the second phase of the Commission's study of administrative law and procedure. The first phase — administrative adjudication by state agencies — was the subject of a Commission recommendation to the 1995 legislative session that was enacted as 1995 Cal. Stats. ch. 938.

The Commission has considered background studies prepared by its consultant, Professor Michael Asimow of UCLA Law School, on this topic. See Asimow, *Judicial Review of Administrative Decision: Standing and Timing* (September 1992); Asimow, *A Modern Judicial Review Statute to Replace Administrative Mandamus* (November 1993); Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157 (1995).

The Commission has circulated for comment a tentative recommendation to enact a comprehensive judicial review statute for all governmental action, both state and local. The proposed law would replace administrative mandamus and other procedural devices currently used for judicial review, and would clarify the procedures and standards for judicial review. The Commission is currently reviewing comments received on the tentative recommendation. The Commission will complete work on this project during 1996.

Administrative Rulemaking

The third phase of the Commission's study of administrative law and procedure, after state agency adjudication and judicial review of agency action, is administrative rulemaking. The Commission will activate this phase of the study in 1996.

Unfair Competition Litigation

The Commission commenced work on the unfair competition litigation statute, Business and Professions Code Section 17200 *et seq.*, following receipt of a background study from the Commission's consultant, Professor Robert C. Fellmeth of the University of San Diego Law School. See Fellmeth, *California's Unfair Competition Act: Conundrums and Confusions* (January 1995). The Commission hopes to complete work on this topic during 1996.

Health Care Decisions

If time permits, the Commission plans to begin consideration of revisions of the Durable Power of Attorney for Health Care, Probate Code Section 4600 *et seq.*, in 1996. This review would consider changes in the law that have occurred throughout the country since the basic statute was enacted in California in 1983, and would include a review of the Uniform Health-Care Decisions Act

(1993). These issues were reserved for study when the Commission reviewed the power of attorney statutes culminating in enactment of the comprehensive Power of Attorney Law in 1994.

Uniform Unincorporated Nonprofit Association Act

The Commission has retained a consultant, Professor Michael Hone of the University of San Francisco Law School, to prepare an analysis of the Uniform Unincorporated Nonprofit Association Act (1992). The Commission plans to commence consideration of this matter early in 1996, after the anticipated receipt of Professor Hone's analysis. The Commission hopes to complete work on this topic during 1996 and submit a recommendation to the Governor and Legislature for the 1997 legislative session.

Business Judgment Rule and Derivative Actions

During 1995 the Commission commenced work on two related corporate governance matters — the business judgment rule and derivative actions. The Commission's consultant on this study, Professor Melvin Eisenberg of the University of California, Berkeley, Law School, has prepared background studies on both these matters. See Eisenberg, *Whether the Business-Judgment Rule Should Be Codified* (May 1995), and Eisenberg, *The Requirement of Making a Demand on the Board Before Bringing a Derivative Action, and the Standard of Review of a Board or Committee Determination that a Derivative Action Is Not in the Corporation's Best Interests* (October 1995). The Commission has begun consideration of both studies. The Commission plans to complete work on this project during 1996.

Trial Court Unification by Attrition

Pursuant to legislative directive, the Commission in January 1994 issued its report on *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994). Since then the legislative directive has been revised to assign the Commission responsibility to report recommendations pertaining to statutory changes that may be necessitated by court unification. 1995 Cal. Stat. res. ch. 87.

At the 1995 session the Legislature enacted SB 162 (Lockyer), 1995 Cal. Stat. ch. 963, providing for gradual unification by the

Governor's conversion of vacant municipal court seats to superior court seats. During 1996 the Commission will review this approach to trial court unification to ascertain whether any conforming statutory changes are necessary or desirable.

Other Subjects

The major studies in progress described above will dominate the Commission's time and resources during 1996. If time permits, the Commission will work other subjects into its agenda. These subjects include two matters currently in progress — the best evidence rule and obsolete restrictive covenants — as well as three new matters — the mediation privilege, standing of parents to sue for wrongful death of child, and protective proceedings for federal benefits.

Calendar of Topics for Study

The Commission's calendar of topics is set out in Appendix 2 in this Annual Report. Each of these topics has been authorized for Commission study by the Legislature.⁵

Topic for Future Consideration

The Commission recommends that it be authorized to study one new topic:

Law of contracts. The California law of contracts has a common law base, supplemented by statutory principles. The extensive use today of communications technologies unknown at the time of development of the California law of contracts, has called into question some of the underpinnings of contract law. The National Conference of Commissioners on Uniform State Laws is reviewing and rewriting commercial sales contract principles in Article 2 of the Uniform Commercial Code in light of this phenomenon. A similar review should be made of the California law of contracts

5. 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. For the current authorization, see 1995 Cal. Stat. res. ch. 87. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments every 10 years and to recommend any needed revisions.

generally, including the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.

Function and Procedure of Commission

The principal duties of the Commission⁶ 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,⁷ 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.⁸

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. As a rule, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes it to study.⁹ However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.¹⁰

Background Studies

The Commission's work on a recommendation begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a spe-

6. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

7. 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.

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

9. Gov't Code § 8293.

10. Gov't Code § 8298.

cialist in the field of law involved who is retained as a consultant. Use of 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 and receive little more than an honorarium for their services. Expert consultants are also retained to advise the Commission at meetings.

Recommendations

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar, other bar associations, 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.¹¹ The background study is sometimes published with the recommendation published by the Commission or in a law review.¹²

Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends. These Comments are included in the Commission's recommendations and may be revised by the Commission in later reports to reflect amendments

11. 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.

12. For recent background studies published in law reviews, see Kasner, *Donative and Interspousal Transfers of Community Property in California: Where We Are (or Should Be) After MacDonald*, 23 Pac. L.J. 361 (1991); Asimow, *Toward a New California Administrative Procedure Act: Adjudication Fundamentals*, 39 UCLA L. Rev. 1067 (1992). For a list of background studies published in law reviews before 1991, 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); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990).

made in the legislative process.¹³ The reports provide background with respect to the Commission intent 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 report on the bill as amended.¹⁴

Comments indicate the derivation of a section and often explain 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.¹⁵ However, while the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every inconsistent case is noted in the Comments, nor can it anticipate judicial conclusions as to the significance of existing case authorities.¹⁶ 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.¹⁷

13. Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after publication of its recommendation. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

14. For an example of such a report, see Appendix 5 *infra*. Reports containing new or revised comments are printed in the Commission's Annual Report for the year in which the recommendation was proposed. For a description of 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). On rare occasions, the Commission will approve revised Comments to make important editorial changes or correct obvious errors in past Comments.

15. 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); *Juran v. Epstein*, 23 Cal. App. 4th 882, 893-94, 28 Cal. Rptr. 2d 588, 594 (1994). The Commission concurs with the opinion of the court in *Juran* that staff memorandums to the Commission should not be considered as legislative history. *Id.*, 23 Cal. App. 4th at 894 n.5, 28 Cal. Rptr. 2d at 594 n.5.

Commission Comments are published by Bancroft-Whitney and West Publishing Company in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers.

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

17. 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

Publications

Commission publications are distributed to the Governor, legislative leadership, and, on request, to heads of state departments and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.¹⁸ Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.¹⁹

The reports, 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.²⁰

Electronic Publication and Internet Access

Since June 1995, the Commission has provided a variety of on-line information and downloadable files on the Internet.²¹ Interested persons with Internet access can find current agendas, recent meeting minutes, background studies, tentative and final recommendations, staff memorandums, and general background information.

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.

18. See Gov't Code § 8291. In the past, Commission publications have generally been distributed free of charge. Due to budget constraints, the Commission in 1991 began implementing a charge for Commission publications. For price list, see "Commission Publications" at 635 *infra*.

19. 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).

20. See "Commission Publications" at 635 *infra*.

21. The URL of the Commission's Website is <http://www.clrc.ca.gov>.

Personnel of Commission

As of November 2, 1995, the following persons were members of the Law Revision Commission:

| Members Appointed by Governor ²² | <i>Term Expires</i> |
|---|---------------------|
| Colin W. Wied, San Diego <i>Chairperson</i> | October 1, 1995 |
| Allan L. Fink, San Francisco <i>Vice Chairperson</i> | October 1, 1997 |
| Christine W.S. Byrd, Los Angeles | October 1, 1997 |
| Robert E. Cooper, Los Angeles | October 1, 1995 |
| Arthur K. Marshall, Los Angeles | October 1, 1995 |
| Edwin K. Marzec, Santa Monica | October 1, 1995 |
| Sanford M. Skaggs, Walnut Creek | October 1, 1997 |

Legislative Members ²³

Senator Quentin L. Kopp, San Francisco
Assembly Member [vacant]

Legislative Counsel ²⁴

Bion M. Gregory, Sacramento

In January 1995, the Commission elected Colin W. Wied as Chairperson for the remainder of the term of Daniel M. Kolkey, who had resigned to accept a position as the Governor's Counsel and Legal Affairs Secretary, and elected Edwin K. Marzec as Vice Chairperson for the remainder of Mr. Wied's term.

Effective September 1, 1995, the Commission reelected Colin W. Wied as Chairperson, and Alan L. Fink as Vice Chairperson

22. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

23. The Senate and Assembly members of the Commission serve at the pleasure of the appointing power, the Senate Committee on Rules and the Speaker of the Assembly, respectively. Gov't Code § 8281.

24. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

(succeeding Edwin K. Marzec). The terms of the new officers end August 31, 1996.

In February 1995, Governor Wilson appointed Robert E. Cooper to succeed Daniel M. Kolkey.

In August 1995, Senator Quentin L. Kopp was appointed by the Senate Rules Committee as the Commission's Senate Member, succeeding Senator Tom Campbell.

As of November 2, 1995, the following persons were on the Commission's staff:

Legal

Nathaniel Sterling
Executive Secretary

Stan Ulrich
Assistant Executive Secretary

Barbara S. Gaal
Staff Counsel

Robert J. Murphy
Staff Counsel

Secretarial

Victoria V. Matias

During the summer of 1995, Yanping Cao, a student at Stanford Law School, worked for the Commission as a student legal assistant, funded by an outside grant. During the spring and fall law school terms, Matthew Waddell assisted the Commission as part of the Public Service Program of the University of Pennsylvania Law School, and in the fall term, Tina Chen assisted the Commission under the same program. Starting in the fall term, Deborah J. Muns, a student at Stanford Law School, has worked as a student legal assistant under the work-study program.

Commission Budget

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 1995-96 fiscal year is \$417,000, less a \$5,000 unallocated reduction. This represents a reduction of 40% over the past five years.

In order to remain productive within the limits of the reduced budget allocation, the Commission has substantially reduced its staffing and revised its operations. The Commission now imposes a charge for copies of its materials to cover reproduction and shipping costs. The Commission has reduced its meeting time to limit travel expenses and other associated meeting costs.

There is some mitigation from outside sources available to the Commission. The Commission receives substantial donations of necessary library materials from the legal publishing community, especially Bancroft-Whitney Company, California Continuing Education of the Bar, and West Publishing Company. The Commission receives additional library materials from other legal publishers and from other law reform agencies on an exchange basis, and has full access to the Stanford University Law Library. The Commission is grateful for their contributions.

Other Activities

By statute the Commission is directed to cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of the Commission.²⁵

National Conference of Commissioners on Uniform State Laws²⁶

The Commission's executive secretary participated in the National Conference of Commissioners on Uniform State Laws, in Kansas City, Missouri, August 28 to September 4, 1995. Matters considered at the conference included uniform acts on unclaimed property, statute and rule construction, punitive damages, principal and income, and Commercial Code Articles 2, 5, and 9.

The executive secretary also served on the drafting committee for a new Uniform Trust Act. The uniform act will be based on the California Trust Law, a national model enacted on recommendation of the Commission.²⁷

Consultant Activities

The Commission's consultant on administrative law and procedure, Professor Michael Asimow, published articles in legal journals concerning administrative adjudication and judicial review,

25. Gov't Code § 8296.

26. The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws. Gov't Code § 8289. The Commission's executive secretary is an associate member of the National Conference.

27. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986); enacted 1986 Cal. Stat. ch. 820.

based on his background studies for the Commission. Professor Asimow also addressed various bar organizations on these matters.

Legislative History of Recommendations Submitted to 1995 Legislative Session

The Commission recommendations were included in four bills and a concurrent resolution recommended for enactment at the 1995 legislative session. Four bills were enacted and the concurrent resolution was adopted.

Administrative Adjudication by State Agencies

Senate Bill 523 (1995 Cal. Stat. ch. 938) was introduced by Senator Quentin L. Kopp to effectuate a Commission recommendation. See *Administrative Adjudication by State Agencies*, 25 Cal. L. Revision Comm'n Reports 55 (1995). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 938 of the Statutes of 1995 (Senate Bill 523)*, 25 Cal. L. Revision Comm'n Reports 711 (Appendix 7, *infra*).

Uniform Prudent Investor Act

Senate Bill 222 (1995 Cal. Stat. ch. 63) was introduced by Senator Robert Beverly to effectuate a Commission recommendation. See *Uniform Prudent Investor Act*, 25 Cal. L. Revision Comm'n Reports 543 (1995). The bill was enacted after amendments were made. See *Report of the California Law Revision Commission on Chapter 63 of the Statutes of 1995 (Senate Bill 222)*, 25 Cal. L. Revision Comm'n Reports 673 (Appendix 4, *infra*).

Debtor-Creditor Relations

Senate Bill 832 (1995 Cal. Stat. ch. 196) was introduced by Senator Quentin L. Kopp to effectuate a Commission recommendation. See *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm'n Reports 1 (1995). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 196 of the Statutes of 1995 (Senate Bill 832)*, 25 Cal. L. Revision Comm'n Reports 707 (Appendix 5, *infra*). The portion of the recommendation relating to attachment in

actions where the claim is partially secured²⁸ was not enacted, nor were a number of Family Code technical amendments. However, the provisions concerning exemptions from enforcement of money judgments and applicable in bankruptcy were enacted.

Power of Attorney Law

Senate Bill 984 (1995 Cal. Stat. ch. 300) was introduced by Senator Tom Campbell to make a number of technical revisions in the Power of Attorney Law recommended by the Commission. For the basic legislation, see *1995 Comprehensive Power of Attorney Law*, 24 Cal. L. Revision Comm'n Reports 323 (1994). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 300 of the Statutes of 1995 (Senate Bill 984)*, 25 Cal. L. Revision Comm'n Reports 709 (Appendix 6, *infra*).

Resolution Authorizing Topics for Study

Assembly Concurrent Resolution 14 (1995 Cal. Stat. res. ch. 87) was introduced by Assembly Member Richard Rainey. It continues the Commission's authority to study 24 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 prepared²⁹ and has the following to report:

- No decision holding a state statute repealed by implication has been found.

28. The attachment portion of the recommendation was submitted in fulfillment of a legislative direction in 1990 Cal. Stat. ch. 943, § 3.

29. This study has been carried through 45 Cal. Rptr. 2d 424 (1995) and 115 S. Ct. (1994-95 Term).

- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- No decision of the California Supreme Court holding a state statute unconstitutional has been found.³⁰

Recommendations

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized³¹ and to study the new topic recommended for study.³²

30. In *People v. Heitzman*, 9 Cal. 4th 205, 886 P.2d 1229, 37 Cal. Rptr. 2d 236 (1994), the Supreme Court construed Penal Code Section 368(a), proscribing elder abuse by caretakers, to avoid holding the statute unconstitutionally vague under the 14th Amendment of the U.S. Constitution and Article I, Section 7, of the California Constitution.

In *In re Marriage of Heikes*, 10 Cal. 4th 1211, 1225, 44 Cal. Rptr. 2d 155 (1995), the Supreme Court ruled that application of Family Code Section 2640 (former Civil Code Section 4800.2) “is limited by the due process clause to property acquired on or after January 1, 1984.”

In *Smiley v. Citibank (South Dakota) N.A.*, 11 Cal. 4th 138, 44 Cal. Rptr. 2d 441 (1995), the California Supreme Court held that California law regulating late payment fees conflicts with the National Bank Act, 12 U.S.C. § 85, and is preempted by the Supremacy Clause of Article 6 of the U.S. Constitution.

31. See “Calendar of Topics Authorized for Study,” Appendix 2 *infra*.

32. See “Topic for Future Consideration” *supra*.

APPENDIX 1

STATUTE GOVERNING THE CALIFORNIA LAW REVISION COMMISSION

GOVERNMENT CODE SECTIONS 8280-8297*

§ 8280. Creation

8280. There is created in the State Government the California Law Revision Commission.

§ 8281. Membership

8281. The commission consists of one Member of the Senate appointed by the Committee on Rules, one Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel shall be an ex officio member of the commission.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this article, those Members of the Legislature shall constitute a joint interim investigating committee on the subject of this article and as a joint interim investigating committee shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

The members appointed by the Governor shall be appointed for a term of four years and shall hold office until the

* Added by 1984 Cal. Stat. ch. 1335, § 2; see also 1985 Cal. Stat. ch. 106, § 45 (amending Section 8295); 1989 Cal. Stat. ch. 152, § 1 (adding Section 8298). Formerly Gov't Code §§ 10300-10340, added by 1953 Cal. Stat. ch. 1445, § 2; amended by 1960 Cal. Stat. ch. 61, § 1 (1st Ex. Sess.); 1965 Cal. Stat. ch. 371, § 110; 1978 Cal. Stat. ch. 228, § 1; 1981 Cal. Stat. ch. 1106, § 2.

appointment and qualification of their successors. The terms of the members first appointed shall not commence earlier than October 1, 1953, and shall expire as follows: four on October 1, 1955, and three on October 1, 1957. When a vacancy occurs in any office filled by appointment by the Governor, he or she shall appoint a person to the office, who shall hold office for the balance of the unexpired term of his or her predecessor.

Note. The provision in the third paragraph to the effect that Commission members appointed by the Governor hold office until appointment and qualification of their successors is superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

§ 8282. Compensation and expenses

8282. (a) The members of the commission shall serve without compensation, except that each member appointed by the Governor shall receive fifty dollars (\$50) for each day's attendance at a meeting of the commission.

(b) In addition, each member shall be allowed actual expenses incurred in the discharge of his or her duties, including travel expenses.

Note. Government Code Section 11564.5 provides a per diem compensation of \$100, notwithstanding any other provision of law.

§ 8283. Chairperson

8283. The commission shall select one of its members chairperson.

§ 8284. Executive secretary

8284. The commission may appoint an executive secretary and fix his or her compensation, in accordance with law.

§ 8285. Employees

8285. The commission may employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary.

§ 8286. Assistance of state

8286. The material of the State Library shall be made available to the commission. All state agencies, and other official state organizations, and all persons connected therewith shall give the commission full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control.

§ 8287. Assistance of bar

8287. The Board of Governors of the State Bar shall assist the commission in any manner the commission may request within the scope of its powers or duties.

§ 8288. Political activities of commissioners and staff

8288. No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

§ 8289. Duties of commission

8289. The commission shall, within the limitations imposed by Section 8293:

(a) Examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

(c) Receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.

§ 8290. Unconstitutional and impliedly repealed statutes

8290. 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.

§ 8291. Submission and distribution of reports

8291. The commission shall submit its reports, and its recommendations as to revision of the laws, to the Governor and the Legislature, and shall distribute them to the Governor, the Members of the Legislature, and the heads of all state departments.

Note. Section 8291 is limited by the later-enacted rules governing distribution of state reports set out in Government Code Sections 11094-11099.

§ 8292. Contents of reports

8292. The commission may, within the limitations imposed by Section 8293, include in its report the legislative measures proposed by it to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements, and suggested enactments prepared or proposed by the commission with a full and accurate index thereto.

§ 8293. Calendar of topics

8293. The commission shall file a report at each regular session of the Legislature which shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. After the filing of its first report the commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for the study.

§ 8294. Printing of reports

8294. The reports, exhibits, and proposed legislative measures shall be printed by the State Printing Office under the supervision of the commission. The exhibits shall be so printed as to show in the readiest manner the changes and repeals proposed by the commission.

§ 8295. Cooperation with legislative committees

8295. The commission shall confer and cooperate with any legislative committee on revision of the law and may contract with any committee for the rendition of service, by either for the other, in the work of revision.

§ 8296. Cooperation with bar and other associations

8296. The commission may cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of this article.

§ 8297. Research contracts

8297. The commission may, with the approval of the Director of General Services, enter into, amend and terminate contracts with colleges, universities, schools of law or other research institutions, or with qualified individuals for the purposes of research.

§ 8298. Recommendations concerning minor revisions

8298. The commission may study and recommend revisions to correct technical or minor substantive defects in the statutes of the state without a prior concurrent resolution of the Legislature referring the matter to it for study.

APPENDIX 2

CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics authorized for study, the topics listed below. Each of these topics has been authorized for Commission study by the Legislature. For the current authorizing resolution, see 1995 Cal. Stat. res. ch. 87.

1. 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, Annual Report for 1957, at 15-16 (1957).)

2. 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.)

3. 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 in 1988 Cal Stat. res. ch. 81.)

4. 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.)

5. 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.)

6. 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).)

7. 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).)

8. 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).)

9. 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.)

10. 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.)

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

12. Rights and disabilities of minor and incompetent persons. Whether the law relating to the rights and disabilities of minor 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).)

13. 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, Annual Report for 1956, at 29-31 (1957).)

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

15. 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).)

16. 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.)

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

18. Attorney's fees. Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised. (Authorized by 1988 Cal. Stat. res. ch. 20; 1995 Cal. Stat. res. ch. 87.)

19. Family law proceedings. Whether the law relating to the adjudication of child and family civil proceedings should be revised. (Authorized by 1995 Cal. Stat. res. ch. 87; see also 1989 Cal. Stat. res. ch. 70.)

20. Uniform Unincorporated Nonprofit Association Act. Whether the Uniform Unincorporated Nonprofit Association Act, or parts of the Uniform Act, and related matters should be adopted in California. (Authorized by 1993 Cal. Stat. res. ch. 31.)

21. Unfair competition litigation. Whether the law governing unfair competition litigation under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code should be revised to clarify the scope of the chapter and to resolve procedural problems in litigation under the chapter, including the res judicata and collateral estoppel effect on the public of a judgment between the parties to the litigation, and related matters. (Authorized by 1993 Cal. Stat. res. ch. 31.)

22. Shareholders' rights and corporate director responsibilities. Whether the requirement of paragraph (2) of subdivision (b) of Section 800 of the Corporations Code that the plaintiff in a shareholder's derivative action must allege the plaintiff's efforts to secure board action or the reasons for not making the effort, and the standard under Section 309 of the Corporations Code for protection of a director from liability for a good faith business judgment, and related matters, should be revised. (Authorized by 1993 Cal. Stat. res. ch. 31.)

23. Trial court unification. Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification. (Authorized by 1995 Cal. Stat. res. ch. 87. See also 1993 Cal. Stat. res. ch. 96.)

24. Tolling statutes of limitation. Whether Section 351 of the Code of Civil Procedure, relating to tolling statutes of limitations while the defendant is out of state, and related matters, should be revised. (Authorized by 1994 Cal. Stat. res. ch. 81.)

APPENDIX 3

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) |
| 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 |

| Recommendation | Action by Legislature |
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| 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 |
| 34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports, at H-1 (1961) | Not enacted 1961. See recommendation to 1963 session (item 39 <i>infra</i>) which was enacted |

| Recommendation | Action by Legislature |
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| 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 |
| 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 |

| Recommendation | Action by Legislature |
|--|---|
| 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 |
| 58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967) | Enacted. 1968 Cal. Stat. ch. 132 |

| Recommendation | Action by Legislature |
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| 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. "Vesting" of Interests Under Rule Against Perpetuities, 9 Cal. L. Revision Comm'n Reports 901 (1969) | Enacted. 1970 Cal. Stat. ch. 45 |
| 72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 Cal. L. Revision Comm'n Reports 501 (1971) | Enacted. 1971 Cal. Stat. chs. 244, 950. See also 1973 Cal. Stat. ch. 828 |

| Recommendation | Action by Legislature |
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| 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 |
| 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 |

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| 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 |
| 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 |

| Recommendation | Action by Legislature |
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| 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 |
| 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 |

| Recommendation | Action by Legislature |
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| 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>Parol 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 |
| 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 |

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| 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 |
| 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 |

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| 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 |
| 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 |

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| 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>) |
| 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 |

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| 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 |
| 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 |

| Recommendation | Action by Legislature |
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| 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), 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 |
| 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 |

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| 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 |
| 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 |

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| 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 |
| 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 |

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| 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. Balance enacted. 1990 Cal. Stat. ch. 140 |
| 231. <i>1989 Probate Cleanup Bill</i> , see 20 Cal. L. Revision Comm'n Reports 201, 227-232 (1990) | Enacted. 1989 Cal. Stat. ch. 21 |
| 232. <i>Brokers' Commissions on Probate Sales</i> , 20 Cal. L. Revision Comm'n Reports 237-242 (1990) | Enacted. 1989 Cal. Stat. ch. 544 |
| 233. <i>Bonds of Guardians and Conservators</i> , 20 Cal. L. Revision Comm'n Reports 235 (1990) | Enacted. 1989 Cal. Stat. ch. 544 |
| 234. <i>Commercial Real Property Leases</i> , 20 Cal. L. Revision Comm'n Reports 251 (1990) | Enacted. 1989 Cal. Stat. ch. 982 |
| 235. <i>Trustees' Fees</i> , 20 Cal. L. Revision Comm'n Reports 279 (1990) | Enacted. 1990 Cal. Stat. ch. 79 |
| 236. <i>Springing Powers of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 405 (1990) | Enacted. 1990 Cal. Stat. ch. 986 |
| 237. <i>Uniform Statutory Form Powers of Attorney Act</i> , 20 Cal. L. Revision Comm'n Reports 415 (1990) | Enacted. 1990 Cal. Stat. ch. 986 |

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| 238. <i>Disposition of Small Estate by Public Administrator</i> , 20 Cal. L. Revision Comm'n Reports 529 (1990) | Enacted. 1990 Cal. Stat. ch. 324 |
| 239. <i>Court-Authorized Medical Treatment</i> , 20 Cal. L. Revision Comm'n Reports 537 (1990) | Enacted. 1990 Cal. Stat. ch. 710 |
| 240. <i>Survival Requirement for Beneficiary of Statutory Will</i> , 20 Cal. L. Revision Comm'n Reports 549 (1990) | Enacted. 1990 Cal. Stat. ch. 710 |
| 241. <i>Execution or Modification of Lease Without Court Order</i> , 20 Cal. L. Revision Comm'n Reports 557 (1990) | Enacted. 1990 Cal. Stat. ch. 710 |
| 242. <i>Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding</i> , 20 Cal. L. Revision Comm'n Reports 565 (1990) | Enacted. 1990 Cal. Stat. ch. 710 |
| 243. <i>Repeal of Probate Code Section 6402.5 (In-Law Inheritance)</i> , 20 Cal. L. Revision Comm'n Reports 571 (1990) | Not enacted |
| 244. <i>Access to Decedent's Safe Deposit Box</i> , 20 Cal. L. Revision Comm'n Reports 597 (1990); 20 Cal. L. Revision Comm'n Reports 2859 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 |
| 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 |
| 250. <i>Remedies for Breach of Assignment or Sublease Covenant</i> , 20 Cal. L. Revision Comm'n Reports 2405 (1990) | Enacted. 1991 Cal. Stat. ch. 67 |

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| 251. <i>Use Restrictions</i> , 20 Cal. L. Revision Comm'n Reports 2421 (1990) | Enacted. 1991 Cal. Stat. ch. 67 |
| 252. <i>Uniform Statutory Rule Against Perpetuities</i> , 20 Cal. L. Revision Comm'n Reports 2501 (1990) | Enacted. 1991 Cal. Stat. ch. 156 |
| 253. <i>Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care</i> , 20 Cal. L. Revision Comm'n Reports 2601 (1990) | Enacted. 1991 Cal. Stat. ch. 896 |
| 254. <i>Recognition of Agent's Authority Under Statutory Form Power of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 2629 (1990); 22 Cal. L. Revision Comm'n Reports 965 (1992) | Enacted. 1992 Cal. Stat. ch. 178 |
| 255. <i>Debts That Are Contingent, Disputed, or Not Due</i> , 20 Cal. L. Revision Comm'n Reports 2707 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 |
| 256. <i>Remedies of Creditor Where Personal Representative Fails to Give Notice</i> , 20 Cal. L. Revision Comm'n Reports 2719 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 |
| 257. <i>Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)</i> , 20 Cal. L. Revision Comm'n Reports 2729 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 |
| 258. <i>Disposition of Small Estate Without Probate</i> , 20 Cal. L. Revision Comm'n Reports 2737 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 |
| 259. <i>Right of Surviving Spouse to Dispose of Community Property</i> , 20 Cal. L. Revision Comm'n Reports 2769 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 |
| 260. <i>Litigation Involving Decedents</i> , 20 Cal. L. Revision Comm'n Reports 2785 (1990); 22 Cal. L. Revision Comm'n Reports 895 (1992) | Enacted. 1992 Cal. Stat. ch. 178 |
| 261. <i>Compensation in Guardianship and Conservatorship Proceedings</i> , 20 Cal. L. Revision Comm'n Reports 2837 (1990); 21 Cal. L. Revision Comm'n Reports 227 (1991) | Enacted. 1992 Cal. Stat. ch. 572 |
| 262. <i>Recognition of Trustees' Powers</i> , 20 Cal. L. Revision Comm'n Reports 2849 (1990) | Enacted. 1992 Cal. Stat. ch. 178 |

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| 263. <i>Gifts in View of Impending Death</i> , 20 Cal. L. Revision Comm'n Reports 2869 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 |
| 264. <i>TOD Beneficiary Designation for Vehicles and Certain Other State-Registered Property</i> , 20 Cal. L. Revision Comm'n Reports 2883 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 |
| 265. <i>1991 General Probate Bill</i> (miscellaneous provisions), see 20 Cal. L. Revision Comm'n Reports 2907 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 |
| 266. <i>1991 Probate Urgency Clean-up Bill</i> , see 20 Cal. L. Revision Comm'n Reports 2909 (1990) | Enacted. 1991 Cal. Stat. ch. 82 |
| 267. <i>Application of Marketable Title Statute to Executory Interests</i> , 21 Cal. L. Revision Comm'n Reports 53 (1991) | Enacted. 1991 Cal. Stat. ch. 156 |
| 268. <i>Relocation of Powers of Appointment Statute</i> , 21 Cal. L. Revision Comm'n Reports 91 (1991) | Enacted. 1992 Cal. Stat. ch. 30 |
| 269. <i>Miscellaneous Creditors' Remedies</i> , 21 Cal. L. Revision Comm'n Reports 135 (1991) | Enacted. 1992 Cal. Stat. ch. 283 |
| 270. <i>Nonprobate Transfers of Community Property</i> , 21 Cal. L. Revision Comm'n Reports 163 (1991) | Enacted. 1992 Cal. Stat. ch. 51 |
| 271. <i>Notice of Trustees' Fees</i> , 21 Cal. L. Revision Comm'n Reports 191 (1991) | Enacted. 1992 Cal. Stat. ch. 178 |
| 272. <i>Nonprobate Transfer to Trustee Named in Will</i> , 21 Cal. L. Revision Comm'n Reports 201 (1991) | Enacted. 1992 Cal. Stat. ch. 178 |
| 273. <i>Preliminary Distribution Without Court Supervision</i> 21 Cal. L. Revision Comm'n Reports 209 (1991) | Enacted. 1992 Cal. Stat. ch. 178 |
| 274. <i>Transfer of Conservatorship Property to Trust</i> , 21 Cal. L. Revision Comm'n Reports 227 (1991) | Enacted. 1992 Cal. Stat. ch. 572 |
| 275. <i>Standing To Sue for Wrongful Death</i> , 22 Cal. L. Revision Comm'n Reports 955 (1992) | Enacted. 1992 Cal. Stat. ch. 178 |
| 276. <i>Family Code</i> , 22 Cal. L. Revision Comm'n Reports 1 (1992) | Enacted. 1992 Cal. Stat. chs. 162, 163 |

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| 277. <i>Special Needs Trust for Disabled Minor or Incompetent Person</i> , 22 Cal. L. Revision Comm'n Reports 989 (1992) | Enacted. 1992 Cal. Stat. ch. 355 |
| 278. <i>1992 General Probate Bill</i> (miscellaneous provisions), see 22 Cal. L. Revision Comm'n Reports 977 (1990) | Enacted. 1992 Cal. Stat. ch. 178 |
| 279. <i>1994 Family Code</i> , 23 Cal. L. Revision Comm'n Reports 1, 5 (1993) | Enacted. 1993 Cal. Stat. ch. 219 |
| 280. <i>Family Code: Child Custody</i> , 23 Cal. L. Revision Comm'n Reports 1, 15 (1993) | Enacted. 1993 Cal. Stat. ch. 219 |
| 281. <i>Family Code: Reorganization of Domestic Violence Provisions</i> , 23 Cal. L. Revision Comm'n Reports 1, 23 (1993) | Enacted. 1993 Cal. Stat. ch. 219 |
| 282. <i>Deposit of Estate Planning Documents with Attorney</i> , 23 Cal. L. Revision Comm'n Reports 965 (1993) | Enacted. 1993 Cal. Stat. ch. 519 |
| 283. <i>Parent and Child Relationship for Intestate Succession</i> , 23 Cal. L. Revision Comm'n Reports 991 (1993) | Enacted. 1993 Cal. Stat. ch. 529 |
| 284. <i>Effect of Joint Tenancy Title on Marital Property</i> , 23 Cal. L. Revision Comm'n Reports 1013 (1993) | Not enacted |
| 285. <i>Orders To Show Cause and Temporary Restraining Orders</i> , 24 Cal. L. Revision Comm'n Reports 603 (1994) | Enacted. 1994 Cal. Stat. ch. 587 |
| 286. <i>Comprehensive Power of Attorney Law</i> , 24 Cal. L. Revision Comm'n Reports 111 (1994); <i>1995 Comprehensive Power of Attorney Law</i> , 24 Cal. L. Revision Comm'n Reports 323 (1994) | Enacted. 1994 Cal. Stat. ch. 307 |
| 287. <i>Trial Court Unification: Constitutional Revision (SCA 3)</i> , 24 Cal. L. Revision Comm'n Reports 1 (1994); <i>Trial Court Unification: Transitional Provisions for SCA 3</i> , 24 Cal. L. Revision Comm'n Reports 627 (1994). | Not enacted. Commission recommendations adopted in SCA 3, but SCA 3 not approved by Assembly |
| 288. <i>Family Code Technical Amendments</i> . See 24 Cal. L. Revision Comm'n Reports 621 (1994) | Enacted. 1994 Cal. Stat. ch. 1269 |

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| 289. <i>Uniform Prudent Investor Act</i> , 25 Cal. L. Revision Comm'n Reports 543 (1995). See also 25 Cal. L. Revision Comm'n Reports 673 (1995). | Enacted. 1995 Cal. Stat. ch. 63 |
| 290. <i>Debtor-Creditor Relations</i> , 25 Cal. L. Revision Comm'n Reports 1 (1995) | Enacted in part. 1995 Cal. Stat. ch. 196 |
| 291. <i>Power of Attorney Law Technical Amendments</i> . See 25 Cal. L. Revision Comm'n Reports 709 (1995) | Enacted. 1995 Cal. Stat. ch. 300 |
| 292. <i>Administrative Adjudication by State Agencies</i> , 25 Cal. L. Revision Comm'n Reports 55 (1995) | Enacted. 1995 Cal. Stat. ch. 938 |

Recommendation

Action by Legislature

APPENDIX 4

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 63 OF THE STATUTES OF 1995 (SENATE BILL 222)

Chapter 63 of the Statutes of 1995 was introduced as Senate Bill 222 by Senator Robert G. Beverly on recommendation of the California Law Revision Commission. For ease of reference, the complete text of Chapter 63 and the Official Comments of the Commission, are set out below. These comments supersede the comments in the Commission's printed recommendation, *Uniform Prudent Investor Act*, 25 Cal. L. Revision Comm'n Reports 543 (1995). The Uniform Prudent Investor Act is set out first, followed by conforming revisions in other sections and revised comments.

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UNIFORM PRUDENT INVESTOR ACT

Prob. Code §§ 16045-16054 (added). Uniform Prudent Investor Act

SEC. 6. Article 2.5 (commencing with Section 16045) is added to Chapter 1 of Part 4 of Division 9 of the Probate Code, to read:

Article 2.5. Uniform Prudent Investor Act

§ 16045. Short title

16045. This article, together with subdivision (a) of Section 16002 and Section 16003, constitutes the prudent investor rule and may be cited as the Uniform Prudent Investor Act.

Comment. Section 16045 has the same purpose as Section 12 of the Uniform Prudent Investor Act (1994) promulgated by the National Conference of Commissioners on Uniform State Laws. Most of the

substance of the uniform act is set forth in this article, but some rules already exist in other parts of the Trust Law and are included within the short title by specific reference. See Sections 16002(a) (duty of loyalty), 16003 (duty to deal impartially with beneficiaries).

See also Section 2 (construction of provisions drawn from uniform acts), which is the same in substance as Section 11 of the Uniform Prudent Investor Act (1994), and Section 13 (severability), which is the same in substance as Section 14 of the Uniform Prudent Investor Act (1994). For a list of uniform acts in the Probate Code, see Section 2 Comment.

§ 16046. Prudent investor rule

16046. (a) Except as provided in subdivision (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule.

(b) The settlor may expand or restrict the prudent investor rule by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

Comment. Section 16046 is similar to Section 1 of the Uniform Prudent Investor Act (1994). See also Section 16045 (prudent investor rule defined). Subdivision (a) and the first sentence of subdivision (b) are a special application of the general duty provided in Section 16000 (duty to administer trust according to statute, subject to control in trust).

Subdivision (b) continues the rule in former subdivision (c) (now subdivision (b)) of Section 16040, insofar as it applied to matters now governed by this article. The first sentence of subdivision (b) is the same in substance as the first sentence Section 1(b) of the Uniform Prudent Investor Act (1994). The second sentence continues the good-faith standard of Section 16040 in place of the reasonable reliance rule of the Uniform Prudent Investor Act (1994).

§ 16047. Standard of care, portfolio strategy, risk and return objectives

16047. (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the

trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets and courses of action must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that are appropriate to consider in investing and managing trust assets are the following, to the extent relevant to the trust or its beneficiaries:

(1) General economic conditions.

(2) The possible effect of inflation or deflation.

(3) The expected tax consequences of investment decisions or strategies.

(4) The role that each investment or course of action plays within the overall trust portfolio.

(5) The expected total return from income and the appreciation of capital.

(6) Other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries.

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment or engage in any course of action or investment strategy consistent with the standards of this chapter.

Comment. Section 16047 is generally the same in substance as Section 2(a)-(e) of the Uniform Prudent Investor Act (1994). Subdivisions (a)-(c) of Section 16047 replace the portfolio investment

rule of former subdivision (b) of Section 16040. Subdivision (a) is also the same in substance as the first paragraph and subsection (a) of Section 227 of Restatement (Third) of Trusts: Prudent Investor Rule (1992).

The second sentence of subdivision (a) states the basic elements of prudence. Thus, where “prudence” is used in this article, it includes “reasonable care, skill, and caution.” These elements are delineated in the Restatement:

[Care]

The duty of care requires the trustee to exercise reasonable effort and diligence in making and monitoring investments for the trust, with attention to the trust’s objectives. The trustee has a related duty of care in keeping informed of rights and opportunities associated with those investments....

[Skill]

The exercise of care alone is not sufficient, however, because a trustee is liable for losses resulting from failure to use the skill of an individual of ordinary intelligence. This is so despite the careful use of all the skill of which the particular trustee is capable.

On the other hand, if follows from the requirement of care as well as from sound policy that, if the trustee possesses a degree of skill greater than that of an individual of ordinary intelligence, the trustee is liable for a loss that results from failure to make reasonably diligent use of that skill....

[Caution]

In addition to the duty to use care and skill, the trustee must exercise the caution of a prudent investor managing similar funds for similar purposes. In the absence of contrary provisions in the terms of the trust, this requirement of caution requires the trustee to invest with a view both to safety of the capital and to securing a reasonable return....

Restatement (Third) of Trusts: Prudent Investor Rule § 227 comments d & e (1992). For a full discussion, see *id.* § 227, comments & Reporter’s Notes (1992).

Subdivision (d) is new to the code. Subdivision (e) replaces former Section 16223 (“The trustee has the power to invest in any kind of property, whether real, personal, or mixed.”). This subdivision, like its predecessor, makes clear that there are no categorical restrictions on proper investments. Any form of investment is permissible in the absence of a prohibition in the trust instrument or an overriding duty. This subdivision is intended to permit investment in investment company shares, mutual funds, index funds, and other modern vehicles for collective investments. While investment in these funds is not forbidden merely because discretion over the fund is delegated to others, the trustee

is ultimately subject to fiduciary standards under this chapter in making the investment. See also Sections 62 (“property” defined), 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Statutes pertaining to legal investments appear in other codes. See, e.g., Fin. Code §§ 1561.1 (funds provided services by trust company or affiliate), 1564 (common trust funds); Gov’t Code §§ 971.2, 17202, 61673; Harb. & Nav. Code §§ 6331, 6931; Health & Safety Code §§ 33663, 34369, 37649, 52040, 52053.5; Pub. Res. Code § 26026; Sts. & Hy. Code §§ 8210, 25371, 30241, 30242, 31173; Water Code §§ 9526, 20064.

Section 2(f) of the Uniform Prudent Investor Act (1994) has been omitted from Section 16047 because it is unnecessary. The same general rule is provided by Section 16014 (duty to use special skills). An expert trustee is held to the standard of care of other experts. See the discussions in *Estate of Collins*, 72 Cal. App. 3d 663, 673, 139 Cal. Rptr. 644 (1977); *Coberly v. Superior Court*, 231 Cal. App. 2d 685, 689, 42 Cal. Rptr. 64 (1965); *Estate of Beach*, 15 Cal. 3d 623, 635, 542 P.2d 994, 125 Cal. Rptr. 570 (1975) (bank as executor); see also Section 2401 Comment (standard of care applicable to professional guardian or conservator of estate); Section 3912 Comment (standard of care applicable to professional fiduciary acting as custodian under California Uniform Transfers to Minors Act).

§ 16048. Diversification

16048. In making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is prudent not to do so.

Comment. Section 16048 is drawn from Section 227(b) of the Restatement (Third) of Trusts: Prudent Investor Rule (1992), and is similar to Section 3 of the Uniform Prudent Investor Act (1994). This section is new to the Trust Law, but is consistent with case law. See, e.g., *Estate of Collins*, 72 Cal. App. 3d 663, 669-72, 139 Cal. Rptr. 644, 648-49 (1977). This section, along with Section 16049, supersedes the rule in former Section 16008 (disposition of improper investments and retention of property in furtherance of trust purposes). See the comments to Restatement (Third) of Trusts: Prudent Investor Rule § 227 (1992).

§ 16049. Duties at inception of trusteeship

16049. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

Comment. Section 16049 is the same as Section 4 of the Uniform Prudent Investor Act (1994). For related duties, see Sections 16000 (duty to administer trust on acceptance), 16006 (duty to take control of and preserve trust property). This section, along with Section 16048, supersedes the rule in former Section 16008 (disposition of improper investments and retention of property in furtherance of trust purposes).

§ 16050. Investment costs

16050. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, overall investment strategy, purposes, and other circumstances of the trust.

Comment. Section 16050 is similar to Section 7 of the Uniform Prudent Investor Act (1994). This section is consistent with the rules concerning costs in Section 227(c)(3) of the Restatement (Third) of Trusts: Prudent Investor Rule (1992). For related rules concerning reimbursement and compensation of trustees, see Sections 15680-15685. The duty to minimize costs applies to delegation to agents and hiring advisers as well as to other aspects of fiduciary investing. In deciding whether to delegate, the trustee must balance the projected benefits against the likely costs. Similarly, in deciding how to delegate, the trustee must take costs into account. The trustee must be alert to protect the beneficiary from “double dipping.” If, for example, the trustee’s regular compensation schedule presupposes that the trustee will conduct the investment management function, it should ordinarily follow that the trustee will lower its fee if delegating the investment function to an outside manager.

§ 16051. Reviewing compliance

16051. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Comment. Section 16051 is the same as Section 8 of the Uniform Prudent Investor Act (1994). See also Section 16045 (prudent investor rule defined). For related rules governing trustee liability, see Sections 16440-16465.

§ 16052. Delegation of investment and management functions

16052. (a) A trustee may delegate investment and management functions as prudent under the circumstances. The trustee shall exercise prudence in the following:

- (1) Selecting an agent.
 - (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust.
 - (3) Periodically reviewing the agent's overall performance and compliance with the terms of the delegation.
- (b) In performing a delegated function, an agent has a duty to exercise reasonable care to comply with the terms of the delegation.
- (c) Except as otherwise provided in Section 16401, a trustee who complies with the requirements of subdivision (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.
- (d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Comment. Section 16052 is the same in substance as Section 9 of the Uniform Prudent Investor Act (1994), except that subdivision (c) has been revised for coordination with the basic rule on liability for acts of agents in Section 16401. Unlike the uniform act, the second sentence of subdivision (a) refers to the exercise of "prudence" rather than "reasonable care, skill, and caution." This is not a substantive change, however, since "prudence" means "reasonable care, skill, and caution" as provided in Section 16047(a). See Section 16047 Comment.

The duty to review the agent's overall performance under subdivision (a)(3) would include the periodic evaluation of the continued need for and appropriateness of the delegation of authority. In particular circumstances, the trustee may need to terminate the delegation to comply with the duty under Section 16401(b)(3) (duty to use prudence in retaining agent). Section 16052 provides special exceptions to the general rule concerning delegation (Section 16012) and the trustee's liability for acts of agents (Section 16401). See also Section 16247 (power to hire accountants, auditors, investment advisors, etc.).

§ 16053. Language invoking standard of Uniform Prudent Investor Act

16053. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

Comment. Section 16053 is the same as Section 10 of the Uniform Prudent Investor Act (1994) and restates former Section 16042 without substantive change. See also Section 16045 (prudent investor rule defined).

§ 16054. Application to existing relationships

16054. This article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this article governs only decisions or actions occurring after that date.

Comment. Section 16054 is the same as Section 11 of the Uniform Prudent Investor Act (1994) and is a specific application of the general transitional provisions in Section 3.

CONFORMING REVISIONS

Prob. Code § 16003 (amended). Duty to deal impartially with beneficiaries

SECTION 1. Section 16003 of the Probate Code is amended to read:

16003. If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them *and shall act impartially in investing and managing the trust property, taking into account any differing interests of the beneficiaries.*

Comment. Section 16003 is amended to provide additional detail drawn from Section 6 of the Uniform Prudent Investor Act (1994).

This section codifies the substance of Section 183 of the Restatement (Second) of Trusts (1957) and is in accord with prior case law. See Estate of Miller, 107 Cal. App. 438, 290 P. 528 (1930). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives).

Prob. Code § 16008 (repealed). Duty to dispose of improper investments

SEC. 2. Section 16008 of the Probate Code is repealed.

~~16008. (a) Except as provided in subdivision (b), the trustee has a duty within a reasonable time to dispose of any part of the trust property included in the trust at the time of its creation, or later acquired by or added to the trust, that would not be a proper investment for the trustee to make.~~

~~(b) Unless the trust instrument expressly provides otherwise, the trustee may, without liability, continue to hold property included in the trust at its creation or later added to the trust or acquired pursuant to proper authority, if retention is in the best interests of the trust or in furtherance of the purposes of the trust.~~

Comment. Section 16008 is superseded by the rules in Section 16048 (diversification) and 16049 (duties at inception of trusteeship).

Prob. Code § 16012 (amended). Duty not to delegate

SEC. 3. Section 16012 of the Probate Code is amended to read:

16012. (a) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(b) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

(c) This section does not apply to investment and management functions under Section 16052.

Comment. Section 16012 is amended to recognize the special rule in Section 16052 applicable under the Uniform Prudent Investor Act (1994).

Subdivisions (a) and (b) continue Section 16012 of the repealed Probate Code without change. The first part of subdivision (a) codifies the substance of Section 171 of the Restatement (Second) of Trusts (1957). The second part of subdivision (a) codifies the substance of Section 4 of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. The duty not to delegate administration of the trust does not preclude employment of an agent in a proper case. A trust company may delegate matters involved in trust administration to its affiliates. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 15620 (actions by cotrustees), 15621 (vacancy in office of cotrustee), 15622 (temporary incapacity of cotrustee), 16000 (duties subject to control by trust instrument), 16040 (trustee's general standard of care in performing duties), 16247 (power to hire agents of trust).

Subdivision (b) is drawn from comment k to Section 171 of the Restatement (Second) of Trusts (1957).

Prob. Code § 16040 (amended). Trustee's standard of care in administering trust

SEC. 4. Section 16040 of the Probate Code is amended to read:

16040. (a) The trustee shall administer the trust with the *reasonable* care, skill, ~~prudence, and diligence~~ *and caution* under the circumstances then prevailing that a prudent person acting in a like capacity and ~~familiar with such matters~~ would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument.

(b) ~~When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.~~

(c) The settlor may expand or restrict the standards *standard* provided in subdivisions *subdivision* (a) and ~~(b)~~ by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

(d) *This section does not apply to investment and management functions governed by the Uniform Prudent Investor Act, Article 2.5 (commencing with Section 16045).*

Comment. Section 16040 is amended for harmony with the new Uniform Prudent Investor Act, Article 2.5 (commencing with Section 16045). This section provides a general standard of care that applies where the special, more detailed rule applicable to investments and management of trust property does not apply, such as determining

whether to make discretionary distributions, communicating with beneficiaries, and relations with creditors. See subdivision (c).

The portfolio rule formerly provided by subdivision (b) is restated in Section 16047. Former subdivision (c) has been redesignated as subdivision (b) and revised to delete the reference to former subdivision (b). For a special rule protecting the trustee's good-faith reliance on trust provisions concerning investments, see Section 16046 (prudent investor rule).

Prob. Code § 16042 (repealed). Interpretation of trust terms concerning legal investments

SEC. 5. Section 16042 of the Probate Code is repealed.

~~16042. If a trust created before, on, or after July 1, 1987, refers to “investments permissible by law for investment of trust funds,” “authorized by law for investment of trust funds,” “legal investments,” “authorized investments,” or “investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital,” or uses other words of similar meaning in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as imposing the standard of care provided by Section 16040 and authorizing any investment permitted under Chapter 2 (commencing with Section 16200).~~

Comment. Section 16042 is continued without substantive change in Section 16053.

Prob. Code § 16200 (technical amendment). General powers of trustee

SEC. 7. Section 16200 of the Probate Code is amended to read:

16200. A trustee has the following powers without the need to obtain court authorization:

(a) The powers conferred by the trust instrument.

(b) Except as limited in the trust instrument, the powers conferred by statute.

(c) Except as limited in the trust instrument, the power to perform any act that a trustee would perform for the purposes of the trust under the standard of care provided in Section 16040 *or* 16047.

Comment. Subdivision (c) of Section 16200 is amended to recognize the authority provided in the Uniform Prudent Investor Act. See Sections 16045-16054.

This section is drawn from Sections 2(a) and 3(a) of the Uniform Trustees' Powers Act (1964) and from various California statutes that existed before the enactment of Section 16200 of the repealed Probate Code. As to the construction of provisions drawn from uniform acts, see Section 2.

The introductory clause of Section 16200 makes clear that the trustee has the powers as provided in this section without the need to obtain court authorization. See also Section 16201 (power of court to relieve trustee from restrictions on powers).

Subdivision (b) gives the trustee the statutory powers without the need to incorporate them. The main list of powers is provided in Article 2 (commencing with Section 16220). Additional powers are provided by statutes outside this chapter. See, e.g., Section 16300 *et seq.* (Revised Uniform Principal and Income Act).

Under subdivision (c), the trustee has the powers of a prudent person, without the need to obtain prior court approval. However, if the trustee desires court approval before exercising a power or desires court review after exercise of a power, the procedure provided in Section 17200 *et seq.* is available. This subdivision is drawn from Section 3(a) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2.

The exercise of powers by the trustee is subject to various important limitations as recognized in this section and as provided elsewhere. Subdivisions (b) and (c) make clear that the exercise of statutory or "prudent person" powers is subject to limitations provided in the trust. Section 16202 makes clear that the exercise of powers by the trustee is subject to the fiduciary duties owed to the beneficiaries. See Section 16202 Comment; see also Section 16201 (power of court to relieve trustee from restrictions on powers).

As to the construction of trust language that refers to "investments permissible by law for investment of trust funds," "authorized by law for

investment of trust funds,” “legal investments,” “authorized investments,” or “investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs,” or other words of similar meaning in defining the powers of the trustee relative to investments, see Section 16053.

Prob. Code § 16223 (repealed). Investments

SEC. 8. Section 16223 of the Probate Code is repealed.

~~16223. The trustee has the power to invest in any kind of property, whether real, personal, or mixed.~~

Comment. Section 16223 is replaced by Section 16047(e), which provides the same unrestricted power of investment under the Uniform Prudent Investor Act.

Prob. Code § 16401 (amended). Trustee’s liability to beneficiary for acts of agent

SEC. 9. Section 16401 of the Probate Code is amended to read:

16401. (a) Except as provided in subdivision (b), the trustee is not liable to the beneficiary for the acts or omissions of an agent.

(b) ~~The~~ *Under any of the circumstances described in this subdivision, the trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee under any of the following circumstances:*

(1) Where the trustee has ~~the power to direct~~ *directs* the act of the agent.

(2) Where the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate.

(3) Where the trustee does not use reasonable ~~care~~ *prudence* in the selection of the agent or the retention of the agent selected by the trustee.

(4) Where the trustee does not ~~exercise proper supervision over~~ *periodically review* the agent’s ~~conduct in a case where~~

~~the trustee has the power to supervise the agent overall performance and compliance with the terms of the delegation.~~

(5) Where the trustee conceals the act of the agent.

(6) Where the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

(c) The liability of a trustee for acts or omissions of agents that occurred before July 1, 1987, is governed by prior law and not by this section.

Comment. Subdivision (b) of Section 16401 is amended for consistency with Section 16052 (delegation of investment and management functions), part of the Uniform Prudent Investor Act (1994). See Section 16052 & Comment. Subdivision (b)(1) is also revised in light of language in Section 225(2)(a) of the Restatement (Second) of Trusts (1957). Subdivision (b)(3) is amended to refer to the use of "prudence" which includes the elements of reasonable care, skill, and caution under Section 16040 (standard of care in non-investment functions) or Section 16047(a) (standard of care in investment and management functions under Uniform Prudent Investor Act). This is not intended to be a substantive change. Subdivision (b)(4) is amended to state a more concrete standard and to be consistent with the delegation rules governing investment and management under the Uniform Prudent Investor Act. See Section 16052(a).

Subdivisions (a) and (b) are drawn from Section 225 of the Restatement (Second) of Trusts (1957). Whether a trustee has acted reasonably under this section depends upon application of the standard of care provided in Section 16040. The trustee of a revocable trust is not liable where the agent's act is performed or omitted pursuant to the written instructions of the person having the power to revoke the trust. See Section 16462. Similarly, the trustee of a revocable trust is not liable for hiring an agent where the trustee is directed to do so in writing by the person having the power to revoke. See Section 16462. It should also be noted that the liability to beneficiaries does not include beneficiaries under a revocable trust during the time that the trust can be revoked. See Section 15800; see also Sections 15803 (holder of general power of appointment or power to withdraw property from trust treated as settlor), 16000 (duty to administer trust).

The six paragraphs of subdivision (b) state independent bases for imposition of liability on the trustee. For example, if the trustee has not used reasonable care in selecting or retaining an agent, the trustee may be held liable for the agent's breach under paragraph (3); but even if the

trustee has no control over selection or retention of the agent, the trustee may still be held liable for the agent's breach under paragraph (1) if the trustee directed or permitted the agent's actions. It should also be noted that paragraphs (2), (5), and (6) of subdivision (b) apply regardless of whether the trustee has any control over the agent.

REVISED COMMENTS

Prob. Code § 2 (revised comment). Continuation of existing law; construction of provisions drawn from uniform acts

Comment. Section 2 continues Section 2 of the repealed Probate Code without change. See also Gov't Code §§ 9604 (reference made in statute, charter, or ordinance to provisions of one statute carried into another statute under circumstances in which they are required to be construed as restatements and continuations and not as new enactments), 9605 (construction of amended statutory provision).

Some of the provisions of this code are the same as or similar to provisions of uniform acts. Subdivision (b) provides a rule for interpretation of these provisions. Many of the provisions of this code are drawn from the Uniform Probate Code (1987). Some provisions are drawn from other uniform acts:

- Sections 220-224 — Uniform Simultaneous Death Act (1953)
- Sections 260-288 — Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978)
- Sections 260-288 — Uniform Disclaimer of Transfers Under Nontestamentary Instrument Act (1978)
- Sections 3900-3925 — Uniform Transfers to Minors Act (1983)
- Sections 4001, 4124-4127, 4206, 4304-4305 — Uniform Durable Power of Attorney Act
- Sections 4400-4465 — Uniform Statutory Form Power of Attorney Act
- Sections 6300-6303 — Uniform Testamentary Additions to Trusts Act (1960)
- Sections 6380-6390 — Uniform International Wills Act (1977).
See also Section 6387 (need for uniform interpretation of Uniform International Wills Act)
- Sections 16002(a), 16003, 16045-16054 — Uniform Prudent Investor Act (1994)
- Sections 16200-16249 — Uniform Trustees' Powers Act (1964)
- Sections 16300-16313 — Revised Uniform Principal and Income Act (1962)

[remainder of Section 2 Comment unchanged]

Prob. Code § 15001 (revised comment). General rule concerning application of division

Comment. Section 15001 restates Section 15001 of the repealed Probate Code without substantive change. The language used in this section has been revised to reflect the fact that this division of the repealed Probate Code (the Trust Law) became operative on July 1, 1987.

Subdivision (a) provides the general rule that this division applies to all trusts, regardless of when created. Subdivision (a) is comparable to Section 8 of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. Subdivision (b), a specific application of the general rule stated in subdivision (a), makes clear that, except as otherwise provided by statute, this division applies to all proceedings commenced on or after July 1, 1987. Subdivision (c) is a special provision concerning the application of this division to proceedings concerning trusts commenced before July 1, 1987.

For special transitional provisions, see Sections 15401(d) (application of rules governing method of revocation by settlor), 16053 (language invoking standard of Uniform Prudent Investor Act), 16054 (application of Uniform Prudent Investor Act to existing relationships), 16062(b)-(d) (application of duty to account to beneficiaries), 16203 (application of rules governing trustee's powers), 16401(c) (application of rules governing trustee's liability to beneficiary for acts of agent), 16402(c) (application of rules governing trustee's liability to beneficiary for acts of cotrustee), 16403(c) (application of rules governing trustee's liability to beneficiary for acts of predecessor trustee), 18000(b) (application of rule governing personal liability of trustee to third persons on contracts).

Prob. Code § 16000 (revised comment). Duty to administer trust

Comment. Section 16000 continues Section 16000 of the repealed Probate Code without change. This section is drawn in part from Sections 164 and 169 of the Restatement (Second) of Trusts (1957). See also Sections 15600 (acceptance of trust by trustee), 15800 (duties owed to person holding power to revoke), 15803 (duties owed to person with general power of appointment or power to withdraw trust property), 16001 (duties of trustee of revocable trust), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives), 16049 (duties at inception of trusteeship). For provisions permitting the

beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance).

Prob. Code § 16001 (revised comment). Duties of trustee of revocable trust

Comment. Section 16001 continues Section 16001 of the repealed Probate Code without change. The qualification in subdivision (a) that a direction be acceptable to the trustee does not mean that the trustee is required to determine the propriety of the direction. For the rule protecting the trustee from liability for following directions under this section, see Section 16462. See also Sections 15800 (duties owed to person holding power to revoke), 16000 (duties subject to control in trust instrument), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives).

Subdivision (b) clarifies the relationship between the duty to follow directions provided in subdivision (a) and the rules governing modification of trusts. See Sections 15401 (method of revocation by settlor), 15402 (power to revoke includes power to modify).

Prob. Code § 16002 (revised comment). Duty of loyalty

Comment. Section 16002 continues Section 16002 of the repealed Probate Code without change. Subdivision (a) codifies the substance of Section 170(1) of the Restatement (Second) of Trusts (1957). Subdivision (a) is also included within the Uniform Prudent Investor Act (1994). See Section 16045 & Comment. See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives). This article does not attempt to state all aspects of the trustee's duty of loyalty, nor does this article seek to cover all duties that may exist. See Section 15002 (common law as law of state). See also Section 16015 (certain actions not violations of duties). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance).

Subdivision (b) is drawn from Indiana law. See Ind. Code Ann. § 30-4-3-7(d) (West Supp. 1988). This subdivision permits sales or exchanges between two or more trusts that have the same trustee without running afoul of the duty of loyalty. See Restatement (Second) of Trusts § 170 comment r (1957). Subdivision (b) does not require the trustee to give notice to all beneficiaries of both trusts; for limitations on the need to give notice, see Sections 15802 (notice to beneficiary of revocable trust)

and 15804 (notice in case involving future interest of beneficiary). See also Sections 15800 (limits on rights of beneficiary of revocable trust), 15801 (consent of beneficiary of revocable trust).

Prob. Code § 16004 (revised comment). Duty to avoid conflict of interest

Comment. Section 16004 continues Section 16004 of the repealed Probate Code without change. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16015 (certain actions not violations of duties), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives).

The court referred to in subdivision (b) may be the court where the trust is administered, such as where the trustee seeks reimbursement for the claim under Section 17200(b), or the court where enforcement of the claim is sought, such as where the trustee seeks to foreclose a lien or seeks recognition of the claim in proceedings commenced by some other creditor.

Prob. Code § 16005 (revised comment). Duty not to undertake adverse trust

Comment. Section 16005 continues Section 16005 of the repealed Probate Code without change. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives).

Prob. Code § 16006 (revised comment). Duty to take control of and preserve trust property

Comment. Section 16006 continues Section 16006 of the repealed Probate Code without change. This section codifies the substance of Sections 175 and 176 of the Restatement (Second) of Trusts (1957). The section is in accord with prior case law. See, e.g., Purdy v. Bank of America Nat'l Tr. & Sav. Ass'n, 2 Cal. 2d 298, 302-04, 40 P.2d 481 (1935); Estate of Duffill, 188 Cal. 536, 547, 206 P. 42 (1922); Martin v. Bank of America Nat'l Tr. & Sav. Ass'n, 4 Cal. App. 2d 431, 436, 41 P.2d 200 (1935). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release),

16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives).

Prob. Code § 16007 (revised comment). Duty to make trust property productive

Comments. Section 16007 continues Section 16007 of the repealed Probate Code without change. The section codifies the substance of Section 181 of the Restatement (Second) of Trusts (1957). For the trustee's standard of care governing investments and management of trust property, see Section 16047. In appropriate circumstances under Section 16007, property may be made productive by appreciation in value rather than by production of income. If the trust instrument imposes a duty on the trustee to hold property and give possession of it to a beneficiary at a later date, this duty would override the general duty to make the property productive. See Restatement (Second) of Trusts § 181 comment a (1957). Similarly, if a beneficiary has the right under the trust instrument to occupy a home, the trustee would have no duty to make the property productive of income. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16046(b) (prudent investor rule subject to control by trust instrument).

Prob. Code § 16009 (revised comment). Duty to keep trust property separate and identified

Comment. Section 16009 continues Section 16009 of the repealed Probate Code without change. This section codifies the substance of Section 179 of the Restatement (Second) of Trusts (1957), but the Restatement provision for keeping trust property separate from the trustee's individual property is omitted since it is redundant with subdivision (a). For exceptions to this general duty, see, e.g., Fin. Code §§ 1563 (securities registered in name of nominee), 1564 (Uniform Common Trust Fund Act). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives).

Prob. Code § 16010 (revised comment). Duty to enforce claims

Comment. Section 16010 continues Section 16010 of the repealed Probate Code without change. This section codifies the substance of Section 177 of the Restatement (Second) of Trusts (1957) and is in accord with prior case law. See *Ellig v. Naglee*, 9 Cal. 683, 695-96 (1858). Depending upon the circumstances of the case, it might not be reasonable to enforce a claim in view of the likelihood of recovery and the cost of suit and enforcement. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives).

Prob. Code § 16011 (revised comment). Duty to defend actions

Comment. Section 16011 continues Section 16011 of the repealed Probate Code without change. This section codifies the substance of the first part of Section 178 of the Restatement (Second) of Trusts (1957) and is in accord with prior case law. See, e.g., *Estate of Duffill*, 188 Cal. 536, 554-55, 206 P. 42 (1922). Depending on the circumstances of the case, it might be reasonable to settle an action or suffer a default rather than to defend an action. For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives).

Prob. Code § 16013 (revised comment). Duty with respect to cotrustees

Comment. Section 16013 continues Section 16013 of the repealed Probate Code without change. This section codifies the substance of Section 184 of the Restatement (Second) of Trusts (1957) and is in accord with prior case law. See *Birmingham v. Wilcox*, 120 Cal. 467, 471-73, 52 P. 822 (1898). For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's general standard of care in performing duties), 16402 (trustee's liability to beneficiary for acts of cotrustee), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives). If one cotrustee is also a settlor under a revocable trust, another cotrustee who is not a settlor has a

duty to follow the directions of the settlor-cotrustee pursuant to Section 16001. That duty supersedes the general duty under this section.

Prob. Code § 16014 (revised comment). Duty to use special skills

Comment. Section 16014 continues Section 16014 of the repealed Probate Code without change. Subdivision (a) codifies a duty set forth in *Coberly v. Superior Court*, 231 Cal. App. 2d 685, 689, 42 Cal. Rptr. 64 (1965).

Subdivision (b) is similar to the last part of Section 7-302 of the Uniform Probate Code (1987) and the last part of Section 174 of the Restatement (Second) of Trusts (1957). As to the construction of provisions drawn from uniform acts, see Section 2. Subdivision (b) does not limit the duty provided in subdivision (a). Thus, the nature of the trustee's representations to the settlor leading up to the selection of the trustee does not affect the trustee's duty to use the full extent of his or her skills.

For provisions permitting the beneficiaries to relieve the trustee from liability, see Sections 16463 (consent), 16464 (release), 16465 (affirmance). See also Sections 16000 (duties subject to control by trust instrument), 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives).

Prob. Code § 16200 (revised comment). General powers of trustee

Comment. Section 16200 continues Section 16200 of the repealed Probate Code without change. This section is drawn from Sections 2(a) and 3(a) of the Uniform Trustees' Powers Act (1964) and from various California statutes that existed before the enactment of Section 16200 of the repealed Probate Code. As to the construction of provisions drawn from uniform acts, see Section 2.

The introductory clause of Section 16200 makes clear that the trustee has the powers as provided in this section without the need to obtain court authorization. See also Section 16201 (power of court to relieve trustee from restrictions on powers).

Subdivision (b) gives the trustee the statutory powers without the need to incorporate them. The main list of powers is provided in Article 2 (commencing with Section 16220). Additional powers are provided by statutes outside this chapter. See, e.g., Section 16300 *et seq.* (Revised Uniform Principal and Income Act).

Under subdivision (c), the trustee has the powers of a prudent person, without the need to obtain prior court approval. However, if the trustee desires court approval before exercising a power or desires court review

after exercise of a power, the procedure provided in Section 17200 *et seq.* is available. This subdivision is drawn from Section 3(a) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2.

The exercise of powers by the trustee is subject to various important limitations as recognized in this section and as provided elsewhere. Subdivisions (b) and (c) make clear that the exercise of statutory or "prudent person" powers is subject to limitations provided in the trust. Section 16202 makes clear that the exercise of powers by the trustee is subject to the fiduciary duties owed to the beneficiaries. See the Comment to Section 16202; see also Section 16201 (power of court to relieve trustee from restrictions on powers). As to the construction of trust language that refers to "investments permissible by law for investment of trust funds," "authorized by law for investment of trust funds," "legal investments," "authorized investments," or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs," or other words of similar meaning in defining the powers of the trustee relative to investments, see Section 16053.

Prob. Code § 16201 (revised comment). Power of court to relieve trustee from restrictions on powers

Comments. Section 16201 continues Section 16201 of the repealed Probate Code without change. This section did not change the prior case law rule permitting deviation from trust restrictions as necessary in unforeseen circumstances. See, e.g., *Estate of Loring*, 29 Cal. 2d 423, 436-37, 175 P.2d 524 (1946); *Adams v. Cook*, 15 Cal. 2d 352, 359, 101 P.2d 484 (1940); *Estate of Mabury*, 54 Cal. App. 3d 969, 984-85, 127 Cal. Rptr. 233 (1976); see also Restatement (Second) of Trusts § 167 (1957). For a provision permitting the court to modify a trust where there has been a material change of circumstances, see Section 15409. As to the construction of trust language that refers to "investments permissible by law for investment of trust funds," "authorized by law for investment of trust funds," "legal investments," "authorized investments," or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs," or other words of similar meaning in defining the powers of the trustee relative to investments, see Section 16053.

Prob. Code § 16202 (revised comment). Exercise of powers subject to trustee's duties

Comments. Section 16202 continues Section 16202 of the repealed Probate Code without change. This section recognizes that a power

granted to the trustee from any source does not necessarily permit the exercise of the power, nor does it prevent the exercise of a power in a manner that conflicts with a general duty where the trust instrument so directs (see Section 16000) or where the trustee is directed so to act by a person holding the power to revoke the trust (see Section 16001). For example, the trust instrument may give the trustee discretion to favor one beneficiary over others, in apparent conflict with the general duty to deal with beneficiaries impartially under Section 16003. See also Section 16000 *et seq.* (trustee's fiduciary duties). As to the construction of trust language that refers to "investments permissible by law for investment of trust funds," "authorized by law for investment of trust funds," "legal investments," "authorized investments," or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs," or other words of similar meaning in defining the powers of the trustee relative to investments, see Section 16053.

Prob. Code § 16203 (revised comment). Application of rules governing trustees' powers

Comment. Section 16203 continues Section 16203 of the repealed Probate Code with technical changes. This section makes clear the effect of references in instruments to the former provisions listing trustees' powers. As to the construction of trust language that refers to "investments permissible by law for investment of trust funds," "authorized by law for investment of trust funds," "legal investments," "authorized investments," or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs," or other words of similar meaning in defining the powers of the trustee relative to investments, see Section 16053.

Prob. Code § 16220 (revised comment). Collecting and holding property

Comment. Section 16220 continues Section 16220 of the repealed Probate Code without change. This section is the same in substance as Section 3(c)(1) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. The exercise of the power to hold property under this section is subject to the limitation provided in Section 21524(c) in the case of a marital deduction trust. See also Sections 62 ("property" defined), 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16222 (revised comment). Participation in business; change in form of business

Comment. Section 16222 continues Section 16222 of the repealed Probate Code without change. Subdivision (a) is similar to Section 3(c)(3) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. Under Section 16222, the trustee may have the power to continue a business that is made part of the trust, but may not enter into a new business. See also 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Subdivision (b) excludes the lease of four or fewer residential units from the requirement that the trustee obtain court approval to continue operation of a business or other enterprise that is a part of trust property. It is irrelevant whether the residential units are located in one or more buildings or on one or more lots.

Subdivision (d) limits the rule in subdivision (b) requiring court authorization for the trustee to operate a business or other enterprise that is a part of trust property. This is a special application of the rule stated in Section 16203.

Prob. Code § 16223 (revised comment). Investments

Comment. Section 16223 continues Section 16223 of the repealed Probate Code without change. This section is the same in substance as Section 16047(e), part of the Uniform Prudent Investor Act (1994). See Section 16047 & Comment. This section is the same in substance as Section 3(c)(5) of the Uniform Trustees' Powers Act (1964), except that surplus language has been omitted. As to the construction of provisions drawn from uniform acts, see Section 2. Under this section, any form of investment is permissible in the absence of a prohibition in the trust instrument or an overriding duty. This section is intended to permit investment in investment company shares, mutual funds, index funds, and other modern vehicles for collective investments. While investment in these funds is not forbidden merely because discretion over the fund is delegated to others, the trustee is ultimately subject to general fiduciary standards of care in making the investment. See Section 16040 (trustee's general standard of care in performing duties), 16046 (prudent investor rule), 16047 (standard of care, portfolio strategy, risk and return objectives). See also Sections 62 ("property" defined), 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Statutes pertaining to legal investments appear in other codes. See, e.g., Fin. Code §§ 1561.1 (funds provided services by trust company or affiliate), 1564 (common trust funds); Gov't Code §§ 971.2, 17202, 61673; Harb. & Nav. Code §§ 6331, 6931; Health & Safety Code §§ 33663, 34369, 37649, 52040, 52053.5; Pub. Res. Code § 26026; Sts. & Hy. Code §§ 8210, 25371, 30241, 30242, 31173; Water Code §§ 9526, 20064.

Prob. Code § 16224 (revised comment). Investments in obligations of United States government

Comment. Section 16224 continues Section 16224 of the repealed Probate Code without change. See also Sections 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16226 (revised comment). Acquisition and disposition of property

Comment. Section 16226 continues Section 16226 of the repealed Probate Code without change. This section is the same in substance as part of Section 3(c)(7) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Sections 62 ("property" defined), 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16227 (revised comment). Management of property

Comment. Section 16227 continues Section 16227 of the repealed Probate Code without change. This section is the same in substance as part of Section 3(c)(7) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Sections 62 ("property" defined), 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16228 (revised comment). Encumbrances

Comment. Section 16228 continues Section 16228 of the repealed Probate Code without change. This section is the same in substance as part of Section 3(c)(7) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2.

See also Sections 62 (“property” defined), 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16229 (revised comment). Repairs and alterations of property

Comment. Section 16229 continues Section 16229 of the repealed Probate Code without substantive change. This section is the same in substance as Section 3(c)(8) of the Uniform Trustees’ Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Sections 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16230 (revised comment). Development of land

Comment. Section 16230 continues Section 16230 of the repealed Probate Code without change. This section is the same in substance as Section 3(c)(9) of the Uniform Trustees’ Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Sections 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16231 (revised comment). Leases

Comment. Section 16231 continues Section 16231 of the repealed Probate Code without change. This section is the same in substance as Section 3(c)(10) of the Uniform Trustees’ Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Sections 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16232 (revised comment). Mineral leases

Comment. Section 16232 continues Section 16232 of the repealed Probate Code with the addition of a reference to geothermal energy. The reference to a pooling or unitization agreement is drawn from Section 3(c)(11) of the Uniform Trustees’ Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. The

authority to make leases or agreements extending beyond the term of the trust is consistent with Section 16231 (general power to lease). See also Sections 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16233 (revised comment). Options

Comment. Section 16233 continues Section 16233 of the repealed Probate Code without change. This section is the same in substance as Section 3(c)(12) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. The authority to grant or take options exercisable beyond the term of the trust is consistent with Section 16231 (general power to lease). An option under this section includes a right of first refusal. See also Sections 62 ("property" defined), 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16234 (revised comment). Voting rights with respect to corporate shares, memberships, or property

Comment. Section 16234 continues Section 16234 of the repealed Probate Code without change. This section is comparable to Section 2458 (voting rights under guardianship and conservatorship statute). See also Corp. Code §§ 702(a) (voting of shares by trustee), 703(c) (voting of shares in corporate trustee), 705 (proxies); Prob. Code §§ 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16235 (revised comment). Payment of calls and assessments

Comment. Section 16235 continues Section 16235 of the repealed Probate Code without change. This section is the same as Section 3(c)(14) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Sections 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16236 (revised comment). Stock subscriptions and conversions

Comment. Section 16236 continues Section 16236 of the repealed Probate Code without change. This section is the same as the first part of Section 3(c)(15) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Sections 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16237 (revised comment). Consent to change in form of business; voting trusts

Comment. Section 16237 continues Section 16237 of the repealed Probate Code without substantive change. This section, in part, is similar to the second part of Section 3(c)(15) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Sections 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16238 (revised comment). Holding securities in name of nominee

Comment. Section 16238 continues Section 16238 of the repealed Probate Code, but deletes the reference to the liability of the trustee for an act of the nominee for consistency with Section 9736 (decedent's estate management). This matter is governed by general provisions on liability of a trustee. See, e.g., Section 16401. This section is comparable to Section 3(c)(16) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Corp. Code § 702(a) (trustee not entitled to vote shares without transfer into trustee's name); Fin. Code § 1563 (trust company may register securities in name of nominee); Prob. Code §§ 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16239 (revised comment). Deposit of securities in securities depository

Comment. Section 16239 continues Section 16239 of the repealed Probate Code without change. See also Sections 16053 (language

invoking standard of Uniform Prudent Investor Act), 16200 (powers subject to control by trust instrument), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16240 (revised comment). Insurance

Comment. Section 16240 continues Section 16240 of the repealed Probate Code without change. This section is the same in substance as Section 3(c)(17) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Sections 62 ("property" defined), 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16241 (revised comment). Borrowing money

Comment. Section 16241 continues Section 16241 of the repealed Probate Code without change. The first sentence of this section is similar to part of Section 3(c)(18) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. See also Sections 62 ("property" defined), 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16242 (revised comment). Payment and settlement of claims

Comment. Section 16242 continues Section 16242 of the repealed Probate Code without change. This section is substantially the same as Section 3(c)(19) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. The trustee has the power to release a claim; the determination of when to release a claim depends upon the duties imposed on the trustee. As a general matter, the trustee should be able to release a claim not only when it is uncollectible, but also when it is uneconomical to attempt to collect it. See also Sections 16010 (duty to enforce claims), 16011 (duty to defend actions), 16053 (language invoking standard of Uniform Prudent Investor Act), 16202 (exercise of powers is subject to duties), 16203 (trust instrument that incorporates the powers provided in former Section 1120.2 of the repealed Probate Code).

Prob. Code § 16247 (revised comment). Hiring persons

Comment. Section 16247 is the same in substance as part of Section 3(c)(24) of the Uniform Trustees' Powers Act (1964). As to the construction of provisions drawn from uniform acts, see Section 2. If the trustee is in doubt concerning the propriety of hiring an agent, the judicial procedure for obtaining instructions is available. See Section 17200(b)(6). An agent with a close relationship with the trustee or an insider may be hired when it is in the best interests of the trust, taking into account the duty of loyalty (see Section 16002) and the duty to avoid conflicts of interest (see Section 16004), and particularly as to routine matters; but in situations involving substantial matters, it is best to hire outside agents. The trustee has a duty to inform certain beneficiaries of agents hired, their relationship to the trustee, if any, and their compensation. See Section 16063(d).

See also Sections 16012 (general duty not to delegate), 16014 (duty to use special skills), 16052 (delegation of investment and management functions), 16202 (exercise of powers is subject to duties), 16401 (trustee's liability to beneficiary for acts of agent).

Prob. Code § 16311 (revised comment). Underproductive property

Comment. Subdivision (d) of Section 16311 resolves the conflict between the portfolio approach to investment decisions provided in Section 16047 and the underproductive property provision of Section 16311 as it applies to securities.

Prob. Code § 16440 (revised comment). Measure of liability for breach of trust

Comment. Section 16440 continues Section 16440 of the repealed Probate Code without change. Subdivision (a) is drawn from Section 205 of the Restatement (Second) of Trusts (1957). See also Section 16047 (duty to consider investments as part of an overall investment strategy under Uniform Prudent Investor Act).

Subdivision (b) codifies the good-faith exception to the general liability rules found in the Restatement. See Restatement (Second) of Trusts § 205 comment g (1957). This rule supersedes subdivision (a) of former Civil Code Section 2238 and represents an expansion of the rule in *Estate of Talbot*, 141 Cal. App. 2d 309, 320-27, 296 P.2d 848 (1956). In *Talbot*, liability for appreciation damages was excused on the grounds of good faith, but the trustee was liable for the breach in the amount of the loss to the corpus plus interest.

APPENDIX 5

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 196 OF THE STATUTES OF 1995 (SENATE BILL 832)

Chapter 196 of the Statutes of 1995 was introduced as Senate Bill 832 by Senator Quentin L. Kopp on recommendation of the Commission. Comments to the sections in Chapter 196 that are recommended by the Commission are set out in *Debtor-Creditor Relations: Exemptions from Enforcement of Money Judgments — Decennial Review*, 25 Cal. L. Revision Comm'n Reports 1, 12-15, 40-52 (1995). These comments remain applicable to Chapter 196, except for the revised comments set out below, which reflect amendments to the bill made during the legislative process.

Code Civ. Proc. § 704.010 (amended). Motor vehicles exemption

Comment. Section 704.010 is amended to increase the exemption amounts from \$1,200 to \$1,900.

Code Civ. Proc. § 704.060 (amended). Personal property used in trade, business, or profession

Comment. Section 704.060 is amended to double the exemption amounts for the general tools of the trade exemption. However, the exemption for a commercial motor vehicle under this section is limited as provided in subdivision (d). This limitation is generally consistent with the motor vehicle exemption under Section 704.010.

APPENDIX 6

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 300 OF THE STATUTES OF 1995 (SENATE BILL 984)

Chapter 300 of the Statutes of 1995 was introduced as Senate Bill 984 by Senator Tom Campbell on recommendation of the California Law Revision Commission to make a number of technical corrections in 1994 legislation concerning powers of attorney. For additional background, see the Commission's report, *1995 Comprehensive Power of Attorney Law*, 24 Cal. L. Revision Comm'n Reports 323 (1994). Comments to the more important sections in Chapter 300 recommended by the Commission are set out below. The Commission has not prepared Comments to sections that correct purely technical errors, such as the misdesignated chapter number in Probate Code Section 4150 *et seq.*

Gov't Code § 8205 (amended). Duties of notary public

Comment. Paragraph (4) is added to subdivision (a) of Section 8205 to recognize the authority granted by Probate Code Section 4307 (certification of copy of power of attorney) and to specify the manner of certification. The second sentence of paragraph (4) is included for consistency with paragraphs (2) and (3). The sentence added at the end of subdivision (a)(1) conforms to language in 1995 Cal. Stat. ch. 590 (SB 1121).

Gov't Code § 8211 (amended). Fees of notary public

Comment. Subdivision (h) is added to Section 8211 to provide a fee for exercising the authority granted by Government Code Section 8205 (duties of notary public) and Probate Code Section 4307 (certification of copy of power of attorney).

Prob. Code § 4054 (amended). Application to existing powers of attorney and pending proceedings

Comment. Subdivision (d) is added to Section 4054 to make clear that enactment of the Power of Attorney Law is not intended to affect the validity of a pre-existing power of attorney. See Section 4050 (types of powers governed by Power of Attorney Law). Thus, for example, a durable power of attorney for property matters executed before January 1, 1995, that is neither notarized nor witnessed, is not made invalid by the new execution formalities provided by Section 4121. Subdivision (d) is declaratory of, and not a change in, the law.

Prob. Code § 4703 (technical amendment). Requirements for printed form of durable power of attorney for health care

Comment. Subdivision (b) of Section 4703 is amended to delete the surplus word “and.” This is a technical, nonsubstantive change.

Prob. Code § 4753 (technical amendment). Request to forego resuscitative measures

Comment. Subdivisions (b) and (d) of Section 4753 are amended to clarify the signing requirements for a request to forego resuscitative measures. These are technical, nonsubstantive changes.

APPENDIX 7

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 938 OF THE STATUTES OF 1995 (SENATE BILL 523)

Chapter 938 of the Statutes of 1995 was introduced as Senate Bill 523 by Senator Quentin L. Kopp on recommendation of the Commission. See *Administrative Adjudication by State Agencies*, 25 Cal. L. Revision Comm'n Reports 55 (1995). Amendments were made to the bill during the legislative process. Significant substantive changes from the Commission's recommendation as a result of the amendments are:

(1) The Office of Administrative Hearings is authorized to adopt regulations to carry out its functions and duties under the Administrative Procedure Act. Gov't Code § 11370.5(b).

(2) The exception from the *ex parte* communications prohibition for technical staff advice is made inapplicable in medical quality hearings since a panel of technical assistants is provided in those hearings. Gov't Code § 11371(d). The emergency decision procedure is made inapplicable in those hearings since a complete interim order procedure is already provided. Gov't Code § 11529(i).

(3) A "poisoned fruit" exception is added to make clear that although confidentiality of communications in alternative dispute resolution is protected, the protection does not preclude admission of evidence in a subsequent proceeding that is otherwise admissible. Gov't Code § 11420.30(d).

(4) Agencies are authorized to provide for peremptory challenge of the presiding officer. Gov't Code § 11425.40(d).

(5) Disclosure of *ex parte* communications is not required in nonprosecutorial proceedings involving certain land use and environmental agencies. Gov't Code § 11430.30(c).

(6) Ex parte communications to the agency head are allowed in individualized ratemaking proceedings provided they are disclosed on the record. Gov't Code § 11430.70(b).

(7) Ex parte communications between the presiding officer and agency head are allowed where the presiding officer does not issue a decision in the proceeding but simply advises the agency head. Gov't Code § 11430.80(b).

(8) A licensee may demand a formal, instead of informal, hearing in an occupational license disciplinary proceeding. Gov't Code § 11445.30(c).

(9) A written notice to attend is allowed in lieu of service of a subpoena, in the same manner as in civil practice. Gov't Code § 11450.50.

(10) Existing law on electronic reporting is preserved in Office of Administrative Hearings cases. Gov't Code § 11512(d).

(11) The agency head is not allowed to change the legal basis of the opinion without remanding to the presiding officer. Gov't Code § 11517(b).

(12) The State Board of Equalization is exempted from the requirements of the Administrative Procedure Act. Gov't Code § 15609.5.

(13) The special ex parte communications limitation applicable in Integrated Waste Management Board hearings is preserved. Pub. Res. Code § 40412.

(14) The exemption for hearings under the Public Utilities Act is extended to the Public Utilities Code. Pub. Util. Code § 1701.

(15) Franchise Tax Board deficiency protest and jeopardy assessment "hearings" are exempted from the bill since these are informal settlement negotiations. Rev. & Tax. Code §§ 19044, 19084.

Comments to the sections in Chapter 938 recommended by the Commission are set out in *Administrative Adjudication by*

State Agencies, 25 Cal. L. Revision Comm'n Reports 55 (1995). These comments remain applicable to Chapter 938, except for the new and revised comments set out below, which reflect amendments to the bill made during the legislative process.

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Bus. & Prof. Code § 124 (amended). Notice

Comment. Section 124 is amended to correct cross references. It should be noted that a notice, order, or document given or served pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code is governed by Government Code Section 11440.20. In addition to notice by personal delivery or regular mail to the person's last known address, Government Code Section 11440.20 permits service or notice by mail delivery service, facsimile transmission, or by such other electronic means as is provided by agency regulation. The procedures to which Government Code Section 11440.20 applies include alternative dispute resolution, informal hearing, emergency decision, declaratory decision, and conversion of the proceeding to another type of proceeding. See Gov't Code § 11440.20 (introductory clause).

Gov't Code § 11370.5 (amended). Administrative law and procedure

Comment. Subdivision (a) of Section 11370.5 is amended to limit the authority of the Office of Administrative Hearings to administrative adjudication. For authority of the Office of Administrative Law to study administrative rulemaking, see Section 11340.4. Subdivision (a) is also amended to add language protecting confidentiality of records.

Subdivision (b) is added to make clear the general authority of the Office of Administrative Hearings to adopt implementing regulations concerning the office and proceedings under the Administrative Procedure Act. For specific regulation authority of the office, see, e.g., Sections 11420.20 (regulations governing ADR), 11465.70 (regulations governing declaratory decision).

Gov't Code § 11371 (amended). Medical Quality Hearing Panel

Comment. Subdivision (d) of Section 11371 is amended to make certain ex parte communications exceptions inapplicable in proceedings under this section.

Gov't Code § 11400 (added). Administrative adjudication provisions of Administrative Procedure Act

Comment. Section 11400 makes clear that references to the administrative adjudication provisions of the Administrative Procedure Act include both this chapter (general provisions) and Chapter 5 (formal hearing). The formal hearing provisions of Chapter 5 apply to an adjudicative proceeding as determined by the statutes relating to the proceeding. Section 11501. The general provisions of this chapter apply to all statutorily and constitutionally required state agency adjudicative proceedings, including proceedings under Chapter 5. See Section 11410.10 and sections following.

Various statutes and regulations incorporate provisions of the existing Administrative Procedure Act by referring to specific section numbers. See, e.g., Ins. Code § 1861.08 (Proposition 103). This chapter is not intended to change those incorporated provisions. See Section 11415.10 & Comment (governing procedure determined by applicable statutes; this chapter supplements and does not replace governing procedure). Where a specific provision that is incorporated by reference has been moved to a differently numbered section of this chapter, it is intended that the obligation will continue to apply as provided in this chapter. Subdivision (b).

References in section Comments in this chapter and Chapter 5 to the "1981 Model State APA" mean the Model State Administrative Procedure Act (1981) promulgated by the National Conference of

Commissioners on Uniform State Laws. See 15 U.L.A. 1 (1990). References to the “Federal APA” mean the Federal Administrative Procedure Act, 5 U.S.C. §§ 551-583, 701-706, 1305, 3105, 3344, 5372, 7521 (1988 & Supp. V 1993), and related sections (originally enacted as Act of June 11, 1946, ch. 324, 60 Stat. 237). A number of the administrative adjudication provisions of the Administrative Procedure Act are drawn from the Federal APA.

Gov’t Code § 11410.10 (added). Application to constitutionally and statutorily required hearings

Comment. Section 11410.10 limits application of this chapter to constitutionally and statutorily required hearings of state agencies. See Section 11410.20 (application to state). The provisions do not govern local agency hearings except to the extent expressly made applicable by another statute. Section 11410.30 (application to local agencies).

Section 11410.10 states the general principle that an agency must conduct an appropriate adjudicative proceeding before issuing a decision where a statute or the due process clause of the federal or state constitutions necessitates an evidentiary hearing for determination of facts. Such a hearing is a process in which a neutral decision maker makes a decision based exclusively on evidence contained in a record made at the hearing or on matters officially noticed. The hearing must at least permit a party to introduce evidence, make an argument to the presiding officer, and rebut opposing evidence.

The coverage of this chapter is the same as coverage by the existing provision for administrative mandamus under Code of Civil Procedure Section 1094.5(a). That section applies only where an agency has issued a final decision “as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the [agency].” Numerous cases have applied Code of Civil Procedure Section 1094.5(a) broadly to administrative proceedings in which a statute requires an “administrative appeal” or some other functional equivalent of an evidentiary hearing for determination of facts — an on-the-record or trial-type hearing. See, e.g., *Eureka Teachers Ass’n v. Board of Educ.*, 199 Cal. App. 3d 353, 244 Cal. Rptr. 240 (1988) (teacher’s right to appeal grade change was right to hearing — Code Civ. Proc. § 1094.5 applies); *Chavez v. Civil Serv. Comm’n*, 86 Cal. App. 3d 324, 150 Cal. Rptr. 197 (1978) (right of “appeal” means hearing required — Code Civ. Proc. § 1094.5 available).

In many cases, statutes or the constitution call for administrative proceedings that do not rise to the level of an evidentiary hearing as defined in this section. For example, the constitution or a statute might require only a consultation or a decision that is not based on an exclusive

record or a purely written procedure or an opportunity for the general public to make statements. In some cases, the agency has discretion to provide or not provide the procedure. In other cases, the hearing called for by the statute is informal and investigative in nature, and any decision that results is not final but is subject to a full administrative hearing at a higher agency level. See, e.g., Rev. & Tax. Code §§ 19044, 19084 (statutory oral hearing available, with opportunity for full administrative hearing before State Board of Equalization). This chapter does not apply in such cases. Examples of cases in which the required procedure does not meet the standard of an evidentiary hearing for determination of facts are: *Goss v. Lopez*, 419 U.S. 565 (1975) (informal consultation between student and disciplinarian before brief suspension from school); *Hewitt v. Helms*, 459 U.S. 460 (1983) (informal nonadversary review of decision to place prisoner in administrative segregation — prisoner has right to file written statement); *Skelly v. State Personnel Bd.*, 15 Cal. 3d 194, 539 P.2d 774, 124 Cal. Rptr. 14 (1975) (informal opportunity for employee to respond orally or in writing to charges of misconduct prior to removal from government job); *Wasko v. Department of Corrections*, 211 Cal. App. 3d 996, 1001-02, 259 Cal. Rptr. 764 (1989) (prisoner's right to appeal decision does not require a hearing — Code Civ. Proc. § 1094.5 inapplicable); *Marina County Water Dist. v. State Water Resources Control Bd.*, 163 Cal. App. 3d 132, 209 Cal. Rptr. 212 (1984) (hearing discretionary, not mandatory — Code Civ. Proc. § 1094.5 inapplicable).

Agency action pursuant to statutes that do not require evidentiary hearings are not subject to this chapter. Such statutes include the California Environmental Quality Act (Pub. Res. Code §§ 21000-21178.1), the Bagley-Keene Open Meeting Act (Gov't Code §§ 11120-11132), and the California Public Records Act (Gov't Code §§ 6250-6268).

This chapter applies only to proceedings for issuing a “decision.” A decision is an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person. Section 11405.50(a) (“decision” defined). Therefore this chapter does not apply to agency actions that do not determine a person's legal interests and does not apply to rulemaking, which is agency action of general applicability.

This chapter does not apply where agency regulations or practice, rather than a statute or the constitution, call for a hearing. For example, an agency may provide an informal “hearing” as part of its process for deciding whether to issue a license or for deciding whether a particular educational program meets requirements established by regulation for continuing education credits; if a statute does not require a hearing in such a case, this chapter does not apply. Agencies are encouraged to

provide procedural protections by regulation even though not required to do so by statute or the constitution. An agency may provide any appropriate procedure for a decision for which an adjudicative proceeding is not required. Section 11415.50 (when adjudicative proceeding not required).

This section does not specify what type of adjudicative proceeding should be conducted. If an adjudicative proceeding is required by this section, the proceeding may be a formal hearing procedure under Chapter 5 (commencing with Section 11500), or may be a special hearing procedure provided by a statute applicable to the particular proceeding. This chapter also makes available the alternatives of an informal hearing, an emergency decision, or a declaratory decision, where appropriate under the circumstances. See Articles 10 (commencing with Section 11445.10), 13 (commencing with Section 11460.10), and 14 (commencing with Section 11465.10).

This section does not preclude the waiver of any procedure, or the settlement of any case without use of all available proceedings, under the general waiver and settlement provisions of Sections 11415.40 (waiver of provisions) and 11415.60 (settlement).

Gov't Code § 11415.50 (added). When adjudicative proceeding not required

Comment. Subdivision (a) of Section 11415.50 is subject to statutory specification of the applicable procedure for decisions not governed by this chapter. See Section 11415.20 (conflicting or inconsistent statute controls).

Subdivision (b) is drawn in part from 1981 Model State APA § 4-101(a). The provision lists situations in which an agency may issue a decision without first conducting an adjudicative proceeding. For example, a law enforcement officer may, without first conducting an adjudicative proceeding, issue a "ticket" that will lead to a proceeding before an agency or court. Likewise, an agency may commence an adjudicative proceeding without first conducting a proceeding to decide whether to issue the pleading. Nothing in this subdivision implies that this chapter applies in a proceeding in which a hearing is not statutorily or constitutionally required. Section 11410.10 (application to constitutionally and statutorily required hearings).

Nothing in this section excuses compliance with this chapter in an agency decision for which an evidentiary hearing may be statutorily or constitutionally required. See Section 11410.10 (application to constitutionally and statutorily required hearings). A hearing may be statutorily or constitutionally required for a decision that an occupational license should be granted, revoked, suspended, limited, or conditioned.

See, e.g., Bus. & Prof. Code §§ 485 (denial of license), 2555 (suspension, revocation, or probation of medical license); *Suckow v. Alderson*, 182 Cal. 247, 187 P. 965 (1920) (occupational license a vested property right that cannot be impaired without affording licensee an opportunity for a hearing).

Gov't Code § 11420.10 (added). ADR authorized

Comment. The introductory portion of subdivision (a) of Section 11420.10 makes clear that alternative dispute resolution is not mandatory, but may only be used if all parties consent. The relative cost of alternative dispute resolution is a factor an agency should consider in determining whether to refer a dispute for alternative resolution proceedings.

Under subdivision (a)(1), the mediator may use any mediation technique.

Subdivision (a)(2) authorizes delegation of the agency's authority to decide, with the consent of all parties.

Subdivision (a)(3) parallels the procedure applicable in judicial arbitration. See Code Civ. Proc. §§ 1141.20-1141.21. The costs and fees specified in Section 1141.21 for a civil proceeding may not all be applicable in an adjudicative proceeding, but subdivision (a)(3) requires such costs and fees to be assessed to the extent they are applicable.

Subdivision (b) recognizes that some statutes require alternative dispute resolution techniques.

If there is no statute requiring the agency to use mediation or arbitration, this section applies unless the agency makes it inapplicable by regulation under subdivision (c).

Gov't Code § 11420.30 (added). Confidentiality and admissibility of ADR communications

Comment. The policy of Section 11420.30 is not to restrict access to information but to encourage dispute resolution.

Subdivision (a) is analogous to Evidence Code Section 1152.5(a) (mediation).

Subdivision (b) is drawn from Code of Civil Procedure Section 1141.25 (arbitration) and California Rules of Court 1616(c) (arbitration). Subdivision (b) protects confidentiality of a proposed decision in nonbinding arbitration that is rejected by a party; it does not protect a decision accepted by the parties in a nonbinding arbitration, nor does it protect an award in a binding arbitration. See also Section 11425.20 (open hearings).

Subdivision (c) is drawn from Evidence Code Section 703.5.

Subdivision (d) is drawn from Evidence Code Section 1152.5(a)(6).

Gov't Code § 11425.10 (added). Administrative adjudication bill of rights

Comment. Section 11425.10 specifies the minimum due process and public interest requirements that must be satisfied in a hearing that is subject to this chapter, including a hearing under Chapter 5 (formal hearing). See Sections 11410.50 (application where formal hearing procedure required) and 11501 (application of chapter).

Under subdivision (b), this section is self-executing — it is part of the governing procedure by which an agency conducts an adjudicative proceeding whether or not regulations address the matter. The section does not, however, override conflicting or inconsistent state statutes, or federal statutes or regulations. Section 11415.20 (conflicting or inconsistent statute controls). If the governing procedure includes regulations that are at variance with the requirements of this section, it is desirable, but not necessary, that the agency revise the regulations; the requirements of this section apply regardless of the regulations. Conforming regulations may be adopted by a simplified procedure under the rulemaking provisions of the Administrative Procedure Act pursuant to 1 California Code of Regulations Section 100. Nothing in this section precludes the agency from adopting additional or more extensive requirements than those prescribed by this section.

Subdivision (a)(1), providing a person the opportunity to present and rebut evidence, is subject to reasonable control and limitation by the agency conducting the hearing, including the manner of presentation of evidence, whether oral, written, or electronic, limitation on lengthy or repetitious testimony or other evidence, and other controls or limitations appropriate to the character of the hearing.

Subdivision (a)(2) requires only that the agency “make available” a copy of the applicable hearing procedure. This requirement is subject to a rule of reasonableness in the circumstances and does not necessarily require the agency routinely to provide a copy to a person each time agency action is directed to the person. The requirement may be satisfied, for example, by the agency’s offer to provide a copy on request.

Subdivision (a)(9), relating to language assistance, is limited to agencies listed in Sections 11018 (state agency not subject to Chapter 5) and 11435.15 (application of language assistance provisions).

Gov't Code § 11425.40 (added). Disqualification of presiding officer for bias, prejudice, or interest

Comment. Section 11425.40 applies in all administrative adjudications subject to this chapter, including a hearing under Chapter 5

(formal hearing). See Sections 11410.50 (application where formal hearing procedure required) and 11501 (application of chapter). It supersedes a provision formerly found in Section 11512(c) (disqualification of presiding officer in formal hearing). Section 11425.40 applies whether the presiding officer serves alone or with others. For separation of functions requirements, see Section 11425.30.

Subdivision (a) is drawn from 1981 Model State APA § 4-202(b).

Subdivision (b) is drawn from Code of Civil Procedure Section 170.2 (disqualification of judges). Although subdivision (b)(2) provides that, as a general principle, expression of a view on a legal, factual, or policy issue in the proceeding is not in itself bias, prejudice, or interest under Section 11425.40, expression of a view could be a basis for disqualification in conjunction with other acts of the presiding officer. Moreover, expression of a view concerning the particular proceeding before the presiding officer could be grounds for disqualification, and disqualification in such a situation might also occur under Section 11425.30 (neutrality of presiding officer).

Subdivision (d) adds authority for an agency to allow for peremptory challenge of the presiding officer. This is consistent with existing practice in some agencies. See, e.g., 8 Cal. Code Reg. § 10453 (Workers' Compensation Appeals Board). In the case of a proceeding conducted under Chapter 5 (formal hearing procedure) by an administrative law judge employed by the Office of Administrative Hearings, this provision authorizes the Office of Administrative Hearings, and not the agency for which the Office of Administrative Hearings is conducting the proceeding, to provide for peremptory challenge of the administrative law judge.

Gov't Code § 11430.10 (added). Ex parte communications prohibited

Comment. Section 11430.10 is drawn from former Section 11513.5(a) and (b). See also 1981 Model State APA § 4-213(a), (c). This provision also applies to the agency head, or other person or body to which the power to hear or decide is delegated. See Section 11430.70 (application of provisions to agency head or other person). For exceptions to this section, see Sections 11430.20 (permissible ex parte communications generally) and 11430.30 (permissible ex parte communications from agency personnel).

The reference to an "interested person outside the agency" replaces the former reference to a "person who has a direct or indirect interest in the outcome of the proceeding," and is drawn from federal law. See Federal APA § 557(d)(1)(A) (1988); see also *Professional Air Traffic Controllers Org. v. Federal Labor Relations Auth.*, 685 F.2d 547, 562 (D.C. Cir.

1982) (construing the federal standard to include person with an interest beyond that of a member of the general public).

Where the agency conducting the hearing is not a party to the proceeding, the presiding officer may consult with other agency personnel. The *ex parte* communications prohibition only applies as between the presiding officer and parties and other interested persons, not as between the presiding officer and disinterested personnel of a non-party agency conducting the hearing. However, the presiding officer may not consult with the agency head. Section 11430.80 (communications between presiding officer and agency head).

While this section precludes an adversary from communicating with the presiding officer, it does not preclude the presiding officer from communicating with an adversary. This reverses a provision of former Section 11513.5(a). Thus it would not prohibit an agency head from communicating to an adversary that a particular case should be settled or dismissed. However, a presiding officer should give assistance or advice with caution, since there may be an appearance of unfairness if assistance or advice is given to some parties but not others.

Nothing in this section limits the authority of the presiding officer to conduct an *in camera* examination of proffered evidence. *Cf.* Section 11507.7(d)-(e).

Subdivision (c) defines the pendency of a proceeding to include any period between the time an application for a hearing is made and the time the agency's pleading is issued. Treatment of communications made to a person during pendency of the proceeding but before the person becomes presiding officer is dealt with in Section 11430.40 (prior *ex parte* communication).

Gov't Code § 11430.30 (added). Permissible *ex parte* communications from agency personnel

Comment. The exceptions to the prohibition on *ex parte* communications provided in Section 11430.30 are most likely to be useful in hearings where the presiding officer is employed by an agency that is a party. This provision also applies to the agency head, or other person or body to which the power to hear or decide is delegated. See Section 11430.70 (application of provisions to agency head or other person).

This article does not limit on-the-record communications between agency personnel and the presiding officer. Section 11430.10(b) (*ex parte* communications prohibited). Only advice or assistance given outside the hearing is prohibited.

The first sentence of subdivision (a) is drawn from 1981 Model State APA § 4-214(a)-(b). The second sentence is drawn from 1981 Model

State APA § 4-213(b). Under this provision, a person has “served” in any of the capacities mentioned if the person has personally carried out the function, and not merely supervised or been organizationally connected with a person who has personally carried out the function. The limitation is intended to apply to substantial involvement in a case by a person, and not merely marginal or trivial participation. The sort of participation intended to be disqualifying is meaningful participation that is likely to affect an individual with a commitment to a particular result in the case. Thus a person who merely participated in a preliminary determination in an adjudicative proceeding or its pre-adjudicative stage would ordinarily be able to assist or advise the presiding officer in the proceeding. *Cf.* Section 11425.30 (neutrality of presiding officer). For this reason also, a staff member who plays a meaningful but neutral role without becoming an adversary would not be barred by this section.

This provision is not limited to agency personnel, but includes participants in the proceeding not employed by the agency. A deputy attorney general who prosecuted the case at the administrative trial level, for example, would be precluded from advising the agency head or other person delegated the power to hear or decide at the final decision level, except with respect to settlement matters. Subdivision (b).

Subdivision (b), permitting an investigator, prosecutor, or advocate to advise the presiding officer regarding a settlement proposal, is limited to advice in support of the proposed settlement; the insider may not use the opportunity to argue against a previously agreed-to settlement. *Cf.* Alhambra Teachers Ass’n CTA/NEA v. Alhambra City and High Sch. Dists. (1986), PERB Decision No. 560. Insider access is permitted here in furtherance of public policy favoring settlement, and because of the consonance of interest of the parties in this situation.

Subdivision (c) applies to nonprosecutorial types of administrative adjudications, such as power plant siting, land use decisions, and proceedings allocating water or setting water quality protection or instream flow requirements. The provision recognizes that the length and complexity of many cases of this type may as a practical matter make it impossible for an agency to adhere to the restrictions of this article, given limited staffing and personnel. Subdivision (c)(1) recognizes that such an adjudication may require advice from a person with special technical knowledge whose advice would not otherwise be available to the presiding officer under standard doctrine. Subdivision (c)(2) recognizes the need for policy advice from planning staff in proceedings such as land use and environmental matters.

Gov't Code § 11430.70 (added). Application of provisions to agency head or other person

Comment. Under Section 11430.70, this article is applicable to the agency head or other person or body to which the power to act is delegated. For an additional limitation on communications between the presiding officer and agency head, see Section 11430.80.

Section 11430.70 applies only in administrative adjudication proceedings; it does not apply in rulemaking proceedings. *Cf.* Sections 11405.20 (“adjudicative proceeding” defined); 11405.50 (“decision” defined). See also Sections 11400 (administrative adjudication provisions); 11410.10 (application of chapter). While subdivision (b) permits ex parte communications to the agency head in an individualized ratemaking proceeding, it does not require an agency head to accept ex parte communications. Moreover, an agency may provide greater limitations on acceptance of ex parte communications than would be permitted by this provision. See Section 11425.10(b) & Comment (administrative adjudication bill of rights).

Gov't Code § 11430.80 (added). Communications between presiding officer and agency head

Comment. Section 11430.80 is a special application of a provision of former Section 11513.5(a), which precluded a presiding officer from communicating with a person who presided in an earlier phase of the proceeding. Section 11430.80 extends the ex parte communications limitation of Section 11430.70 (application of provisions to agency head or other person) to include communications with an agency or non-agency presiding officer as well. This limitation does not apply where the presiding officer does not issue a decision to the parties, but merely prepares a recommended decision for the agency head or other person or body to which the power to decide is delegated.

This section enforces the general principle that the presiding officer should not be an advocate for the proposed decision to the agency head, including a person or body to which the power to act is delegated. See Section 11405.40 (“agency head” defined). The decision of the agency head should be based on the record and not on off-the-record discussions from which the parties are excluded. Nothing in this section restricts on-the-record communications between the presiding officer and the agency head. Section 11430.10(b).

This section precludes only communications concerning the merits of an issue in the proceeding while the proceeding is pending. It does not preclude, for example, the agency head from directing the presiding officer to elaborate portions of the proposed decision in the proceeding, from asking the presiding officer for tapes of settlement discussions in

the proceeding, or from informing the presiding officer of an investigation concerning disciplinary action involving the presiding officer arising out of the proceeding.

References in this section to a “person or body to which the power to hear or decide in the proceeding is delegated” mean a referral by the agency head pursuant to legal authority vested in the agency head. *Cf.* Section 11405.40 & Comment (“agency head” defined).

Gov’t Code § 11440.50 (added). Intervention

Comment. Subdivision (a) of Section 11440.50 makes clear that this section does not apply to a proceeding unless an agency has acted to make it applicable. This section provides an optional means by which an agency can provide for intervention. This section does not provide an exclusive intervention procedure, and an agency may adopt other intervention rules or may preclude intervention entirely, subject to due process limitations.

Subdivision (b)(1) is drawn from 1981 Model State APA § 4-209(a). It provides that the presiding officer must grant the motion to intervene if a party satisfies the standards of the section. Subdivision (b)(3) confers standing on an applicant to intervene on demonstrating that the applicant’s “legal rights, duties, privileges, or immunities will be substantially affected by the proceeding.” This provision is not intended to permit intervention by a person such as a victim or interest group whose legal rights are not affected by the proceeding, but to permit intervention only by a person who has a legal right entitled to protection by due process of law that will be substantially impaired by the proceeding. *Cf.* *Horn v. County of Ventura*, 24 Cal. 3d 605, 596 P.2d 1134, 156 Cal. Rptr. 718 (1979) (right to notice and hearing if agency action will constitute substantial deprivation of property rights). However, subdivision (b)(4) imposes the further limitation that the presiding officer may grant the motion for intervention only on determining that “the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.” The presiding officer is thus required to weigh the impact that the proceeding will have on the legal rights of the applicant for intervention (subdivision (b)(3)) against the interests of justice and the need for orderly and prompt proceedings (subdivision (b)(4)).

Subdivision (c) is drawn from 1981 Model State APA § 4-209(c). This provision, authorizing the presiding officer to impose conditions on the intervenor’s participation in the proceeding, is intended to permit the presiding officer to facilitate reasonable involvement of intervenors without subjecting the proceeding to unreasonably burdensome or repetitious presentations.

Subdivision (d) is drawn from 1981 Model State APA § 4-209(d). By requiring advance notice of the presiding officer's order granting, denying, or modifying intervention, this provision is intended to give the parties and the applicants for intervention an opportunity to prepare for the adjudicative proceeding.

Subdivision (f) recognizes that there are ways whereby an interested person can have an impact on an ongoing adjudication without assuming the substantial litigation costs of becoming a party and without unnecessarily complicating the proceeding through the addition of more parties. Agency regulations may provide, for example, for filing of amicus briefs, testifying as a witness, or contributing to the fees of a party.

Gov't Code § 11445.10 (added). Purpose of informal hearing procedure

Comment. Section 11445.10 states the policy that underlies the informal hearing procedure. The circumstances where the simplified procedure is appropriate are provided in Section 11445.20 (when informal hearing may be used). The simplified procedures are outlined in Section 11445.40 (procedure for informal hearing).

Basic due process and public policy protections of the administrative adjudication bill of rights are preserved in the informal hearing. Sections 11445.40(a) (procedure for informal hearing), 11425.10 (administrative adjudication bill of rights). Thus, for example, the presiding officer must be free of bias, prejudice, and interest; the presiding officer must be neutral, the adjudicative function being separated from the investigative, prosecutorial, and advocacy functions within the agency; the hearing must be open to public observation; the agency must make available language assistance; ex parte communications are restricted; the decision must be in writing, be based on the record, and include a statement of the factual and legal basis of the decision; and the agency must designate and index significant decisions as precedent.

Reference in this article to the "presiding officer" is not intended to imply unnecessary formality in the proceeding. The presiding officer may be the agency head, an agency member, an administrative law judge, or another person who presides over the hearing. Section 11405.80 ("presiding officer" defined).

It should be noted that a decision made pursuant to the informal hearing procedure is subject to judicial review to the same extent and in the same manner as a decision made pursuant to a formal hearing procedure. See, e.g., Code Civ. Proc. § 1094.5(a) (administrative mandamus for decisions "made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken,

and discretion in the determination of facts is vested in the [agency]”; see also Sections 11445.40 (procedure for informal hearing) and 11410.10 (“This chapter applies to a decision by an agency if, under the federal or state Constitution or a federal or state statute, an evidentiary hearing for determination of facts is required for formulation and issuance of the decision.”)

Gov’t Code § 11445.20 (added). When informal hearing may be used

Comment. Subdivision (a) of Section 11445.20 permits the informal hearing to be used, regardless of the type or amount at issue, if no disputed issue of material fact has appeared, e.g., a power plant siting proceeding in which the power company and the Energy Commission have agreed on all material facts. However, if consumers intervene and dispute material facts, the proceeding may be subject to conversion from an informal hearing procedure to a formal or other type of hearing procedure in accordance with Sections 11470.10-11470.50.

Subdivision (b) permits the informal hearing to be used, even if a disputed issue of material fact has appeared, where the amount or other stake involved is relatively minor. The reference to a “licensee” in subdivision (b)(4) includes a certificate holder. Under subdivision (b), an informal hearing procedure may be used if the sanction imposed in the decision falls within the limitations of the subdivision, even though a greater penalty may result if a party fails to comply with the sanction imposed in the decision.

Subdivision (c) imposes no limits on the authority of the agency to adopt the informal hearing by regulation, other than the general limitation that use of the informal hearing procedure is subject to statutory and constitutional due process requirements. Thus, an agency by regulation may authorize use of the informal hearing procedure in a case where the amount in issue or sanction exceeds the amount provided in subdivision (b), so long as use of the informal hearing procedure would not contravene other statutes or due process of law.

Each subdivision in this section provides an independent basis for conducting an informal hearing. For example, if there is no issue of material fact, an agency may conduct an informal hearing under subdivision (a) whether or not a disciplinary sanction that exceeds the limits of subdivision (b) may result from the hearing.

Nothing in this section implies that this procedure is required in a proceeding in which a hearing is not statutorily or constitutionally required, including an agency’s authority in minor disciplinary matters to make an investigation with or without a hearing as it deems necessary. Sections 11410.10 (application to constitutionally and statutorily required hearings), 11415.50 (when adjudicative proceeding not required).

Gov't Code § 11450.05 (added). Application of article

Comment. Subdivision (a) of Section 11450.05 makes clear that the subpoena provisions of this article apply automatically in hearings required to be conducted under Chapter 5. Under subdivision (b), application of the subpoena provisions in other hearings is discretionary with the agency. But if the agency uses the subpoena procedure in other hearings, all provisions of this article apply, including the service and protective provisions, as well as the requirement for issuance of a subpoena on request of a party or by the attorney of record for a party. See Section 11450.20(a) (issuance of subpoena).

Gov't Code § 11450.50 (added). Written notice to attend

Comment. Section 11450.50 is drawn from Code of Civil Procedure Section 1987 and adapted for administrative adjudication proceedings.

Gov't Code § 11460.20 (added). Agency regulation required

Comment. Section 11460.20 requires specificity in agency regulations that adopt an emergency decision procedure. Notwithstanding this article, a statute on emergency decisions, including cease and desist orders and interim and temporary suspension orders, applicable to a particular agency or proceeding prevails over the provisions of this article. Section 11415.20 (conflicting or inconsistent statute controls).

Gov't Code § 11465.10 (added). Application of article

Comment. Article 14 (commencing with Section 11465.10) creates, and establishes all of the requirements for, a special proceeding to be known as a “declaratory decision” proceeding. The purpose of the proceeding is to provide an inexpensive and generally available means by which a person may obtain fully reliable information as to the applicability of agency administered law to the person’s particular circumstances.

The declaratory decision procedure is thus quasi-adjudicative in nature, enabling an agency to issue in effect an advisory opinion concerning assumed facts submitted by a person. The procedure does not authorize an agency “declaration” of a guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is an “underground regulation.” See Section 11340.5.

The declaratory decision procedure provided in this article applies only to decisions subject to this chapter, including a hearing under Chapter 5 (formal hearing). See Sections 11410.50 (application where formal hearing procedure required), 11501 (application of chapter). See also

Section 11410.10 (application to constitutionally and statutorily required hearings).

It should be noted that an agency not governed by this chapter nonetheless has general power to issue a declaratory decision. This power is derived from the power to adjudicate. See, e.g., M. Asimow, *Advice to the Public from Federal Administrative Agencies* 121-22 (1973).

Gov't Code § 11501 (added). Application of chapter

Comment. Section 11501 is revised to make this chapter the default procedure, absent a contrary statute, for agencies created after the operative date of the revision.

This chapter is supplemented by the general provisions on administrative adjudication found in Chapter 4.5 (commencing with Section 11400), which apply to proceedings under this chapter. See subdivision (c). See also Section 11410.50 (application where formal hearing procedure required). Thus if an agency is required by statute to conduct a hearing under this chapter, the agency may, unless a statute provides otherwise, elect to use alternative dispute resolution or the informal hearing procedure or other appropriate provisions of Chapter 4.5. Likewise, the general provisions of Chapter 4.5 restricting ex parte communications, regulating precedent decisions, and the like, apply to a hearing under this chapter. See also Section 11502 (use of administrative law judges under Chapter 4.5).

The enumeration of agencies formerly found in subdivision (b) is deleted as obsolete. The application of this chapter to the hearings of an agency is determined by the statutes relating to the agency. See also Section 11500(a) (“agency” defined).

Gov't Code § 11501.5 (repealed). Language assistance; provision by state agencies

Comment. Former Section 11501.5 is restated in Section 11435.15 (application of article), with the exception of the reference to the Bureau of Employment Agencies, which no longer exists.

Gov't Code § 11507.7 (amended). Motion to compel discovery

Comment. Section 11507.7 is amended to provide for proceedings to compel discovery before the administrative law judge rather than the superior court. The administrative law judge may continue the proceeding if necessary to allow adequate briefing of the motion. *Cf.* Section 11524(a) (continuances granted for good cause).

An order of the administrative law judge compelling discovery is enforceable by certification to the superior court of facts to justify the contempt sanction. Sections 11455.10-11455.20. A court judgment of contempt is not appealable. Code Civ. Proc. §§ 1222, 904.1(a). The administrative law judge may also impose monetary sanctions for bad faith tactics, which are reviewable in the same manner as the decision in the proceeding. Section 11455.30.

Gov't Code § 11508 (amended). Time and place of hearing

Comment. Subdivision (a) of Section 11508 is amended to reflect relocation of the San Francisco branch of the Office of Administrative Hearings to Oakland and to recognize creation of a branch of the Office of Administrative Hearings in San Diego.

Subdivision (c) codifies practice authorizing a motion for change of venue. See 1 G. Ogden, California Public Agency Practice § 33.02[4][d] (1994). Grounds for change of venue include selection of an improper county and promotion of the convenience of witnesses and ends of justice. *Cf.* Code Civ. Proc. § 397. In making a change of venue determination the administrative law judge may weigh the detriment to the moving party of the initial location against the cost to the agency and other parties of relocating the site. Failure to move for a change in the place of the hearing within the 10 day period waives the right to object to the place of the hearing.

Gov't Code § 11511.5 (amended). Prehearing conference

Comment. Subdivision (a) of Section 11511.5 is amended to reflect the practice of the administrative law judge, rather than the agency, giving the required notice.

Subdivision (b)(9) is not intended to provide a new discovery procedure. If a party has not availed itself of discovery within the time periods provided by Section 11507.6, it should not be permitted to use the prehearing conference as a substitute for statutory discovery. The prehearing conference is limited to an exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.

Subdivision (b)(10) implements Section 11440.50 (intervention) for those proceedings in which an agency has by regulation provided for intervention.

Subdivision (c) is a procedural innovation drawn from 1981 Model State APA § 4-205(a) that allows the presiding officer to conduct all or part of the prehearing conference by telephone, television, or other electronic means, such as a conference telephone call. While subdivision (c) permits the conduct of proceedings by telephone, television, or other

electronic means, the administrative law judge may of course conduct the proceedings in the physical presence of all participants.

Subdivision (d) is drawn from 1981 Model State APA § 4-204(3)(vii), expanded to include alternative dispute resolution.

Gov't Code § 11512 (amended). Presiding officer

Comment. Subdivision (b) of Section 11512 is amended to overrule any contrary implication that might otherwise be drawn from the language of subdivision (b).

Grounds for disqualification under subdivision (c) include bias, prejudice, or interest of presiding officer (Section 11425.40) and receipt of ex parte communications (Section 11430.60). A waiver of disqualification is a voluntary relinquishment of rights by the parties. The administrative law judge need not accept a waiver; the waiver is effective only if accepted by the administrative law judge. The provision for appointment of a substitute for an agency member is drawn from 1981 Model State APA § 4-202(e). In cases where there is no appointing authority, e.g., the agency member is an elected official, the “rule of necessity” still applies and the agency member shall not withdraw or be disqualified. See 1 G. Ogden, California Public Agency Practice § 36.14 (1994).

Gov't Code § 11513 (amended). Evidence

Comment. Subdivision (d) of Section 11513 is intended to avoid or eliminate routine objections to administrative hearsay. If a proposed finding is supported only by hearsay evidence, a single objection at the conclusion of testimony, or on petition for reconsideration by the agency, is sufficient and timely.

The “irrelevant and unduly repetitious” standard formerly found in Section 11513 is replaced in subdivision (f) by the general standard of Evidence Code Section 352. The basic standard of admissibility of relevant evidence is stated in subdivision (c); nothing in subdivision (f) authorizes admission of irrelevant evidence.

The unnumbered paragraph formerly located between subdivisions (c) and (d) is restated in Section 11440.40(a).

Former subdivisions (d)-(n) are restated in Sections 11435.20-11435.65.

Former subdivision (o) is restated in Section 11440.40(b).

Former subdivision (p) is restated in Section 11440.40(c).

Former subdivision (q) is deleted as obsolete.

Gov't Code § 11517 (amended). Decision in contested cases

Comment. Subdivision (a) of Section 11517 is amended to add a provision formerly located in subdivision (d).

Subdivision (b) is amended to add authority to adopt with changes. This supplements the general authority of the agency under Section 11518.5 (correction of mistakes and clerical errors in the decision). Mitigation of a proposed remedy under subdivision (b)(2) includes adoption of a different sanction, as well as reduction in amount, so long as the sanction adopted is not of increased severity.

Subdivision (b) is also amended to make clear that the agency is not accountable for the administrative law judge's failure to meet required deadlines. This implements case law determinations that the time periods provided in this section are directory and not mandatory or jurisdictional. See, e.g., *Chrysler v. New Motor Vehicle Bd.*, 12 Cal. App. 4th 621, 15 Cal. Rptr. 2d 771 (1993); *Outdoor Resorts v. Alcoholic Beverage Control Appeals Bd.*, 224 Cal. App. 3d 696, 273 Cal. Rptr. 748 (1990). Nothing in subdivision (b) is intended to limit the authority of an agency to use its own internal procedures, including internal review processes, in the development of a decision.

Subdivision (c) requires only that the record be made available to the parties. The cost of providing a copy of the record is a matter left to the discretion of each agency as appropriate for its situation. The addition of the provision for an agreed statement of the parties in subdivision (c) is drawn from Rule 6 of the California Rules of Court (agreed statement).

Remand under subdivision (c) is required to the presiding officer who issued the proposed decision only if "reasonably" available. Thus if workloads make remand to the same presiding officer impractical, the officer would not be reasonably available, and remand need not be made to that particular person.

The authority in subdivision (c) for the agency itself to elect to decide some but not all issues in the case is drawn from 1981 Model State APA § 4-216(a)(2)(i). The authority of the agency itself to select issues for decision under this provision is unlimited, and includes authority to select for agency decision questions of law, questions of fact, and mixed questions of law and fact.

Subdivision (d) is amended to require affirmative notice of nonadoption of a proposed decision with the 100-day period. The provision formerly found in subdivision (d) giving an agency 100 days in which to issue a decision where the case is heard by the agency itself is relocated to subdivision (a) for clarity.

Gov't Code § 11529 (amended). Interim orders

Comment. Section 11529 is amended to substitute the administrative law judge for the court in subdivision (e).

Subdivision (i) is amended to make clear that, notwithstanding Section 11415.10, the emergency decision procedure of the Administrative Procedure Act may not be used as an alternative to the interim order procedure provided in this section for interim suspension of a license, or imposition of drug testing, continuing education, supervision of procedures, or other license restrictions.

Gov't Code § 15609.5 (added). State Board of Equalization

Comment. The language in Section 15609.5 making Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 (formal hearing procedure) inapplicable is surplus, because that chapter does not apply unless a statute makes it applicable. See Section 11501 (application of chapter). Since there is no statute that makes Chapter 5 applicable to the board, Chapter 5 does not apply in any event. The language making Chapter 5 inapplicable to the board should not be read to create an implication that Chapter 5 is applicable in a proceeding of any other agency absent language making it inapplicable. Chapter 5 is only applicable in a proceeding to which it is made applicable by statute. *Cf.*, e.g., Lab. Code § 1144.5 & Comment (language exempting certain hearings of Agricultural Labor Relations Board from Chapter 4.5 does not create implication that Chapter 5 is applicable in those hearings; whether Chapter 5 applies to a hearing is determined by statutes governing hearing).

Gov't Code § 68560.5 (added). Definitions

Comment. Section 68560.5 is revised to correct the reference to the Administrative Procedure Act.

Pub. Res. Code § 40412 (amended). Ex parte communication

Comment. Section 40412 is amended to make clear that the ex parte communications provisions of the Administrative Procedure Act do not apply to proceedings of the California Integrated Waste Management Board governed by this section. This section continues to apply to proceedings of the California Integrated Waste Management Board.

Pub. Util. Code § 1701 (amended). Rules of procedure

Comment. Section 1701 is amended to make the general administrative adjudication provisions of the Administrative Procedure Act inapplicable to a hearing of the Public Utilities Commission under

the Public Utilities Code. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 1701 is silent on the question, the formal hearing provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to a hearing of the Public Utilities Commission under the Public Utilities Code. *Cf.* Gov't Code § 11501 (application of chapter).

Nothing in Section 1701 excuses compliance with procedural protections required by due process of law.

Rev. & Tax. Code § 19044 (amended). Deficiency assessment protest

Comment. Section 19044 is amended to make clear that the general provisions of the Administrative Procedure Act do not apply to an oral deficiency assessment protest hearing, which is investigative and informal in nature. *Cf.* Gov't Code § 11415.50 (when adjudicative proceeding not required). A taxpayer that is unable to resolve the issue at the Franchise Tax Board level has available an administrative hearing remedy before the State Board of Equalization. See Sections 19045-19048.

Rev. & Tax. Code § 19084 (amended). Jeopardy assessment review

Comment. Paragraph (4) of Section 19084(a) is amended to make clear that the general provisions of the Administrative Procedure Act do not apply to an oral jeopardy assessment review hearing, which is investigative and informal in nature. *Cf.* Gov't Code § 11415.50 (when adjudicative proceeding not required). A taxpayer that is unable to resolve the issue at the Franchise Tax Board level has available an administrative hearing remedy before the State Board of Equalization. See subdivision (b).

Welf. & Inst. Code § 11350.6 (amended). Compliance with support order

Comment. Section 11350.6 is amended to correct references to the Administrative Procedure Act.

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VOLUME 1 (1957)

[Hardcover Volume Out of Print]

1955 Annual Report [out of print]

1956 Annual Report [out of print]

1957 Annual Report [out of print]

Recommendation and Study Relating to:

Maximum Period of Confinement in a County Jail

Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions
[out of print]

Taking Instructions to the Jury Room [out of print]

Dead Man Statute

Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled
Elsewhere [out of print]

Marital "For and Against" Testimonial Privilege

Suspension of the Absolute Power of Alienation [out of print]

Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378

Judicial Notice of the Law of Foreign Countries [out of print]

Choice of Law Governing Survival of Actions [out of print]

Effective Date of an Order Ruling on a Motion for New Trial [out of print]

Retention of Venue for Convenience of Witnesses [out of print]

Bringing New Parties into Civil Actions [out of print]

VOLUME 2 (1959)

1958 Annual Report

1959 Annual Report, includes the following recommendation:

Procedure for Appointing Guardians

Recommendation and Study Relating to:

Presentation of Claims Against Public Entities

Right of Nonresident Aliens to Inherit

Mortgages to Secure Future Advances

Doctrine of Worthier Title

Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles
and Drunk Driving
Time Within Which Motion for New Trial May Be Made
Notice to Shareholders of Sale of Corporate Assets

VOLUME 3 (1961)

[Hardcover Volume Out of Print]

1960 Annual Report [out of print]
1961 Annual Report [out of print]
Recommendation and Study Relating to:
 Evidence in Eminent Domain Proceedings
 Taking Possession and Passage of Title in Eminent Domain Proceedings [out of print]
 Reimbursement for Moving Expenses When Property is Acquired for Public Use [out
 of print]
 Rescission of Contracts [out of print]
 Right to Counsel and the Separation of the Delinquent From the Nondelinquent
 Minor in Juvenile Court Proceedings [out of print]
 Survival of Actions
 Arbitration
 Presentation of Claims Against Public Officers and Employees
 Inter Vivos Marital Property Rights in Property Acquired While Domiciled
 Elsewhere
 Notice of Alibi in Criminal Actions

VOLUME 4 (1963)

1962 Annual Report
1963 Annual Report
1964 Annual Report
Recommendation and Study Relating to Condemnation Law and Procedure:
 Number 4 — Discovery in Eminent Domain Proceedings
Recommendations Relating to Sovereign Immunity:
 Number 1 — Tort Liability of Public Entities and Public Employees
 Number 2 — Claims, Actions and Judgments Against Public Entities and Public
 Employees
 Number 3 — Insurance Coverage for Public Entities and Public Employees
 Number 4 — Defense of Public Employees
 Number 5 — Liability of Public Entities for Ownership and Operation of Motor
 Vehicles
 Number 6 — Workmen's Compensation Benefits for Persons Assisting Law
 Enforcement or Fire Control Officers
 Number 7 — Amendments and Repeals of Inconsistent Special Statutes [out of print]
Tentative Recommendation and A Study Relating to the Uniform Rules of Evidence
 (Article VIII. Hearsay Evidence) [same as publication in Volume 6] [out of print]

VOLUME 5 (1963)

[Hardcover Volume Out of Print]

A Study Relating to Sovereign Immunity [Note: The price of this softcover publication is \$25. The softcover publication includes the entire contents of the hardcover publication except for the title page and some other front matter.]

VOLUME 6 (1964)

[Hardcover Volume Out of Print]

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

Article I (General Provisions)

Article II (Judicial Notice)

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

Article IV (Witnesses)

Article V (Privileges) [out of print]

Article VI (Extrinsic Policies Affecting Admissibility)

Article VII (Expert and Other Opinion Testimony)

Article VIII (Hearsay Evidence) [same as publication in Volume 4] [out of print]

Article IX (Authentication and Content of Writings)

VOLUME 7 (1965)

1965 Annual Report

1966 Annual Report

Evidence Code with Official Comments

Recommendation Proposing an Evidence Code [out of print]

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

VOLUME 8 (1967)

Annual Report (December 1966) includes the following recommendation:

Discovery in Eminent Domain Proceedings

Annual Report (December 1967) includes the following recommendations:

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

Improvements Made in Good Faith upon Land Owned by Another

Damages for Personal Injuries to a Married Person as Separate or Community Property

Service of Process on Unincorporated Associations

Recommendation and Study Relating to:

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

Vehicle Code Section 17150 and Related Sections

Additur

Abandonment or Termination of a Lease

- Good Faith Improver of Land Owned by Another
Suit By or Against An Unincorporated Association
- Recommendation Relating to The Evidence Code:
 - Number 1 — Evidence Code Revisions
 - Number 2 — Agricultural Code Revisions [out of print]
 - Number 3 — Commercial Code Revisions [out of print]
- Recommendation Relating to Escheat
- Tentative Recommendation and A Study Relating to Condemnation Law and Procedure:
 - Number 1 — Possession Prior to Final Judgment and Related Problems

VOLUME 9 (1969)

[Hardcover Volume Out of Print]

- Annual Report (December 1968) includes the following recommendations:
 - Sovereign Immunity: Number 9 — Statute of Limitations in Actions Against Public Entities and Public Employees
 - Additur and Remittitur
 - Fictitious Business Names
- Annual Report (December 1969) includes the following recommendations:
 - Quasi-Community Property
 - Arbitration of Just Compensation
 - The Evidence Code: Number 5 — Revisions of the Evidence Code
 - Real Property Leases
 - Statute of Limitations in Actions Against Public Entities and Public Employees
- Recommendation and Study Relating to:
 - Mutuality of Remedies in Suits for Specific Performance
 - Powers of Appointment
 - Fictitious Business Names
 - Representations as to the Credit of Third Persons and the Statute of Frauds
 - The “Vesting” of Interests Under the Rule Against Perpetuities
- Recommendation Relating to:
 - Real Property Leases
 - The Evidence Code: Number 4 — Revision of the Privileges Article
 - Sovereign Immunity: Number 10 — Revisions of the Governmental Liability Act

VOLUME 10 (1971)

[Hardcover Volume Out of Print]

- Annual Report (December 1970) includes the following recommendation:
 - Inverse Condemnation: Insurance Coverage
- Annual Report (December 1971) includes the following recommendation:
 - Attachment, Garnishment, and Exemptions From Execution: Discharge From Employment
- California Inverse Condemnation Law
- 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

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

Claim and Delivery Statute

Unclaimed Property

Enforcement of Sister State Money Judgments

Prejudgment Attachment

Landlord-Tenant Relations, includes the following recommendations:

Abandonment of Leased Real Property

Personal Property Left on Premises Vacated by Tenant

Tentative Recommendation Relating to Prejudgment Attachment

VOLUME 12 (1974)

Annual Report (December 1974) includes the following recommendations:

Payment of Judgments Against Local Public Entities

View by Trier of Fact in a Civil Case

The Good Cause Exception to the Physician-Patient Privilege

Escheat of Amounts Payable on Travelers Checks, Money Orders and Similar Instruments

Recommendation Proposing the Eminent Domain Law

Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts

Recommendation Relating to Wage Garnishment Exemptions

Tentative Recommendations Relating to Condemnation Law and Procedure:

Eminent Domain Law [out of print]

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

Eminent Domain Law with Conforming Changes in Codified Sections and Official Comments

Recommendation and Study Relating to Oral Modification of Written Contracts

Recommendation Relating to:

- Partition of Real and Personal Property
- Wage Garnishment Procedure
- Revision of the Attachment Law
- Undertakings for Costs
- Nonprofit Corporation Law

VOLUME 14 (1978)

Annual Report (December 1977) includes the following recommendations:

- Use of Keepers Pursuant to Writs of Execution
- Attachment Law: Effect of Bankruptcy Proceedings; Effect of General Assignments for Benefit of Creditors
- Review of Resolution of Necessity by Writ of Mandate
- Use of Court Commissioners Under the Attachment Law
- Evidence of Market Value of Property
- Psychotherapist-Patient Privilege
- Parol Evidence Rule

Annual Report (December 1978) includes the following recommendations:

- Technical Revisions in the Attachment Law 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: PART I (1980)

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

VOLUME 15: PART II (1980)

[Hardcover Volume 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:

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

Tentative Recommendation Proposing the Enforcement of Judgments Law

VOLUME 16 (1982)

[Hardcover Volume 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
Tentative Recommendation Relating to Wills and Intestate Succession

VOLUME 17 (1984)

[Hardcover Volume Out of Print]

Annual Report (December 1983) (\$25) 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 (January 1983) (\$8.50)
- Durable Power of Attorney for Health Care Decisions (March 1983) (\$8.50)
- Statutory Forms for Durable Powers of Attorney [out of print]

Family Law (November 1983) (\$18) includes the following recommendations:

- Marital Property Presumptions and Transmutations
- Reimbursement of Educational Expenses
- Special Appearance in Family Law Proceedings
- Liability of Stepparent for Child Support
- Awarding Temporary Use of Family Home
- Disposition of Community Property

Probate Law (November 1983) (\$25) 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 (January 1984) (\$8.50)

Uniform Transfers to Minors Act (January 1984) (\$18)

VOLUME 18 (1986)

[Hardcover Volume Out of Print]

Annual Report (March 1985) (\$25) 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) (\$25) 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) (\$25) includes the following recommendations:

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

Recommendation Proposing the Trust Law (December 1985) (\$25)

Recommendations Relating to Probate Law (December 1985) (\$25) includes the following recommendations:

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

Selected 1986 Trust and Probate Legislation (September 1986) (\$40)

VOLUME 19 (1988)

Recommendations Relating to Probate Law (January 1987) (\$25) 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) (\$25) includes the following recommendations:

- Marital Deduction Gifts
- Administration of Estates of Missing Persons

Recommendations Relating to Probate Law (December 1987) (\$25) 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) (\$25) includes the following recommendations:

- Creditors' Remedies:
 - 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)

Recommendations Relating to Probate Law (February 1989) (\$25) 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) (\$25) includes the following recommendations:

- Commercial Lease Law: Assignment and Sublease
- Trustees' Fees

Recommendation Relating to Powers of Attorney (December 1989) (\$18) includes the following recommendations:

- Springing Powers of Attorney
- Uniform Statutory Form Power of Attorney

Recommendations Relating to Probate Law (December 1989) (\$25) 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 (December 1989)

Revised and Supplemental Comments to the New Probate Code (September 1990)

Annual Report (December 1990) (\$25) 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 (May 1990) (\$8.50) includes the following recommendations:

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

Recommendation Relating to Uniform Statutory Rule Against Perpetuities (September 1990) (\$18)

Recommendation Relating to Powers of Attorney (November 1990) (\$8.50) 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

Recommendation Relating to Probate Law (November 1990) (\$25) includes the following recommendations:

- 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

VOLUME 21 (1991)

[Bound with Volume 22]

Annual Report for 1991 (\$18) includes the following recommendation:

Application of Marketable Title Statute to Executory Interests

Recommendations (November 1991) (\$25) includes the following recommendations:

Relocation of Powers of Appointment Statute

Miscellaneous Creditors' Remedies Matters

Nonprobate Transfers of Community Property

Notice of Trustees' Fees

Nonprobate Transfer to Trustee Named in Will

Preliminary Distribution Without Court Supervision

Transfer of Conservatorship Property to Trust

Compensation in Guardianship and Conservatorship Proceedings

VOLUME 22 (1992)

[Bound with Volume 21]

Family Code (July 1992) (\$40)

Annual Report for 1992 (\$25) includes the following recommendations:

Litigation Involving Decedents (Revised)

Standing To Sue for Wrongful Death

Recognition of Agent's Authority Under Statutory Form Power of Attorney (Revised)

Special Needs Trust for Disabled Minor or Incompetent Person

VOLUME 23 (1993)

1994 Family Code with Official Comments (November 1993) (\$25) includes the following report and recommendations:

1994 Family Code

Child Custody

Reorganization of Domestic Violence Provisions

Annual Report for 1993 (\$25) includes the following recommendations:

Deposit of Estate Planning Documents

Parent and Child Relationship for Intestate Succession

Effect of Joint Tenancy Title on Marital Property

VOLUME 24 (1994)

Trial Court Unification: Constitutional Revision (SCA 3) (January 1994) (\$25)

Comprehensive Power of Attorney Law (February 1994) (\$25)

1995 Comprehensive Power of Attorney Law (November 1994) (\$25)

Annual Report for 1994 (\$25) includes the following recommendations:

Orders To Show Cause and Temporary Restraining Orders (January 1994)

Trial Court Unification: Transitional Provisions for SCA 3 (May 1994)

VOLUME 25 (1995)

[Available mid-1996]

Debtor-Creditor Relations (November 1994) (\$18) includes the following recommendations:

Attachment Where Claim Is Partially Secured — Report on 1990 Amendments

Exemptions from Enforcement of Money Judgments — Decennial Review

Miscellaneous Debtor-Creditor Matters

Administrative Adjudication by State Agencies (January 1995) (\$35) also includes the following background studies:

Asimow, *Toward a New California Administrative Procedure Act: Adjudication Fundamentals*

Asimow, *The Adjudication Process*

Uniform Prudent Investor Act (November 1994) (\$18)

Annual Report for 1995 (\$25)
