

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

1999-2000 Annual Report

Including

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| Enforcement of Judgments Under the Family Code: Technical Revisions | 695 |
| Eminent Domain Goodwill Issues | 719 |
| Eminent Domain Valuation Evidence: Clarification of Evidence Code Section 822 ... | 733 |
| Alternate Distributee for Unclaimed Distribution .. | 743 |

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

CALIFORNIA LAW REVISION COMMISSION

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Assembly Member, Chairperson

SANFORD M. SKAGGS
Vice Chairperson

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Secretary

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 publication (#206) will appear in Volume 29 of the Commission's *Reports, Recommendations, and Studies*.

Commission publications and other materials are available on the Internet at <http://www.clrc.ca.gov/>.

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Cite this pamphlet as *1999-2000 Annual Report*, 29 Cal. L. Revision Comm'n Reports 579 (1999). This is publication #206.

SUMMARY OF WORK OF COMMISSION

Recommendations Enacted in the 1999 Legislative Session

In 1999, three bills effectuating the Commission's recommendations were enacted, relating to the following subjects:

- Health care decisions for adults without decisionmaking capacity
- Uniform Principal and Income Act
- Trial court unification follow-up

A bill relating to valuation evidence in eminent domain proceedings remains in the Assembly as a two-year bill.

A bill relating to administrative rulemaking was vetoed.

Recommendations to the 2000 Legislature

In 2000, the Commission plans to submit recommendations on the following subjects to the Legislature:

- Settlement negotiations
- Administrative rulemaking
- Administrative mandamus
- Family consent in health care decisionmaking
- Air resources technical revisions
- Goodwill issues in eminent domain
- Family Code enforcement technical revisions
- Miscellaneous probate issues
- Trial court unification follow-up

Commission Activities Planned for 2000

During 2000, the Commission will work on the following major topics: mechanic's lien law, implementation of Bankruptcy Code Chapter 9 (adjustment of debts of governmental entities), general assignments for the benefit of creditors, selected issues in eminent domain and inverse condemnation, Evidence Code changes required by electronic communications, rules of construction for trusts, and issues in judicial administration resulting from trial court unification. The Commission will consider other subjects as

time permits, including shifting of attorney fees between litigants, selected issues in probate law, statutes of limitation in legal malpractice actions, public records law, and the Uniform Unincorporated Nonprofit Association Act.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION
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ARTHUR K. MARSHALL
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COLIN W. WIED

October 15, 1999

To: The Honorable Gray Davis
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 1999 and its plans for 2000.

Three bills introduced in 1999 to effectuate the Commission's recommendations were enacted. One bill became a two-year bill. A bill on administrative rulemaking was vetoed. A concurrent resolution recommended by the Commission was adopted.

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

- Assembly Member Ackerman (Uniform Principal and Income Act)
- Assembly Member Elaine Alquist (health care decisions)
- Assembly Member Howard Wayne (administrative rulemaking)
- Senate Judiciary Committee (trial court unification follow-up)

The Commission held four two-day meetings and two one-day meetings during 1999. Meetings were held in Los Angeles, Sacramento, and San Diego.

Respectfully submitted,

Howard Wayne
Chairperson

1999-2000 ANNUAL REPORT

Introduction

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

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

- 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 Commission's efforts enable the Legislature to focus on significant policy questions in a recommendation rather than on the technical issues which can be resolved in the process of preparing background studies, working out intricate legal problems, and drafting implementing legislation. The Commission thus helps the Legislature 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* p. 609). See also *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 has authorized. The Commission now has a calendar of 20 topics.²

The Commission has submitted 314 recommendations to the Legislature — 295 have been enacted in whole or in substantial part.³ Commission recommendations have resulted in the enactment of legislation affecting 19,669 sections of the California statutes: 3,623 sections amended, 9,041 sections added, and 7,005 sections repealed.

The Commission's recommendations, reports, and other selected materials are published in softcover and later collected in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining copies are at the end of this Annual Report.⁴

2000 Legislative Program

In 2000, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

Administrative Law

Administrative Rulemaking. The Commission will recommend omnibus revision of the Administrative Procedure Act's rulemaking provisions to improve clarity, eliminate procedural discrepancies, and make other technical and minor substantive improvements.

Administrative Mandamus. The Commission will recommend changes relating to notice of time for judicial review, venue, and exhaustion of remedies in administrative mandamus.

Civil Procedure and Judicial Administration

Settlement Negotiations. The Commission will recommend comprehensive revision of the law to protect confidentiality of communications made during settlement negotiations.

2. See list of topics under "Calendar of Topics Authorized for Study" in Appendix 2 *infra* p. 615.

3. See "Legislative Action on Commission Recommendations" in Appendix 3 *infra* p. 619.

4. See "Commission Publications" in Appendix 11 *infra* p. 751.

Trial Court Unification. The Commission will recommend correction of minor problems discovered as a result of trial court unification work, e.g., jurisdictional classification of good faith improver claims and repeal of expired pilot project statutes.

Debtor-Creditor and Family Law

Family Code Enforcement. The Commission will recommend legislation to correct technical defects relating to enforcement of judgments under the Family Code and its interrelation with the Enforcement of Judgments Law.

Environmental Law

Air Resources Technical Revisions. The Commission will recommend clean-up legislation to correct technical defects relating to air resources.

Estate Planning, Probate, and Trusts

Family Consent in Health Care Decisionmaking. The Commission will recommend adding provisions governing family consent for adults without decisionmaking capacity to the Health Care Decisions Law enacted on Commission recommendation in 1999.

Miscellaneous Probate Issues. The Commission will recommend changes in the law governing alternative beneficiaries for unclaimed distributions and liability of property passing to a surviving spouse for debts of a decedent.

Property

Goodwill Issues in Eminent Domain. The Commission will recommend clarification of technical issues surrounding compensation for loss of goodwill in eminent domain, including exchange of valuation data and final offer and demand issues.

Major Studies in Progress

During 2000, the Commission will work on seven major topics: mechanic's lien law, implementation of Bankruptcy Code Chapter 9 (adjustment of debts of governmental entities), general assignments for the benefit of creditors, selected issues in eminent domain and inverse condemnation, Evidence Code changes required by electronic communications, rules of construction for

trusts, and issues in judicial administration resulting from trial court unification. The Commission will also consider other subjects to the extent time permits.

Mechanic's Lien Law

The Assembly Judiciary Committee has asked the Commission to make a comprehensive review of mechanic's lien law and suggest areas for reform. The Commission has retained Gordon Hunt of Pasadena to prepare a background study. The Commission will give this matter highest priority.

Bankruptcy Code Chapter 9 Implementation

The Commission will begin its study of California law implementing Bankruptcy Code Chapter 9, relating to adjustment of debts of governmental entities. Issues to be considered include whether California law should be revised to increase the options of state and local agencies and nonprofit corporations that administer government funded programs to elect Chapter 9 treatment. The Commission has retained Professor Frederick Tung of the University of San Francisco Law School to prepare a background study.

General Assignment for Benefit of Creditors

The Commission will begin its study of general assignments for benefit of creditors. The purpose of this study is to determine whether any aspects of the law and practice of general assignments may benefit from statutory clarification. The Commission has retained David Gould of Los Angeles to prepare a background study.

Eminent Domain and Inverse Condemnation Selected Issues

The Eminent Domain Law was enacted on recommendation of the Commission in 1975. In 2000, the Commission plans to recommend technical revisions relating to compensation for loss of goodwill. During 2000, the Commission, with the assistance of Professor Gideon Kanner, will review other issues, including award of litigation expenses and assessment of general and special benefits and severance damages. The Commission also plans in the future to study procedural prerequisites for an inverse condemna-

tion action, particularly exhaustion of administrative remedies and ripeness requirements, and relevant limitations periods.

Evidence Code Changes Required by Electronic Communications

The Evidence Code was enacted on recommendation of the Commission in 1965. Application of the 1965 statute to electronic communications is not always clear or appropriate. For example, the Commission has recommended, and the Legislature in 1998 enacted, repeal of the Best Evidence Rule, which had become anachronistic with the advent of contemporary electronic data and photocopying technology. The Commission in 2000 will study whether any further Evidence Code changes may be required by electronic communications. The Commission has retained Judge Joseph B. Harvey (ret.) of Susanville to prepare a background study. As an early member of the Commission's legal staff, Judge Harvey was a principal draftsman of the 1965 Evidence Code.

Rules of Construction for Trusts

Recent legislation has made the rules of construction for wills applicable to trusts as well. The results of this approach to construction of trusts and other nonprobate transfer instruments are not always appropriate. The Commission will conduct a comprehensive review of the application of the rules of construction to trusts, and recommend corrective legislation where appropriate. The Commission has retained Professor William McGovern of UCLA Law School to prepare a background study.

Judicial Administration Issues Resulting from Trial Court Unification

Legislation to implement unification of the trial courts under Proposition 220 was enacted on recommendation of the Commission in 1998. The 1998 legislation also directs the Commission, in consultation with the Judicial Council, to perform follow-up studies, taking into consideration experience in courts that have unified.⁵ Issues include civil and criminal procedures in a unified court, the role of the court reporter in a unified court, and publica-

5. Gov't Code § 70219.

tion of legal notice in a county in which the courts have unified, among others.⁶ The Commission intends to complete the majority of these studies in 2000. The Commission is assisted in this project by the Institute for Legislative Practice of McGeorge Law School and its director, Professor J. Clark Kelso.

Other Subjects

The major studies in progress described above will dominate the Commission's time and resources during 2000. The Commission will consider other subjects as time permits, including shifting of attorney fees between litigants, selected issues in probate law, statutes of limitation in legal malpractice actions, public records law, and the Uniform Unincorporated Nonprofit Association Act.

Calendar of Topics for Study

The Commission's calendar of topics is set out in Appendix 2.⁷ The Commission does not recommend the addition or removal of any topics on its calendar in 2000.

Function and Procedure of Commission

The principal duties of the Commission⁸ 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,⁹ bar associations, and other learned

6. For a complete listing, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998) ("Issues in Judicial Administration Appropriate for Future Study").

7. See *infra* p. 615.

8. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra* p. 609.

9. 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.

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.¹⁰

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. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study.¹¹ However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.¹² Additionally, some statutes directly confer authority to study particular subjects.¹³

Background Studies

The Commission's work on a recommendation typically 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

10. 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. See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra* p. 605.

11. Gov't Code § 8293.

12. Gov't Code § 8298.

13. 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. The next report will be due in 2003.

Government Code Section 70219 requires the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration experience in courts that have unified. For a list of specific studies, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

Statutory authority may not be codified. See, e.g., 1996 Cal. Stat. ch. 856, § 12 (study of revisions of Public Utilities Code resulting from utility deregulation, in consultation with Public Utilities Commission.)

specialist in the field who is retained as a consultant.¹⁴ Law professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and they receive little more than an honorarium for their services. From time to time, 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 interested persons and organizations, including the State Bar, local and specialized bar associations, public interest organizations, and business and professional associations. Notice of the availability of the tentative recommendation is mailed to interested persons on the Commission's mailing list and publicized in legal newspapers and other relevant publications. Notice is also posted on the Commission's website and emailed to interested persons.

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation¹⁵ to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and in digital form on the Internet. If a background study has been prepared in connection

14. The following persons are serving as Commission consultants: Prof. Michael Asimow, UCLA Law School; Prof. Robert K. Best, McGeorge School of Law, Pacific Legal Foundation; Prof. David M. English, University of Missouri Law School; David Gould, McDermott, Will & Emery, Los Angeles; Hon. Joseph B. Harvey; Gordon Hunt, Hunt, Ortmann, Blasco, Palffy & Rossell, Pasadena; Prof. Gideon Kanner, Berger & Norton, Burbank (formerly with Loyola Law School); Prof. Clark Kelso, McGeorge School of Law, Institute of Legislative Practice; Prof. William M. McGovern, UCLA Law School; Prof. Frederick Tung, University of San Francisco School of Law; Prof. Gerald F. Uelmen, Santa Clara University School of Law; Prof. Gregory S. Weber, McGeorge School of Law.

15. 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. Dissents are noticed in the minutes of the meeting where the recommendation is approved.

with the recommendation, it may be published by the Commission or in a law review.¹⁶

Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends. These Comments are included in the Commission's printed recommendations. Comments may be revised by the Commission in later reports to reflect amendments made in the legislative process.¹⁷ Reports provide background with respect to Commission intent in proposing the legislation, 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.¹⁸

16. For recent background studies published in law reviews, see Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157 (1995); Asimow, *Toward a New California Administrative Procedure Act: Adjudication Fundamentals*, 39 UCLA L. Rev. 1067 (1992); Kasner, *Donative and Interspousal Transfers of Community Property in California: Where We Are (or Should Be) After MacDonald*, 23 Pac. L.J. 361 (1991). A revised version of Prof. Fellmeth's background study on unfair competition litigation was published as Fellmeth, *Unfair Competition Act Enforcement by Agencies, Prosecutors, and Private Litigants: Who's on First?*, 15 Cal. Reg. L. Rep. 1 (Winter 1995).

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).

17. Many amendments are made on Commission recommendation to address matters brought to the Commission's attention after publication of its recommendation. In some cases, however, a bill may be amended in a way that the Commission believes is not desirable and does not recommend.

18. For an example of such a report, see Appendix 4 *infra* p. 643. Reports containing new or revised comments are printed in the next Annual Report following enactment of a recommendation, and may be found by reference to the "Cumulative Table of Sections Affected by Commission Recommendations" included in each bound volume of Commission reports. For a description of legislative committee reports adopted in connection with the bill that became the

A Comment indicates the derivation of a section and often explains its purpose, its relation to other sections, and potential issues concerning its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.¹⁹ 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.²⁰ Hence, failure to note a change in prior law or to refer to an inconsistent

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, or where comments have become inaccurate due to changes in cross-referenced provisions or other revisions. See, e.g., *Report of the California Law Revision Commission on Corrected Probate Code Comments*, Appendix 8 to the *Annual Report for 1991*, 21 Cal. L. Revision Comm'n Reports 1, 75 (1991).

19. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968); *Catch v. Phillips*, 73 Cal. App. 4th 648, 654-55, 86 Cal. Rptr. 584, 588 (1999). See also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983); *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993); *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.* at 894 n.5, 28 Cal. Rptr. 2d at 594 n.5.

Courts may also rely on the explanatory text of a Commission recommendation. See, e.g., *Vournas v. Fidelity Nat'l Title Ins. Co.*, 73 Cal. App. 4th 668, 673 n.4, 86 Cal. Rptr. 2d 490, 493-94 n.4 (1999). In a recent case, the Supreme Court gave weight to a Commission recommendation, as the "opinion of a learned panel," even though the recommendation has not been enacted. *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 87 Cal. Rptr. 2d 701, 711-12 (1999).

Commission Comments are published by Lexis Law Publishers and West Publishing Company in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers. Comments are also available on Westlaw and Lexis.

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

judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.²¹

Comments are provided to legislative committee members and staff before a bill is heard and throughout the legislative process. Comments are provided to the Governor's office once a bill has passed the Legislature and is before the Governor for action.

Publications

Commission materials and publications are distributed to the Governor, the Chief Clerks of the Senate and Assembly, and, on request, to heads of state departments, and to interest groups, lawyers, law professors, courts, district attorneys, and law libraries throughout the state.²² 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.²³

The Commission's reports, recommendations, and studies are republished in hardcover volumes that serve as a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. Half of the hardcover volumes are out of print, but others are available for purchase.²⁴

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

22. See Gov't Code § 8291. For availability see "Commission Publications," Appendix 11 *infra* p. 751.

23. 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).

24. See "Commission Publications," Appendix 11 *infra* p. 751.

Electronic Publication and Internet Access

Since June 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.²⁵ Interested persons with Internet access can find current agendas, meeting minutes, background studies, tentative and final recommendations, staff memorandums, and general background information.

Electronic Mail

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence, if the email message includes the name and regular mailing address of the sender. Email to the Commission may be sent to *commission@clrc.ca.gov* or to *staff@clrc.ca.gov*.

The Commission distributes about half of its tentative and final meeting agendas through email and also gives notice of the availability of tentative recommendations and printed reports by email. The Commission encourages use of email as an inexpensive and expedient means of communication with the Commission.

25. The URL for the Commission's website is <<http://www.clrc.ca.gov>>.

Personnel of Commission

On October 15, 1999, the following persons were members of the Law Revision Commission:

Legislative Members ²⁶

Assembly Member Howard Wayne, San Diego
Chairperson
 [Senate member not appointed]

Members Appointed by Governor ²⁷

| | <i>Term Expires</i> |
|--|---------------------|
| Sanford M. Skaggs, Walnut Creek <i>Vice Chairperson</i> | October 1, 2001 |
| Arthur K. Marshall, Los Angeles [see below] | October 1, 1999 |
| Edwin K. Marzec, Santa Monica | October 1, 1999 |
| Colin W. Wied, San Diego | October 1, 1999 |
| <i>Vacancy</i> | October 1, 1999 |
| <i>Vacancy</i> | October 1, 2001 |
| <i>Vacancy</i> | October 1, 2001 |

Legislative Counsel ²⁸

Bion M. Gregory, Sacramento

In January 1999, Pamela L. Hemminger and Ronald S. Orr left the Commission because appointments made by the prior administration that had not yet been confirmed were withdrawn generally

26. The Senate and Assembly members of the Commission serve at the pleasure of their respective appointing powers, the Senate Committee on Rules and the Speaker of the Assembly. Gov't Code § 8281.

27. 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).

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

by the new Governor. In January 1999, Robert E. Cooper resigned from the Commission.

Effective September 1, 1999, the Commission elected Assembly Member Howard Wayne as Chairperson (succeeding Arthur K. Marshall), and Sanford M. Skaggs as Vice Chairperson (succeeding Mr. Wayne). The terms of the new officers end August 31, 2000.

In Memoriam

The Honorable Arthur K. Marshall

The California Law Revision Commission commemorates the passing of The Honorable Arthur K. Marshall in November 1999. Judge Marshall served as a member of the Commission for 16 years. He was originally appointed to the Commission in 1984 by Governor Deukmejian, and was thrice reappointed, once by Governor Deukmejian and twice by Governor Wilson. During that period, he was elected to three terms as the Commission's Chairperson and three terms as the Commission's Vice Chairperson.

Judge Marshall's tenure is marked by a number of notable enactments on recommendation of the Law Revision Commission, including revision of the entire Probate Code, establishment of the new Family Code, creation of the Trust Law and the Power of Attorney Law, revision of the Administrative Procedure Act, implementation of trial court unification, and numerous other important reforms of California law.

Judge Marshall was warm and caring. He treated others with respect and dignity, as well as good humor.

Judge Marshall's depth of knowledge and experience served the Commission well. His spirit and wit endeared him to those who were privileged to work with him. The generous donation of his energies to the cause of law reform will be an enduring legacy to the people of California.

The following persons are on the Commission's staff:

Legal

Nathaniel Sterling
Executive Secretary

Stan Ulrich
Assistant Executive Secretary

Barbara S. Gaal
Staff Counsel

Brian P. Hebert
Staff Counsel

Administrative-Secretarial

Lauren M. Trevathan
Administrative Assistant

Victoria V. Matias
Secretary

In July 1999, staff counsel Robert J. Murphy retired from state service. During his 24-year tenure, Mr. Murphy was the principal draftsman of many of California's probate and estate planning and related statutes enacted on recommendation of the Commission.

In early 1999, Linda Wong Verheecke worked as a volunteer attorney for the Commission. During the spring, University of Pennsylvania law students Holly Olson Paz and Jon Steinberg performed legal research for the Commission through the law school's Public Service Program. During the summer, Stanford law student Julian M. Davis worked as a law clerk for the Commission through the work study program under the auspices of the Stanford Public Interest Law Foundation. Legal work for the Commission was also performed by law students in the Hastings Public Law Research Institute under the direction of Professor David Jung, and by law students in the McGeorge Institute for Legislative Practice under the direction of Professor J. Clark Kelso.

Sacramento Office

The Commission has opened a small office at McGeorge Law School, in conjunction with the Institute for Legislative Practice. The office is staffed by Brian Hebert, who has relocated to the Sacramento area. The Sacramento office will be helpful in recruiting new legal talent for the Commission on state salary, due to the significantly lower cost of living in the Sacramento area.

Commission Budget

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 1999-2000 fiscal year from the general fund is \$598,000. This is supplemented by \$15,000 budgeted for income generated from sale of documents to the public, representing reimbursement for the production and shipping cost of the documents.

The Commission receives substantial donations of necessary library materials from the legal publishing community, especially California Continuing Education of the Bar, Lexis Law Publishers, 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 and the McGeorge Law School Library. The Commission is grateful for their contributions.

Other Activities

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.²⁹

National Conference of Commissioners on Uniform State Laws³⁰

The Commission's executive secretary participated in the National Conference of Commissioners on Uniform State Laws, in Denver, Colorado in July 1999. Matters considered at the conference included uniform acts on rules of evidence, electronic transactions, trusts, and disclaimer of property interests.

The Executive Secretary also continued serving on the drafting committee for a new Uniform Trust Act. The uniform act will be

29. Gov't Code § 8296.

30. 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.

derived from the California Trust Law, a national model enacted on recommendation of the Commission.³¹

Other Staff Activities

In March 1999, Staff Counsel Barbara Gaal gave a presentation at Stanford Law School on the roles of lawyers in the legislative process.

Visitors

In August 1999, the Commission's staff was visited by Tatyana Mogilyova, a Russian attorney with the Irkutsk Commission on Regional Legislation, which drafts legislation for consideration by the legislature of the Irkutsk Region in eastern Siberia.

31. See *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501 (1986) (enacted by 1986 Cal. Stat. ch. 820). See also 18 Cal. L. Revision Comm'n Reports 1207 (1986) (Trust Law as enacted, with revised Comments).

Legislative History of Recommendations Submitted to 1999 Legislative Session

The Commission's recommendations were included in five bills and a concurrent resolution recommended for enactment in the 1999 legislative session. Three bills and the concurrent resolution were enacted. One bill will be carried over as a two-year bill in the 2000 session. One bill was vetoed.

Uniform Principal and Income Act

Assembly Bill 846 (1999 Cal. Stat. ch. 145) was introduced by Assembly Member Dick Ackerman to effectuate the Commission recommendation on the *Uniform Principal and Income Act*, 29 Cal. L. Revision Comm'n Reports 245 (1999). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 145 of the Statutes of 1999 (Assembly Bill 846)*, 29 Cal. L. Revision Comm'n Reports 643 (1999) (Appendix 4 *infra* pp. 643-56).

Trial Court Unification Follow-Up

Senate Bill 210 (1999 Cal. Stat. ch. 344) was introduced as a committee bill by the Senate Committee on Judiciary to make Commission-recommended revisions relating to trial court unification. The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm'n Reports 657 (1999) (Appendix 5 *infra* pp. 657-64).

Health Care Decisions Law

Assembly Bill 891 (1999 Cal. Stat. ch. 658) was introduced by Assembly Member Elaine Alquist to effectuate the Commission recommendation on *Health Care Decisions for Adults Without Decisionmaking Capacity*, 29 Cal. L. Revision Comm'n Reports 1 (1999). The bill was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 658 of the Statutes of 1999 (Assembly Bill 891)*, 29 Cal. L.

Revision Comm'n Reports 665 (1999) (Appendix 6 *infra* pp. 665-94).

Administrative Rulemaking

Assembly Bill 486 was introduced by Assembly Member Howard Wayne to effectuate the Commission recommendations on *Administrative Rulemaking: Consent Regulations and Other Non-controversial Regulations*, 28 Cal. L. Revision Comm'n Reports 625 (1998), and *Administrative Rulemaking: Advisory Interpretations*, 28 Cal. L. Revision Comm'n Reports 657 (1998). The Governor vetoed AB 486.

Resolution Authorizing Topics for Study

Assembly Concurrent Resolution 17 (1999 Cal. Stat. res. ch. 81) was introduced by Assembly Member Howard Wayne. It continues the Commission's authority to study 16 topics previously authorized, removes five topics,³² and adds four new topics.³³

Report on Statutes Repealed by Implication or Held Unconstitutional

Government Code Section 8290 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 prepared³⁴ and has the following to report:

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

32. See *1998-1999 Annual Report*, 28 Cal. L. Revision Comm'n Reports 679, 692-93 (1998).

33. See *1998-1999 Annual Report*, 28 Cal. L. Revision Comm'n Reports 679, 693-96 (1998).

34. This study has been carried through 21 Cal. 4th 737 and 119 S. Ct. (1998-99 Term).

- One decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- Three decisions of the California Supreme Court holding a state statute unconstitutional has been found.

In *Saenz v. Roe, et al.*,³⁵ the United States Supreme Court held that Welfare and Institutions Code Section 11405.03, limiting for one year the welfare benefits of new California residents to the benefits they would have received in their state of prior residence, was an unconstitutional restriction on the fundamental right to travel.

In *California Teachers Ass'n v. California*,³⁶ the California Supreme Court held that Education Code Section 44944(e), requiring a teacher who unsuccessfully challenged his or her suspension or termination to pay half the costs for an administrative law judge, was unconstitutional on procedural due process grounds.

In *Bramberg v. Jones*,³⁷ the California Supreme Court held unconstitutional the Congressional Term Limits Act,³⁸ instructing elected state and federal legislators to propose and support a congressional term limits amendment to the federal Constitution. The Act was codified at Elections Code Sections 10204.1 through 10204.11 (Article 1.2 of Chapter 2 of Part 2 of Division 10 of the Elections Code). The court further held that, despite a severability clause in Section 10204.11, the entire Act was unconstitutional.

In *Hotel Employees & Restaurant Employees Int'l Union v. Davis*,³⁹ the California Supreme Court held that the Tribal Government Gaming and Economic Self-Sufficiency Act of 1998,⁴⁰ allowing various forms of gambling in tribal casinos, violates the state Constitution's prohibition on "casinos of the type currently

35. 119 S. Ct. 1518 (1999).

36. 20 Cal. 4th 327, 975 P.2d 622, 84 Cal. Rptr. 2d 425 (1999).

37. 20 Cal. 4th 1045, 978 P.2d 1240, 86 Cal. Rptr. 2d 319 (1999).

38. Proposition 225, approved by the electors, June 2, 1998, codified as Elec. Code §§ 10204.1-10204.11.

39. 21 Cal. 4th 585, 981 P.2d 990, 88 Cal. Rptr. 2d 56 (1999).

40. Proposition 5, approved by electors, Nov. 3, 1998, codified as Gov't Code §§ 98000-98012.

operating in Nevada and New Jersey.”⁴¹ The court further held that only the final sentence of Section 98005, waiving the state’s immunity from suits challenging the Act in federal court, was severable from the invalid portions of the Act.

Recommendations

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized.⁴²

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under “Report on Statutes Repealed by Implication or Held Unconstitutional,” *supra*, to the extent they have been held unconstitutional and have not been amended or repealed.

41. Cal. Const. art. IV, § 19(e).

42. See “Calendar of Topics Authorized for Study,” Appendix 2 *infra* p. 615.

APPENDIX 1

STATUTE GOVERNING THE CALIFORNIA LAW REVISION COMMISSION

GOVERNMENT CODE SECTIONS 8280-8298*

§ 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.

* 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.

The members appointed by the Governor shall be appointed for a term of four years and shall hold office until the 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 later-enacted rules governing distribution of state reports set out in Government Code Sections 9795 and 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's calendar of topics authorized for study includes the subjects listed below. Each of these topics has been authorized for Commission study by the Legislature. For the current authorizing resolution, see 1999 Cal. Stat. res. ch. 81.

1. Creditors' remedies. Whether the law should be revised that relates 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 provisions on repossession of property), 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, insolvency, and related matters.¹

2. Probate Code. Whether the California Probate Code should be revised, including, but not limited to, the issue of whether California should adopt, in whole or in part, the Uniform Probate Code.²

3. Real and personal property. Whether the law should be revised that relates 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.³

4. Family law. Whether the law should be revised that relates to family law, including, but not limited to, community property, the adjudication of child and family civil proceedings, child custody, adoption,

1. See also 1983 Cal. Stat. res. ch. 40; 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. See also 1980 Cal. Stat. res. ch. 37.

3. See 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.

guardianship, freedom from parental custody and control, and related matters, including other subjects covered by the Family Code.⁴

5. Offers of compromise. Whether the law relating to offers of compromise should be revised.⁵

6. Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised.⁶

7. Special assessments for public improvements. Whether the acts governing special assessments for public improvement should be simplified and unified.⁷

8. Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.⁸

9. Evidence. Whether the Evidence Code should be revised.⁹

10. Arbitration. Whether the law relating to arbitration should be revised.¹⁰

11. Administrative law. Whether there should be changes to administrative law.¹¹

12. Attorney's fees. Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised.¹²

4. See 1997 Cal. Stat. res. ch. 102, consolidating Family Code authority, child custody, adoption, and guardianship authority, and family law proceedings authority. See also 1995 Cal. Stat. res. ch. 87; 1989 Cal. Stat. res. ch. 70; 1983 Cal. Stat. res. ch. 40; 1978 Cal. Stat. res. ch. 65; 1972 Cal. Stat. res. ch. 27; 1956 Cal. Stat. res. ch. 42.

5. See also 1975 Cal. Stat. res. ch. 15; 12 Cal. L. Revision Comm'n Reports 525-26 (1974).

6. See also 1975 Cal. Stat. res. ch. 15; 12 Cal. L. Revision Comm'n Reports 526-28 (1974).

7. See also 1980 Cal. Stat. res. ch. 37.

8. See also 1979 Cal. Stat. res. ch. 19; 14 Cal. L. Revision Comm'n Reports 217-18 (1978).

9. See also 1965 Cal. Stat. res. ch. 130.

10. See also 1968 Cal. Stat. res. ch. 110; 8 Cal. L. Revision Comm'n Reports 1325-26 (1967).

11. See also 1987 Cal. Stat. res. ch. 47.

12. See also 1995 Cal. Stat. res. ch. 87; 1988 Cal. Stat. res. ch. 20.

13. Uniform Unincorporated Nonprofit Association Act. Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California.¹³

14. Trial court unification. Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.¹⁴

15. Contract law. Whether the law of contracts should be revised, including the law relating to the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.¹⁵

16. Environmental law. Whether the laws within various codes relating to environmental quality and natural resources should be reorganized in order to simplify and consolidate relevant statutes, resolve inconsistencies between the statutes, and eliminate obsolete and unnecessarily duplicative statutes.¹⁶

17. Common interest developments. Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to formation and management of these developments and transaction of real property interests located within them, and to determine to what extent they should be subject to regulation.¹⁷

18. Legal malpractice statutes of limitation. Whether the statutes of limitation for legal malpractice actions should be revised to recognize equitable tolling or other adjustment for the circumstances of simultaneous litigation, and related matters.¹⁸

19. Coordination of public records statutes. Whether the law governing disclosure of public records and the law governing protection of privacy in public records should be revised to better coordinate them, including consolidation and clarification of the scope of required disclosure and creation of a single set of disclosure procedures, to provide appropriate enforcement mechanisms, and to ensure that the law govern-

13. See also 1993 Cal. Stat. res. ch. 31.

14. See also 1995 Cal. Stat. res. ch. 87; 1993 Cal. Stat. res. ch. 96.

15. See also 1996 Cal. Stat. res. ch. 38; 25 Cal. L. Revision Comm'n Reports 628-29 (1995).

16. See also 1996 Cal. Stat. res. ch. 38.

17. See also 1999 Cal. Stat. res. ch. 81.

18. See also 1999 Cal. Stat. res. ch. 81.

ing disclosure of public records adequately treats electronic information, and related matters.¹⁹

20. Criminal sentencing. Whether the law governing criminal sentencing should be revised, nonsubstantively, to reorganize and clarify the sentencing procedure statutes in order to make them more logical and understandable.²⁰

19. See also 1999 Cal. Stat. res. ch. 81.

20. See also 1999 Cal. Stat. res. ch. 81.

APPENDIX 3

LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

(Cumulative)

Note. The “Action by Legislature” column includes references to relevant legislative history, following the italicized “*See.*” References are to volume and page of the Commission’s Reports. (Addition of these references is an ongoing project.)

| 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 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 Evid. Code § 1261 Comment |
| 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 Evid. Code § 970 Comment |

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

| Recommendation | Action by Legislature |
|--|--|
| 21. <i>Right of Nonresident Aliens to Inherit</i> , 2 Cal. L. Revision Comm'n Reports, at B-1 (1959); 11 Cal. L. Revision Comm'n Reports 421 (1973) | Enacted. 1974 Cal. Stat. ch. 425 |
| 22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports, at C-1 (1959) | Enacted. 1959 Cal. Stat. ch. 528 |
| 23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports, at D-1 (1959) | Enacted. 1959 Cal. Stat. ch. 122 |
| 24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 Cal. L. Revision Comm'n Reports, at E-1 (1959) | Not enacted. But see 1972 Cal. Stat. ch. 92, enacting substance of a portion of recommendation relating to drunk driving |
| 25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 Cal. L. Revision Comm'n Reports, at F-1 (1959) | Enacted. 1959 Cal. Stat. ch. 469 |
| 26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 Cal. L. Revision Comm'n Reports, at G-1 (1959) | Not enacted. But see Corp. Code §§ 1001, 1002, enacting substance of recommendation |
| 27. <i>Evidence in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at A-1 (1961) | Not enacted. But see Evid. Code § 810 <i>et seq.</i> enacting substance of recommendation |
| 28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at B-1 (1961) | Enacted. 1961 Cal. Stat. chs. 1612, 1613 |
| 29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 Cal. L. Revision Comm'n Reports, at C-1 (1961) | Not enacted. But see Gov't Code § 7260 <i>et seq.</i> enacting substance of recommendation |
| 30. <i>Rescission of Contracts</i> , 3 Cal. L. Revision Comm'n Reports, at D-1 (1961) | Enacted. 1961 Cal. Stat. ch. 589 |
| 31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor in Juvenile Court Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at E-1 (1961) | Enacted. 1961 Cal. Stat. ch. 1616 |
| 32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports, at F-1 (1961) | Enacted. 1961 Cal. Stat. ch. 657 |
| 33. <i>Arbitration</i> , 3 Cal. L. Revision Comm'n Reports, at G-1 (1961) | Enacted. 1961 Cal. Stat. ch. 461 |

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| 34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports, at H-1 (1961) | Not enacted 1961. See recommendation to 1963 session (item 39 <i>infra</i>) which was enacted |
| 35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 Cal. L. Revision Comm'n Reports, at I-1 (1961) | Enacted. 1961 Cal. Stat. ch. 636 |
| 36. <i>Notice of Alibi in Criminal Actions</i> , 3 Cal. L. Revision Comm'n Reports, at J-1 (1961) | Not enacted |
| 37. <i>Discovery in Eminent Domain Proceedings</i> , 4 Cal. L. Revision Comm'n Reports 701 (1963); 8 Cal. L. Revision Comm'n Reports 19 (1967) | Enacted. 1967 Cal. Stat. ch. 1104 |
| 38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 801 (1963) | Enacted. 1963 Cal. Stat. ch. 1681 <i>See 4:211, 219</i> |
| 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 <i>See 4:211, 222</i> |
| 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 <i>See 4:212, 223</i> |
| 41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963) | Enacted. 1963 Cal. Stat. ch. 1683 <i>See 4:212, 224</i> |
| 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 <i>See 4:212, 224</i> |
| 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 <i>See 4:213</i> |
| 45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965) | Enacted. 1965 Cal. Stat. ch. 299 <i>See 7:912, 923</i> |

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| 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 <i>See 7:914, 928</i> |
| 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 <i>See 8:1315</i> |
| 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 <i>See 8:1318; 9:18</i> |
| 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 <i>See 8:1317</i> |
| 52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967) | Enacted. 1967 Cal. Stat. ch. 72 <i>See 8:1317</i> |
| 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 <i>See 8:1319; 10:1018</i> |
| 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 <i>See 8:2319; 9:19</i> |
| 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 <i>See 8:1317</i> |
| 56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967) | Enacted. 1968 Cal. Stat. chs. 247, 356 <i>See 9:16</i> |
| 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 <i>See 9:19</i> |

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| 58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967) | Enacted. 1968 Cal. Stat. ch. 132 <i>See 9:18</i> |
| 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 <i>See 9:98</i> |
| 60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969) | Enacted. 1969 Cal. Stat. ch. 115 <i>See 9:99</i> |
| 61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969) | Enacted. 1969 Cal. Stat. ch. 114 <i>See 9:98</i> |
| 62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969) | Enacted. 1970 Cal. Stat. ch. 312 <i>See 10:1019</i> |
| 63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969) | Enacted. 1970 Cal. Stat. ch. 417 <i>See 10:1018</i> |
| 64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969) | Enacted in part. 1970 Cal. Stat. ch. 69. <i>See also 1970 Cal. Stat. chs. 1396, 1397; 1972 Cal. Stat. ch. 888</i> <i>See 10:1018</i> |
| 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 <i>See 9:99</i> |
| 66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969) | Enacted. 1969 Cal. Stat. chs. 113, 155 <i>See 9:98</i> |
| 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 <i>See 9:98</i> |
| 68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969) | Enacted. 1970 Cal. Stat. ch. 618 <i>See 10:1019</i> |
| 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 <i>See 10:1021</i> |
| 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 <i>See 10:1020</i> |
| 71. <i>“Vesting” of Interests Under Rule Against Perpetuities</i> , 9 Cal. L. Revision Comm'n Reports 901 (1969) | Enacted. 1970 Cal. Stat. ch. 45 <i>See 10:1021</i> |

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|---|---|
| 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 <i>See 10:1125</i> |
| 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 <i>See 11:1024; 11:1123; 12:530; 13:2012; 14:13, 223; 15:1024</i> |
| 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 <i>See 10:1126</i> |
| 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 <i>See 10:1126</i> |
| 77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973) | Enacted. 1973 Cal. Stat. ch. 20 <i>See 11:1123</i> |
| 78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973) | Enacted. 1973 Cal. Stat. ch. 526 <i>See 11:1124</i> |
| 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 <i>See 11:1124; 12:530; 13:2012</i> |
| 80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973) | Enacted. 1974 Cal. Stat. ch. 211 <i>See 12:534</i> |
| 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 <i>See 12:530</i> |
| 82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973) | Enacted. 1974 Cal. Stat. chs. 331, 332 <i>See 12:536</i> |
| 83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973) | Enacted. 1972 Cal. Stat. ch. 73 |

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| 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 — <i>See 12:535</i> |
| 86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 Cal. L. Revision Comm'n Reports 1163 (1973) | Enacted. 1974 Cal. Stat. ch. 227 <i>See 12:535</i> |
| 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 <i>See 12:535; 13:1616; 14:13</i> |
| 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 <i>See 13:2011</i> |
| 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 <i>See 13:2011</i> |
| 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 <i>See 13:2012</i> |
| 91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974) | Enacted. 1974 Cal. Stat. ch. 426 <i>See 12:534</i> |
| 92. <i>Condemnation Law and Procedure: 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 |
| 93. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974) | Enacted. 1975 Cal. Stat. chs. 1239, 1240, 1275 — <i>See 13:2010</i> |
| 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 <i>See 13:2011; 13:1616</i> |
| 95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976) | Enacted. 1976 Cal. Stat. ch. 73 <i>See 13:2013, 1610</i> |
| 96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976) | Enacted. 1976 Cal. Stat. ch. 437 <i>See 13:1612</i> |

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| 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 – <i>See 13:1614</i> |
| 98. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976) | Enacted. 1976 Cal. Stat. ch. 888 <i>See 13:1616</i> |
| 99. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976) | Enacted. 1977 Cal. Stat. ch. 232 <i>See 14:12</i> |
| 100. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976) | Enacted. 1977 Cal. Stat. ch. 49 <i>See 14:13</i> |
| 101. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2051 (1976) | Not enacted <i>See 13:2012</i> |
| 102. <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 <i>See 13:1614</i> |
| 103. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976) | Enacted. 1976 Cal. Stat. ch. 143 <i>See 13:1614</i> |
| 104. <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 <i>See 13:1615</i> |
| 105. <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 <i>See 13:1615</i> |
| 106. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976) | Enacted. 1985 Cal. Stat. ch. 100 <i>See 13:1615</i> |
| 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 <i>See 14:11</i> |
| 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 <i>See 14:12</i> |
| 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 <i>See 14:12</i> |

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| 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 <i>See 14:224</i> |
| 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 <i>See 14:224</i> |
| 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. <i>See item 123 infra See 14:225</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 Evid. Code § 1028) – <i>See 14:225</i> |
| 114. <i>Parol Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978) | Enacted. 1978 Cal. Stat. ch. 150 <i>See 14:224</i> |
| 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 <i>See 14:224</i> |
| 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 <i>See 15:1025</i> |
| 118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978) | Enacted. 1980 Cal. Stat. ch. 114 <i>See 15:1025</i> |
| 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 – <i>See 15:1024, 1427</i> |
| 120. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980) | Enacted. 1982 Cal. Stat. ch. 150 <i>See 15:1427; 16:2025</i> |
| 121. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980) | Enacted. 1980 Cal. Stat. ch. 123 <i>See 15:1426</i> |
| 122. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980) | Enacted. 1980 Cal. Stat. ch. 600 <i>See 15:1427</i> |

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| 123. <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 <i>See 15:1429</i> |
| 124. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980) | Enacted. 1981 Cal. Stat. ch. 511 <i>See 16:25</i> |
| 125. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980) | Enacted. 1980 Cal. Stat. ch. 119 <i>See 15:1428</i> |
| 126. <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 <i>See 15:1024</i> |
| 127. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980) | Enacted. 1979 Cal. Stat. ch. 568 <i>See 15:1024</i> |
| 128. <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 <i>See 15:1428</i> |
| 129. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980) | Enacted. 1980 Cal. Stat. ch. 135 <i>See 15:1427</i> |
| 130. <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 <i>See 15:1429</i> |
| 131. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980) | Enacted. 1980 Cal. Stat. ch. 44 <i>See 15:1428</i> |
| 132. <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 <i>See 15:1426</i> |
| 133. <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 <i>See 15:1426</i> |
| 134. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980) | Enacted. 1980 Cal. Stat. ch. 89 <i>See 15:1428</i> |
| 135. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980) | Enacted. 1980 Cal. Stat. ch. 124 <i>See 15:1426</i> |
| 136. <i>Guardianship-Conservatorship</i> (technical change), 15 Cal. L. Revision Comm'n Reports 1427 (1980) | Enacted. 1980 Cal. Stat. ch. 246 |

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| 137. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980) | Enacted. 1981 Cal. Stat. ch. 9 <i>See 16:24</i> |
| 138. <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>) – <i>See 16:2026; 17:823</i> |
| 139. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980) | Enacted. 1981 Cal. Stat. ch. 63 <i>See 16:25</i> |
| 140. <i>The Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980) | Enacted. 1982 Cal. Stat. chs. 497, 1364 <i>See 16:2024</i> |
| 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 <i>See 16:2027</i> |
| 144. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982) | Enacted. 1983 Cal. Stat. ch. 201 <i>See 17:822</i> |
| 145. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982) | Enacted. 1982 Cal. Stat. ch. 182 |
| 146. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982) | Enacted. 1983 Cal. Stat. ch. 6 <i>See 17:823</i> |
| 147. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982) | Enacted. 1983 Cal. Stat. ch. 72 <i>See 17:823</i> |
| 148. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982) | Enacted. 1983 Cal. Stat. ch. 17 <i>See 17:823</i> |
| 149. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982) | Enacted. 1982 Cal. Stat. ch. 187 <i>See 16:2026</i> |

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| 150. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982) | Enacted. 1982 Cal. Stat. ch. 1268 <i>See 16:2026</i> |
| 151. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982) | Enacted. 1982 Cal. Stat. chs. 517, 998 <i>See 16:2025</i> |
| 152. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982) | Enacted. 1982 Cal. Stat. ch. 1198 <i>See 16:2025</i> |
| 153. <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 <i>See 17:823</i> |
| 154. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982) | Enacted. 1983 Cal. Stat. ch. 155 <i>See 17:824</i> |
| 155. <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 <i>See 17:825</i> |
| 156. <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 <i>See 17:824</i> |
| 157. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982) | Enacted. 1983 Cal. Stat. ch. 842 <i>See 17:822</i> |
| 158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984) | Enacted. 1984 Cal. Stat. ch. 1671 <i>See 18:20</i> |
| 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 <i>See 17:822</i> |
| 160. <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 <i>See 18:21</i> |
| 161. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984) | Enacted. 1984 Cal. Stat. ch. 1661 <i>See 18:22</i> |
| 162. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984) | Enacted. 1984 Cal. Stat. ch. 156 <i>See 18:21</i> |
| 163. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984) | Enacted. 1984 Cal. Stat. ch. 249 <i>See 18:21</i> |

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| 164. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984) | Enacted. 1984 Cal. Stat. ch. 463 <i>See 18:21</i> |
| 165. <i>Disposition of Community Property</i> , 17 Cal. L. Revision Comm'n Reports 269 (1984) | Not enacted <i>See 18:22</i> |
| 166. <i>Statutes of Limitation for Felonies</i> , 17 Cal. L. Revision Comm'n Reports 301 (1984) | Enacted. 1984 Cal. Stat. ch. 1270 <i>See 18:23; 20:2305</i> |
| 167. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984) | Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i> |
| 168. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984) | Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i> |
| 169. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984) | Enacted in part. <i>See</i> 1989 Cal. Stat. ch. 544 (intestate succession) (item 227 <i>infra</i>); 1990 Cal. Stat. ch. 710 (statutory will) (item 240 <i>infra</i>) <i>See 18:20</i> |
| 170. <i>Notice of Will</i> , 17 Cal. L. Revision Comm'n Reports 461 (1984) | Not enacted <i>See 18:20</i> |
| 171. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 Cal. L. Revision Comm'n Reports 471 (1984) | Enacted. 1984 Cal. Stat. ch. 493 <i>See 18:19</i> |
| 172. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984) | Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i> |
| 173. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984) | Enacted. 1984 Cal. Stat. ch. 527 <i>See 18:20</i> |
| 174. <i>Execution of Witnessed Will</i> , 17 Cal. L. Revision Comm'n Reports 509 (1984) | Not enacted <i>See 18:20</i> |
| 175. <i>Revision of Wills and Intestate Succession Law</i> , 17 Cal. L. Revision Comm'n Reports 537 (1984) | Enacted. 1984 Cal. Stat. ch. 892 <i>See 18:19</i> |
| 176. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984) | Enacted. 1984 Cal. Stat. ch. 243 <i>See 18:19</i> |
| 177. <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) – <i>See 18:18</i> |

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|---|--|
| 178. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984) | Enacted. 1983 Cal. Stat. ch. 52 |
| 179. <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>) – See 18:21 |
| 180. <i>Dismissal for Lack of Prosecution</i> , 17 Cal. L. Revision Comm'n Reports 905 (1984) | Enacted. 1984 Cal. Stat. ch. 1705 See 18:23 |
| 181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984) | Enacted. 1984 Cal. Stat. ch. 519 See 18:23 |
| 182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984) | Enacted. 1984 Cal. Stat. ch. 20 See 18:22 |
| 183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984) | Enacted. 1984 Cal. Stat. ch. 240 See 18:22 |
| 184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984) | Enacted. 1984 Cal. Stat. ch. 538 See 18:23 |
| 185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984) | Enacted. 1984 Cal. Stat. ch. 241 See 18:23 |
| 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 See 18:217 |
| 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 See 18:216 |
| 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 See 18:217 |
| 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 See 18:218 |

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|---|--|
| 193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986) | Enacted. 1985 Cal. Stat. ch. 157 <i>See 18:217</i> |
| 194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986) | Enacted. 1985 Cal. Stat. ch. 157 <i>See 18:217</i> |
| 195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986) | Enacted. 1985 Cal. Stat. ch. 982 <i>See 18:216</i> |
| 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 <i>See 18:216</i> |
| 197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986) | Enacted. 1985 Cal. Stat. ch. 403 <i>See 18:216</i> |
| 198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986) | Enacted. 1985 Cal. Stat. ch. 362 <i>See 18:217</i> |
| 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 (<i>Application of Civil Code §§ 4800.1 and 4800.2</i>). 1986 Cal. Stat. ch. 49 – <i>See 18:1717</i> |
| 200. <i>The Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986) | Enacted. 1986 Cal. Stat. ch. 820 <i>See 18:1718</i> |
| 201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986) | Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i> |
| 202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986) | Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i> |
| 203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986) | Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i> |
| 204. <i>Notice in Guardianship and Conservatorship</i> , 18 Cal. L. Revision Comm'n Reports 1793 (1986) | Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i> |
| 205. <i>Preliminary Provisions and Definitions</i> , 18 Cal. L. Revision Comm'n Reports 1807 (1986) | Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i> |
| 206. <i>Technical Revisions in the Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 1823 (1986) | Enacted. 1987 Cal. Stat. ch. 128 <i>See 19:517</i> |
| 207. <i>Supervised Administration</i> , 19 Cal. L. Revision Comm'n Reports 5 (1988) | Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i> |

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| 208. <i>Independent Administration</i> , 19 Cal. L. Revision Comm'n Reports 205 (1988) | Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i> |
| 209. <i>Creditor Claims Against Decedent's Estate</i> , 19 Cal. L. Revision Comm'n Reports 299 (1988) | Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i> |
| 210. <i>Notice in Probate Proceedings</i> , 19 Cal. L. Revision Comm'n Reports 357 (1988) | Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i> |
| 211. <i>Marital Deduction Gifts</i> , 19 Cal. L. Revision Comm'n Reports 615 (1988) | Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i> |
| 212. <i>Estates of Missing Persons</i> , 19 Cal. L. Revision Comm'n Reports 637 (1988) | Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i> |
| 213. <i>Public Guardians and Administrators</i> , 19 Cal. L. Revision Comm'n Reports 707 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i> |
| 214. <i>Inventory and Appraisal</i> , 19 Cal. L. Revision Comm'n Reports 741 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i> |
| 215. <i>Opening Estate Administration</i> , 19 Cal. L. Revision Comm'n Reports 787 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i> |
| 216. <i>Abatement</i> , 19 Cal. L. Revision Comm'n Reports 865 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i> |
| 217. <i>Accounts</i> , 19 Cal. L. Revision Comm'n Reports 877 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i> |
| 218. <i>Litigation Involving Decedents</i> , 19 Cal. L. Revision Comm'n Reports 899 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i> |
| 219. <i>Rules of Procedure in Probate</i> , 19 Cal. L. Revision Comm'n Reports 917 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i> |
| 220. <i>Distribution and Discharge</i> , 19 Cal. L. Revision Comm'n Reports 953 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i> |
| 221. <i>Nondomiciliary Decedents</i> , 19 Cal. L. Revision Comm'n Reports 993 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i> |
| 222. <i>Interest and Income During Administration</i> , 19 Cal. L. Revision Comm'n Reports 1019 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i> |
| 223. <i>Authority of the Law Revision Commission</i> , 19 Cal. L. Revision Comm'n Reports 1162 (1988) | Enacted. 1989 Cal. Stat. ch. 152 |
| 224. <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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| 225. <i>Creditors' Remedies</i> , 19 Cal. L. Revision Comm'n Reports 1251 (1988) | Enacted. 1989 Cal. Stat. ch. 1416 <i>See 20:201</i> |
| 226. <i>No Contest Clauses</i> , 20 Cal. L. Revision Comm'n Reports 7 (1990) | Enacted. 1989 Cal. Stat. ch. 544 <i>See 20:201</i> |
| 227. <i>120-Hour Survival Requirement</i> , 20 Cal. L. Revision Comm'n Reports 21 (1990) | Enacted. 1989 Cal. Stat. ch. 544 <i>See 20:201</i> |
| 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 – <i>See 20:2218</i> |
| 229. <i>Multiple-Party Accounts</i> , 20 Cal. L. Revision Comm'n Reports 95 (1990) | Enacted. 1989 Cal. Stat. ch. 397 <i>See 20:202</i> |
| 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 – <i>See 20:201</i> |
| 231. <i>1989 Probate Cleanup Bill</i> , see 20 Cal. L. Revision Comm'n Reports 201, 227 (1990) | Enacted. 1989 Cal. Stat. ch. 21 |
| 232. <i>Bonds of Guardians and Conservators</i> , 20 Cal. L. Revision Comm'n Reports 235 (1990) | Enacted. 1989 Cal. Stat. ch. 544 |
| 233. <i>Brokers' Commissions on Probate Sales</i> , 20 Cal. L. Revision Comm'n Reports 237-42 (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 <i>See 20:202</i> |
| 235. <i>Trustees' Fees</i> , 20 Cal. L. Revision Comm'n Reports 279 (1990) | Enacted. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i> |
| 236. <i>Springing Powers of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 405 (1990) | Enacted. 1990 Cal. Stat. ch. 986 <i>See 20:2220</i> |
| 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 <i>See 20:2220</i> |
| 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 <i>See 20:2220</i> |
| 239. <i>Court-Authorized Medical Treatment</i> , 20 Cal. L. Revision Comm'n Reports 537 (1990) | Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i> |

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|---|--|
| 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 <i>See 20:2219</i> |
| 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 <i>See 20:2219</i> |
| 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 <i>See 20:2219</i> |
| 243. <i>Repeal of Probate Code Section 6402.5 (In-Law Inheritance)</i> , 20 Cal. L. Revision Comm'n Reports 571 (1990) | Not enacted <i>See 20:2220</i> |
| 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 <i>See 20:2219; 21:20</i> |
| 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 <i>See 20:2219</i> |
| 246. <i>New Probate Code</i> , 20 Cal. L. Revision Comm'n Reports 1001 (1990) | Enacted. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i> |
| 247. <i>Notice in Probate Where Address Unknown</i> , 20 Cal. L. Revision Comm'n Reports 2245 (1990) | Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i> |
| 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 <i>See 20:2219</i> |
| 249. <i>Uniform Management of Institutional Funds Act</i> , 20 Cal. L. Revision Comm'n Reports 2265 (1990) | Enacted. 1990 Cal. Stat. ch. 1307 <i>See 20:2220</i> |
| 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 <i>See 21:22</i> |
| 251. <i>Use Restrictions</i> , 20 Cal. L. Revision Comm'n Reports 2421 (1990) | Enacted. 1991 Cal. Stat. ch. 67 <i>See 21:22</i> |
| 252. <i>Uniform Statutory Rule Against Perpetuities</i> , 20 Cal. L. Revision Comm'n Reports 2501 (1990) | Enacted. 1991 Cal. Stat. ch. 156 <i>See 21:21</i> |

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|---|---|
| 253. <i>Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care</i> , 20 Cal. L. Revision Comm'n Reports 2605 (1990) | Enacted. 1991 Cal. Stat. ch. 896 <i>See 21:22</i> |
| 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 <i>See 22:852</i> |
| 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 <i>See 21:20</i> |
| 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 <i>See 21:20</i> |
| 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 <i>See 21:20</i> |
| 258. <i>Disposition of Small Estate Without Probate</i> , 20 Cal. L. Revision Comm'n Reports 2737 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i> |
| 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 <i>See 21:20</i> |
| 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 <i>See 22:852</i> |
| 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 <i>See 22:853</i> |
| 262. <i>Recognition of Trustees' Powers</i> , 20 Cal. L. Revision Comm'n Reports 2849 (1990) | Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i> |
| 263. <i>Gifts in View of Impending Death</i> , 20 Cal. L. Revision Comm'n Reports 2869 (1990) | Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i> |

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|---|---|
| 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 <i>See 21:20</i> |
| 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 <i>See 21:20</i> |
| 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 <i>See 21:21</i> |
| 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 <i>See 21:21</i> |
| 268. <i>Relocation of Powers of Appointment Statute</i> , 21 Cal. L. Revision Comm'n Reports 91 (1991) | Enacted. 1992 Cal. Stat. ch. 30 <i>See 22:853</i> |
| 269. <i>Miscellaneous Creditors' Remedies</i> , 21 Cal. L. Revision Comm'n Reports 135 (1991) | Enacted. 1992 Cal. Stat. ch. 283 <i>See 22:853</i> |
| 270. <i>Nonprobate Transfers of Community Property</i> , 21 Cal. L. Revision Comm'n Reports 163 (1991) | Enacted. 1992 Cal. Stat. ch. 51 <i>See 22:852</i> |
| 271. <i>Notice of Trustees' Fees</i> , 21 Cal. L. Revision Comm'n Reports 191 (1991) | Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i> |
| 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 <i>See 22:852</i> |
| 273. <i>Preliminary Distribution Without Court Supervision</i> , 21 Cal. L. Revision Comm'n Reports 209 (1991) | Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i> |
| 274. <i>Transfer of Conservatorship Property to Trust</i> , 21 Cal. L. Revision Comm'n Reports 227 (1991) | Enacted. 1992 Cal. Stat. ch. 572 <i>See 22:853</i> |
| 275. <i>Family Code</i> , 22 Cal. L. Revision Comm'n Reports 1 (1992) | Enacted. 1992 Cal. Stat. chs. 162, 163 <i>See 22:851</i> |
| 276. <i>Standing To Sue for Wrongful Death</i> , 22 Cal. L. Revision Comm'n Reports 955 (1992) | Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i> |
| 277. <i>1992 General Probate Bill</i> (miscellaneous provisions), see 22 Cal. L. Revision Comm'n Reports 977 (1990) | Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i> |

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|---|---|
| 278. <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 <i>See</i> 22:853 |
| 279. <i>1994 Family Code</i> , 23 Cal. L. Revision Comm'n Reports 1, 5 (1993) | Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922 |
| 280. <i>Family Code: Child Custody</i> , 23 Cal. L. Revision Comm'n Reports 1, 15 (1993) | Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922 |
| 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 <i>See</i> 23:922 |
| 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 <i>See</i> 23:923 |
| 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 <i>See</i> 23:923 |
| 284. <i>Effect of Joint Tenancy Title on Marital Property</i> , 23 Cal. L. Revision Comm'n Reports 1013 (1993) | Not enacted <i>See</i> 24:568 |
| 285. <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 (1993-94), but SCA 3 not approved by Assembly. Commission recommendations largely enacted in SCA 4 (1996 Cal. Stat. res. ch. 36) – <i>See</i> 24:568; 28:707 |
| 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 <i>See</i> 24:567 |
| 287. <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 <i>See</i> 24:567 |
| 288. <i>Family Code Technical Amendments</i> . See 24 Cal. L. Revision Comm'n Reports 621 (1994); 26 Cal. L. Revision Comm'n Reports 175 (1996) | Enacted. 1994 Cal. Stat. ch. 1269; 1996 Cal. Stat. ch. 1061 <i>See</i> 24:567; 26:132 |
| 289. <i>Debtor-Creditor Relations</i> , 25 Cal. L. Revision Comm'n Reports 1 (1995) | Enacted in part. 1995 Cal. Stat. ch. 196 <i>See</i> 25:636, 707 |
| 290. <i>Administrative Adjudication by State Agencies</i> , 25 Cal. L. Revision Comm'n Reports 55 (1995) | Enacted. 1995 Cal. Stat. ch. 938 <i>See</i> 25:636, 711 |

| Recommendation | Action by Legislature |
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| 291. <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 See 25:636, 673 |
| 292. <i>Power of Attorney Law Technical Amendments</i> . See 25 Cal. L. Revision Comm'n Reports 709 (1995) | Enacted. 1995 Cal. Stat. ch. 300 See 25:637 |
| 293. <i>Statute of Limitations in Trust Matters: Probate Code Section 16460</i> , 26 Cal. L. Revision Comm'n Reports 1 (1996) | Enacted. 1996 Cal. Stat. ch. 862 See 26:132 |
| 294. <i>Inheritance From or Through Child Born Out of Wedlock</i> , 26 Cal. L. Revision Comm'n Reports 13 (1996) | Enacted. 1996 Cal. Stat. ch. 862 See 26:132 |
| 295. <i>Collecting Small Estate Without Administration</i> , 26 Cal. L. Revision Comm'n Reports 21 (1996) | Enacted. 1996 Cal. Stat. ch. 563 See 26:132 |
| 296. <i>Repeal of Civil Code Section 1464: The First Rule in Spencer's Case</i> , 26 Cal. L. Revision Comm'n Reports 29 (1996) | Enacted. 1998 Cal. Stat. ch. 14 See 28:706 |
| 297. <i>Homestead Exemption</i> , 26 Cal. L. Revision Comm'n Reports 37 (1996) | Not enacted See 26:133 |
| 298. <i>Tolling Statute of Limitations When Defendant Is Out of State</i> , 26 Cal. L. Revision Comm'n Reports 83 (1996) | Enacted in part (technical amendments). 1997 Cal. Stat. ch. 1012, §§ 13, 14 – See 27:555, 623 |
| 299. <i>Administrative Adjudication Technical Amendments</i> , 26 Cal. L. Revision Comm'n Reports 171 (1996) | Enacted. 1996 Cal. Stat. ch. 390 See 26:132 |
| 300. <i>Unfair Competition Litigation</i> , 26 Cal. L. Revision Comm'n Reports 191 (1996) | Not enacted See 27:555 |
| 301. <i>Administrative Adjudication by Quasi-Public Entities</i> , 26 Cal. L. Revision Comm'n Reports 277 (1996) | Enacted. 1997 Cal. Stat. ch. 220 See 27:554, 593 |
| 302. <i>Marketable Title: Enforceability of Land Use Restrictions</i> , 26 Cal. L. Revision Comm'n Reports 289 (1996) | Enacted in part. 1998 Cal. Stat. ch. 14 See 28:706 |
| 303. <i>Attachment by Undersecured Creditors</i> , 26 Cal. L. Revision Comm'n Reports 307 (1996) | Enacted. 1997 Cal. Stat. ch. 222 See 27:554 |
| 304. <i>Ethical Standards for Administrative Law Judges</i> , 26 Cal. L. Revision Comm'n Reports 335 (1996) | Enacted. 1998 Cal. Stat. ch. 95 See 28:706 |

| Recommendation | Action by Legislature |
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| 305. <i>Best Evidence Rule</i> , 26 Cal. L. Revision Comm'n Reports 369 (1996) | Enacted. 1998 Cal. Stat. ch. 100 <i>See 28:706</i> |
| 306. <i>Mediation Confidentiality</i> , 26 Cal. L. Revision Comm'n Reports 407 (1996) | Enacted. 1997 Cal. Stat. ch. 772 <i>See 27:554, 595</i> |
| 307. <i>Judicial Review of Agency Action</i> , 27 Cal. L. Revision Comm'n Reports 1 (1997) | Not enacted <i>See 28:708</i> |
| 308. <i>Business Judgment Rule</i> , 28 Cal. L. Revision Comm'n Reports 1 (1998) | Not enacted <i>See 28:708</i> |
| 309. <i>Trial Court Unification: Revision of Codes</i> , 28 Cal. L. Revision Comm'n Reports 51 (1998) | Enacted. 1998 Cal. Stat. ch. 931 <i>See 28:707</i> |
| 310. <i>Response to Demand for Production of Documents in Discovery</i> , 28 Cal. L. Revision Comm'n Reports 561 (1998) | Enacted. 1998 Cal. Stat. ch. 932 <i>See 28:708</i> |
| 311. <i>Uniform TOD Security Registration Act</i> , 28 Cal. L. Revision Comm'n Reports 577 (1998) | Enacted. 1998 Cal. Stat. ch. 242 <i>See 28:707</i> |
| 312. <i>Administrative Rulemaking: Consent Regulations and Other Noncontroversial Regulations</i> , 28 Cal. L. Revision Comm'n Reports 625 (1998) | Vetoed <i>See 29:605</i> |
| 313. <i>Administrative Rulemaking: Advisory Interpretations</i> , 28 Cal. L. Revision Comm'n Reports 657 (1998) | Vetoed <i>See 29:605</i> |
| 314. <i>Health Care Decisions for Adults Without Decisionmaking Capacity</i> , 29 Cal. L. Revision Comm'n Reports 1 (1999) | Enacted. 1999 Cal. Stat. ch. 658 <i>See 29:604</i> |
| 315. <i>Uniform Principal and Income Act</i> , 29 Cal. L. Revision Comm'n Reports 245 (1999) | Enacted. 1999 Cal. Stat. ch. 145 <i>See 29:604</i> |
| 316. <i>Trial Court Unification Follow-Up</i> , 29 Cal. L. Revision Comm'n Reports _____ (1999) | Enacted. 1999 Cal. Stat. ch. 344 <i>See 29:604</i> |

APPENDIX 4

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 145 OF THE STATUTES OF 1999 (ASSEMBLY BILL 846)

Uniform Principal and Income Act

Chapter 145 of the Statutes of 1999 was introduced as Assembly Bill 846 by Assemblyman Dick Ackerman. It implements the California Law Revision Commission recommendation on the *Uniform Principal and Income Act*, 29 Cal. L. Revision Comm'n Reports 245 (1999). The new and revised Comments set out below supersede the comparable Comments in the recommendation and reflect amendments to the bill made during the legislative process.

Prob. Code § 16335 (added). General fiduciary duties [UPAIA § 103]

Comment. Section 16335 supersedes former Section 16302 and is generally the same as Section 103 of the Uniform Principal and Income Act (1997), with a number of changes. The last clause in subdivision (a)(2) has been added to preserve and generalize the “no inference” rule in former Section 16302(b). “Trust” is used in place of “terms of the trust” throughout. As provided in the introductory clause of subdivision (a), its rules apply to allocation between principal and income (Sections 16350-16375), as under former Section 16302, but in addition, these rules apply to matters within the scope of Sections 16335-16341.

The rule in the first sentence of subdivision (b) is a special expression of the general fiduciary duty in Section 16003. The wording in the second sentence has been revised to make clear that the presumption applies to exercise of discretion under this chapter.

See also Sections 82 (“trust” defined), 16323 (“fiduciary” defined), 16324 (“income” defined).

Background from Uniform Act

Prior Act. The rule in Section 2(a) of the 1962 Act [former Prob. Code § 16302] is restated in Section 103(a) [Prob. Code § 16335(a)], without changing its substance, to emphasize that the Act contains only default

rules and that provisions in the terms of the trust are paramount. However, Section 2(a) of the 1962 Act [former Prob. Code § 16302] applies only to the allocation of receipts and disbursements to or between principal and income. In this Act, the first sentence of Section 103(a) [Prob. Code § 16335(a)] states that it also applies to matters within the scope of Articles [3 (commencing with Prob. Code § 16340)] and [4 (commencing with Prob. Code § 16345)]. Section 103(a)(2) [Prob. Code § 16335(a)(2)] incorporates the rule in Section 2(b) of the 1962 Act [former Prob. Code § 16302(b)] that a discretionary allocation made by the trustee that is contrary to a rule in the Act should not give rise to an inference of imprudence or partiality by the trustee.

....

Fiduciary discretion. The general rule is that if a discretionary power is conferred upon a trustee, the exercise of that power is not subject to control by a court except to prevent an abuse of discretion. Restatement (Second) of Trusts § 187. The situations in which a court will control the exercise of a trustee's discretion are discussed in the comments to § 187. See also *id.* § 233 comment *p.*

Questions for which there is no provision. Section 103(a)(4) [Prob. Code § 16335(a)(4)] allocates receipts and disbursements to principal when there is no provision for a different allocation in the terms of the trust, the will, or the Act. This may occur because money is received from a financial instrument not available at the present time (inflation-indexed bonds might have fallen into this category had they been announced after this Act was approved by the Commissioners on Uniform State Laws) or because a transaction is of a type or occurs in a manner not anticipated by the Drafting Committee for this Act or the drafter of the trust instrument.

Allocating to principal a disbursement for which there is no provision in the Act or the terms of the trust preserves the income beneficiary's level of income in the year it is allocated to principal, but thereafter will reduce the amount of income produced by the principal. Allocating to principal a receipt for which there is no provision will increase the income received by the income beneficiary in subsequent years, and will eventually, upon termination of the trust, also favor the remainder beneficiary. Allocating these items to principal implements the rule that requires a trustee to administer the trust impartially However, if the trustee decides that an adjustment between principal and income is needed to enable the trustee to comply with Section 103(b) [Prob. Code § 16335(b)], after considering the return from the portfolio as a whole, the trustee may make an appropriate adjustment under Section 104(a) [Prob. Code § 16336(a)].

Duty of impartiality. Whenever there are two or more beneficiaries, a trustee is under a duty to deal impartially with them. Restatement of Trusts 3d: Prudent Investor Rule § 183 (1992). [See Prob. Code § 16003.] This rule applies whether the beneficiaries' interests in the trust are concurrent or successive. If the terms of the trust give the trustee discretion to favor one beneficiary over another, a court will not control the exercise of such discretion except to prevent the trustee from abusing it. *Id.* § 183, comment *a*. "The precise meaning of the trustee's duty of impartiality and the balancing of competing interests and objectives inevitably are matters of judgment and interpretation. Thus, the duty and balancing are affected by the purposes, terms, distribution requirements, and other circumstances of the trust, not only at the outset but as they may change from time to time." *Id.* § 232, comment *c*.

The terms of a trust may provide that the trustee, or an accountant engaged by the trustee, or a committee of persons who may be family members or business associates, shall have the power to determine what is income and what is principal. If the terms of a trust provide that this Act specifically or principal and income legislation in general does not apply to the trust but fail to provide a rule to deal with a matter provided for in this Act, the trustee has an implied grant of discretion to decide the question. Section 103(b) [Prob. Code § 16335(b)] provides that the rule of impartiality applies in the exercise of such a discretionary power to the extent that the terms of the trust do not provide that one or more of the beneficiaries are to be favored. The fact that a person is named an income beneficiary or a remainder beneficiary is not by itself an indication of partiality for that beneficiary.

[Adapted from Unif. Principal and Income Act § 103 comment (1997).]

Prob. Code § 16336 (added). Trustee's power to adjust [see UPAIA § 104]

Comment. Section 16336 is drawn in large part from Section 104 of the Uniform Principal and Income Act (1997). The purpose of this section is to provide a way to reconcile the tension that may exist between the duties under the Uniform Prudent Investor Act (Section 16045 *et seq.*) and the technical trust accounting rules governing allocations between principal and income provided in other parts of this chapter, the Uniform Principal and Income Act. The power to adjust is a discretionary power and is subject to rules governing exercise of discretionary powers, both under the trust terms and the law of trusts. If a trustee decides to exercise the power to adjust, the trustee may exercise the power under the authority of this section and related rules, or may prefer to seek the agreement of beneficiaries before making the

adjustment. A procedure for giving notice of proposed action is provided in Section 16337. The trustee may also seek court approval under Section 17200(b)(5) of a decision to make an adjustment. Subdivision (h) reaffirms and expands on the portion of subdivision (a) providing that the trustee *may* make an adjustment *to the extent the trustee considers necessary*. Subdivision (h) makes clear that the existence of the adjustment power does not create or imply a duty to consider its use or to use it. The *existence* of the power to adjust is a neutral factor. The trustee may, without liability, decide as an institutional policy or with respect to individual trusts or classes of trusts, whether and under what conditions it will use the adjustment power. This rule is a corollary of the principle stated in Section 16202 that the grant of a power does not authorize its use and that exercise of a power is subject to fiduciary duties. Subdivision (h) does not, however, affect any liability that may result from breach of a duty under other trust law.

The condition expressed in subdivision (a)(1) — that the trustee invests and manages trust assets under the prudent investor rule — will almost always be met. The Uniform Prudent Investor Act (Sections 16045-16054) applies to all California trusts, except to the extent a trust provides otherwise. See Sections 16046(b) (control by trust instrument), 16054 (application of prudent investor rule to all trusts). Under Section 16046, even where the trust provides special rules, to the extent the rules can be classed as a prudent investor rule, the condition of subdivision (a)(1) is satisfied.

The trustee's determination of whether to make an adjustment under this section, and how to implement the adjustment, are subject to the trustee's fiduciary duties. See Sections 16003, 16335(b). Unlike Section 104(b) of the Uniform Principal and Income Act (1997), this section does not mandate consideration of particular factors, but the UPAIA factors provide useful guidance, and are set out in subdivision (g) by way of illustration. Consideration of the factors in the course of determining whether or how to make an adjustment is discretionary, as is clear from the introductory language of subdivision (g) ("trustee may consider ... any of the following"). See also subdivision (h).

The introductory clause in subdivision (c) recognizes that this subdivision is an exception to the default rule requiring trustees to act unanimously.

See also Sections 24 ("beneficiary" defined), 84 ("trustee" defined), 16324 ("income" defined).

Background from Uniform Act

Purpose and Scope of Provision. The purpose of Section 104 [Prob. Code § 16336] is to enable a trustee to select investments using the

standards of a prudent investor without having to realize a particular portion of the portfolio's total return in the form of traditional trust accounting income such as interest, dividends, and rents. Section 104(a) [Prob. Code § 16336(a)] authorizes a trustee to make adjustments between principal and income if three conditions are met: (1) the trustee must be managing the trust assets under the prudent investor rule; (2) the terms of the trust must express the income beneficiary's distribution rights in terms of the right to receive "income" in the sense of traditional trust accounting income; and (3) the trustee must determine, after applying the rules in Section 103(a) [Prob. Code § 16335(a)], that he is unable to comply with Section 103(b) [Prob. Code § 16335(b)].... [The] trustee may not make an adjustment in circumstances described in Section 104(c) [Prob. Code § 16336(b)].

Section 104 [Prob. Code § 16336] does not empower a trustee to increase or decrease the degree of beneficial enjoyment to which a beneficiary is entitled under the terms of the trust; rather, it authorizes the trustee to make adjustments between principal and income that may be necessary if the income component of a portfolio's total return is too small or too large because of investment decisions made by the trustee under the prudent investor rule. The paramount consideration in applying Section 104(a) [Prob. Code § 16336(a)] is the requirement in Section 103(b) [Prob. Code § 16335(b)] that "the fiduciary shall administer the trust or decedent's estate impartially, except to the extent that the trust or the will expresses an intention that the fiduciary shall or may favor one or more of the beneficiaries." The power to adjust is subject to control by the court to prevent an abuse of discretion. Restatement (Second) of Trusts § 187 (1959). See also *id.* §§ 183, 232, 233, Comment *p* (1959).

Section 104 [Prob. Code § 16336] will be important for trusts that are irrevocable when a State adopts the prudent investor rule by statute [see Prob. Code § 16045 *et seq.*] or judicial approval of the rule in Restatement of Trusts 3d: Prudent Investor Rule. Wills and trust instruments executed after the rule is adopted can be drafted to describe a beneficiary's distribution rights in terms that do not depend upon the amount of trust accounting income, but to the extent that drafters of trust documents continue to describe an income beneficiary's distribution rights by referring to trust accounting income, Section 104 [Prob. Code § 16336] will be an important tool in trust administration.

Three conditions to the exercise of the power to adjust. The first of the three conditions [Prob. Code § 16336(a)(1)] that must be met before a trustee can exercise the power to adjust — that the trustee invest and manage trust assets as a prudent investor — is expressed in this Act by language derived from the Uniform Prudent Investor Act, but the condition will be met whether the prudent investor rule applies because

the Uniform Act or other prudent investor legislation has been enacted, the prudent investor rule has been approved by the courts, or the terms of the trust require it. [See California Uniform Prudent Investor Act, Prob. Code §§ 16045-16054.] Even if a State's legislature or courts have not formally adopted the rule, the Restatement establishes the prudent investor rule as an authoritative interpretation of the common law prudent man rule, referring to the prudent investor rule as a "modest reformulation of the Harvard College dictum and the basic rule of prior Restatements." Restatement of Trusts 3d: Prudent Investor Rule, Introduction, at 5. As a result, there is a basis for concluding that the first condition is satisfied in virtually all States except those in which a trustee is permitted to invest only in assets set forth in a statutory "legal list."

The second condition [Prob. Code § 16336(a)(2)] will be met when the terms of the trust require all of the "income" to be distributed at regular intervals; or when the terms of the trust require a trustee to distribute all of the income, but permit the trustee to decide how much to distribute to each member of a class of beneficiaries; or when the terms of a trust provide that the beneficiary shall receive the greater of the trust accounting income and a fixed dollar amount (an annuity), or of trust accounting income and a fractional share of the value of the trust assets (a unitrust amount). If the trust authorizes the trustee in its discretion to distribute the trust's income to the beneficiary or to accumulate some or all of the income, the condition will be met because the terms of the trust do not permit the trustee to distribute more than the trust accounting income.

To meet the third condition [Prob. Code § 16336(a)(3)], the trustee must first meet the requirements of Section 103(a) [Prob. Code § 16335(a)], i.e., she must apply the terms of the trust, decide whether to exercise the discretionary powers given to the trustee under the terms of the trust, and must apply the provisions of the Act if the terms of the trust do not contain a different provision or give the trustee discretion. Second, the trustee must determine the extent to which the terms of the trust clearly manifest an intention by the settlor that the trustee may or must favor one or more of the beneficiaries. To the extent that the terms of the trust do not require partiality, the trustee must conclude that she is unable to comply with the duty to administer the trust impartially. To the extent that the terms of the trust do require or permit the trustee to favor the income beneficiary or the remainder beneficiary, the trustee must conclude that she is unable to achieve the degree of partiality required or permitted. If the trustee comes to either conclusion — that she is unable to administer the trust impartially or that she is unable to achieve the degree of partiality required or permitted — she may exercise the power to adjust under Section 104(a) [Prob. Code § 16336(a)].

Impartiality and productivity of income. The duty of impartiality between income and remainder beneficiaries is linked to the trustee's duty to make the portfolio productive of trust accounting income whenever the distribution requirements are expressed in terms of distributing the trust's "income." The 1962 Act implies that the duty to produce income applies on an asset by asset basis because the right of an income beneficiary to receive "delayed income" from the sale proceeds of underproductive property under Section 12 of that Act arises if "any part of principal ... has not produced an average net income of a least 1% per year of its inventory value for more than a year" Under the prudent investor rule, "[t]o whatever extent a requirement of income productivity exists, ... the requirement applies not investment by investment but to the portfolio as a whole." Restatement of Trusts 3d: Prudent Investor Rule § 227, Comment *i*, at 34. [See Prob. Code § 16047.] The power to adjust under Section 104(a) [Prob. Code § 16336(a)] is also to be exercised by considering net income from the portfolio as a whole and not investment by investment. Section 413(b) of this Act [Prob. Code § 16365(b)] eliminates the underproductive property rule in all cases other than trusts for which a marital deduction is allowed; the rule applies to a marital deduction trust if the trust's assets "consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets ..." — in other words, the section applies by reference to the portfolio as a whole.

While the purpose of the power to adjust in Section 104(a) [Prob. Code § 16336(a)] is to eliminate the need for a trustee who operates under the prudent investor rule to be concerned about the income component of the portfolio's total return, the trustee must still determine the extent to which a distribution must be made to an income beneficiary and the adequacy of the portfolio's liquidity as a whole to make that distribution.

For a discussion of investment considerations involving specific investments and techniques under the prudent investor rule, see Restatement of Trusts 3d: Prudent Investor Rule § 227, Comments *k-p*. [See also Prob. Code §§ 16045-16054, California Uniform Prudent Investor Act.]

Factors to consider in exercising the power to adjust. Section 104(b) requires [not required in Prob. Code § 16336 — subdivision (g) of the California section lists discretionary factors by way of illustration] a trustee to consider factors relevant to the trust and its beneficiaries in deciding whether and to what extent the power to adjust should be exercised. Section 2(c) of the Uniform Prudent Investor Act [see Prob. Code § 16047(c)] sets forth circumstances that a trustee is to consider in investing and managing trust assets. The circumstances in Section 2(c) of the Uniform Prudent Investor Act are the source of the factors in

paragraphs (3) through (6) and (8) of Section 104(b) (modified where necessary to adapt them to the purposes of this Act) so that, to the extent possible, comparable factors will apply to investment decisions and decisions involving the power to adjust. [See Prob. Code §§ 16047(c)(3)-(6) & (8), 16336(g).] If a trustee who is operating under the prudent investor rule decides that the portfolio should be composed of financial assets whose total return will result primarily from capital appreciation rather than dividends, interest, and rents, the trustee can decide at the same time the extent to which an adjustment from principal to income may be necessary under Section 104. On the other hand, if a trustee decides that the risk and return objectives for the trust are best achieved by a portfolio whose total return includes interest and dividend income that is sufficient to provide the income beneficiary with the beneficial interest to which the beneficiary is entitled under the terms of the trust, the trustee can decide that it is unnecessary to exercise the power to adjust.

Assets received from the settlor. Section 3 of the Uniform Prudent Investor Act provides that “[a] trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.” [For a comparable rule, see Prob. Code § 16048.] The special circumstances may include the wish to retain a family business, the benefit derived from deferring liquidation of the asset in order to defer payment of income taxes, or the anticipated capital appreciation from retaining an asset such as undeveloped real estate for a long period. To the extent the trustee retains assets received from the settlor because of special circumstances that overcome the duty to diversify, the trustee may take these circumstances into account in determining whether and to what extent the power to adjust should be exercised to change the results produced by other provisions of this Act that apply to the retained assets. See Section 104(b)(5) [Prob. Code § 16336(g)(5)]; Uniform Prudent Investor Act § 3, Comment, 7B U.L.A. 18, at 25-26 (Supp. 1997); Restatement of Trusts 3d: Prudent Investor Rule § 229 and Comments *a-e*.

Limitations on the power to adjust. The purpose of subsections (c)(1) through (4) [Prob. Code § 16336(b)(1)-(4)] is to preserve tax benefits that may have been an important purpose for creating the trust. Subsections (c)(5), (6), and (8) [Prob. Code § 16336(b)(5)-(6); UPAIA subsection (c)(8) is omitted in California] deny the power to adjust in the circumstances described in those subsections in order to prevent adverse tax consequences, and subsection (c)(7) [Prob. Code § 16336(b)(7)] denies the power to adjust to any beneficiary, whether or not possession of the power may have adverse tax consequences.

Under subsection (c)(1) [Prob. Code § 16336(b)(1)], a trustee cannot make an adjustment that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction is allowed; but this subsection does not prevent the trustee from making an adjustment that increases the amount of income paid from a marital deduction trust to the spouse. Subsection (c)(1) [Prob. Code § 16336(b)(1)] applies to a trust that qualifies for the marital deduction because the spouse has a general power of appointment over the trust, but it applies to a qualified terminable interest property (QTIP) trust only if and to the extent that the fiduciary makes the election required to obtain the tax deduction. Subsection (c)(1) [Prob. Code § 16336(b)(1)] does not apply to a so-called “estate” trust. This type of trust qualifies for the marital deduction because the terms of the trust require the principal and undistributed income to be paid to the surviving spouse’s estate when the spouse dies; it is not necessary for the terms of an estate trust to require the income to be distributed annually. Reg. § 20.2056(c)-2(b)(1)(iii).

Subsection (c)(3) [Prob. Code § 16336(b)(3)] applies to annuity trusts and unitrusts with no charitable beneficiaries as well as to trusts with charitable income or remainder beneficiaries; its purpose is to make it clear that a beneficiary’s right to receive a fixed annuity or a fixed fraction of the value of a trust’s assets is not subject to adjustment under Section 104(a) [Prob. Code § 16336(a)]. Subsection (c)(3) [Prob. Code § 16336(b)(3)] does not apply to any additional amount to which the beneficiary may be entitled that is expressed in terms of a right to receive income from the trust. For example, if a beneficiary is to receive a fixed annuity or the trust’s income, whichever is greater, subsection (c)(3) [Prob. Code § 16336(b)(3)] does not prevent a trustee from making an adjustment under Section 104(a) [Prob. Code § 16336(a)] in determining the amount of the trust’s income.

If subsection (c)(5), (6), (7), or (8) [Prob. Code § 16336(b)(5)-(7); UPAIA subsection (c)(8) is omitted in California], prevents a trustee from exercising the power to adjust, subsection (d) [Prob. Code § 16336(c)] permits a cotrustee who is not subject to the provision to exercise the power unless the terms of the trust do not permit the cotrustee to do so.

Release of the power to adjust. Section 104(e) [Prob. Code § 16336(d)-(e)] permits a trustee to release all or part of the power to adjust in circumstances in which the possession or exercise of the power might deprive the trust of a tax benefit or impose a tax burden. For example, if possessing the power would diminish the actuarial value of the income interest in a trust for which the income beneficiary’s estate may be eligible to claim a credit for property previously taxed if the beneficiary

dies within ten years after the death of the person creating the trust, the trustee is permitted under subsection (e) [Prob. Code § 16336(d)] to release just the power to adjust from income to principal.

Trust terms that limit a power to adjust. Section 104(f) [Prob. Code § 16336(f)] applies to trust provisions that limit a trustee's power to adjust. Since the power is intended to enable trustees to employ the prudent investor rule without being constrained by traditional principal and income rules, an instrument executed before the adoption of this Act whose terms describe the amount that may or must be distributed to a beneficiary by referring to the trust's income or that prohibit the invasion of principal or that prohibit equitable adjustments in general should not be construed as forbidding the use of the power to adjust under Section 104(a) [Prob. Code § 16336(a)] if the need for adjustment arises because the trustee is operating under the prudent investor rule. Instruments containing such provisions that are executed after the adoption of this Act should specifically refer to the power to adjust if the settlor intends to forbid its use. See generally, Joel C. Dobris, *Limits on the Doctrine of Equitable Adjustment in Sophisticated Postmortem Tax Planning*, 66 Iowa L. Rev. 273 (1981).

Examples. The following examples illustrate the application of Section 104 [Prob. Code § 16336]:

Example (1) — *T* is the successor trustee of a trust that provides income to *A* for life, remainder to *B*. *T* has received from the prior trustee a portfolio of financial assets invested 20% in stocks and 80% in bonds. Following the prudent investor rule, *T* determines that a strategy of investing the portfolio 50% in stocks and 50% in bonds has risk and return objectives that are reasonably suited to the trust, but *T* also determines that adopting this approach will cause the trust to receive a smaller amount of dividend and interest income. After considering the [relevant] factors ..., *T* may transfer cash from principal to income to the extent *T* considers it necessary to increase the amount distributed to the income beneficiary.

Example (2) — *T* is the trustee of a trust that requires the income to be paid to the settlor's son *C* for life, remainder to *C*'s daughter *D*. In a period of very high inflation, *T* purchases bonds that pay double-digit interest and determines that a portion of the interest, which is allocated to income under Section 406 of this Act [Prob. Code § 16357], is a return of capital. In consideration of the loss of value of principal due to inflation and other factors that *T* considers relevant, *T* may transfer part of the interest to principal.

Example (3) — *T* is the trustee of a trust that requires the income to be paid to the settlor's sister *E* for life, remainder to charity *F*. *E* is a retired schoolteacher who is single and has no children. *E*'s income from her

social security, pension, and savings exceeds the amount required to provide for her accustomed standard of living. The terms of the trust permit *T* to invade principal to provide for *E*'s health and to support her in her accustomed manner of living, but do not otherwise indicate that *T* should favor *E* or *F*. Applying the prudent investor rule, *T* determines that the trust assets should be invested entirely in growth stocks that produce very little dividend income. Even though it is not necessary to invade principal to maintain *E*'s accustomed standard of living, she is entitled to receive from the trust the degree of beneficial enjoyment normally accorded a person who is the sole income beneficiary of a trust, and *T* may transfer cash from principal to income to provide her with that degree of enjoyment.

Example (4) — *T* is the trustee of a trust that is governed by the law of State *X*. The trust became irrevocable before State *X* adopted the prudent investor rule. The terms of the trust require all of the income to be paid to *G* for life, remainder to *H*, and also give *T* the power to invade principal for the benefit of *G* for "dire emergencies only." The terms of the trust limit the aggregate amount that *T* can distribute to *G* from principal during *G*'s life to 6% of the trust's value at its inception. The trust's portfolio is invested initially 50% in stocks and 50% in bonds, but after State *X* adopts the prudent investor rule *T* determines that, to achieve suitable risk and return objectives for the trust, the assets should be invested 90% in stocks and 10% in bonds. This change increases the total return from the portfolio and decreases the dividend and interest income. Thereafter, even though *G* does not experience a dire emergency, *T* may exercise the power to adjust under Section 104(a) [Prob. Code § 16336(a)] to the extent that *T* determines that the adjustment is from only the capital appreciation resulting from the change in the portfolio's asset allocation. If *T* is unable to determine the extent to which capital appreciation resulted from the change in asset allocation or is unable to maintain adequate records to determine the extent to which principal distributions to *G* for dire emergencies do not exceed the 6% limitation, *T* may not exercise the power to adjust. See Joel C. Dobris, *Limits on the Doctrine of Equitable Adjustment in Sophisticated Postmortem Tax Planning*, 66 Iowa L. Rev. 273 (1981).

Example (5) — *T* is the trustee of a trust for the settlor's child. The trust owns a diversified portfolio of marketable financial assets with a value of \$600,000, and is also the sole beneficiary of the settlor's IRA, which holds a diversified portfolio of marketable financial assets with a value of \$900,000. The trust receives a distribution from the IRA that is the minimum amount required to be distributed under the Internal Revenue Code, and *T* allocates 10% of the distribution to income under Section 409(c) of this Act [Prob. Code § 16361(c)]. The total return on

the IRA's assets exceeds the amount distributed to the trust, and the value of the IRA at the end of the year is more than its value at the beginning of the year. Relevant factors that *T* may consider in determining whether to exercise the power to adjust and the extent to which an adjustment should be made to comply with Section 103(b) [Prob. Code § 16335(b)] include the total return from all of the trust's assets, those owned directly as well as its interest in the IRA, the extent to which the trust will be subject to income tax on the portion of the IRA distribution that is allocated to principal, and the extent to which the income beneficiary will be subject to income tax on the amount that *T* distributes to the income beneficiary.

Example (6) — *T* is the trustee of a trust whose portfolio includes a large parcel of undeveloped real estate. *T* pays real property taxes on the undeveloped parcel from income each year pursuant to Section 501(3) [Prob. Code § 16370(c)]. After considering the return from the trust's portfolio as a whole and other relevant factors ..., *T* may exercise the power to adjust under Section 104(a) [Prob. Code § 16336(a)] to transfer cash from principal to income in order to distribute to the income beneficiary an amount that *T* considers necessary to comply with Section 103(b) [Prob. Code § 16335(b)].

Example (7) — *T* is the trustee of a trust whose portfolio includes an interest in a mutual fund that is sponsored by *T*. As the manager of the mutual fund, *T* charges the fund a management fee that reduces the amount available to distribute to the trust by \$2,000. If the fee had been paid directly by the trust, one-half of the fee would have been paid from income under Section 501(1) [Prob. Code § 16370(a)] and the other one-half would have been paid from principal under Section 502(a)(1) [Prob. Code § 16371(a)(1)]. After considering the total return from the portfolio as a whole and other relevant factors ..., *T* may exercise its power to adjust under Section 104(a) [Prob. Code § 16336(a)] by transferring \$1,000, or half of the trust's proportionate share of the fee, from principal to income.

[Adapted from Unif. Principal and Income Act § 104 comment (1997).]

Prob. Code § 16338 (added). Remedy in proceedings concerning adjustment

Comment. Section 16338 limits the remedy in proceedings concerning adjustments under Section 16336 to correcting the adjustment. This rule recognizes that if there is a dispute concerning exercise of the adjustment power, it is between the affected beneficiaries, and not between the trustee and beneficiaries. Accordingly, the trustee is not liable for a surcharge or denial of fees where the dispute relates to the exercise or

nonexercise of the power to adjust or the proper level of an adjustment, if any.

Prob. Code § 16339 (added). Application of chapter to existing trusts and estates [UPAIA § 605]

Comment. Section 16339 is the same in substance as Section 605 of the Uniform Principal and Income Act (1997).

See also Section 3 (general transitional provisions).

Prob. Code § 16356 (added). Rental property [UPAIA § 405]

Comment. Section 16356 is the same in substance as Section 405 of the Uniform Principal and Income Act (1997), with some technical changes in the introductory clause to clarify the relation of this section to Section 16352.

See also Sections 62 (“property” defined), 84 (“trustee” defined).

Background from Uniform Act

Application of Section 403 [Prob. Code § 16352]. This section applies to the extent that the trustee does not account separately under Section 403 [Prob. Code § 16352] for the management of rental properties owned by the trust.

Receipts that are capital in nature. A portion of the payment under a lease may be a reimbursement of principal expenditures for improvements to the leased property that is characterized as rent for purposes of invoking contractual or statutory remedies for nonpayment. If the trustee is accounting for rental income under Section 405 [Prob. Code § 16356], a transfer from income to reimburse principal may be appropriate under Section 504 [Prob. Code § 16373] to the extent that some of the “rent” is really a reimbursement for improvements. [This set of facts could also be a relevant factor for a trustee to consider under Section 104(b) [see Prob. Code § 16336 & Comment] in deciding whether and to what extent to make an adjustment between principal and income under Section 104(a) [Prob. Code § 16336(a)] after considering the return from the portfolio as a whole.]

[Adapted from Unif. Principal and Income Act § 405 comment (1997).]

Prob. Code § 16372 (added). Transfers from income to principal for depreciation [UPAIA § 503]

Comment. Section 16372 supersedes former Section 16313 and is the same as Section 503 of the Uniform Principal and Income Act (1997), with some clarifying language and the addition of the generally accepted accounting principles standard in subdivision (b). This addition continues

the substance of former Section 16312(b)(2). Section 16372 also supersedes the last part of former Section 16312(d)(3). The word “may” in subdivision (b) has the same meaning as the phrase “is not required to” in former Section 16313.

See also Sections 84 (“trustee” defined), 16324 (“income” defined).

APPENDIX 5

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 344 OF THE STATUTES OF 1999 (SENATE BILL 210)

Trial Court Unification Follow-Up

Chapter 344 of the Statutes of 1999 was introduced as Senate Bill 210 by the Senate Judiciary Committee, on recommendation of the California Law Revision Commission. The measure is follow-up legislation for Chapter 931 of the Statutes of 1998, relating to trial court unification. Comments to the sections in the bill that were recommended by the Commission are set out below.

Bus. & Prof. Code § 6301.1 (amended). Board of law library trustees in San Diego County

Comment. Section 6301.1 is amended to accommodate unification of the municipal and superior courts in San Diego County. Cal. Const. art. VI, § 5(e).

Code Civ. Proc. § 77 (amended). Appellate division

Comment. Subdivision (h) of Section 77 is amended to refer more precisely to the appellate division. See Cal. Const. art. VI, § 4.

Code Civ. Proc. § 87 (added). Small claims case

Comment. Section 87 is added to clarify the appropriate treatment of a small claims case. The provision is declarative of existing law. Because a small claims case is a limited civil case, a provision that applies to a case other than a limited civil case (e.g., Sections 564, 1283.05) does not apply to a small claims case. Where, however, there is a conflict between a provision applicable to a limited civil case and a provision applicable to a small claims case, the provision applicable to a small claims case prevails over the more general provision in a small claims case. For example, Section 904.2 governs an appeal in a limited civil case. It is inapplicable to a small claims case because Section 904.5 specifies different procedures for an appeal from the small claims division. This is

comparable to the situation that existed before the Constitution was amended to permit unification of the municipal and superior courts in a county: In a small claims case, a provision applicable to a small claims case prevailed over a general provision for a municipal court case. See, e.g., former Sections 904.2 (appeal from municipal or justice court), 904.5 (appeal from small claims division of municipal or justice court).

See Sections 85 (limited civil cases) & Comment, 116.220 (jurisdiction of the small claims division).

Code Civ. Proc. § 88 (added). “Unlimited civil case” defined

Comment. Section 88 is added to provide a convenient means of referring to a civil case other than a limited civil case. The new term (“unlimited civil case”) reflects the broad jurisdiction of the superior court. Cal. Const. art. VI, § 10. A small claims case is a type of limited civil case, not an unlimited civil case. See Sections 85 & 87 & Comments.

Code Civ. Proc. § 116.950 (amended). Small claims advisory committee

Comment. Subdivision (d) of Section 116.950 is amended to broaden the range of judicial officers eligible to serve on the Small Claims Advisory Committee.

Code Civ. Proc. § 395.9 (repealed). Reclassification as limited civil case or otherwise

Comment. Section 395.9 is repealed and recodified for organizational clarity. The first and third sentences of subdivision (a) are continued without substantive change in Section 403.040(a) (motion for reclassification). The second sentence of subdivision (a) is continued without substantive change in Section 403.070(b) (reclassified action or proceeding).

Subdivision (b) is continued in Section 403.040(b), with revisions to improve clarity. The reference to a motion by the court is deleted as redundant. See Section 403.040(a).

Subdivision (c) is unnecessary and is not continued. The Judicial Council has authority to promulgate rules governing reclassification of civil actions and proceedings. See Sections 403.050 (reclassification fees), 403.090 (rules governing reclassification procedure).

Subdivision (d) is continued without substantive change in Section 403.070(a) (reclassified action or proceeding).

Subdivision (e) is continued without substantive change in Section 403.010(b) (application and effect of chapter).

Subdivisions (f)-(g) are continued without substantive change in Section 403.040(c)-(d).

The first sentence of subdivision (h) is unnecessary and is not continued. The second sentence of subdivision (h) is continued in part in the introductory clause and the first sentence of Section 403.050(a) (reclassification fees). The remainder of the second sentence is superseded by Section 403.050(a)(1)-(2).

Code Civ. Proc. § 399.5 (repealed). Reclassification pursuant to Section 395.9

Comment. Section 399.5 is repealed and recodified for organizational clarity. Subdivisions (a)-(c) are continued without substantive change in Section 403.060 (proceedings on order granting motion for reclassification), except that (1) the consequences of failure to make payment are not addressed as fully, because this matter may be covered by rules of court promulgated pursuant to Section 403.050, and (2) the clerk is to reclassify the case upon payment of the reclassification fees, regardless of whether the time for filing a writ petition pursuant to Section 403.080 (petition for writ of mandate) has expired or such a petition is pending.

Subdivision (d) is not continued. See Section 403.090 (rules governing reclassification procedure).

Subdivision (e) is continued without substantive change in Section 403.070(b) (reclassified action or proceeding).

Code Civ. Proc. § 400 (amended). Petition for writ of mandate

Comment. Section 400 is amended for organizational clarity. The references to reclassification are continued without substantive change in Section 403.080 (petition for writ of mandate).

Code Civ. Proc. §§ 403.010-403.090 (added). Reclassification of civil actions and proceedings

Comment. The provisions governing reclassification of civil actions and proceedings (former Sections 395.9 and 399.5) are recodified in this chapter for organizational clarity, with modifications to eliminate ambiguities and improve procedures.

Code Civ. Proc. § 403.010 (added). Application and effect of chapter

Comment. Subdivision (a) of Section 403.010 makes clear that this chapter is limited to counties in which the trial courts have unified. For transfer between superior and municipal courts in counties in which the courts have not unified, see Chapter 1 (commencing with Section 392).

The first sentence of subdivision (b) continues former Section 395.9(e) without substantive change. The second sentence clarifies that this chapter does not affect the running of the statute of limitations.

Code Civ. Proc. § 403.020 (added). Reclassification by amending initial pleading

Comment. Section 403.020 is added to provide guidance where a plaintiff recognizes and acknowledges the need for reclassification. It does not affect whether a plaintiff is entitled to amend the complaint or other initial pleading. See Section 403.010 (application and effect of chapter). For authority to amend pleadings, see Sections 426.50 (amending to add cause of action), 472 (amendment once of course), 473 (amendment requiring leave of court).

See also Sections 32.5 (jurisdictional classification), 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 422.030 (caption).

Code Civ. Proc. § 403.030 (added). Reclassification of limited civil case by cross-complaint

Comment. Section 403.030 is added to provide guidance where a cross-complainant in a limited civil case recognizes and acknowledges the need for reclassification.

See also Sections 403.020 (reclassification by amending initial pleading), 403.040 (motion for reclassification), 422.30 (caption).

Code Civ. Proc. § 403.040 (added). Motion for reclassification

Comment. Subdivision (a) of Section 403.040 continues the first and third sentences of former Section 399.5(a) without substantive change. A new clause is added to expressly negate any inference that a motion for reclassification may only be granted upon a finding of fault. This is declarative of existing law.

Subdivision (b) continues former Section 395.9(b), with revisions to improve clarity. The reference to a motion by the court is deleted as redundant. See subdivision (a).

Subdivisions (c)-(d) continue former Section 395.9(f)-(g) without substantive change.

For the procedure on granting a motion for reclassification, see Sections 403.060 (proceedings on order granting motion for reclassification), 403.070 (reclassified action or proceeding). For reclassification fees, see Section 403.050. See also Sections 403.020 (reclassification by amending initial pleading), 403.030 (reclassification of limited civil case by cross-complaint).

Code Civ. Proc. § 403.050 (added). Reclassification fees

Comment. The introductory clause and the first sentence of subdivision (a) of Section 403.050 continue the second sentence of former Section 395.9(h) without substantive change, except that they do not specify which party is to make payment. Like former Section 395.9(h), this section does not authorize an award of attorney's fees attributable to misclassification of a case. For authority to make such an award under limited circumstances, see Sections 128.6, 128.7.

Paragraphs (1)-(2) of subdivision (a) clarify the fees due on reclassification pursuant to order of the court. See Gov't Code §§ 26820.4 (fee for filing first paper in case other than limited civil case), 26826 (fee for filing defendant's first paper in case other than limited civil case), 72055 (fee for filing first paper in limited civil case), 72056 (fee for filing defendant's first paper in limited civil case). The Judicial Council may promulgate rules governing the details of making payment. For example, the Judicial Council may specify by rule that the losing party is to pay the reclassification fees in the first instance, subject to reimbursement by the other parties in accordance with this provision.

Under subdivision (b), if a limited civil case is reclassified by filing an amended complaint pursuant to Section 403.020, and the defendant has already answered the original complaint, the reclassification fees include, for example, the difference between the fee for filing the defendant's first paper in a limited civil case (Gov't Code § 72056) and the fee for filing the defendant's first paper in a case other than a limited civil case (Gov't Code § 26826). The same approach applies where a cross-complainant reclassifies a limited civil case by filing a cross-complaint pursuant to Section 403.030.

See Section 403.040 (motion for reclassification). See also Section 422.30 (caption).

Code Civ. Proc. § 403.060 (added). Proceedings on order granting motion for reclassification

Comment. Subdivisions (a)-(c) of Section 403.060 continue former Section 399.5(a)-(c) without substantive change, except that (1) the consequences of failure to make payment are not addressed as fully, because this matter may be covered by rules of court promulgated pursuant to Section 403.050, and (2) the clerk is to reclassify the case on payment of the reclassification fees, regardless of whether the time for filing a writ petition pursuant to Section 403.080 (petition for writ of mandate) has expired or such a petition is pending.

For rules governing reclassified actions or proceedings, see Section 403.070. For authority of the court of appeal to stay an action or

proceeding pending determination of a writ proceeding, see Section 403.080.

Code Civ. Proc. § 403.070 (added). Reclassified action or proceeding

Comment. Subdivision (a) of Section 403.070 continues former Section 399.5(d) without substantive change. Subdivision (b) continues without substantive change former Section 399.5(e) and the second sentence of former Section 395.9(a).

See also Sections 403.020 (reclassification by amending initial pleading), 403.030 (reclassification of limited civil case by cross-complaint), 403.040 (motion for reclassification), 403.050 (reclassification fees), 422.30 (caption).

Code Civ. Proc. § 403.080 (added). Petition for writ of mandate

Comment. Section 403.080 continues without substantive change the references to reclassification deleted from Section 400.

Code Civ. Proc. § 403.090 (added). Rules governing reclassification procedure

Comment. Section 403.090 is added to facilitate refinement of the procedures governing reclassification of civil actions. See also Section 403.050 (Judicial Council authority to prescribe rules governing manner of paying reclassification fees and consequences of failure to make payment).

Code Civ. Proc. § 422.30 (amended). Caption

Comment. Subdivision (c) of Section 422.30 is amended to clarify that the clerk is to rely on the caption in determining how to classify a civil case that is brought in a unified superior court. For the rules governing reclassification, see Sections 403.010-403.090. See also Section 32.5 (jurisdictional classification).

Code Civ. Proc. § 871.3 (amended). Good faith improver

Comment. Section 871.3 is amended to reflect relocation of the provisions governing reclassification of a civil case.

Code Civ. Proc. § 1014 (amended). Appearance by defendant

Comment. Section 1014 is amended to reflect relocation of the provisions governing reclassification of a civil case.

Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review

Comment. Section 1068 is amended to fully reflect the writ jurisdiction of the appellate division. Cal. Const. art. VI, §§ 10, 11(b). See also Penal Code §§ 691(g) (“misdemeanor or infraction case” defined), 1466 (appeal in misdemeanor or infraction case).

Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate

Comment. Section 1085 is amended to fully reflect the writ jurisdiction of the appellate division. Cal. Const. art. VI, §§ 10, 11(b). See also Penal Code §§ 691(g) (“misdemeanor or infraction case” defined), 1466 (appeal in misdemeanor or infraction case).

Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition

Comment. Section 1103 is amended to fully reflect the writ jurisdiction of the appellate division. Cal. Const. art. VI, §§ 10, 11(b). See also Penal Code §§ 691(g) (“misdemeanor or infraction case” defined), 1466 (appeal in misdemeanor or infraction case).

Code Civ. Proc. § 1167.3 (amended). Default in unlawful detainer case

Comment. Section 1167.3 is amended to correct cross-references.

Gov’t Code § 26863 (amended). Automation fee

Comment. Section 26863 is amended to restore amendments made by Chapter 406 of the Statutes of 1998 that were chaptered out by Chapter 931 of the Statutes of 1998.

Gov’t Code § 71042.6 (amended). Map to establish district boundaries

Comment. Section 71042.6 is amended to accommodate unification of the municipal and superior courts. Cal. Const. art. VI, § 5(e). This preserves the effect of statutes that specify publication by judicial district, rather than by county. See, e.g., Bus. & Prof. Code § 21707; Civ. Code §§ 2924f, 3440.1, 3440.5; Code Civ. Proc. §§ 701.540, 1208.5; Com. Code §§ 6105, 7210; Rev. & Tax. Code §§ 3381, 3702. *Cf.* Code Civ. Proc. § 38 (“judicial district” defined, subject to contrary statute).

Penal Code § 1214 [operative Jan. 1, 2000] (amended). Enforcement

Comment. Section 1214, as operative (with exceptions) January 1, 2000, is amended to accommodate unification of the municipal and

superior courts. Cal. Const. art. VI, § 5(e). New subdivision (c) continues the policy of former Code of Civil Procedure Section 86(a)(11), which provided that the municipal court had original jurisdiction in all actions to enforce restitution orders or restitution fines that were imposed by the municipal court (without any limitation on amount in controversy). In certain criminal cases, a municipal court could impose a restitution order or restitution fine. Penal Code §§ 1462(a) (misdemeanor or infraction case), 1462(b) (pronouncing judgment in noncapital criminal case). In a county in which there is no municipal court, Section 1462(d) gives the superior court the jurisdiction provided in Section 1462(a)-(b). Thus, new subdivision (c) of this section accommodates trial court unification and continues the effect of former law.

See Code Civ. Proc. §§ 85 (limited civil cases), 86(a)(8) (enforcement of judgment in limited civil case).

Penal Code § 1238 (amended). Appealable orders in felony cases

Comment. Paragraph (11) is added to subdivision (a) of Section 1238 for consistency with Section 1424(a)(2) (appeal from order of recusal in felony case made pursuant to Chapter 1 (commencing with Section 1235) of Title 9).

Penal Code § 1382 (amended). Time for bringing case to trial

Comment. Section 1382 is amended to accommodate unification of the municipal and superior courts. Cal. Const. art. VI, § 5(e).

Rev. & Tax. Code § 19280 (technical amendment). Referral of fines and penalties to Franchise Tax Board

Comment. Section 19280 is amended to add the word “or” in subdivision (a)(1). This is a technical, nonsubstantive change.

APPENDIX 6

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 658 OF THE STATUTES OF 1999 (ASSEMBLY BILL 891)

Health Care Decisions for Adults Without Decisionmaking Capacity

Chapter 658 of the Statutes of 1999 was introduced as Assembly Bill 891 by Assemblywoman Elaine Alquist. It implements the California Law Revision Commission recommendation on *Health Care Decisions for Adults Without Decisionmaking Capacity*, 29 Cal. L. Revision Comm'n Reports 1 (1999). The new and revised Comments set out below supersede the comparable Comments in the recommendation and reflect amendments to the bill made during the legislative process.

Health Care Decisions Law

Prob. Code § 4609 (added). Capacity

Comment. Section 4609 is a new provision drawn from Health and Safety Code Section 1418.8(b) and Section 1(3) of the Uniform Health-Care Decisions Act (1993). This standard replaces the capacity to contract standard that was formerly applicable to durable powers of attorney for health care under Section 4120 in the Power of Attorney Law.

For provisions in this division relating to capacity, see Sections 4651 (authority of person having capacity not affected), 4657 (presumption of capacity), 4658 (determination of capacity and other medical conditions), 4682 (when agent's authority effective), 4670 (authority to give individual health care instruction), 4671 (authority to execute power of attorney for health care), 4683 (scope of agent's authority), 4695 (revocation of power of attorney for health care), 4715 (disqualification of surrogate), 4732 (duty of primary physician to record relevant

information), 4733 (obligations of health care provider), 4766 (petition as to durable power of attorney for health care).

See also Sections 4615 (“health care” defined), 4617 (“health care decision” defined).

Prob. Code § 4613 (added). Conservator

Comment. Section 4613 is a new provision and serves the same purpose as Section 1(4) of the Uniform Health-Care Decisions Act (1993) (definition of “guardian”). Terminology in other states may vary, but the law applies the same rules regardless of terminology.

For provisions in this division concerning conservators, see Sections 4617 (“health care decision” defined), 4631 (“primary physician” defined), 4643 (“surrogate” defined), 4659 (limitations on who may act as agent or surrogate), 4672 (nomination of conservator in written advance health care directive), 4696 (duty to communicate revocation), 4732 (duty of primary physician to record relevant information), 4753 (limitations on right to petition), 4765 (petitioners), 4770 (temporary health care order).

See also Section 4617 (“health care decision” defined), 4625 (“patient” defined).

Prob. Code § 4619 (added). Health care institution

Comment. Section 4619 is a new provision and is the same as Section 1(7) of the Uniform Health-Care Decisions Act (1993).

For provisions in this division using this term, see Sections 4654 (compliance with generally accepted health care standards), 4659 (limitations on who may act as agent or surrogate), 4677 (restriction on requiring or prohibiting advance directive), 4696 (duty to communicate revocation), 4701 (optional form of advance health care directive), 4711 (patient’s designation of surrogate), 4733 (obligations of health care institution), 4734 (right to decline for reasons of conscience or institutional policy), 4735 (health care institution’s right to decline ineffective care), 4736 (obligations of declining health care institution), 4740 (immunities of health care provider or institution), 4742 (statutory damages), 4765 (petitioners), 4785 (application of request to forgo resuscitative measures).

See also Section 4615 (“health care” defined).

Background from Uniform Act. The term “health-care institution” includes a hospital, nursing home, residential-care facility, home health agency, or hospice. [Adapted from Unif. Health-Care Decisions Act § 1(7) comment (1993).]

Prob. Code § 4621 (added). Health care provider

Comment. Section 4621 continues former Section 4615 without substantive change and is the same as Section 1(8) of the Uniform Health-Care Decisions Act (1993). This section also continues former Health and Safety Code Section 7186(c) (Natural Death Act) without substantive change.

For provisions in this division using this term, see Sections 4617 (“health care decision” defined), 4641 (“supervising health care provider” defined), 4654 (compliance with generally accepted health care standards), 4659 (limitations on who may act as agent or surrogate), 4673 (witnessing requirements in skilled nursing facility), 4676 (validity of written advance directive executed in another jurisdiction), 4677 (restriction on requiring or prohibiting advance directive), 4685 (agent’s priority), 4696 (duty to communicate revocation), 4701 (optional form of advance health care directive), 4733 (obligations of health care provider), 4734 (health care provider’s right to decline for reasons of conscience), 4735 (health care provider’s right to decline ineffective care), 4736 (obligations of declining health care provider), 4740 (immunities of health care provider), 4742 (statutory damages).

See also Section 4615 (“health care” defined).

Prob. Code § 4623 (added). Individual health care instruction, individual instruction

Comment. Section 4623 is a new provision and is the same in substance as Section 1(9) of the Uniform Health-Care Decisions Act (1993). The term “individual health care instruction” is included to provide more clarity. A declaration or directive under the repealed Natural Death Act (former Health & Safety Code § 7185 *et seq.*) is an individual health care instruction.

For provisions in this division using this term, see Sections 4605 (“advance health care directive” defined), 4625 (“patient” defined), 4658 (determination of capacity and other medical conditions), 4670 (individual health care instruction recognized), 4671 (power of attorney for health care may include individual instruction), 4684 (standard governing agent’s health care decisions), 4714 (standard governing surrogate’s health care decisions), 4732 (duty of primary physician to record relevant information), 4733 (obligations of health care provider or institution), 4734 (health care provider’s or institution’s right to decline), 4735 (right to decline to provide ineffective care), 4736 (obligations of declining health care provider or institution).

See also Section 4617 (“health care decision” defined), 4625 (“patient” defined).

Background from Uniform Act. The term “individual instruction” includes any type of written or oral direction concerning health-care treatment. The direction may range from a written document which is intended to be effective at a future time if certain specified conditions arise and for which a form is provided in Section 4 [Prob. Code § 4701], to the written consent required before surgery is performed, to oral directions concerning care recorded in the health-care record. The instruction may relate to a particular health-care decision or to health care in general. [Adapted from Unif. Health-Care Decisions Act § 1(9) comment (1993).]

Prob. Code § 4625 (added). Patient

Comment. Section 4625 is a new provision added for drafting convenience. “Adult” includes an emancipated minor. See Fam. Code §§ 7002 (emancipation), 7050 (emancipated minor considered as adult for consent to medical, dental, or psychiatric care). For provisions governing surrogates, see Section 4711 *et seq.*

See also Sections 4615 (“health care” defined), 4623 (“individual health care instruction” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined), 4643 (“surrogate” defined). Compare Section 3200 (“patient” defined for purposes of court-authorized medical treatment procedure).

Prob. Code § 4631 (added). Primary physician

Comment. Section 4631 supersedes former Health and Safety Code Section 7186(a) (“attending physician” defined) and is the same in substance as Section 1(13) of the Uniform Health-Care Decisions Act (1993), with the addition of the reference to the ability to decline to act as primary physician. To be a “primary physician” under this division, the substantive rules in this section must be complied with. The institutional designation of a person is not relevant. Hence, a “primary care physician” or a “hospitalist” may or may not be a “primary physician,” depending on the circumstances.

For provisions in this division using this term, see Sections 4641 (“supervising health care provider” defined), 4658 (determination of capacity and other medical conditions), 4701 (optional form of advance health care directive), 4732 (duty of primary physician to record relevant information).

See also Sections 4607 (“agent” defined), 4613 (“conservator” defined), 4615 (“health care” defined), 4627 (“physician” defined), 4635 (“reasonably available” defined), 4643 (“surrogate” defined).

Background from Uniform Act. The Act employs the term “primary physician” instead of “attending physician.” The term “attending

physician” could be understood to refer to any physician providing treatment to the individual, and not to the physician whom the individual, or agent, guardian, or surrogate, has designated or, in the absence of a designation, the physician who has undertaken primary responsibility for the individual’s health care. [Adapted from Unif. Health-Care Decisions Act § 1(13) comment (1993).]

Prob. Code § 4635 (added). Reasonably available

Comment. Section 4635 is the same as Section 1(14) of the Uniform Health-Care Decisions Act (1993).

For provisions in this division using this term, see Sections 4631 (“primary physician” defined), 4641 (“supervising health care provider” defined), 4685 (agent’s priority), 4701 (optional form of advance health care directive).

See also Section 4615 (“health care” defined), 4625 (“patient” defined).

Background from Uniform Act. The term “reasonably available” is used in the Act to accommodate the reality that individuals will sometimes not be timely available. The term is incorporated into the definition of “supervising health-care provider” [Prob. Code § 4641]. It appears in the optional statutory form (Section 4) [Prob. Code § 4701] to indicate when an alternate agent may act. [Adapted from Unif. Health-Care Decisions Act § 1(14) comment (1993).]

Prob. Code § 4643 (added). Surrogate

Comment. Section 4643 is a new provision and is the same in substance as Section 1(17) of the Uniform Health-Care Decisions Act (1993), except that this section refers to “conservator” instead of “guardian” and to “adult” instead of “individual.” “Adult” includes an emancipated minor. See Fam. Code § 7002 (emancipation). For other provisions concerning surrogates, see Section 4711 *et seq.*

For provisions in this division using this term, see Sections 4617 (health care decision), 4625 (patient), 4631 (primary physician), 4653 (mercy killing, assisted suicide, euthanasia not approved), 4657 (presumption of capacity), 4658 (determination of capacity and other medical conditions), 4659 (limitations on who may act as agent or surrogate), 4660 (use of copies), 4696 (duty to communicate revocation), 4711-4715 (health care surrogates), 4731 (duty of supervising health care provider to record relevant information), 4732 (duty of primary physician to record relevant information), 4741 (immunities of agent and surrogate), 4750 (judicial intervention disfavored), 4762 (jurisdiction over agent or surrogate), 4763 (venue), 4765 (petitioners), 4766 (purposes of petition), 4769 (notice of hearing), 4771 (award of

attorney's fees). See also 4780 (request to forgo resuscitative measures), 4783 (forms for requests to forgo resuscitative measures).

See also Section 4607 ("agent" defined).

Background from Uniform Act. The definition of "surrogate" refers to the individual having present authority under Section 5 [see Prob. Code § 4711 *et seq.*] to make a health-care decision for a patient. It does not include an individual who might have such authority under a given set of circumstances which have not occurred. [Adapted from Unif. Health-Care Decisions Act § 1(17) comment (1993).]

Prob. Code § 4651 (added). Scope of division

Comment. Subdivision (a) of Section 4651 is a new provision.

Subdivision (b)(1) is the same in substance as Section 11(a) of the Uniform Health-Care Decisions Act (1993) and replaces former Health and Safety Code Sections 7189.5(a) and 7191.5(e) & (h) (Natural Death Act).

Subdivision (b)(2) continues the substance of former Section 4652(b).

Subdivision (b)(3) is new. This division applies to emancipated minors to the same extent as adults. See Fam. Code §§ 7002 (emancipation), 7050 (emancipated minor considered as adult for consent to medical, dental, or psychiatric care).

See also Sections 4605 ("advance health care directive" defined), 4615 ("health care" defined), 4617 ("health care decision" defined), 4687 (other authority of person named as agent not affected).

Prob. Code § 4653 (added). Mercy killing, assisted suicide, euthanasia not approved

Comment. Section 4653 continues the first sentence of former Section 4723 without substantive change, and is consistent with Section 13(c) of the Uniform Health-Care Decisions Act (1993). This section also continues the substance of former Health and Safety Code Section 7191.5(g) (Natural Death Act). Language has been revised to conform to the broader scope of this division. This section provides a rule governing the interpretation of this division. It is not intended as a general statement beyond the scope of this division nor is it intended to affect any other authority that may exist.

See Sections 4670 *et seq.* (advance health care directives), 4711 *et seq.* (health care surrogates). See also Sections 4605 ("advance health care directive" defined), 4615 ("health care" defined), 4643 ("surrogate" defined).

Prob. Code § 4655 (added). Impermissible constructions

Comment. Subdivision (a) of Section 4655 continues and generalizes former Health and Safety Code Section 7191.5(d) (Natural Death Act), and is the same in substance as Section 13(a) of the Uniform Health-Care Decisions Act (1993).

Subdivision (b) continues the second sentence of former Section 4723 without substantive change and with wording changes to reflect the broader scope of this division.

See also Sections 4605 (“advance health care directive” defined), 4615 (“health care” defined), 4617 (“health care decision” defined), 4625 (“patient” defined).

Prob. Code § 4658 (added). Determination of capacity and other medical conditions

Comment. Section 4658 is drawn from Section 2(d) (advance directives) and part of Section 5(a) (surrogates) of the Uniform Health-Care Decisions Act (1993). This section also supersedes parts of the Natural Death Act relating to physician certification of the patient’s condition. See former Health & Safety Code §§ 7187.5, 7189. This section makes clear that capacity determinations need not be made by the courts. For provisions governing judicial determinations of capacity, see Sections 810-813 (Due Process in Capacity Determinations Act). See also Section 4766 (petitions concerning advance directives). For the primary physician’s duty to record capacity determinations, see Section 4732. See also Section 4766(a) (petition to review capacity determinations).

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4609 (“capacity” defined), 4623 (“individual health care instruction” defined), 4625 (“patient” defined), 4631 (“primary physician” defined), 4643 (“surrogate” defined).

Background from Uniform Act. Section 2(d) provides that unless otherwise specified in a written advance health-care directive, a determination that a principal has lost or recovered capacity to make health-care decisions must be made by the primary physician. For example, a principal might specify that the determination of capacity is to be made by the agent in consultation with the primary physician. Or a principal, such as a member of the Christian Science faith who relies on a religious method of healing and who has no primary physician, might specify that capacity be determined by other means. In the event that multiple decision makers are specified and they cannot agree, it may be necessary to seek court instruction as authorized by Section 14 [see Prob. Code § 4766].

Section 2(d) also provides that unless otherwise specified in a written advance health-care directive, the existence of other conditions which affect an individual instruction or the authority of an agent must be determined by the primary physician. For example, an individual might specify that an agent may withdraw or withhold treatment that keeps the individual alive only if the individual has an incurable and irreversible condition that will result in the individual's death within a relatively short time. In that event, unless otherwise specified in the advance health-care directive, the determination that the individual has that condition must be made by the primary physician.

[Adapted from Unif. Health-Care Decisions Act § 2(d) comment (1993).]

Prob. Code § 4659 (added). Limitations on who may act as agent or surrogate

Comment. Section 4659 restates former Section 4702 without substantive change, and extends its principles to cover surrogates. The terms “supervising health care provider” and “health care institution” have been substituted for “treating health care provider” as appropriate, for consistency with the terms used in this division. See Section 4641 (“supervising health care provider” defined).

Subdivisions (a) and (b) serve the same purpose as Section 2(b) (fourth sentence) and Section 5(i) of the Uniform Health-Care Decisions Act (1993). Subdivision (a) does not preclude a person from appointing, for example, a friend who is a physician as the agent under the person's power of attorney for health care, but if the physician becomes the person's “supervising health care provider,” the physician is precluded from acting as the agent under the power of attorney. See also Section 4675 (witnessing requirements in skilled nursing facilities).

Subdivision (b) provides a special exception to subdivision (a). This will, for example, permit a nurse to serve as agent for the nurse's spouse when the spouse is being treated at the hospital where the nurse is employed.

Subdivision (c) prescribes conditions that must be satisfied if a conservator is to be designated as the agent or surrogate for a conservatee under the Lanterman-Petris-Short Act. This subdivision has no application where a person other than the conservator is so designated.

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4611 (“community care facility” defined), 4613 (“conservator” defined), 4617 (“health care decision” defined), 4619 (“health care institution” defined), 4625 (“patient” defined), 4629 (“power of attorney for health care” defined), 4637 (“residential care

facility for the elderly” defined), 4641 (“supervising health care provider” defined), 4643 (“surrogate” defined).

Prob. Code § 4673 (added). Formalities for executing written advance directive

Comment. Section 4673 continues the execution requirements in Section 4121 in the Power of Attorney Law applicable to powers of attorney for health care, and expands the execution requirements under former law to cover all written advance directives, not just powers of attorney. “Adult” has been substituted for “person” in subdivision (b). “Adult” includes an emancipated minor. See Fam. Code §§ 7002 (emancipation), 7050 (emancipated minor considered as adult for consent to medical, dental, or psychiatric care). Sections 4674 and 4675 provide additional requirements applicable where the written advance directive is signed by witnesses, instead of being notarized.

See also Sections 4605 (“advance health care directive” defined), 4625 (“patient” defined).

Prob. Code § 4674 (added). Requirements for witnesses

Comment. The introductory clause and subdivisions (a) and (b) of Section 4674 continue the witnessing requirements in Section 4122(a) and (c) in the Power of Attorney Law to the extent they applied to powers of attorney for health care, and expands these rules to cover all written advance directives, not just powers of attorney.

Subdivision (c)(1)-(3) continues former Section 4701(a) without substantive change. Subdivision (c)(4) continues Section 4122(b) to the extent it applied to powers of attorney for health care.

Subdivisions (d)-(f) continue former Section 4701(b)-(d) without substantive change and expands the rules to cover all written advance directives.

Subdivision (g) is a new provision making clear that the special rules and restrictions applicable to witnesses are not applicable to notaries. Notaries are subject to obligations under other law by virtue of office. See Gov’t Code § 8200 *et seq.*

See also Sections 4605 (“advance health care directive” defined), 4611 (“community care facility” defined), 4621 (“health care provider” defined), 4625 (“patient” defined), 4637 (“residential care facility for the elderly” defined).

Prob. Code § 4675 (added). Witnessing required in skilled nursing facility

Comment. Subdivision (a) of Section 4675 continues former Section 4701(e) without substantive change. This section expands the witnessing

rules under former law to cover all written advance directives executed in nursing homes, not just powers of attorney.

Subdivision (b) continues the substance of former Section 4751(c) (identity of patient in skilled nursing facility) and applies to all written advance directives covered by this section, not just powers of attorney for health care as under former law.

See also Sections 4605 (“advance health care directive” defined), 4621 (“health care provider” defined), 4625 (“patient” defined), 4639 (“skilled nursing facility” defined).

Prob. Code § 4676 (added). Validity of written advance directive executed in another jurisdiction

Comment. Subdivision (a) of Section 4676 continues former Section 4653 without substantive change, and extends its principles to apply to all written advance health care directives, which include both powers of attorney for health care and written individual instructions. This subdivision also continues and generalizes former Health and Safety Code Section 7192.5 (Natural Death Act). This subdivision is consistent with Section 2(h) of the Uniform Health-Care Decisions Act (1993), as applied to instruments.

Subdivision (b) continues former Section 4752 without substantive change, and broadens the former rule for consistency with the scope of this division. This subdivision also continues and generalizes former Health and Safety Code Section 7192 (Natural Death Act).

See also Sections 4605 (“advance health care directive” defined), 4621 (“health care provider” defined), 4627 (“physician” defined). For the rule applicable under the Power of Attorney Law, see Section 4053.

Background from Uniform Act. Section 2(h) validates advance health-care directives which conform to the Act, regardless of when or where executed or communicated. This includes an advance health-care directive which would be valid under the Act but which was made prior to the date of its enactment and failed to comply with the execution requirements then in effect. It also includes an advance health-care directive which was made in another jurisdiction but which does not comply with that jurisdiction’s execution or other requirements. [Adapted from Unif. Health-Care Decisions Act § 2(h) comment (1993).]

Prob. Code § 4677 (added). Restriction on requiring or prohibiting advance directive

Comment. Section 4677 continues and generalizes former Section 4725, and contains the substance of Section 7(h) of the Uniform Health-Care Decisions Act (1993). The former provision applied only to powers of attorney for health care. This section supersedes former Health and

Safety Code Sections 7191(e)-(f) and 7191.5(c) (Natural Death Act). This section is intended to eliminate the possibility that duress might be used by a health care provider, insurer, plan, or other entity to cause the patient to execute or revoke an advance directive. The reference to a “health care service plan” is drawn from Health and Safety Code Section 1345(f) in the Knox-Keene Health Care Service Plan Act of 1975.

See also Sections 4605 (“advance health care directive” defined), 4615 (“health care” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined).

Background from Uniform Act. Section 7(h), forbidding a health-care provider or institution to condition provision of health care on execution, non-execution, or revocation of an advance health-care directive, tracks the provisions of the federal Patient Self-Determination Act. 42 U.S.C. §§ 1395cc(f)(1)(C) (Medicare), 1396a(w)(1)(C) (Medicaid). [Adapted from Unif. Health-Care Decisions Act § 7(h) comment (1993).]

Prob. Code § 4678 (added). Right to health care information

Comment. Section 4678 is drawn from Section 8 of the Uniform Health-Care Decisions Act (1993). This section continues former Section 4721 without substantive change, but is broader in scope since it covers all persons authorized to make health care decisions for a patient, not just agents. A power of attorney may limit the right of the agent, for example, by precluding examination of specified medical records or by providing that the examination of medical records is authorized only if the principal lacks the capacity to give informed consent. The right of the agent is subject to any limitations on the right of the patient to reach medical records. See Health & Safety Code §§ 1795.14 (denial of right to inspect mental health records), 1795.20 (providing summary of record rather than allowing access to entire record).

See also Sections 4605 (“advance health care directive” defined), 4617 (“health care decision” defined), 4625 (“patient” defined).

Background from Uniform Act. An agent, conservator, [guardian,] or surrogate stands in the shoes of the patient when making health-care decisions. To assure fully informed decisionmaking, this section provides that a person who is then authorized to make health-care decisions for a patient has the same right of access to health-care information as does the patient unless otherwise specified in the patient’s advance health-care directive. [Adapted from Unif. Health-Care Decisions Act § 8 comment (1993).]

Prob. Code § 4680 (added). Formalities for executing a power of attorney for health care

Comment. Section 4680 continues the general substance of former Section 4700(b)-(c).

A power of attorney must be in writing. See Section 4629 (“power of attorney for health care” defined). A power of attorney that complies with this section and incorporated rules is legally sufficient as a grant of authority to an agent.

See also Section 4629 (“power of attorney for health care” defined).

Prob. Code § 4684 (added). Standard governing agent’s health care decisions

Comment. Section 4684 continues the substance of former Section 4720(c) and is the same as Section 2(e) of the Uniform Health-Care Decisions Act (1993). Although the new wording of this fundamental rule is different, Section 4684 continues the principle of former law that, in exercising authority, the agent has the duty to act consistent with the principal’s desires if known or, if the principal’s desires are unknown, to act in the best interest of the principal. The agent’s authority is subject to Section 4652, which precludes consent to certain specified types of treatment. See also Section 4653 (mercy killing, assisted suicide, euthanasia not approved). The principal is free to provide any limitations on types of treatment in the power of attorney that are desired. See also Section 4750 *et seq.* (judicial proceedings).

See also Sections 4607 (“agent” defined), 4623 (“individual health care instruction” defined), 4633 (“principal” defined).

Background from Uniform Act. Section 2(e) requires the agent to follow the principal’s individual instructions and other expressed wishes to the extent known to the agent. To the extent such instructions or other wishes are unknown, the agent must act in the principal’s best interest. In determining the principal’s best interest, the agent is to consider the principal’s personal values to the extent known to the agent. The Act does not prescribe a detailed list of factors for determining the principal’s best interest but instead grants the agent discretion to ascertain and weigh the factors likely to be of importance to the principal. [Adapted from Unif. Health-Care Decisions Act § 2(e) comment (1993).]

Prob. Code § 4685 (added). Agent’s priority

Comment. Section 4685 continues without substantive change the first part of former Section 4720(a) and part of former Section 4652(a) relating to availability, willingness, and ability of agents. This section gives the agent priority over others, including a conservator or statutory surrogate, to make health care decisions if the agent is known to the

health care provider to be available and willing to act. The power of attorney may vary this priority, as recognized in the introductory clause, and the rule of this section is subject to a contrary court order. See Section 4766. In part, this section serves the same purpose as Section 6(b) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4607 (“agent” defined), 4617 (“health care decision” defined), 4621 (“health care provider” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined), 4635 (“reasonably available” defined).

Prob. Code § 4687 (added). Other authority of person named as agent not affected

Comment. Section 4687 continues former Section 4720(d) without substantive change, and supersedes part of former Section 4652(a). An agent may, without liability, decline to act under the power of attorney. For example, the agent may not be willing to follow the desires of the principal as stated in the power of attorney because of changed circumstances. This section makes clear that, in such a case, the person may make or participate in making health care decisions for the principal without being bound by the stated desires of the principal to the extent that the person designated as the agent has the right under the applicable law apart from the power of attorney.

See also Sections 4607 (“agent” defined), 4617 (“health care decision” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined).

Prob. Code § 4689 (added). Principal’s objections

Comment. Section 4689 continues former Section 4724 without substantive change. Terminology has been revised for consistency with the language of the Health Care Decisions Law. See Sections 4607 (“agent” defined), 4629 (“power of attorney for health care” defined), 4617 (“health care decision” defined), 4633 (“principal” defined). As under the former section, this section does not limit any right the agent may have apart from the authority under the power of attorney for health care. See Section 4687.

Prob. Code § 4690 (added). Consultation and disclosure

Comment. Section 4690 is drawn from Section 4235 in the Power of Attorney Law, and continues the substance of former law as applied to durable powers of attorney for health care under former law. As with Section 4235, this section does not provide anything inconsistent with permissible practice under former law, but is intended to recognize the desirability of consultation in appropriate circumstances and provide

assurance to third persons that consultation with the agent is proper and does not contravene privacy rights.

See also Sections 4607 (“agent” defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined).

Prob. Code § 4701 (added). Optional form of advance directive

Comment. Section 4701 provides the contents of the optional statutory form for the Advance Health Care Directive. Parts 1-5 of this form are largely drawn from Section 4 of the Uniform Health-Care Decisions Act (1993). This form supersedes the Statutory Form Durable Power of Attorney for Health Care in former Section 4771 and the related rules in former Sections 4772-4774, 4776-4778. Part 6 of this form continues a portion of the former statutory form applicable to patients in skilled nursing facilities.

Background from Uniform Act. The optional form set forth in this section incorporates the Section 2 [Prob. Code § 4670 *et seq.*] requirements applicable to advance health-care directives. An individual may complete all or any of the first four parts of the form. Any part of the form left blank is not to be given effect. For example, an individual may complete the instructions for health care part of the form alone. Or an individual may complete the power of attorney for health care part of the form alone. Or an individual may complete both the instructions and power of attorney for health care parts of the form. An individual may also, but need not, complete the parts of the form pertaining to donation of bodily organs and tissue and the designation of a primary physician.

Part 1, the power of attorney for health care, appears first on the form in order to ensure to the extent possible that it will come to the attention of a casual reader. This reflects the reality that the appointment of an agent is a more comprehensive approach to the making of health-care decisions than is the giving of an individual instruction, which cannot possibly anticipate all future circumstances which might arise.

Part [1.1] of the power of attorney for health care form requires only the designation of a single agent, but with opportunity given to designate a single first alternate and a single second alternate, if the individual chooses. No provision is made in the form for the designation of co-agents in order not to encourage the practice. Designation of co-agents is discouraged because of the difficulties likely to be encountered if the co-agents are not all readily available or do not agree. If co-agents are appointed, the instrument should specify that either is authorized to act if the other is not reasonably available. It should also specify a method for resolving disagreements.

Part [1.2] of the power of attorney for health care form grants the agent authority to make all health-care decisions for the individual subject to

any limitations which the individual may state in the form. Reference is made to artificial nutrition and hydration and other forms of treatment to keep an individual alive in order to ensure that the individual is aware that those are forms of health care that the agent would have the authority to withdraw or withhold absent specific limitation.

Part [1.3] of the power of attorney for health care form provides that the agent's authority becomes effective upon a determination that the individual lacks capacity, but as authorized by Section 2(c) [Prob. Code § 4682] a box is provided for the individual to indicate that the authority of the agent takes effect immediately.

Part [1.4] of the power of attorney for health care form directs the agent to make health-care decisions in accordance with the power of attorney, any instructions given by the individual in Part 2 of the form, and the individual's other wishes to the extent known to the agent. To the extent the individual's wishes in the matter are not known, the agent is to make health-care decisions based on what the agent determines to be in the individual's best interest. In determining the individual's best interest, the agent is to consider the individual's personal values to the extent known to the agent. Section 2(e) [Prob. Code § 4684] imposes this standard, whether or not it is included in the form, but its inclusion in the form will bring it to the attention of the individual granting the power, to the agent, to any [conservator] or surrogate, and to the individual's health-care providers.

[Part 1.5 implements Probate Code Section 4683.]

Part [1.6] of the power of attorney for health care form nominates the agent, if available, able, and willing to act, otherwise the alternate agents in order of priority stated, as [conservators] of the person for the individual. This provision is included in the form for two reasons. First, if an appointment of a [conservator] becomes necessary the agent is the one whom the individual would most likely want to serve in that role. Second, the nomination of the agent as [conservator] will reduce the possibility that someone other than the agent will be appointed as [conservator] who could use the position to thwart the agent's authority.

Because the variety of treatment decisions to which health-care instructions may relate is virtually unlimited, Part 2 of the form does not attempt to be comprehensive, but is directed at the types of treatment for which an individual is most likely to have special wishes. Part [2.1] of the form, entitled "End-of-Life Decisions," provides two alternative choices for the expression of wishes concerning the provision, withholding, or withdrawal of treatment. Under the first choice, the individual's life is not to be prolonged if the individual has an incurable and irreversible condition that will result in death within a relatively short time, if the individual becomes unconscious and, to a reasonable

degree of medical certainty, will not regain consciousness, or if the likely risks and burdens of treatment would outweigh the expected benefits. Under the second choice, the individual's life is to be prolonged within the limits of generally accepted health-care standards.... Part [2.2] of the form provides space for an individual to specify any circumstance when the individual would prefer not to receive pain relief. Because the choices provided in Parts [2.1-2.2] do not cover all possible situations, Part [2.3] of the form provides space for the individual to write out his or her own instructions or to supplement the instructions given in the previous subparts of the form. Should the space be insufficient, the individual is free to add additional pages.

The health-care instructions given in Part 2 of the form are binding on the agent, any [conservator], any surrogate, and, subject to exceptions specified in Section 7(e)-(f) [Prob. Code §§ 4734-4735], on the individual's health-care providers. Pursuant to Section 7(d) [Prob. Code § 4733], a health-care provider must also comply with a reasonable interpretation of those instructions made by an authorized agent, [conservator], or surrogate.

Part 3 of the form provides the individual an opportunity to express an intention to donate bodily organs and tissues at death. The options provided are derived from a suggested form in the Comment to Section 2 of the Uniform Anatomical Gift Act (1987). [See Health & Safety Code § 7150 *et seq.*]

Part 4 of the form provides space for the individual to designate a primary physician should the individual choose to do so. Space is also provided for the designation of an alternate primary physician should the first designated physician not be available, able, or willing to act.

[Part 5.1] of the form conforms with the provisions of Section 12 [Prob. Code § 4660] by providing that a copy of the form has the same effect as the original....

The form does not require formal acceptance by an agent. Formal acceptance by an agent has been omitted not because it is an undesirable practice but because it would add another stage to executing an advance health-care directive, thereby further reducing the number of individuals who will follow through and create directives. However, practitioners who wish to adapt this form for use by their clients are strongly encouraged to add a formal acceptance. Designated agents have no duty to act until they accept the office either expressly or through their conduct. Consequently, requiring formal acceptance reduces the risk that a designated agent will decline to act when the need arises. Formal acceptance also makes it more likely that the agent will become familiar with the principal's personal values and views on health care. While the form does not require formal acceptance, the explanation to the form

does encourage principals to talk to the person they have named as agent to make certain that the designated agent understands their wishes and is willing to take the responsibility.

[Adapted from Unif. Health-Care Decisions Act § 4 comment (1993).]

Prob. Code § 4711 (added). Patient’s designation of surrogate

Comment. The first sentence of Section 4711 is drawn from Section 5(b) of the Uniform Health-Care Decisions Act (1993). Both the patient and the surrogate must be adults. See Sections 4625 (“patient” defined), 4643 (“surrogate” defined). “Adult” includes an emancipated minor. See Fam. Code § 7002 (emancipation). “Personally informing,” as used in this section, includes both oral and written communications. The second sentence is intended to guard against the possibility of giving effect to obsolete oral statements entered in the patient’s record.

See also Sections 4617 (“health care decision” defined), 4619 (“health care institution” defined), 4625 (“patient” defined), 4635 (“reasonably available” defined), 4641 (“supervising health care provider” defined), 4643 (“surrogate” defined).

Background from Uniform Act. While a designation of an agent in a written power of attorney for health care is preferred, situations may arise where an individual will not be in a position to execute a power of attorney for health care. In that event, subsection (b) affirms the principle of patient autonomy by allowing an individual to designate a surrogate by personally informing the supervising health-care provider. The supervising health-care provider would then, in accordance with Section 7(b) [Prob. Code § 4731], be obligated to promptly record the designation in the individual’s health-care record. An oral designation of a surrogate made by a patient directly to the supervising health-care provider revokes a previous designation of an agent. See Section 3(a) [Prob. Code § 4695(a)]. [Adapted from Unif. Health-Care Decisions Act § 5(b) comments (1993).]

Prob. Code § 4714 (added). Standard governing surrogate’s health care decisions

Comment. Section 4714 is drawn from Section 5(f) of the Uniform Health-Care Decisions Act (1993). This standard is consistent with the health care decisionmaking standard applicable to agents. See Section 4684.

See also Sections 4617 (“health care decision” defined), 4623 (“individual health care instruction” defined), 4625 (“patient” defined), 4643 (“surrogate” defined).

Background from Uniform Act. Section 5(f) imposes on surrogates the same standard for health-care decision making as is prescribed for

agents in Section 2(e) [Prob. Code § 4684]. The surrogate must follow the patient's individual instructions and other expressed wishes to the extent known to the surrogate. To the extent such instructions or other wishes are unknown, the surrogate must act in the patient's best interest. In determining the patient's best interest, the surrogate is to consider the patient's personal values to the extent known to the surrogate. [Adapted from Unif. Health-Care Decisions Act § 5(f) comment (1993).]

Prob. Code § 4730 (added). Supervising health care provider's duty to communicate

Comment. Section 4730 is drawn from Section 7(a) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4617 ("health care decision" defined), 4625 ("patient" defined), 4641 ("supervising health care provider" defined).

Background from Uniform Act. Section 7(a) further reinforces the Act's respect for patient autonomy by requiring a supervising health-care provider, if possible, to promptly communicate to a patient, prior to implementation, a health-care decision made for the patient and the identity of the person making the decision. [Adapted from Unif. Health-Care Decisions Act § 7(a) comment (1993).]

Prob. Code § 4731 (added). Supervising health care provider's duty to record relevant information

Comment. Subdivision (a) of Section 4731 is drawn from Section 7(b) of the Uniform Health-Care Decisions Act (1993). With respect to recording notice of revocation of a power of attorney for health care, this section continues the substance of part of former Section 4727(b). The recordkeeping duty continues part of former Health and Safety Code Sections 7186.5(c) and 7188 (Natural Death Act).

Subdivision (b) continues the substance of part of former Section 4727(b) and applies the same duty to surrogate disqualification.

See also Sections 4605 ("advance health care directive" defined), 4625 ("patient" defined), 4629 ("power of attorney for health care" defined), 4641 ("supervising health care provider" defined), 4643 ("surrogate" defined).

Background from Uniform Act. The recording requirement in Section 7(b) reduces the risk that a health-care provider or institution, or agent, [conservator] or surrogate, will rely on an outdated individual instruction or the decision of an individual whose authority has been revoked. [Adapted from Unif. Health-Care Decisions Act § 7(b) comment (1993).]

Prob. Code § 4732 (added). Primary physician's duty to record relevant information

Comment. Section 4732 is drawn from Section 7(c) of the Uniform Health-Care Decisions Act (1993). This duty generally continues recordkeeping duties in former Health and Safety Code Sections 7186.5(c), 7188, and 7189 (Natural Death Act).

See also Sections 4607 (“agent” defined), 4609 (“capacity” defined), 4613 (“conservator” defined), 4617 (“health care decision” defined), 4623 (“individual health care instruction” defined), 4625 (“patient” defined), 4631 (“primary physician” defined).

Background from Uniform Act. Section 7(c) imposes recording and communication requirements relating to determinations that may trigger the authority of an agent, [conservator] or surrogate to make health-care decisions on an individual's behalf. The determinations covered by these requirements are those specified in Section 2(c)-(d) [Prob. Code §§ 4658 & 4682 respectively]. [Adapted from Unif. Health-Care Decisions Act § 7(c) comment (1993).]

Prob. Code § 4736 (added). Duty of declining health care provider or institution

Comment. Section 4736 is drawn in part from Section 7(g) of the Uniform Health-Care Decisions Act (1993). This section applies to situations where the health care provider or institution declines to comply under Section 4734 or 4735. This section continues the duty to transfer provided in former Health and Safety Code Sections 7187.5 (2d sentence) and 7190 (Natural Death Act). Subdivision (c) continues statutory recognition of a duty to provide pain relief in former Health and Safety Code Section 7189.5(b). Nothing in this section requires administration of ineffective care. See Sections 4654, 4735.

See also Sections 4617 (“health care decision” defined), 4619 (“health care institution” defined), 4621 (“health care provider” defined), 4623 (“individual health care instruction” defined), 4625 (“patient” defined).

Background from Uniform Act. Section 7(g) requires a health-care provider or institution that declines to comply with an individual instruction or health-care decision to promptly communicate the refusal to the patient, if possible, and to any person then authorized to make health-care decisions for the patient. The provider or institution also must provide continuing care to the patient until a transfer can be effected. In addition, unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, the health-care provider or institution must immediately make all reasonable efforts to assist in the transfer of the patient to another health-care provider or institution that is

willing to comply with the instruction or decision. [Adapted from Unif. Health-Care Decisions Act § 7(g) comment (1993).]

Prob. Code § 4740 (added). Immunities of health care provider and institution

Comment. Section 4740 is drawn in part from Section 9(a) of the Uniform Health-Care Decisions Act (1993) and supersedes former Sections 4727(f) and 4750 (durable power of attorney for health care). This section also supersedes former Health and Safety Code Section 7190.5 (Natural Death Act). The major categories of actions listed in subdivisions (a)-(d) are given as examples and not by way of limitation on the general rule stated in the introductory paragraph.

The good faith standard of former law is continued in this section. Like former law, this section protects the health care provider who acts in good faith reliance on a health care decision made by an agent pursuant to this division. The reference to acting in accordance with generally accepted health care standards makes clear that a health care provider is not protected from liability for malpractice. The specific qualifications built into the rules provided in former Section 4750(a) are superseded by the good faith rule in this section and by the affirmative requirements of other provisions. See, e. g., Sections 4683(a) (scope of agent's authority) (compare to second part of introductory language of former Section 4750(a)), 4684 (standard governing agent's health care decisions) (compare to former Section 4750(a)(1)-(2)). See also Section 4733 (duty of health care provider or institution to comply with health care instructions and decisions), 4734 (health care provider's or institution's right to decline), 4736 (duty of declining health care provider or institution).

See also Sections 4605 ("advance health care directive" defined), 4617 ("health care decision" defined), 4619 ("health care institution" defined), 4621 ("health care provider" defined), 4625 ("patient" defined).

Background from Uniform Act. Section 9 [Prob. Code §§ 4740-4741] grants broad protection from liability for actions taken in good faith. Section 9(a) permits a health-care provider or institution to comply with a health-care decision made by a person appearing to have authority to make health-care decisions for a patient; to decline to comply with a health-care decision made by a person believed to be without authority; and to assume the validity of and to comply with an advance health-care directive. Absent bad faith or actions taken that are not in accord with generally accepted health-care standards, a health-care provider or institution has no duty to investigate a claim of authority or the validity of an advance health-care directive. [Adapted from Unif. Health-Care Decisions Act § 9(a) comment (1993).]

Prob. Code § 4741 (added). Immunities of agent and surrogate

Comment. Section 4741 is drawn from Section 9(b) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4607 (“agent” defined), 4617 (“health care decision” defined), 4643 (“surrogate” defined).

Background from Uniform Act. Section 9(b) protects agents and surrogates acting in good faith from liability for making a health-care decision for a patient. Also protected from liability are individuals who mistakenly but in good faith believe they have the authority to make a health-care decision for a patient. For example, an individual who has been designated as agent in a power of attorney for health care might assume authority unaware that the power has been revoked. Or a family member might assume authority to act as surrogate unaware that a family member having a higher priority was reasonably available and authorized to act. [Adapted from Unif. Health-Care Decisions Act § 9(b) comment (1993).]

Prob. Code § 4750 (added). Judicial intervention disfavored

Comment. This section makes clear that judicial involvement in health care decisionmaking is disfavored. See Section 4650(c) (legislative findings). Subdivision (a) of Section 4750 continues former Section 4900 to the extent it applied to powers of attorney for health care.

Subdivision (b) is drawn from Section 2(f) of the Uniform Health-Care Decisions Act (1993).

Subdivision (c) is drawn from Sections 2(f) and 5(g) of the Uniform Health-Care Decisions Act (1993).

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4617 (“health care decision” defined), 4625 (“patient” defined), 4633 (“principal” defined), 4643 (“surrogate” defined).

Prob. Code § 4751 (added). Cumulative remedies

Comment. Section 4751 continues former Section 4901 to the extent it applied to powers of attorney for health care and supersedes Health & Safety Code Section 7191.5(h) (Natural Death Act) to the extent it applied to remedies.

Prob. Code § 4765 (added). Petitioners

Comment. Section 4765 continues former Section 4940 to the extent it applied to powers of attorney for health care, with some omissions and clarifications appropriate for the scope of this division. The purposes for which a person may file a petition under this part are limited by other rules. See Sections 4752 (effect of provision in advance directive attempting to limit right to petition), 4753 (limitations on right to

petition), 4766 (petition with respect to advance directive). See also Section 4751 (other remedies not affected).

See also Sections 4607 (“agent” defined), 4613 (“conservator” defined), 4619 (“health care institution” defined), 4625 (“patient” defined), 4641 (“supervising health care provider” defined), 4643 (“surrogate” defined).

Prob. Code § 4766 (added). Purposes of petition

Comment. Section 4766 continues the substance of former Section 4942 to the extent it applied to powers of attorney for health care, and adds language relating to advance directives and surrogates for consistency with the scope of this division.

A determination of capacity under subdivision (a) is subject to the Due Process in Competency Determinations Act. See Sections 810-813.

Under subdivision (c), the patient’s desires as expressed in the power of attorney for health care, individual health care instructions, or otherwise made known to the court provide the standard for judging the acts of the agent or surrogate. See Section 4714 (standard governing surrogate’s health care decisions). Where it is not possible to use a standard based on the patient’s desires because they are not stated in an advance directive or otherwise known or are unclear, subdivision (c) provides that the “patient’s best interest” standard be used.

Subdivision (d) permits the court to terminate health care decisionmaking authority where an agent or surrogate is not complying with the duty to carry out the patient’s desires or act in the patient’s best interest. See Section 4714 (standard governing surrogate’s health care decisions). Subdivision (d) permits termination of authority under an advance health care directive not only where an agent, for example, is acting illegally or failing to perform the duties under a power of attorney or is acting contrary to the known desires of the principal, but also where the desires of the principal are unknown or unclear and the agent is acting in a manner that is clearly contrary to the patient’s best interest. The patient’s desires may become unclear as a result of developments in medical treatment techniques that have occurred since the patient’s desires were expressed, such developments having changed the nature or consequences of the treatment.

An advance health care directive may limit the authority to petition under this part. See Sections 4752 (effect of provision in advance directive attempting to limit right to petition), 4753 (limitations on right to petition).

See also Sections 4605 (“advance health care directive” defined), 4607 (“agent” defined), 4609 (“capacity” defined), 4613 (“conservator”

defined), 4629 (“power of attorney for health care” defined), 4633 (“principal” defined), 4643 (“surrogate” defined).

CONFORMING REVISIONS

Gov’t Code § 8205 (technical amendment). Duties of notary public

Comment. Subdivision (a)(2) of Section 8205 is amended to recognize that advance health care directives are treated separately by statute from powers of attorney. See Prob. Code §§ 4600 *et seq.* (Health Care Decisions Law), 4673 (witnessing or notarization of advance health care directive executed in skilled nursing facility).

Health & Safety Code § 1569.156 (amended). Information and education on advance directives in residential care facility

Comment. Subdivision (b) of Section 1569.156 is amended for conformity with the Health Care Decisions Law, Probate Code Section 4600 *et seq.* “Advance health care directive” under Probate Code Section 4605 is a broad term that includes powers of attorney for health care (defined in Probate Code Section 4629) and individual health care instructions (defined in Probate Code Section 4623). The reference to “some other form” at the end of subdivision (b) is retained out of an abundance of caution. All recognized forms of advance health care directives for adults who lack decisionmaking capacity are intended to be encompassed by the Health Care Decisions Law. See, e.g., Prob. Code §§ 4651 (scope of law), 4665 (application to existing advance directives). Specifically, declarations under former Section 7186.5 of the Natural Death Act are governed by the new law and are included in the term “advance health care directive.” See former Health & Safety Code §§ 7185 & 7186.5 Comments; Prob. Code §§ 4623 & Comment, 4665.

Health & Safety Code § 7100 (amended). Right to control disposition of remains

Comment. Subdivision (a)(1) of Section 7100 is amended to refer to the Health Care Decisions Law, which supersedes the former provisions governing durable powers of attorney for health care, and to conform language to the usage in the new law. The reference to “execution” of a power of attorney “pursuant to” the California statute has been replaced by a reference to the law “governing” powers of attorney. This revision makes the scope of the authority granted by this section consistent with the general rules concerning recognition of powers of attorney for health care executed in other jurisdictions. See Prob. Code §§ 4605 (“advance

health care directive” defined), 4676 (validity of written advance directive executed in another jurisdiction).

Health & Safety Code § 7191 (repealed). Crimes

Comment. Subdivisions (a) and (b) of former Section 7191 are superseded by Probate Code Section 4742, which provides statutory damages instead of criminal penalties.

Subdivisions (c) and (d) are replaced by Probate Code Section 4743 (criminal penalties).

Subdivisions (e) and (f) are superseded by the prohibition in Probate Code Section 4677 (restriction on requiring or prohibiting advance directive).

The rule in subdivision (g) is continued in Probate Code Section 4742(c) (statutory damages cumulative with other remedies).

Health & Safety Code § 7191.5 (repealed). Effect of death on life insurance or annuity

Comment. Subdivision (a) of former Section 7191.5 is generalized in Probate Code Section 4656 (effect on death benefits).

Subdivision (b) is replaced by Probate Code Section 4656.

Subdivision (c) is continued in Probate Code Section 4677 (restriction on requiring or prohibiting advance directive) without substantive change.

Subdivision (d) is continued and generalized in Probate Code Section 4655(a) (impermissible constructions).

Subdivision (e) is superseded by Probate Code Section 4651(b)(1) (authority not affected). See also Prob. Code § 4657 (presumption of capacity)

Subdivision (f) is continued in Probate Code Section 4654 (compliance with generally accepted health care standards) without substantive change.

Subdivision (g) is continued in Probate Code Section 4653 (mercy killing, assisted suicide, euthanasia not approved) without substantive change.

Subdivision (h) is superseded by Probate Code Sections 4651(b) (other authority not affected) and 4751 (cumulative remedies).

Health & Safety Code § 7192 (repealed). Presumption of validity of declaration

Comment. Former Section 7192 is continued and generalized in Probate Code Section 4676(b) (validity of written advance directive executed in another jurisdiction).

Health & Safety Code § 7192.5 (repealed). Validity of declarations executed in another state

Comment. Former Section 7192.5 is continued in Probate Code Section 4676(a) (validity of written advance directive executed in another jurisdiction) without substantive change.

Health & Safety Code § 7193.5 (repealed). Instruments to be given effect

Comment. Former Section 7193.5 is superseded by Probate Code Sections 4665 (application to existing advance directives) and 4676 (validity of written advance directive executed in another jurisdiction). See also Prob. Code § 4605 (“advance health care directive” defined).

Prob. Code § 2355 (amended). Health care where conservatee lacks capacity

Comment. Subdivision (a) of Section 2355 is amended to add the second sentence providing a standard for making health care decisions. This standard is the same in substance as the standard applicable to other surrogate health care decisionmakers under the Health Care Decisions Law of Division 4.7 (commencing with Section 4600). See Sections 4684 (standard governing agent’s health care decisions under power of attorney for health care), 4714 (standard governing statutory surrogate’s health care decisions). Under this standard, the surrogate has both the right and fiduciary duty (“shall make health care decisions”) to make a decision based on the individual circumstances of the conservatee. As amended, subdivision (a) is consistent with *Conservatorship of Drabick*, 220 Cal. App. 3d 185, 245 Cal. Rptr. 840 (1988):

Incapacitated patients “retain the right to have appropriate medical decisions made on their behalf. An appropriate medical decision is one that is made in the patient’s best interests, as opposed to the interests of the hospital, the physicians, the legal system, or someone else. To summarize, California law gives persons a right to determine the scope of their own medical treatment, this right survives incompetence in the sense that incompetent patients retain the right to have appropriate decisions made on their behalf, and Probate Code section 2355 delegates to conservators the right and duty to make such decisions.

Id. at 205. Use of the terms “health care” and “health care decision” from the Health Care Decisions Law make clear that the scope of health care decisions that can be made by a conservator under this section is the same as provided in the Health Care Decisions Law.

The importance of the statutory language concerning the exclusive authority of the conservator and the duty this places on the conservator was also emphasized in *Drabick*:

The statute gives the conservator the exclusive authority to exercise the conservatee's rights, and it is the conservator who must make the final treatment decision regardless of how much or how little information about the conservatee's preferences is available. There is no necessity or authority for adopting a rule to the effect that the conservatee's desire to have medical treatment withdrawn must be proved by clear and convincing evidence or another standard. Acknowledging that the patient's expressed preferences are relevant, it is enough for the conservator, who must act in the conservatee's best interests, to consider them in good faith.

Id. at 211-12. The intent of the rule in subdivision (a) is to protect and further the patient's interest in making a health care decision in accordance with the patient's expressed desires, where known, and if not, to make a decision in the patient's best interest, taking personal values into account. The necessary determinations are to be made by the conservator, whether private or public, in accordance with the statutory standard. Court control or intervention in this process is neither required by statute, nor desired by the courts. See, e.g., *Conservatorship of Morrison*, 206 Cal. App. 3d 304, 312, 253 Cal. Rptr. 530 (1988). *Drabick*, 200 Cal. App. 3d at 198-200. See also Sections 4650(c) (legislative findings), 4750 (judicial intervention disfavored).

This section does not specify any special evidentiary standard for the determination of the conservatee's wishes or best interest. Consequently, the general rule applies: the standard is by preponderance of the evidence. Proof is not required by clear and convincing evidence.

Prob. Code § 3208 (amended). Order authorizing treatment

Comment. Subdivision (a) of Section 3208 is amended to use the terminology of Section 3200. See Section 3200 Comment. Other technical, nonsubstantive changes are also made. The reference to "informed" consent has been omitted as surplus. See Section 3805 Comment.

New subdivision (b) continues former subdivision (d) of Section 3201 without substantive change.

A new subdivision (c) is added to permit withholding or withdrawal of health care, including artificial nutrition and hydration. This amendment extends the authority of the court to authorize health care decisions to the same extent as surrogates and subject to the same standards as provided in the Health Care Decisions Law. See, e.g., Sections 4684 (standard governing agent's health care decisions under power of attorney for health care), 4714 (standard governing surrogate's health care decisions).

Former subdivisions (b)-(d) are continued in Section 3208.5 without substantive change. See Section 3208.5 Comment.

Prob. Code § 3210 (amended). Procedure supplemental and alternative

Comment. Subdivisions (a) and (b) of Section 3210 are amended to use the terminology of Section 3200. See Section 3200 Comment. Other technical, nonsubstantive changes are also made. The second clause added to subdivision (a) continues former subdivision (f) of Section 3201 without substantive change. The erroneous reference to “this chapter” in the former provision is corrected.

Subdivision (c) continues and generalizes former subdivision (e) of Section 3201. Subdivision (c) applies to all health care institutions, as defined in Section 3200(c), not just long-term health care facilities, as defined in Health and Safety Code Section 1418.8(b). Other technical, nonsubstantive changes are also made.

Prob. Code § 4121 (amended, revised comment). Formalities for executing a power of attorney

Comment. Subdivision (b) of Section 4121 is amended to make clear that the person signing at the principal’s direction must be an adult. This is consistent with the language of Section 4673 (formalities for executing written advance health care directive).

Revised Comment. Section 4121 provides the general execution formalities for a power of attorney under this division. A power of attorney that complies with this section is legally sufficient as a grant of authority to an attorney-in-fact. Special rules apply to a statutory form power of attorney. See Section 4402.

The dating requirement in subdivision (a) generalizes the rule applicable to durable powers of attorney for health care under former Civil Code Section 2432(a)(2). This rule is also consistent with the statutory forms. See Sections 4401 (statutory form power of attorney).

In subdivision (b), the requirement that a power of attorney be signed by the principal or at the principal’s direction continues a rule implicit in former law. See former Civ. Code §§ 2400, 2410(c). In addition, it generalizes the rule applicable to durable powers of attorney for health care under former Civil Code Section 2432.

The requirement that the power of attorney be either acknowledged or signed by two witnesses, in subdivision (c), generalizes part of the rule applicable to durable powers of attorney for health care under former Civil Code Section 2432(a)(3). Former general rules did not require either acknowledgment or witnessing. However, the statutory form power of attorney provided for acknowledgment. See former Civ. Code § 2475 (now Prob. Code § 4401). This rule still applies to the statutory form power of attorney; witnessing does not satisfy Section 4402.

Subdivision (c) provides the general rule as to witnessing; specific qualifications for witnesses are provided in Section 4122.

Nothing in this section affects the requirements concerning recordable instruments. A power of attorney legally sufficient as a grant of authority under this division must satisfy the general rules concerning recordation in Civil Code Sections 1169-1231. To facilitate recordation of a power of attorney granting authority concerning real property, the power of attorney should be acknowledged before a notary, whether or not it is witnessed.

See also Sections 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4122 (amended). Requirements for witnesses

Comment. Section 4122 is amended to delete a reference to powers of attorney for health care, which are governed by Division 4.7 (commencing with Section 4600) (Health Care Decisions Law). Witnessing requirements of this section, to the extent they applied to health care powers, are continued in Section 4674(a)-(c) without substantive change.

This section is not subject to limitation in the power of attorney. See Section 4101. See also Sections 4014 (“attorney-in-fact” defined), 4022 (“power of attorney” defined), 4026 (“principal” defined).

Prob. Code § 4653 (repealed). Validity of durable power of attorney for health care executed elsewhere

Comment. Former Section 4653 is continued in Section 4676(a) without substantive change.

Prob. Code § 4701 (repealed). Witnesses of durable power of attorney for health care

Comment. The introductory clause and subdivision (a) of former Section 4701 are continued in the introductory clause and subdivision (c) of Section 4674 without substantive change.

Subdivisions (b)-(d) are continued in Section 4674(d)-(f) without substantive change.

Subdivision (e) is continued in Section 4675(a) without substantive change.

Prob. Code § 4721 (repealed). Availability of medical information to attorney-in-fact

Comment. Former Section 4721 is continued in Section 4678 without substantive change.

Prob. Code § 4723 (repealed). Unauthorized acts and omissions

Comment. The first sentence of former Section 4723 is continued in Section 4653 (mercy killing, assisted suicide, euthanasia not approved) without substantive change. The second sentence is continued in Section 4655(b) (impermissible constructions) without substantive change.

Prob. Code § 4724 (repealed). Principal's objections

Comment. Former Section 4724 is continued in Section 4689 without substantive change. See also Section 4695 (revocation of advance directive).

Prob. Code § 4725 (repealed). Restriction on execution of durable power of attorney for health care as condition for admission, treatment, or insurance

Comment. Former Section 4725 is continued in Section 4677 without substantive change.

Prob. Code § 4751 (repealed). Convincing evidence of identity of principal

Comment. Subdivisions (a) and (b) of former Section 4751 are not continued. See Civ. Code § 1185 (evidence of identity for purposes of acknowledgment of instruments).

Subdivision (c) is continued in Section 4675(b) without substantive change.

Prob. Code § 4752 (repealed). Presumption concerning power executed in other jurisdiction

Comment. Former Section 4752 is continued in Section 4676(b) without substantive change.

APPENDIX 7

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

**Enforcement of Judgments Under the
Family Code: Technical Revisions**

October 1999

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

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *Enforcement of Judgments Under the Family Code: Technical Revisions*, 29 Cal. L. Revision Comm'n Reports 695 (1999). This report is part of publication #206 [*1999-2000 Annual Report*].

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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October 15, 1999

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

This recommendation proposes a number of technical revisions to coordinate the rules in the Code of Civil Procedure and Family Code relating to enforceability and renewal of judgments under the Family Code, including judgments for support and judgments for possession or sale of property. The proposed legislation is not intended to make major substantive changes, but to eliminate overlapping and confusing rules and clarify some doubtful areas.

This recommendation is submitted pursuant to Resolution Chapter 81 of the Statutes of 1999.

Respectfully submitted,

Howard Wayne
Chairperson

ENFORCEMENT OF JUDGMENTS UNDER THE FAMILY CODE: TECHNICAL REVISIONS

This recommendation proposes a number of technical revisions to coordinate the rules in the Code of Civil Procedure and Family Code relating to enforceability and renewal of judgments under the Family Code, including judgments for support and judgments for possession or sale of property. The proposed legislation is not intended to make major substantive changes, but to eliminate overlapping and confusing rules and clarify some doubtful areas.¹

General Enforcement of Judgments Scheme

When the Enforcement of Judgments Law was enacted in 1982, it established a 10-year period of enforcement for money judgments and judgments for possession or sale of property.² This 10-year period is not tolled for any reason and when it expires the judgment becomes unenforceable. However, the judgment may be renewed by a simple procedure for filing an application for renewal with the court and giving the debtor notice and an opportunity to petition to vacate or modify the renewal. In addition, the statute preserves the ancient right to bring an action on the judgment, subject to the 10-

1. The Commission recommended remedial legislation in 1995, but the provisions relating to the Family Code enforcement issues were removed from the bill at its first hearing. See Senate Bill 832 (Kopp), as introduced, Feb. 23, 1995; *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm'n Reports 1, 16-25, 40, 52-54 (1995).

2. See generally Code Civ. Proc. §§ 683.010-683.320, as enacted by 1982 Cal. Stat. ch. 1364, § 2. The Enforcement of Judgments Law was enacted on Commission recommendation. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1009 (1982).

year statute of limitations in Code of Civil Procedure Section 337.5 and its exceptions and tolling features.

In the case of a money judgment payable in installments, the 10-year period of enforceability and the renewal scheme treated each installment as if it were a judgment entered on the date the installment fell due.³ This structure was intended to provide certainty as a foundation for the various enforcement procedures. It was intended to eliminate the doubt about when a judgment or part of a judgment was enforceable and to regularize the process of determining how much remained owing on a judgment.

Family Law Exceptions

The general scheme was not applied to judgments enforceable under the Family Law Act.⁴ The Enforcement of Judgments Law did not affect the rule in family law that the court has discretion as to the manner of enforcement of judgments.⁵ Nevertheless, some of the benefits of the scheme in the Enforcement of Judgments Law were extended to the Family Law Act by providing that judgments for child or spousal support could be enforced by a writ of execution *without* the need for a court order so long as the amounts owing were not more than 10 years overdue — after 10 years, overdue support payments were enforceable only in the court's discretion, and lack of diligence was to be considered in determining

3. Code Civ. Proc. § 683.030.

4. See Code Civ. Proc. § 683.310, as enacted by 1982 Cal. Stat. ch. 1364, § 2. The former Family Law Act was located at Civil Code Section 4000 *et seq.*, until replaced by the Family Code, operative January 1, 1994. See 1992 Cal. Stat. ch. 162, § 3.

5. See former Civ. Code § 4380 (see now Fam. Code § 290).

whether to permit enforcement.⁶ The 10-year period ran as to each installment when it fell due.⁷

Revisions of the Original Scheme

In 1986, Section 4384.5 was added to the Civil Code providing that a judgment for child or spousal support could be renewed by application under the general procedures in the Enforcement of Judgments Law.⁸ This section created the situation whereby the Enforcement of Judgments Law provided that the ministerial renewal procedure did not apply to the Family Law Act⁹ and the Family Law Act provided that the procedure could be used to renew enforceability of child or spousal support obligations.¹⁰ Effectively, however, the ministerial renewal would only affect enforcement by execution,

6. See former Civ. Code §§ 4383-4384, as enacted by 1982 Cal. Stat. ch. 497, §§ 15-16.

7. See former Civ. Code § 4384 (see now Fam. Code § 5102).

8. See former Civ. Code § 4384.5, as enacted by 1986 Cal. Stat. ch. 1046, § 1:

4384.5. Any party may renew a judgment for child or spousal support by filing an application for renewal of the judgment in the manner specified in Article 2 (commencing with Section 683.110) of Title 9 of Part 2 of the Code of Civil Procedure. Notwithstanding subdivision (b) of Section 683.110 of the Code of Civil Procedure, such a judgment shall not be renewed if the application is filed within five years from the time the judgment was previously renewed.

The meaning of the second sentence is unclear since it repeats the five-year limitation on frequency of ministerial renewals provided in Code of Civil Procedure Section 683.110(b). The 1986 version of Section 4384.5 was repealed and replaced by a new section of the same number. See 1992 Cal. Stat. ch. 718, § 3, discussed *infra*.

9. Code Civ. Proc. § 683.310. In 1991, Section 683.310 was amended to recognize the exception provided by former Civil Code Section 4384.5. 1991 Cal. Stat. ch. 110, § 15.

10. Former Civ. Code § 4384.5.

since other types of enforcement required application for a court order.¹¹

In 1987, Civil Code Section 4383 was amended to permit enforcement of child or family support by execution, without prior court approval, until five years after the child reaches the age of majority, and thereafter for amounts not more than 10 years overdue.¹² The 10-year rule was retained for enforcement of spousal support by a writ of execution.

Thus, by 1988, the Family Law Act had a hybrid system. The 10-year rule was no longer related to enforceability and renewal requirements, but only served as a limitation on the discretion of the court, making enforcement by writ of execution a procedural right for amounts not more than 10 years overdue (or more in the case of child and family support involving a child age 23 or less). Amounts more than 10 years overdue continued to be enforceable in the court's discretion without any renewal requirement.

It should also be noted that the renewal scheme in the Enforcement of Judgments Law, generally applicable to judgments for possession or sale, was also inapplicable to these types of judgments under the Family Law Act. In addition, there was no exception for enforcement by writ as in the case of support enforcement.

This situation changed dramatically in 1992 when the 1986 version of Civil Code Section 4384.5 was replaced by a new rule providing that judgments for child or spousal support or for arrearages are completely exempt from any renewal requirement and are enforceable until paid in full.¹³ In

11. Former Civ. Code § 4380.

12. See former Civ. Code § 4383, as amended by 1987 Cal. Stat. ch. 960, § 1. See also *In re Marriage of Wight*, 215 Cal. App. 3d 1590, 1594 n.4, 264 Cal. Rptr. 508 (1989).

13. See former Civ. Code § 4384.5, as enacted by 1992 Cal. Stat. ch. 718, § 3 (see now Fam. Code § 4502); Code Civ. Proc. § 683.130(c), as amended by

essence, although stated quite differently, the 1992 amendments to the Family Law Act returned the renewal and enforceability rules to their pre-1986 status. In other words, the 10-year limitations on enforceability and the ministerial renewal procedure did not apply to support judgments.

In 1993, the law was again revised to add a provision for the optional renewal of support judgments that had been deleted in 1992.¹⁴ The rules concerning judgments for possession or sale of property were not revised.

Current Law

In 1992 and 1993, this area of the law was also being reorganized in the course of creating the new Family Code.¹⁵ As a first step, the interrelated enforcement provisions were revised or carried over into the new code without substantive revision.¹⁶ At the same time, confusing an already complicated

1992 Cal. Stat. ch. 718, § 4. The 1992 version of former Civil Code Section 4384.5 provided:

4384.5. Notwithstanding any other provision of law, a judgment for child or spousal support, including a judgment for reimbursement or other arrearages, is exempt from any requirement that judgments be renewed. A judgment for child or spousal support, including all lawful interest and penalties computed thereon, is enforceable until paid in full.

14. See Code Civ. Proc. § 683.130(c), as amended by 1993 Cal. Stat. ch. 876, § 8.

15. The Family Code was enacted on Commission recommendation. See 1992 Cal. Stat. ch. 162 (AB 2650); 1992 Cal. Stat. ch. 163 (AB 2641) (conforming revisions); *Family Code*, 22 Cal. L. Revision Comm'n Reports 1 (1992); 1993 Cal. Stat. ch. 219 (AB 1500); 1993 Cal. Stat. ch. 876 (SB 1068) (*passim*); *1994 Family Code*, 23 Cal. L. Revision Comm'n Reports 1 & 9 n.1 (1993).

16. Code of Civil Procedure Section 683.310 was revised to provide as follows:

683.310. Except as otherwise provided in Section 4502 of the Family Code, this chapter does not apply to a judgment or order made or entered pursuant to the Family Code.

Family Code Section 4502, as enacted in 1992, carried forward the then-existing version of Civil Code Section 4384.5:

situation, many of these rules were undergoing amendment to eliminate the last vestiges of the 10-year rule.¹⁷ Attempts were made to coordinate the Family Code with the ongoing revisions occurring around it in 1993, but the task was not completed and the situation remains confused.¹⁸

4502. A party may renew a judgment for child, family, or spousal support as provided in Article 2 (commencing with Section 683.110) of Chapter 3 of Title 9 of Part 2 of the Code of Civil Procedure.

The special writ of execution rules from former Civil Code Section 4383 were continued in Family Code Sections 5100-5102 and 5103-5104 without substantive change. See *infra* note 18.

17. See 1992 Cal. Stat. ch. 718; 1993 Cal. Stat. ch. 876. These amendments, not sponsored by the Commission, occurred in parallel bills at the same sessions during which the Family Code was created.

18. Family Code Section 4502 was amended in 1993 to pick up the 1992 amendments to Civil Code Section 4384.5. It now provides:

4502. Notwithstanding any other provision of law, a judgment for child, family, or spousal support, including a judgment for reimbursement or other arrearages, is exempt from any requirement that judgments be renewed. A judgment for child, family, or spousal support, including all lawful interest and penalties computed thereon, is enforceable until paid in full.

The writ of execution rules from former Civil Code Sections 4383 and 4384, as revised in 1993, read as follows in their Family Code setting (as amended in 1994 and 1997):

Fam. Code § 5100. Enforcement of child or family support without prior court approval

5100. Notwithstanding Section 291, a child or family support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil Procedure or Section 11350.7 of the Welfare and Institutions Code without prior court approval as long as the support order remains enforceable.

Fam. Code § 5101. Enforcement of spousal support without prior court approval

5101. Notwithstanding Section 291, a spousal support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil Procedure or Section 11350.7 of the Welfare and Institutions Code without prior court approval as long as the support order remains enforceable.

Fam. Code § 5102. Period for enforcement of installment payments

5102. If a support order provides for the payment of support in installments, the period specified pursuant to this chapter runs as to each installment from the date the installment became due.

Fam. Code § 5103. Enforcement of support against employee benefit plan

5103. (a) Notwithstanding Section 2060, an order for the payment of child, family, or spousal support may be enforced against an employee benefit plan regardless of whether the plan has been joined as a party to the proceeding in which the support order was obtained.

(b) Notwithstanding Section 697.710 of the Code of Civil Procedure, an execution lien created by a levy on the judgment debtor's right to payment of benefits from an employee benefit plan to enforce an order for the payment of child, family, or spousal support continues until the date the plan has withheld and paid over to the levying officer, as provided in Section 701.010 of the Code of Civil Procedure, the full amount specified in the notice of levy, unless the plan is directed to stop withholding and paying over before that time by court order or by the levying officer.

(c) A writ of execution pursuant to which a levy is made on the judgment debtor's right to payment of benefits from an employee benefit plan under an order for the payment of child, family, or spousal support shall be returned not later than one year after the date the execution lien expires under subdivision (b).

Fam. Code § 5104. Application for writ

5104. (a) The application for a writ of execution shall be accompanied by an affidavit stating the total amount due and unpaid that is authorized to be enforced pursuant to Sections 5100 to 5103, inclusive, on the date of the application.

(b) If interest on the overdue installments is sought, the affidavit shall state the total amount of the interest and the amount of each due and unpaid installment and the date it became due.

(c) The affidavit shall be filed in the action and a copy shall be attached to the writ of execution delivered to the levying officer. The levying officer shall serve the copy of the affidavit on the judgment debtor when the writ of execution is first served on the judgment debtor pursuant to a levy under the writ.

The 1994 amendments of Family Code Sections 5100 and 5101 changed the "notwithstanding" clause to refer to Section 291 instead of Section 290. This change is puzzling. The purpose of the "notwithstanding" clause was to make clear that enforcement by writ of execution was available *without prior court approval*, which is the subject of Section 290. Section 291 provides a diligence factor to be considered by the court when court approval is sought for enforcement *after* the automatic writ enforcement period. Hence, the scope of Section 291 and Sections 5100-5101 are mutually exclusive and the notwithstanding clause is meaningless. Furthermore, as discussed *supra*, the period referred to in

Further legislative efforts in 1997 to improve collection of child support have resulted in additional amendments to some of the Family Code enforcement provisions without resolving the underlying inconsistencies.¹⁹

Commission Recommendations

The Commission proposes to reconcile the relationship between the Enforcement of Judgments Law and the Family Code. Existing law is confusing and potentially misleading.²⁰ Accordingly, the vestiges of the 10-year renewal rule as applicable to support judgments should be deleted from the Family Code and the renewal procedure should be made clearly optional. Specifically:

- The optional support order renewal rules in Code of Civil Procedure Section 683.130 should be moved to Family Code Section 4502 which makes clear that renewal is not required. This will unify some related rules and avoid the duplication between these two sections.
- Code of Civil Procedure Section 683.310 should be amended to eliminate the cross-reference to Family Code Section 4502, since that section no longer pro-

Section 291 by incorporation of Section 5100 *et seq.* is nonexistent, since those sections were amended to eliminate the period formerly incorporated.

19. See 1997 Cal. Stat. ch. 599, §§ 19-20 (amending Fam. Code §§ 5100-5101).

20. The contradiction between sections assuming there is a period of enforceability and sections providing that support judgments are enforceable until paid was noted in a recent case. *In re Marriage of Plescia*, 59 Cal. App. 4th 252, 259-62, 69 Cal. Rptr. 2d 120, 124-26 (1997) (doctrine of laches available, even though diligence under Section 291 no longer applicable to spousal support enforcement following elimination of 10-year rule in Section 5101). The proposed revisions are not intended to alter the equitable powers of the court.

For another case with an admirable summary of the changes in the law governing enforcement of support judgments, considered in the context of enforcing a 30-year old spousal support order, see *In re Marriage of Garcia*, 67 Cal. App. 4th 693, 79 Cal. Rptr. 2d 242 (1998).

vides an exception to the general judgment renewal procedure.

- Family Code Sections 291 (diligence) and 5102 (running of time on installments) should be repealed since there is no longer a limited period of enforceability.

The Commission also recommends making clear that judgments for possession or sale of property²¹ under the Family Code are subject to the general rules governing the period of enforceability and renewal on a mandatory basis, not on an optional basis as in the case of support judgments. The general renewal scheme in the Enforcement of Judgments Law applies to judgments for possession or sale of property.²² In recent years, the revisions of the law concerning enforcement and renewal of judgments under the Family Law Act, and now the Family Code, have focused on support enforcement, particularly child support. The policies supporting that legislation do not apply to enforcement of judgments for possession or sale of property. Thus, it is appropriate to clarify the law by applying the orderly general renewal procedure to these judgments.²³

21. The Family Code should also be amended to make clear that “property” includes both real and personal property, consistent with Code of Civil Procedure Section 680.310 in the Enforcement of Judgments Law. See proposed Fam. Code § 113 *infra*. This revision is in response to a concern raised in the Senate Judiciary Committee consultant’s analysis of SB 832 in 1995.

22. See Code Civ. Proc. §§ 683.020 (10-year period for enforcement of judgments), 683.110 (renewal of judgments).

23. In 1994, the Commission was informed that at least one judge has refused to exercise discretion under former Civil Code Section 4380 (now Family Code Section 290) on the grounds that the 10-year period of enforceability had expired, notwithstanding that Code of Civil Procedure Section 683.310 makes the general rules inapplicable to such judgments. A party who believes that Section 683.310 excuses compliance with renewal of judgments for sale or possession would not have thought to use the renewal procedure, and may even have concluded that that procedure was not available, since Section 683.130(c) permitting renewal of Family Code judgments refers only to support.

P R O P O S E D L E G I S L A T I O N

Code Civ. Proc. § 683.130 (amended). Time for filing application for renewal of judgment

SECTION 1. Section 683.130 of the Code of Civil Procedure is amended to read:

683.130. (a) In the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.

(b) ~~Except as otherwise specified in subdivision (c), in~~ *In* the case of a money judgment payable in installments, the application for renewal of the judgment may be filed:

(1) If the judgment has not previously been renewed, at any time as to past due amounts that at the time of filing are not barred by the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(2) If the judgment has previously been renewed, within the time specified by subdivision (a) as to the amount of the judgment as previously renewed and, as to any past due amounts that became due and payable after the previous renewal, at any time before the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

~~(c)(1) Notwithstanding any other provision of law, a judgment for child support, spousal support, or family support, or a judgment for reimbursement that includes, but is not limited to, reimbursement arising under Section 11350 of the Welfare and Institutions Code or other arrearages, and~~

~~including all lawful interest and penalties computed thereon, is exempt from any requirement that judgments be renewed. A judgment for child, spousal, or family support, or a judgment for reimbursement or other arrearages, and including all lawful interest and penalties computed thereon, is enforceable until paid in full.~~

~~(2) In the case of a money judgment whether payable in installments or not, for the payment of child support, spousal support, or family support, or for reimbursement or arrearages, and including all lawful interest computed thereon, an application for renewal of the judgment may be filed:~~

~~(A) If the judgment has not previously been renewed as to past due amounts, at any time.~~

~~(B) If the judgment has previously been renewed, the amount of the judgment as previously renewed and any past due amount that became due and payable after the previous renewal may be renewed at any time after five years has elapsed from the time the judgment was previously renewed.~~

Comment. Subdivision (c) of Section 683.130 is deleted as unnecessary because it duplicates rules in the Family Code. See Fam. Code § 4502. This is not a substantive change. The exemption from renewal requirements for support orders in subdivision (c)(1) is unnecessary because Section 683.310 makes clear that this chapter does not apply to judgments or orders made or entered under the Family Code. Reimbursement for child support under Welfare and Institutions Code Section 11350 is treated in the same fashion, as provided in Family Code Section 4502(a). The second sentence of subdivision (c)(1) is misplaced in this section pertaining to the time for filing an application for renewal. The period of enforceability of support orders is governed by Family Code Section 4502(a). The optional renewal procedure in Family Code Section 4502(b) continues the substance of subdivision (c)(2) of this section. See also Fam. Code § 290 (methods of enforcement).

Code Civ. Proc. § 683.310 (amended). Time for filing renewal application

SEC. 2. Section 683.310 of the Code of Civil Procedure is amended to read:

683.310. Except as otherwise provided in ~~Section 4502~~ of the Family Code, this chapter does not apply to a judgment or order made or entered pursuant to the Family Code.

Comment. Section 683.310 is amended to accommodate other exceptions in the Family Code and the possibility of future revisions in the Family Code. This is a technical, nonsubstantive change. Family Code Section 4502 provides an important exception, making the ministerial renewal scheme available as an option for support judgments. Moreover, Family Code Section 291 makes this chapter applicable to enforceability and renewal of judgments for possession or sale entered under the Family Code.

Code Civ. Proc. § 699.510 (amended). Issuance of writ of execution

SEC. 3. Section 699.510 of the Code of Civil Procedure is amended to read:

699.510. (a) Subject to subdivision (b), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) If the judgment creditor seeks a writ of execution to enforce a judgment made, entered, or enforceable pursuant to the Family Code, in addition to the requirements of this article, the judgment creditor shall satisfy the requirements of any applicable provisions of ~~Chapter 7 (commencing with~~

~~Section 5100) of Part 5 of Division 9 of the Family Code and Sections 290, 291, 2026, and 3556 of the Family Code.~~

Comment. The references to specific Family Code sections in subdivision (b) of Section 699.510 are deleted as unnecessary. If the court has made an order under Family Code Section 290 that affects the right to enforce support obligations by writ of execution, the order would have to be complied with. The reference to former Section 291 is obsolete; the new Section 291 does not apply to money judgments, and so is outside the scope of this section. References to Family Code Sections 2026 (reconciliation as amelioration of contempt) and 3556 (duty of support unaffected by failure or refusal of custody or visitation) are not relevant to issuance of a writ of execution under this section. The reference to Family Code Section 5100 *et seq.* is no longer relevant because the time limits on enforceability by writ have been removed from those sections. See Fam. Code §§ 5100-5101, as amended by 1993 Cal. Stat. ch. 876, §§ 21-22. The general reference to compliance with any additional rules in the Family Code is retained to draw attention to the possibility that special rules may exist or may be enacted in the future.

The references to Family Code Sections 2026 (reconciliation of parties to be considered as ameliorating factor in considering contempt of existing order) and 3556 (duty of support not affected by failure or refusal of custodial parent to implement custody or visitation rights of noncustodial parent) are unrelated to the purpose of this section. Issuance of a writ of execution to enforce a money judgment does not have anything to do with enforcement by contempt. Use of the contempt power to enforce payment of support is distinct from enforcement by a writ of execution. Reference to Section 3556 seems irrelevant since that section provides that there is no excuse. The original intent of subdivision (b) was to pull in the court's authority to control enforcement by writ for amounts that were more than 10 years overdue, including the diligence rule in what became Family Code Section 291.

While the general authority of the court under Family Code Section 290 still exists, there are no limitations on writ issuance stated in the listed sections. Family Code Sections 5100 and 5101 provide that a writ may be used without prior court approval as long as the judgment is enforceable (i.e., without time limitations).

Fam. Code § 113 (added). Property

SEC. 4. Section 113 is added to the Family Code, to read:

113. “Property” includes real and personal property and any interest therein.

Comment. Section 113 is a new provision added for drafting convenience. It is the same as Code of Civil Procedure Section 680.310. The context of a particular section may require that a word or phrase in that section be given a meaning different from the definition in this section. See Section 50. Special definitions used for a particular portion of this code would override the general definition in this section. *Id.*

Fam. Code § 290 (amended). Methods and time of enforcement

SEC. 5. Section 290 of the Family Code is amended to read:

290. *A Subject to Section 291, a judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by such any other order as the court in its discretion determines from time to time to be necessary.*

Comment. Section 290 is amended to apply the general rules concerning the period of enforceability and renewal of judgments in the Enforcement of Judgments Law to judgments for the possession or sale of property under the Family Code. Thus, for example, a judgment for sale would be unenforceable if it is not renewed within the 10-year period of Code of Civil Procedure Section 683.020. However, an action on the judgment may still be possible subject to the statute of limitations in Code of Civil Procedure Section 337.5. See Code Civ. Proc. § 683.020 & Comment. This amendment does not affect the rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502, 5100-5104.

Fam. Code § 291 (repealed). Effect of lack of diligence in seeking enforcement

SEC. 6. Section 291 of the Family Code is repealed.

~~291. The lack of diligence for more than the period specified in Chapter 7 (commencing with Section 5100) of Part 5 of Division 9 in seeking enforcement of a judgment or order made, entered, or enforceable pursuant to this code that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment or order under Section 290.~~

Comment. Section 291 is repealed because it is surplus. There is no longer any limitation on the period of enforceability of support. See Section 4502(a) (exception to general renewal requirement). The incorporated time limitations formerly in Section 5100 *et seq.* were removed in 1993. See 1993 Cal. Stat. ch. 876, §§ 21-22. The repeal of this section is not intended to affect the court's authority to make appropriate orders in the exercise of its discretion under Section 290 (methods of enforcement) nor to affect any other equitable powers the court may have. See, e.g., *In re Marriage of Plescia*, 59 Cal. App. 4th 252, 259-62, 69 Cal. Rptr. 2d 120, 124-26 (1997) (doctrine of laches available, even though diligence under Section 291 no longer applicable to spousal support enforcement following elimination of 10-year rule in Section 5101).

Fam. Code § 291 (added). Time of enforcement of judgment for possession or sale

SEC. 7. Section 291 is added to the Family Code, to read:

291. A judgment or order for possession or sale of property made or entered pursuant to this code is subject to the period of enforceability and the procedure for renewal provided by Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure.

Comment. Section 291 applies the general rules concerning the period of enforceability and renewal of judgments in the Enforcement of Judgments Law to judgments for the possession or sale of property under the Family Code. This provision does not affect the rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502 (period of support enforceability not limited; optional renewal of support judgments), 5100-5102 (enforcement of support by execution without prior court approval).

See also Section 113 ("property" includes real and personal property).

Fam. Code § 4502 (amended). Enforceability of support, optional renewal

SEC. 8. Section 4502 of the Family Code is amended to read:

4502. (a) Notwithstanding any other provision of law, a judgment for child, family, or spousal support, including a judgment for reimbursement *that includes, but is not limited*

to, reimbursement arising under Section 17402 or other arrearages, including all lawful interest and penalties computed thereon, is enforceable until paid in full and is exempt from any requirement that judgments be renewed. A judgment for child, family, or spousal support, including all lawful interest and penalties computed thereon, is enforceable until paid in full.

(b) Although not required, a judgment described in subdivision (a) optionally may be renewed pursuant to the procedure applicable to money judgments generally under Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. An application for renewal of a judgment described in subdivision (a), whether or not payable in installments, may be filed:

(1) If the judgment has not previously been renewed as to past due amounts, at any time.

(2) If the judgment has previously been renewed, the amount of the judgment as previously renewed and any past due amount that became due and payable after the previous renewal may be renewed at any time after a period of at least five years has elapsed from the time the judgment was previously renewed.

Comment. Subdivision (a) of Section 4502 is amended to add clarifying language concerning the scope of the enforceability rule from former subdivision (c)(1) of Code of Civil Procedure Section 683.130. The erroneous reference to former Welfare and Institutions Code Section 11350 (repealed by 1999 Cal. Stat. ch. 478, § 8) has also been corrected. The substance of the second sentence is combined with the first sentence for clarity and to avoid needing to repeat the scope of the rule.

Subdivision (b) is added to Section 4502 to continue the substance of the optional renewal procedure formerly in Code of Civil Procedure Section 683.130(c)(2). As the introductory clause of subdivision (b) makes clear, the ministerial renewal procedure is optional. The availability of renewal is intended to provide a simple and orderly manner for obtaining a currently accurate statement of the amount owing, taking into account past payments, unpaid accruals, and costs and interest

added to the judgment. The option of renewing pursuant to the general procedure in the Code of Civil Procedure has no effect on the enforceability of the amount due, as is clear from subdivision (a). The limitation on the frequency of optional renewals in subdivision (b)(2) is consistent with the policy of Code of Civil Procedure Section 683.110(b) and is intended to limit the opportunity to compound interest on the principal amount owing. See Code Civ. Proc. § 683.110(b) Comment.

See also Code Civ. Proc. § 683.310 (except as provided in Family Code, Code of Civil Procedure provisions on enforceability and renewal of judgments are inapplicable to judgment made or entered under Family Code); Fam. Code § 291 (enforceability and renewal of judgments for possession or sale).

Fam. Code § 5100 (amended). Enforcement of child or family support without prior court approval

SEC. 9. Section 5100 of the Family Code is amended to read:

5100. Notwithstanding Section 291 290, a child or family support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil Procedure or Section ~~11350.7 of the Welfare and Institutions Code 17522 of this code~~ without prior court approval as long as the support order remains enforceable.

Comment. Section 5100 is amended to change the notwithstanding clause to refer to Section 290 instead of Section 291. Section 290 provides the general rule concerning judicial discretion in enforcing judgments under the Family Code to which this section is an exception. Additionally, former Section 291 has been repealed and replaced by a new Section 291 that is not relevant to this section. The erroneous reference to former Welfare and Institutions Code Section 11350.7 (repealed by 1999 Cal. Stat. ch. 478, § 15) has been corrected.

Fam. Code § 5101 (amended). Enforcement of spousal support without prior court approval

SEC. 10. Section 5101 of the Family Code is amended to read:

5101. Notwithstanding Section 291 290, a spousal support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil

Procedure or Section 11350.7 of the Welfare and Institutions Code 17522 of this code without prior court approval as long as the support order remains enforceable.

Comment. Section 5101 is amended to change the notwithstanding clause to refer to Section 290 instead of Section 291. Section 290 provides the general rule concerning judicial discretion in enforcing judgments under the Family Code to which this section is an exception. Additionally, former Section 291 has been repealed and replaced by a new Section 291 that is not relevant to this section. The erroneous reference to former Welfare and Institutions Code Section 11350.7 (repealed by 1999 Cal. Stat. ch. 478, § 15) has been corrected.

Fam. Code § 5102 (repealed). Period for enforcement of installment payments

SEC. 11. Section 5102 of the Family Code is repealed.

~~5102. If a support order provides for the payment of support in installments, the period specified pursuant to this chapter runs as to each installment from the date the installment became due.~~

Comment. Section 5102 is repealed because it is surplus. There is no longer any limitation on the period of enforceability of support. See Section 4502(a).

APPENDIX 8

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

**Compensation for Loss of
Business Goodwill in Eminent Domain:
Selected Issues**

August 1999

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

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *Compensation for Loss of Business Goodwill in Eminent Domain: Selected Issues*, 29 Cal. L. Revision Comm'n Reports 719 (1999). This report is part of publication #206 [1999-2000 *Annual Report*].

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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August 12, 1999

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

This recommendation would clear up a number of technical questions that have arisen in connection with compensation for loss of business goodwill in eminent domain proceedings. It would make clear that the exchange of valuation data is to include compensation for loss of goodwill, and require an expert to identify the method of valuation and summarize the supporting data. And it would make clear that the claimed compensation for loss of goodwill is to be included in the final offer and demand of the parties.

This recommendation is submitted pursuant to Resolution Chapter 81 of the Statutes of 1999.

Respectfully submitted,

Arthur K. Marshall
Chairperson

COMPENSATION FOR LOSS OF BUSINESS GOODWILL IN EMINENT DOMAIN: SELECTED ISSUES

Under the Eminent Domain Law, in addition to compensation for the value of property taken and damage to the remainder, the property owner is entitled to compensation for loss of business goodwill resulting from the taking.¹ This recommendation addresses several issues that have arisen concerning application of provisions of the Eminent Domain Law to this element of compensation:

- Are data relating to compensation for loss of business goodwill required to be included in an exchange of valuation data?
- What are the proper techniques for calculation of loss of business goodwill?
- Are the parties' final offers and demands required to include compensation for loss of business goodwill?

Exchange of Valuation Data

The Eminent Domain Law provides for a pretrial exchange of valuation data on demand of a party.² The parties must provide a statement of valuation data for each witness who will testify on (1) the value of the property taken, (2) any damage or benefit to the remainder, or (3) the amount of "any other compensation required to be paid" by specified statutes, including Chapter 9 (commencing with Section 1263.010).³ Chapter 9 includes provisions that require compensation to be paid for loss of business goodwill.⁴

1. Code Civ. Proc. §§ 1263.510-1263.530.

2. Code Civ. Proc. §§ 1258.210-1258.300.

3. Code Civ. Proc. § 1258.250(d).

4. Code Civ. Proc. §§ 1263.510-1263.530.

Thus the statutes on their face require goodwill valuation data to be included in the data exchanged. However, a Court of Appeal opinion suggests that the statutes might be made clearer on this point. In *City of Fresno v. Harrison*,⁵ the city argued that its failure to provide goodwill valuation data did not violate the statute, “since it was ambiguous whether the special eminent domain discovery statutes applied to cases for recovery of goodwill under section 1263.510.”⁶ This interpretation derives from the city’s observation that the specific types of information required to be exchanged (which are listed in Code of Civil Procedure Section 1258.260) include factors more relevant to valuing tangible than intangible property and damage.

Code of Civil Procedure Section 1258.260 provides:

1258.260. (a) The statement of valuation data shall give the name and business or residence address of the witness and shall include a statement whether the witness will testify to an opinion as to any of the matters listed in Section 1258.250 and, as to each such matter upon which he will give an opinion, what that opinion is and the following items to the extent that the opinion on such matter is based thereon:

- (1) The interest being valued.
- (2) The date of valuation used by the witness.
- (3) The highest and best use of the property.
- (4) The applicable zoning and the opinion of the witness as to the probability of any change in such zoning.
- (5) The sales, contracts to sell and purchase, and leases supporting the opinion.
- (6) The cost of reproduction or replacement of the existing improvements on the property, the depreciation or obsolescence the improvements have suffered, and the method of calculation used to determine depreciation.

5. 154 Cal. App. 3d 296, 201 Cal. Rptr. 219 (1984).

6. 154 Cal. App. 3d at 302.

(7) The gross income from the property, the deductions from gross income, and the resulting net income; the reasonable net rental value attributable to the land and existing improvements thereon, and the estimated gross rental income and deductions therefrom upon which such reasonable net rental value is computed; the rate of capitalization used; and the value indicated by such capitalization.

(8) If the property is a portion of a larger parcel, a description of the larger parcel and its value.

(b) With respect to each sale, contract, or lease listed under paragraph (5) of subdivision (a), the statement of valuation data shall give:

(1) The names and business or residence addresses, if known, of the parties to the transaction.

(2) The location of the property subject to the transaction.

(3) The date of the transaction.

(4) If recorded, the date of recording and the volume and page or other identification of the record of the transaction.

(5) The price and other terms and circumstances of the transaction. In lieu of stating the terms contained in any contract, lease, or other document, the statement may, if the document is available for inspection by the adverse party, state the place where and the times when it is available for inspection.

(6) The total area and shape of the property subject to the transaction.

(c) If any opinion referred to in Section 1258.250 is based in whole or in substantial part upon the opinion of another person, the statement of valuation data shall include the name and business or residence address of such other person, his business, occupation, or profession, and a statement as to the subject matter to which his opinion relates.

(d) Except when an appraisal report is used as a statement of valuation data as permitted by subdivision (e), the statement of valuation data shall include a statement, signed by the witness, that the witness has read the statement of valuation data and that it fairly and correctly states his opinions and knowledge as to the matters therein stated.

(e) An appraisal report that has been prepared by the witness which includes the information required to be included in a statement of valuation data may be used as a statement of valuation data under this article.

The Court of Appeal notes that, of the factors listed in this section, those that may apply to goodwill are (1) the interest being valued, (2) the date of valuation, (3) the gross income, deductions and net income, and (4) the rate of capitalization and resulting value. The court states, "It is likely that section 1258.260 was written without contemplation of business goodwill valuation problems. If it is not explicit on the subject, as the trial court thought, it should be amended. However ill-fitting the words may be, the intent is clearly to expose fully the expert's opinion on the subject concerned."⁷

It is a straightforward matter to remove any uncertainty, and the Law Revision Commission recommends that this be done.

Calculation of Loss of Goodwill

There is no fixed method for valuing goodwill. The cases have held that the following techniques, among others, may be used:

- Market analysis.⁸
- "Excess income" method.⁹
- Capitalized value of net income or business profits, or some similar method of calculating present value of anticipated profits.¹⁰

7. *Id.* at 302-03.

8. *Community Dev. Comm'n v. Asaro*, 212 Cal. App. 3d 1297, 261 Cal. Rptr. 231 (1989).

9. *People ex rel. Dep't of Transp. v. Muller*, 36 Cal. 3d 263, 681 P. 2d 1340, 203 Cal. Rptr. 772 (1984).

10. *People ex rel. Dep't of Transp. v. Leslie*, 55 Cal. App. 4th 918, 64 Cal. Rptr. 2d 252 (1997).

It would be helpful to require that, in the exchange of valuation data, a goodwill valuation expert identify the method used to determine goodwill and summarize the data supporting the opinion.

Offer and Demand

The Eminent Domain Law requires that, at least 20 days before trial, the parties file and serve on each other their final offers and demands of compensation in the proceeding.¹¹ The statute does not define what is included in the meaning of the term “compensation”. If the plaintiff’s offer is unreasonable and the defendant’s demand reasonable in light of the evidence admitted and the compensation awarded in the proceeding, the defendant is entitled to litigation expenses.¹²

At least two appellate cases have indicated that the compensation referred to in this section does not include prejudgment interest (or ordinary costs).¹³ Unfortunately, these cases also include loose language (dictum) that the provision is not intended “to require the offer and demand to cover items other than the value of the part taken and damage, if any, to the remainder.”¹⁴ This interpretation would seem to exclude compensation for loss of goodwill from coverage of the section.

Notwithstanding the language in the cases, the intent of the law is that the offer and demand include compensation for loss of goodwill. The statute should be revised to make clear that the final offer and demand should include all statutorily

11. Code Civ. Proc. § 1250.410(a).

12. Code Civ. Proc. § 1250.410(b).

13. *Coachella Valley County Water Dist. v. Dreyfuss*, 91 Cal. App. 3d 949, 154 Cal. Rptr. 467 (1979); *People ex rel. Dep’t of Transp. v. Gardella Square*, 200 Cal. App. 3d 559, 246 Cal. Rptr. 139 (1988).

14. *Dreyfuss*, 91 Cal. App. 3d at 954; see also *Gardella Square*, 200 Cal. App. 3d at 568.

or constitutionally required compensation, including compensation for loss of goodwill. For the purpose of clarity, each offer and demand should also indicate whether or not interest and costs are included.

PROPOSED LEGISLATION

Code Civ. Proc. § 1250.410 (amended). Pretrial settlement offers

SECTION 1. Section 1250.410 of the Code of Civil Procedure is amended to read:

1250.410. (a) At least 20 days prior to the date of the trial on issues relating to compensation, the plaintiff shall file with the court and serve on the defendant its final offer of compensation in the proceeding and the defendant shall file and serve on the plaintiff its final demand for compensation in the proceeding. *The offer and the demand shall include all statutorily and constitutionally required compensation, including compensation for loss of goodwill if any, and shall state whether interest and costs are included.* Such offers and demands shall be the only offers and demands considered by the court in determining the entitlement, if any, to litigation expenses. Service shall be in the manner prescribed by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(b) If the court, on motion of the defendant made within 30 days after entry of judgment, finds that the offer of the plaintiff was unreasonable and that the demand of the defendant was reasonable viewed in the light of the evidence admitted and the compensation awarded in the proceeding, the costs allowed pursuant to Section 1268.710 shall include the defendant's litigation expenses.

In determining the amount of such litigation expenses, the court shall consider the offer required to be made by the plaintiff pursuant to Section 7267.2 of the Government Code and any other written offers and demands filed and served prior to or during the trial.

(c) If timely made, the offers and demands as provided in subdivision (a) shall be considered by the court on the issue of determining an entitlement to litigation expenses.

Comment. Subdivision (a) of Section 1250.410 is amended to counteract dictum in cases to the effect that the provision is not intended to require the offer and demand to cover items other than the value of the part taken and damage, if any, to the remainder. See, e.g., *Coachella Valley County Water Dist. v. Dreyfuss*, 91 Cal. App. 3d 949, 154 Cal. Rptr. 467 (1979); *People ex rel. Dep't of Transp. v. Gardella Square*, 200 Cal. App. 3d 559, 246 Cal. Rptr. 139 (1988).

The amendment makes clear that the final offer and demand should include all statutorily or constitutionally required compensation, including compensation for loss of goodwill. Although interest and costs are not covered by this provision, the amendment also requires, for the purpose of clarity, that each offer and demand also indicate whether or not interest and costs are included.

Code Civ. Proc. § 1258.260 (amended). Contents of statement of valuation data

SEC. 2. Section 1258.260 of the Code of Civil Procedure is amended to read:

1258.260. (a) The statement of valuation data shall give the name and business or residence address of the witness and shall include a statement whether the witness will testify to an opinion as to any of the matters listed in Section 1258.250 and, as to each such matter upon which he *the witness* will give an opinion, what that opinion is and the following items to the extent that the opinion ~~on such matter~~ is based ~~thereon~~ *on them*:

- (1) The interest being valued.
- (2) The date of valuation used by the witness.
- (3) The highest and best use of the property.
- (4) The applicable zoning and the opinion of the witness as to the probability of any change in such zoning.
- (5) The sales, contracts to sell and purchase, and leases supporting the opinion.
- (6) The cost of reproduction or replacement of the existing improvements on the property, the depreciation or obsolescence the improvements have suffered, and the method of calculation used to determine depreciation.

(7) The gross income from the property, the deductions from gross income, and the resulting net income; the reasonable net rental value attributable to the land and existing improvements thereon, and the estimated gross rental income and deductions therefrom upon which such *the* reasonable net rental value is computed; the rate of capitalization used; and the value indicated by such *the* capitalization.

(8) If the property is a portion of a larger parcel, a description of the larger parcel and its value.

(9) If the opinion concerns loss of goodwill, the method used to determine the loss and a summary of the data supporting the opinion.

(b) With respect to each sale, contract, or lease listed under paragraph (5) of subdivision (a), the statement of valuation data shall give:

(1) The names and business or residence addresses, if known, of the parties to the transaction.

(2) The location of the property subject to the transaction.

(3) The date of the transaction.

(4) If recorded, the date of recording and the volume and page or other identification of the record of the transaction.

(5) The price and other terms and circumstances of the transaction. In lieu of stating the terms contained in any contract, lease, or other document, the statement may, if the document is available for inspection by the adverse party, state the place where and the times when it is available for inspection.

(6) The total area and shape of the property subject to the transaction.

(c) If any opinion referred to in Section 1258.250 is based in whole or in substantial part upon the opinion of another person, the statement of valuation data shall include the name and business or residence address of such other person, his

and the business, occupation, or profession of the other person, and a statement as to the subject matter to which his opinion the opinion of the other person relates.

(d) Except when an appraisal report is used as a statement of valuation data as permitted by subdivision (e), the statement of valuation data shall include a statement, signed by the witness, that the witness has read the statement of valuation data and that it fairly and correctly states his *the* opinions and knowledge *of the witness* as to the matters ~~therein~~ *stated in it.*

(e) An appraisal report that has been prepared by the witness which includes the information required to be included in a statement of valuation data may be used as a statement of valuation data under this article.

Comment. Paragraph (9) is added to Section 1258.260(a) to make clear that the basis for an opinion as to loss of goodwill is to be included in the exchange of valuation data. This codifies the rule in *City of Fresno v. Harrison*, 154 Cal. App. 3d 296, 201 Cal. Rptr. 219 (1984).

Technical revisions are also made to the statute for consistency with contemporary statutory drafting techniques.

APPENDIX 9

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

REVISED RECOMMENDATION

**Eminent Domain Valuation Evidence:
Clarification of Evidence Code Section 822**

October 1999

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

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *Eminent Domain Valuation Evidence: Clarification of Evidence Code Section 822*, 29 Cal. L. Revision Comm'n Reports 733 (1999). This report is part of publication #206 [*1999-2000 Annual Report*].

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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October 15, 1999

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

Evidence Code Section 822(a)(1) provides that evidence of a sale of “property appropriated to a public use or a property interest so appropriated shall not be excluded under this section if the acquisition was for the same public use for which the property could have been taken by eminent domain.” The Law Revision Commission recommends clarification of this confusing language to effectuate its intended purpose.

This recommendation is submitted pursuant to Resolution Chapter 81 of the Statutes of 1999.

Respectfully submitted,

Howard Wayne
Chairperson

EMINENT DOMAIN VALUATION EVIDENCE:
CLARIFICATION OF EVIDENCE CODE
SECTION 822

The owner of property taken by eminent domain is entitled to receive as compensation the fair market value of the property taken. Fair market value is defined as:

[T]he highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.¹

The Evidence Code provides rules for proving the fair market value of property.² Evidence of a previous sale of the subject property or of comparable property, for example, is generally admissible, and may be used as a basis for an opinion as to the value of property.³

Sales to Public Entities

Historically, a previous sale of the subject property or of comparable property to a public entity that could have taken the property by eminent domain cannot be used as valuation

1. Code Civ. Proc. § 1263.320(a).

2. The rules were enacted as a result of a study by the Law Revision Commission. See *Recommendation and Study Relating to Evidence in Eminent Domain Proceedings*, 3 Cal. L. Revision Comm'n Reports, at A-1 (1961); *Recommendation Relating to Evidence of Market Value of Property*, 14 Cal. L. Revision Comm'n Reports 105 (1978); *Recommendation Relating to Application of Evidence Code Property Valuation Rules in Noncondemnation Cases*, 15 Cal. L. Revision Comm'n Reports 301 (1980).

3. Evid. Code §§ 815, 816.

evidence in an eminent domain proceeding. Evidence Code Section 822 provides in part:

822. (a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections 814 to 821, inclusive, the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property:

(1) The price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain

The reason for this exclusion is that a sale of property to a public entity is of doubtful validity as evidence of fair market value. “Such a sale does not involve a willing buyer and a willing seller. The costs, risks and delays of litigation are factors that often affect the ultimate price.... These sales, therefore, are not sales in the ‘open market’ and should not be considered in a determination of market value.”⁴

1987 Amendment of Evidence Code Section 822

Evidence Code Section 822(a)(1), precluding use of a sale of property to a public entity, was amended in 1987 to allow use of certain sales to public entities:⁵

[T]he price or other terms and circumstances of an acquisition of property appropriated to a public use or a property interest so appropriated shall not be excluded under this section if the acquisition was for the same public use for which the property could have been taken by eminent domain.

The meaning of this language is unclear. “The statutory wording is confusing because the exception language follows

4. *Recommendation and Study Relating to Evidence in Eminent Domain Proceedings*, 3 Cal. L. Revision Comm’n Reports A-1, A-7 (1961).

5. 1987 Cal. Stat. ch. 1278, § 1.

very closely the rule itself.”⁶ The confusion is more than academic — the court apparently misconstrued the provision in the only published appellate decision involving it to date, allowing evidence of prices paid by the same condemnor to acquire adjacent private property for public use.⁷

Intent of 1987 Language

The 1987 language was sponsored by the California Department of Transportation. According to a spokesperson for the Department of Transportation, the purpose and effect of this language is to prevent the automatic exclusion of evidence of an acquisition of property that, at the time of the acquisition, was already in use for the same public purpose for which it was acquired.⁸ Thus, for example, a municipal water district’s acquisition of the facilities of an existing water district may be a relevant comparable sale in valuing a similar acquisition by another water district.⁹

This is a very narrow exception. The reason for it is that

it is difficult to find market transactions comparable to an acquisition for a public use of property that is already subject to the same type of public use (*e.g.*, a municipality’s acquisition of the facilities of a water company). Thus, the exception is considered most applicable to the condemnation of public utility properties or special districts.¹⁰

6. 1 N. Matteoni & H. Veit, *Condemnation Practice in California* § 4.29, at 120 (Cal. Cont. Ed. Bar, 2d ed. 1998).

7. See *City & County of San Francisco v. Golden Gate Heights Invs.*, 14 Cal. App. 4th 1203, 1209-10, 18 Cal. Rptr. 2d 467, 470 (1993).

8. 11 CEB Real Property Law Rep. 29 (Jan. 1988).

9. 11 CEB Real Property Law Rep. 29-30 (Jan. 1988).

10. 1 N. Matteoni & H. Veit, *Condemnation Practice in California* § 9.54, at 433-34 (Cal. Cont. Ed. Bar, 2d ed. 1998).

Recommended Clarification

The Law Revision Commission recommends clarification of the language of Evidence Code Section 822(a) to more clearly effectuate its intended purpose.

PROPOSED LEGISLATION

Evid. Code § 822 (amended). Matter inadmissible as evidence

SECTION 1. Section 822 of the Evidence Code is amended to read:

822. (a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections 814 to 821, inclusive, the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property:

(1) The price or other terms and circumstances of an acquisition of property ~~or a property interest~~ if the acquisition was for a public use for which the property could have been taken by eminent domain, ~~except that the~~ . *The price or other terms and circumstances of an acquisition of property appropriated to a public use or a property interest so appropriated for a public use shall not be excluded under this section if the acquisition was for the same public use for which the property could have been taken by eminent domain at the time of the acquisition the property was already appropriated to the same public use. As used in this paragraph, "property appropriated to public use" has the meaning provided in Section 1235.180 of the Code of Civil Procedure.*

(2) The price at which an offer or option to purchase or lease the property ~~or property interest~~ being valued or any other property was made, or the price at which such *the* property ~~or interest~~ was optioned, offered, or listed for sale or lease, except that an option, offer, or listing may be introduced by a party as an admission of another party to the proceeding; but nothing in this subdivision permits an admission to be used as direct evidence upon any matter that may be shown only by opinion evidence under Section 813.

(3) The value of any property ~~or property interest~~ as assessed for taxation purposes or the amount of taxes which may be due on the property, but nothing in this subdivision prohibits the consideration of actual or estimated taxes for the purpose of determining the reasonable net rental value attributable to the property ~~or property interest~~ being valued.

(4) An opinion as to the value of any property ~~or property interest~~ other than that being valued.

(5) The influence upon the value of the property ~~or property interest~~ being valued of any noncompensable items of value, damage, or injury.

(6) The capitalized value of the income or rental from any property ~~or property interest~~ other than that being valued.

(b) In an action other than an eminent domain or inverse condemnation proceeding, the matters listed in subdivision (a) are not admissible as evidence, and may not be taken into account as a basis for an opinion as to the value of property, except to the extent permitted under the rules of law otherwise applicable.

~~(c) The amendments made to this section during the 1987 portion of the 1987-88 Regular Session of the Legislature shall not apply to or affect any petition filed pursuant to this section before January 1, 1988. As used in this section, "property" includes "property interest."~~

Comment. Section 822(a)(1) is amended to clarify its meaning. See Code Civ. Proc. § 1235.180 ("property appropriated to public use" in Eminent Domain Law means property already in use for, or set aside for, public purpose). The amendment reverses the interpretation of the provision in *City & County of San Francisco v. Golden Gate Heights Invs.*, 14 Cal. App. 4th 1203, 18 Cal. Rptr. 2d 467 (1993).

Former subdivision (c) is deleted as obsolete, and is replaced by a definition of "property", and conforming revisions are made throughout the section, for drafting simplicity.

APPENDIX 10

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

**Alternate Distributee for
Unclaimed Distribution**

November 1999

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

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *Alternate Distributee for Unclaimed Distribution*, 29 Cal. L. Revision Comm'n Reports 743 (1999). This report is part of publication #206 [*1999-2000 Annual Report*].

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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November 30, 1999

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

Under this recommendation, when a court orders distribution from a decedent's estate to a person whose whereabouts is unknown, the court must also provide for an alternate distributee. Should the primary distributee fail to claim the share within three years after the date of the order, the primary distributee would be presumed to have predeceased the decedent for purposes of distribution, and the alternate distributee would be entitled to that share. In the case of a charitable devise, the alternate distributee would be determined pursuant to the doctrine of *cy pres*. This procedure would effectuate the presumed intent of a decedent that the decedent's property go to the decedent's beneficiaries, rather than escheat to the state.

This recommendation is submitted pursuant to Resolution Chapter 81 of the Statutes of 1999.

Respectfully submitted,

Howard Wayne
Chairperson

ALTERNATE DISTRIBUTEE FOR UNCLAIMED DISTRIBUTION

It may not be possible to deliver an inheritance to a probate distributee because the person's whereabouts is unknown. In that case, the personal representative may obtain discharge by depositing the property with the county treasurer in the name of the distributee.¹ The distributee may claim the property by petitioning the court that ordered the distribution.² If the property remains unclaimed, the county turns it over to the state treasurer or controller,³ where it is treated in the same manner as other unclaimed property delivered to the state.⁴

The Law Revision Commission in 1990 circulated a tentative recommendation to require the court to name an alternate distributee if the whereabouts of a named distributee is unknown.⁵ Under that proposal, the alternate distributee would be entitled to property that is unclaimed by the primary distributee after three years.

The 1990 proposal received widespread approval.⁶ However, the Commission made no final recommendation on the matter at that time due to the possibility that the proposal could result in a small revenue loss to the state during a period when the state needed every available resource.⁷ The state's finances have improved since then, and the Commis-

1. Prob. Code § 11850.

2. Prob. Code § 11854.

3. Code Civ. Proc. § 1444.

4. Code Civ. Proc. § 1310 *et seq.*

5. See Tentative Recommendation on *Alternate Beneficiaries for Unclaimed Distribution* (April 1990).

6. See Commission Staff Memorandum 90-93 (Aug. 24, 1990).

7. See First Supplement to Commission Staff Memorandum 90-93 (Sept. 5, 1990).

sion has further refined the concept in response to comments received.

When a beneficiary cannot be found, a decedent's presumptive intent is that the property go to another beneficiary, rather than to the state through its escheat process. This objective could be accomplished by having the order of distribution name an alternate distributee who takes if the property is not claimed by the primary distributee.

The Commission recommends that, if a named distributee's whereabouts is unknown, the order of distribution should provide for alternate distributees and the share to which each is entitled. The alternate distributees and their shares are determined as if the primary distributee had predeceased the decedent. In the case of a charitable devise, the alternate distributees are determined by application of the doctrine of *cy pres*. The alternate distributees would be entitled to the primary distributee's share if the primary distributee fails to claim it for a period of three years after the order of distribution.

PROPOSED LEGISLATION

Prob. Code § 11603 (amended). Order for distribution

SECTION 1. Section 11603 of the Probate Code is amended to read:

11603. (a) If the court determines that the requirements for distribution are satisfied, the court shall order distribution of the decedent's estate, or such portion as the court directs, to the persons entitled thereto.

(b) The order shall:

(1) Name the distributees and the share to which each is entitled.

(2) Provide that property distributed subject to a limitation or condition, including, but not limited to, an option granted under Chapter 16 (commencing with Section 9960) of Part 5, is distributed to the distributees subject to the terms of the limitation or condition.

(c) If the whereabouts of a distributee named in the order is unknown, the order shall provide for alternate distributees and the share to which each is entitled. The alternate distributees shall be the persons, to the extent known or reasonably ascertainable, who would be entitled under the decedent's will or under the laws of intestate succession if the distributee named in the order had predeceased the decedent, or in the case of a devise for a charitable purpose, under the doctrine of cy pres. If the distributee named in the order does not claim the share to which the distributee is entitled within three years after the date of the order, the distributee is deemed to have predeceased the decedent for the purpose of this section and the alternate distributees are entitled to the share as provided in the order.

Comment. Section 11603 is amended to add subdivision (c). In cases to which subdivision (c) applies, the personal representative may deposit the property with the county treasurer. Section 11850. For money, no

court order is required for the deposit. For other personal property, a court order is required. Section 11851. A person may claim the money or other personal property on deposit in the county treasury by filing a petition with the court. Section 11854.

In a testate estate, the court determines the alternate distributees under the decedent's will and applicable statutes. If the primary distributee is kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator, the antilapse statute applies (Section 21110), and the alternate distributees are the issue of the missing distributee. In an intestate estate, the court determines the alternate distributees under the laws of intestate succession. See Sections 6400-6414.

In the case of a devise for a charitable purpose without a designated trustee or identified beneficiary, the Attorney General should ensure that there is an appropriate alternate charitable distribution. *Cf.* Prob. Code §§ 8111 (notice to Attorney General of charitable devise), 11703 (Attorney General petition to determine persons entitled to distribution); Gov't Code §§ 12580-12599.5 (Uniform Supervision of Trustees for Charitable Purposes Act).

If a primary distributee's whereabouts is unknown, potential alternate distributees under subdivision (c) are entitled to notice pursuant to Section 11601 (known heir or devisee whose interest would be affected). Moreover, the personal representative, or a person claiming to be entitled as an alternate distributee under subdivision (c), may petition the court pursuant to Article 2 (commencing with Section 11700) for a determination of persons entitled to distribution.

APPENDIX 11

COMMISSION PUBLICATIONS

Since 1955, the California Law Revision Commission's annual reports, recommendations, and studies have been published in separate pamphlets, which are later bound in a small edition of hardcover volumes.

Beginning in 1991 (Volume 21), Commission publications have been assigned volume numbers on an annual basis. This permits the Commission to continue to print pamphlets without being committed to producing a hardcover volume at any particular time. Producing materials with an annual volume number also makes it easy for libraries to bind their own annual volumes. Cumulative tables and title pages are prepared in connection with each new bound volume. When the Commission's budget permits, this material is separately published to facilitate self-binding.

Individual pamphlets are now assigned a sequential publication number to facilitate cataloging and ordering. The publication number is printed on the inside cover of each pamphlet since #189 (Volume 26) and publication numbers have been assigned retroactively to all pamphlets from the first in 1955.

How To Obtain Law Revision Commission Publications

Commission publications may be obtained from:

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
Tel: 650-494-1335

Payment in advance is generally required for publications that are available only by purchase. Checks or money orders should be made payable to the "California Law Revision Commission."

Orders should include the titles of the requested publications, the quantity desired, and the street address to which the order is to be sent (*not* a post office box number).

Prices

The price of hardcover volumes of the Commission's *Reports, Recommendations, and Studies* is now \$60. The price is based on

the physical volume, not the volume number — thus, the combined Volume 21-22 is priced at \$60. California residents must add sales tax.

Printed reports in pamphlet form are available on request. The first copy is free and additional copies are available for the price indicated below.

Where applicable, the price of Commission pamphlets is determined by the number of pages, unless a special price has been set (as with booklets of 400 or 500 pages or more):

| | |
|--------------------|---------|
| 10 or fewer pages: | \$5.50 |
| 11-50 pages: | \$8.50 |
| 51-100 pages: | \$18.00 |
| 101 or more pages: | \$25.00 |

All prices are subject to change without notice.

Publication Table

The bound volumes and separate pamphlets listed below are available unless noted as being out of print. For some years, only a few copies remain. If a bound volume is out of print, individual pamphlets from that volume may still be available. Conversely, some pamphlets are unavailable on an individual basis, but can be found in available bound volumes.

Prices are indicated only for individual pamphlets that are still in print.

A frequently updated version of the publication list is available on the Internet at <http://www.clrc.ca.gov> — the Commission's website. The Internet version of the publication list also provides a current count of the number of remaining copies of the scarcer publications.

Key to Publication Table

The first column lists the publication number.

The second column gives the publication title, and includes a list of the recommendations and studies included within a pamphlet that contains more than one item.

In the third column, the first line lists the month and year of the publication, followed by a citation to the volume and page number (in the format vol:page). The second line lists the number of pages

in the pamphlet and gives its standard price, unless it is out of print (indicated by OOP).

| Volume 1 (1957) | | [Hardcover Volume Out of Print] | |
|------------------------|---|--|-----------------|
| #1 | 1955 [Annual] Report [for 1954] — includes: • Homestead Law and Probate Code Sections 640 to 646 • Summary Disposition of Small Estates Under Probate Code Sections 640 to 646 | 1/55 59 pp | 1:1-1 OOP |
| #2 | 1956 [Annual] Report [for 1955] — includes: • Comparative Survey of the California Inheritance and Gift Tax Laws and the Federal Estate and Gift Tax Laws | 3/56 63 pp | 1:2-1 OOP |
| #3 | 1957 [Annual] Report [for 1956] | 1/57 28 pp | 1:3-1 OOP |
| #4 | Maximum Period of Confinement in a County Jail — includes: • Maximum Period of Confinement in a County Jail (Rec) • Penal Code Section 19a and Related Code Sections (Study) | 10/56 34 pp | 1:A-1 OOP |
| #5 | Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions — includes: • Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions (Rec) • Use of Motions and Orders To Show Cause in Connection with Awards of Attorney's Fees and Costs Pursuant to Civil Code Section 137.3 (Study) | 11/56 13 pp | 1:B-1 OOP |
| #6 | Taking Instructions to the Jury Room — includes: • Taking Instructions to the Jury Room (Rec) • Whether the Jury Should Be Given a Copy of the Court's Instructions To Take into the Jury Room (Study) | 11/56 17 pp | 1:C-1 OOP |
| #7 | Dead Man Statute — includes: • Dead Man Statute (Rec) • Whether the Dead Man Statute Should Be Modified or Repealed (Study) | 2/57 54 pp | 1:D-1 OOP |
| #8 | Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere — includes: • Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere (Rec) • Whether Section 201.5 of the Probate Code Should Be Revised (Study) | 12/56 39 pp | 1:E-1 OOP |
| #9 | Marital "For and Against" Testimonial Privilege — includes: • Marital "For and Against" Testimonial Privilege (Rec) • Whether the "For and Against" Testimonial Privilege of Married Persons Should Be Revised (Study) | 11/56 20 pp | 1:F-1 OOP |
| #10 | Suspension of the Absolute Power of Alienation — includes: • Suspension of the Absolute Power of Alienation (Rec) • Whether the Sections of the Civil Code Prohibiting Suspension of the Absolute Power of Alienation Should Be Repealed (Study) | 11/56 32 pp | 1:G-1 OOP |
| #11 | Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378 | 10/56 4 pp | 1:H-1 \$5.50 |

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| #12 | Judicial Notice of the Law of Foreign Countries — includes: • Judicial Notice of the Law of Foreign Countries (Rec) • Whether California Courts Should Take Judicial Notice of the Law of Foreign Countries (Study) | 2/57 24 pp | 1:J-1 OOP |
| #13 | Choice of Law Governing Survival of Actions — includes: • Choice of Law Governing Survival of Actions (Rec) • Law Which Should Govern Survival of Actions Arising in Another State When Suit Is Brought in California (Study) | 2/57 20 pp | 1:J-1 OOP |
| #14 | Effective Date of an Order Ruling on a Motion for New Trial — includes: • Effective Date of an Order Ruling on a Motion for New Trial (Rec) • Effective Date of New Trial Orders in Relation to Section 660 of the Code of Civil Procedure (Study) | 2/57 27 pp | 1:K-1 OOP |
| #15 | Retention of Venue for Convenience of Witnesses — includes: • Retention of Venue for Convenience of Witnesses (Rec) • California Law Relating to Retention of Venue for Convenience of Witnesses (Study) | 2/57 29 pp | 1:L-1 OOP |
| #16 | Bringing New Parties into Civil Actions — includes: • Bringing New Parties into Civil Actions (Rec) • California Law Relating to Bringing in New Parties in Civil Actions (Study) | 2/57 24 pp | 1:M-1 OOP |

Volume 2 (1959)

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| #17 | 1958 [Annual] Report [for 1957] | 3/58 25 pp | 2:1-1 \$8.50 |
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| #22 | Doctrine of Worthier Title — includes: • Doctrine of Worthier Title (Rec) • Whether the Doctrine of Worthier Title Should Be Abolished in California (Study) | 1/59 38 pp | 2:D-1 \$8.50 |
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| #24 | Time Within Which Motion for New Trial May Be Made — includes: | 11/58 16 pp | 2:F-1 \$8.50 |
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| | • Time Within Which a Motion for a New Trial May Be Made When Notice of Entry of Judgment Has Not Been Given (Study) | | |
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| | • Notice to Shareholders of a Sale of All or Substantially All of the Assets of a Corporation (Study) | | |

Volume 3 (1961)

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| #27 | 1961 [Annual] Report [for 1960] | 1/61 15 pp | 3:2-1 OOP |
| #28 | Evidence in Eminent Domain Proceedings — includes: | 10/60 65 pp | 3:A-1 \$18.00 |
| | • Evidence in Eminent Domain Proceedings (Rec) | | |
| | • Evidence in Eminent Domain Proceedings (Study) | | |
| #29 | Taking Possession and Passage of Title in Eminent Domain Proceedings — includes: | 10/60 66 pp | 3:B-1 OOP |
| | • Taking Possession and Passage of Title in Eminent Domain Proceedings (Rec) | | |
| | • Taking Possession and Passage of Title in Eminent Domain Proceedings (Study) | | |
| #30 | Reimbursement for Moving Expenses when Property Is Acquired for Public Use — includes: | 10/60 36 pp | 3:C-1 OOP |
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| | • Reimbursement for Moving Expenses when Property Is Acquired for Public Use (Study) | | |
| #31 | Rescission of Contracts — includes: | 10/60 35 pp | 3:D-1 OOP |
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| | • Rescission of Contracts (Study) | | |
| #32 | Right to Counsel and the Separation of the Delinquent Minor from the Nondelinquent Minor in Juvenile Court Proceedings — includes: | 10/60 43 pp | 3:E-1 OOP |
| | • Right to Counsel and the Separation of the Delinquent Minor from the Nondelinquent Minor in Juvenile Court Proceedings (Rec) | | |
| | • Juvenile's Right to Counsel and the Designation of Nondelinquent Minor As "Ward of the Juvenile Court" (Study) | | |
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| | • Survival of Actions (Rec) | | |
| | • Survival of Tort Actions (Study) | | |
| #34 | Arbitration — includes: | 12/60 64 pp | 3:G-1 OOP |
| | • Arbitration (Rec) | | |
| | • Arbitration (Study) | | |

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| #35 | Presentation of Claims Against Public Officers and Employees — includes: | 10/60 36 pp | 3:H-1 OOP |
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| | • Presentation of Claims Against Public Officers and Employees (Study) | | |
| #36 | Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere — includes: | 10/60 35 pp | 3:I-1 OOP |
| | • Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere (Rec) | | |
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| | • Notice of Alibi in Criminal Actions (Study) | | |

Volume 4 (1963)

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| #38 | 1962 Annual Report [for 1961] | 3/62 23 pp | 4:1 \$8.50 |
| #39 | 1963 Annual Report [for 1962] | 1/63 18 pp | 4:101 \$8.50 |
| #40 | 1964 Annual Report [for 1963] | 12/63 46 pp | 4:201 \$8.50 |
| #41 | Uniform Rules of Evidence: Article VIII. Hearsay Evidence — includes: | 8/62 319 pp | 4:301 OOP |
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| | • Hearsay Evidence Article of the Uniform Rules of Evidence (Study) | | |
| #42 | Condemnation Law and Procedure: Number 4 — Discovery in Eminent Domain Proceedings [The first three pamphlets (unnumbered) in Volume 3 also deal with the subject of condemnation law and procedure.] — includes: | 1/63 74 pp | 4:701 \$18.00 |
| | • Condemnation Law and Procedure: Number 4 — Discovery in Eminent Domain Proceedings (Rec) | | |
| | • Pretrial Conferences and Discovery in Eminent Domain Proceedings (Study) | | |
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| #46 | Sovereign Immunity: Number 4 — Defense of Public Employees | 1/63 22 pp | 4:1301 \$8.50 |
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Volume 5 (1963)

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| #50 | Study Relating to Sovereign Immunity [Softcover publication has entire contents of hardcover volume except for the title page and some other front matter.] | 1/63 5:1 568 pp \$25.00 |
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Volume 6 (1964)

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| #51 | Uniform Rules of Evidence: Article 1. General Provisions — includes: • Uniform Rules of Evidence: Article 1. General Provisions (Rec) • General Provisions Article of the Uniform Rules of Evidence (Study) | 4/64 6:1 74 pp \$18.00 |
| #52 | Uniform Rules of Evidence: Article IX. Authentication and Content of Writings — includes: • Uniform Rules of Evidence: Article IX. Authentication and Content of Writings (Rec) • Authentication Article of the Uniform Rules of Evidence (Study) | 1/64 6:101 70 pp \$18.00 |
| #53 | Uniform Rules of Evidence: Article V. Privileges — includes: • Uniform Rules of Evidence: Article V. Privileges (Rec) • Privileges Article of the Uniform Rules of Evidence (Study) | 2/64 6:201 301 pp \$25.00 |
| #54 | Uniform Rules of Evidence: Article VI. Extrinsic Policies Affecting Admissibility — includes: • Uniform Rules of Evidence: Article VI. Extrinsic Policies Affecting Admissibility (Rec) • Uniform Rules of Evidence — Extrinsic Policies Affecting Admissibility (Study) | 3/64 6:601 80 pp \$18.00 |
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| #59 | Uniform Rules of Evidence: Article VIII. Hearsay Evidence [same as 4:301] — includes: | 10/62 272 pp | 6:ff-1150 OOP |
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Volume 7 (1965)

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| #60 | Evidence Code | 1/65 394 pp | 7:1 OOP |
| #61 | 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; | 1/65 30 pp | 7:401 \$8.50 |
| #62 | 1965 Annual Report [for 1964] | 1/65 16 pp | 7:801 OOP |
| #63 | 1966 Annual Report [for 1965] | 12/65 28 pp | 7:901 OOP |
| #64 | Evidence Code with Official Comments | 8/65 338 pp | 7:1001 \$25.00 |

Volume 8 (1967)

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| #65 | Annual Report [for 1966] — includes: | 12/66 29 pp | 8:1 \$8.50 |
| | <ul style="list-style-type: none"> • Discovery in Eminent Domain Proceedings | | |
| #66 | Evidence Code: Number 1 — Evidence Code Revisions | 10/66 28 pp | 8:101 \$8.50 |
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| | • Damages for Personal Injuries to a Married Person as Separate or Community Property | | |
| | • Service of Process on Unincorporated Associations | | |

Volume 9 (1969)

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| | • Arbitration of Just Compensation | | |
| | • Evidence Code: Number 5 — Revisions of the Evidence Code | | |
| | • Real Property Leases | | |
| | • Statute of Limitations in Actions Against Public Entities and Public Employees | | |

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Volume 10 (1971)

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| | • Ch. 2: Inverse Condemnation Goals and Policy Criteria (Van Alstyne) [reprinted from 8 Santa Clara Law. 1 (1967)] | | |
| | • Ch. 3: Deliberately Inflicted Injury or Destruction (Van Alstyne) [reprinted from 20 Stan. L. Rev. 617 (1968)] | | |
| | • Ch. 4: Unintended Physical Damage (Van Alstyne) [reprinted from 20 Hastings L.J. 421 (1969)] | | |
| | • Ch. 5: Intangible Detriment (Van Alstyne) [reprinted from 16 UCLA L. Rev. 491 (1969)] | | |

- Ch. 6: Taking or Damaging by Police Power (Van Alstyne)
[reprinted from 44 S. Cal. L. Rev. 1 (1970)]
 - Ch. 7: Recent Developments in California Inverse Condemnation Law (Sterling)
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Employees' Earnings Protection Law 101 pp OOP
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Volume 12 (1974)

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Volume 13 (1976)

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| | • Admissibility of Duplicates in Evidence | | |
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Volume 14 (1978)

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| #122 | Annual Report [for 1977] — includes: | 12/77 | 14:1 |
| | • Use of Keepers Pursuant to Writs of Execution | 160 pp | \$25.00 |
| | • 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 | | |
| #123 | Annual Report [for 1978] — includes: | 12/78 | 14:201 |
| | • Technical Revisions in the Attachment Law: Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of “Chose in Action” | 150 pp | \$25.00 |
| | • Ad Valorem Property Taxes in Eminent Domain Proceedings | | |
| | • Security for Costs | | |
| #124 | Guardianship-Conservatorship Law | 11/78 | 14:501 |
| | | 488 pp | \$35.00 |

Volume 15 (1980) – Part I [Hardcover Volume Out of Print]

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| #125 | Enforcement of Judgments — includes: | 1/80 | 15.1:1 |
| | • Interest Rate on Judgments | 128 pp | \$25.00 |
| | • Married Women as Sole Traders | | |
| | • State Tax Liens | | |
| #126 | Application of Evidence Code Property Valuation Rules in Noncondemnation Cases | 3/79 | 15.1:301 |
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| #127 | Uniform Durable Power of Attorney Act | 12/80 | 15.1:351 |
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| #130 | Annual Report [for 1979] — includes: | 12/79 | 15.1:1001 |
| | • Effect of New Bankruptcy Law on the Attachment Law | 354 pp | \$25.00 |
| | • 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 | | |

Volume 15 (1980) – Part II [Hardcover Volume Out of Print]

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| #131 | Annual Report [for 1980] — includes: | 12/80 | 15.2:1401 |
| | • Revision of the Guardianship-Conservatorship Law: Appointment of Successor Guardian or Conservator; Support of Conservatee Spouse from Community Property; Appealable Orders | 102 pp | \$25.00 |
| #132 | Probate and Estate Planning — includes: | 12/80 | 15.2:1601 |
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| | • Revision of the Powers of Appointment Statute | | |
| #133 | Enforcement of Judgments Law | 10/80 | 15.2:2001 |
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Volume 16 (1982) [Hardcover Volume Out of Print]

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| #134 | Annual Report [for 1981] — includes: | 12/81 | 16:1 |
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| | • Emancipated Minors | | |
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| #140 | 1982 Creditors' Remedies Legislation — includes: | 9/82 | 16:1001 |
| | • Enforcement of Judgments Law | 876 pp | OOP |
| | • Attachment Law | | |
| #141 | Annual Report [for 1982] — includes: | 12/82 | 16:2001 |
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| | • Creditors' Remedies: Amount Secured by Attachment; Execu- tion of Writs by Registered Process Servers; Technical Amendments | | |
| | • Dismissal for Lack of Prosecution | | |
| | • Conforming Changes to the Bond and Undertaking Law | | |
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Volume 17 (1984)

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| | • Bonds for Personal Representatives | | |
| | • Revision of Wills and Intestate Succession Law | | |
| | • Recording Affidavit of Death | | |
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| | • Effect of Quiet Title and Partition Judgments | | |
| | • Dormant Mineral Rights | | |

- Creditors' Remedies: Levy on Joint Deposit Accounts; Issuance of Earnings Withholding Orders by Registered Process Servers; Protection of Declared Homestead After Owner's Death; Jurisdiction of Condominium Assessment Lien Enforcement; Technical Amendments
- Rights Among Cotenants in Possession and Out of Possession of Real Property

Volume 18 (1986)

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| | • Abandoned Easements | | |
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| | • 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 | | |
| #153 | Trust Law | 12/85 | 18:501 |
| | | 308 pp | OOP |
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| | • Proration of Estate Taxes | | |
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| | • Trust Law | 446 pp | OOP |
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| | • Small Estate Set-Aside | | |
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| | • Technical Revisions in the Trust Law | | |

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| | • Distribution and Discharge | | |
| | • Nondomiciliary Decedents | | |
| | • Interest and Income During Administration | | |
| #160 | Annual Report [for 1988] — includes: | 12/88 | 19:1151 |
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| | • 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 | | |
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| | • Right of Surviving Spouse to Dispose of Community Property | | |
| | • Litigation Involving Decedents | | |
| | • Compensation in Guardianship and Conservatorship Proceedings | | |
| | • Recognition of Trustees' Powers | | |
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| | • Gifts in View of Impending Death | | |
| | • TOD Registration of Vehicles and Certain Other State Registered Property | | |

Volume 21 (1991)

[Bound with Volume 22]

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| | • Preliminary Distribution Without Court Supervision | | |
| | • Transfer of Conservatorship Property to Trust | | |
| | • Compensation in Guardianship and Conservatorship Proceedings | | |
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Volume 23 (1993)

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[Available Spring 1999]

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