

TEXT OF COMMENTS TO SECTIONS AFFECTED BY
2001 COMMISSION RECOMMENDATIONS

CLRC Staff Note. This document sets out the text of Official Comments to all Commission-sponsored bills enacted in the 2001 legislative session — 2001 Cal. Stat. chs. 44, 52, 59, 115, 141, 230, 417, 428, and 812. The source for each Comment is given in the accompanying Table of “Sections Affected by 2001 Commission Legislation.”
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BUSINESS AND PROFESSIONS CODE

Bus. & Prof. Code § 6301 (amended). Board of law library trustees

Comment. Section 6301 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Section 6301 is also amended to clarify that an attorney need not belong to a county bar association to serve on a law library board. It is also unnecessary for the attorney to reside in the county or regularly practice law in the county. It is sufficient if the attorney is a member of the State Bar. The local trial judges and the board of supervisors thus have broad discretion to select capable attorneys to serve as trustees, yet eliminate unsuitable candidates in the selection process.

Section 6301 is further amended to permit a resident of the county to serve on a law library board in specified circumstances. To ensure that judges, attorneys, and boards of supervisors continue to be represented on law library boards, the number of lay trustees serving at the same time is limited to two.

Section 6301 is further amended to permit the judges of a superior court to select either four or five of their number to serve on the law library board, at their discretion. Formerly, the number of judge trustees in a county with a unified superior court depended on how many judge trustees were authorized as of January 1, 1998. See 1998 Cal. Stat. ch. 931, § 3.

To further promote flexibility, Section 6301 is amended to permit a law library board to consist of either six or seven members. Formerly, the size of the board depended on the number of judge trustees, which in turn depended on the number of municipal courts in the county or the number of judge trustees authorized as of January 1, 1998. See 1998 Cal. Stat. ch. 931, § 3.

For a special provision governing the composition of the law library board in San Diego County, see Section 6301.1. For a provision authorizing a board of less than six members in a county with three or fewer superior court judges, see Section 6301.5. For a provision grandfathering pre-1941 legislation establishing a law library and board of law library trustees in a county, see Section 6363. See also Section 6364 (discretion of board of supervisors in applying chapter).

Section 6301 is also amended to make technical changes.

Bus. & Prof. Code § 6301.5 (amended). Board of law library trustees in county with three or fewer superior court judges

Comment. Section 6301.5 is amended to apply to any county where there are three or fewer judges of the superior court. Reduction of the size of the board pursuant to this provision is optional, not mandatory. Where the board of supervisors and the judges of the superior court agree to reduce the size of the board pursuant to this provision, the agreement may also address the composition of the board.

For the composition of a law library board generally, see Section 6301. For a special provision governing the composition of the law library board in San Diego County, see Section 6301.1. For a provision grandfathering pre-1941 legislation establishing a law library and board of law library trustees in a county, see Section 6363. See also Section 6364 (discretion of board of supervisors in applying chapter).

CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 86 (amended). Miscellaneous limited civil cases

Comment. Subdivision (a)(6) of Section 86 is amended to clarify the jurisdictional classification of a petition to release a mechanic's lien. This is declaratory of existing law. See Section 85 (limited civil cases) & Comment. See also Section 88 (unlimited civil case).

Subdivision (a)(6) is also amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For reclassification of an action in a unified superior court, see Sections 403.010-403.090.

Subdivision (a)(8) is amended to delete the language on circumstances for appointment of a receiver in a limited civil case, and insert a cross-reference to Section 564, which now governs appointment of receivers in both limited and unlimited civil cases. The language deleted from the first clause of subdivision (a)(8) is continued in Section 564(b)(8), but broadened to apply to all cases. See Section 564 Comment. The language deleted from the second clause of subdivision (a)(8) is not continued, because it is redundant with Section 564(b)(3) and (b)(4).

Code Civ. Proc. § 89 (added). Implied authority in limited and unlimited civil cases

Comment. Section 89 is added to provide guidance in interpreting statutory provisions that expressly authorize particular conduct in a limited civil case but are silent as to an unlimited civil case, or vice versa. See, e.g., Section 402.5 (transfer of limited civil case).

Code Civ. Proc. § 221 (repealed). Experimental eight person juries

Comment. Section 221 is repealed as obsolete. The pilot project established by this section has expired.

Code Civ. Proc. § 270 (repealed). Audio and video recordings used to produce verbatim records

Comment. Section 270 is repealed as obsolete. The pilot project established by this section has expired.

Code Civ. Proc. § 425.10 (amended). Contents of complaint

Comment. Section 425.10 is amended to conform the pleading requirements in limited and unlimited civil cases. In a complaint seeking actual or punitive damages for personal injury or wrongful death, the amount demanded should not be stated, regardless of the jurisdictional classification of the action. If the case is a limited civil case, however, the first page of the complaint must (1) identify the case as a limited civil case as required by Section 422.30, and (2) state whether the amount demanded exceeds \$10,000, so as to permit determination of the filing fee. See Gov't Code § 72055 (first filing fee in limited civil case). For format requirements, see Cal. R. Ct. Rule 201(f)(8).

Technical changes are also made for conformity with preferred drafting style.

Code Civ. Proc. § 425.11 (amended). Statement of damages

Comment. Section 425.11 is amended to conform to the pleading requirements of limited and unlimited civil cases. See Section 425.10. Technical changes are also made for conformity with preferred drafting style.

Code Civ. Proc. § 472b (amended). Running of time following decision on demurrer

Comment. Section 472b is amended to delete the reference to a “docket,” because courts no longer maintain a record denominated a “docket” in civil cases. Formerly, justice courts maintained a docket in civil cases, which was a record of actions taken in open court, as well as documents filed and other proceedings in the case. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other records of the court). Now actions taken in open court are recorded in the minutes of a superior court. Gov't Code § 69844; see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other proceedings in a civil case are recorded in the

register of actions. See Gov't Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior court). Because the minutes are the proper record for reflecting a waiver in open court, and Section 472b already refers to the minutes, the reference to the "docket" may be deleted without substituting a reference to the register of actions.

Code Civ. Proc. § 489.220 (amended). Undertaking for writ of attachment or protective order

Comment. Section 489.220 is amended to provide for the same attachment undertaking, regardless of the jurisdictional classification of the case. Formerly, the amount of the initial undertaking depended on whether the case was a limited civil case or an unlimited civil case. 1998 Cal. Stat. ch. 931, § 74.

Code Civ. Proc. § 564 (amended). Appointment of receiver

Comment. For purposes of simplification, Section 564 is broadened to govern appointment of a receiver in all cases, regardless of the jurisdictional classification of the case. Formerly, a separate provision governed appointment of a receiver in a limited civil case. 1998 Cal. Stat. ch. 931, § 29 (former Section 86(a)(8)).

Although Section 564 covers both limited and unlimited civil cases, some of the types of actions listed in the statute may only be brought as an unlimited civil case. For example, Section 564(b)(7) refers to appointment of a receiver where the Public Utilities Commission requests a receiver pursuant to Public Utilities Code Section 855 or 5259.5. Such a proceeding may only be brought as an unlimited civil case. See Section 85 & Comment.

To aid practitioners, subdivision (b)(5) of Section 564 is amended to refer to Section 565 (appointment of receiver on dissolution of corporation).

Subdivision (b)(9) (former subdivision (b)(8)) is amended to delete language authorizing appointment of a receiver "where receivers have heretofore been appointed by the usages of courts of equity," and insert more readily understandable language formerly found in Section 86. This is not a substantive change. The deleted language conferred broad authority to appoint a receiver, but only where other remedies were found to be inadequate. See, e.g., *Golden State Glass Corp. v. Superior Court*, 13 Cal. 2d 384, 393, 90 P.2d 75 (1939) (superior court should appoint receiver only where necessary to "adequately protect the rights of the parties"); *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, 116 Cal. App. 2d 869, 873, 254 P.2d 599 (1953) (where less severe remedy will adequately protect parties, court ordinarily should not appoint receiver); see also *Murray v. Murray*, 115 Cal. 266, 275, 47 P. 37 (1896) (in equity, receiver may be appointed where plaintiff has equitable claim to property and "receiver is necessary to preserve the same from loss"). Similarly, subdivision (b)(9) authorizes appointment of a receiver only "where *necessary* to preserve the property or rights of any party." (Emphasis added.)

As before, the general language of subdivision (b)(9) does not override specific requirements enumerated elsewhere in the statute. See, e.g., *Marsch v. Williams*, 23 Cal. App. 4th 238, 246 n.8, 28 Cal. Rptr. 2d 402 (1994); *Dabney Oil Co. v. Providence Oil Co.*, 22 Cal. App. 233, 237, 133 P. 1155 (1913).

Subdivision (b)(10) (former subdivision (b)(9)) is amended to correct the cross-reference. Health and Safety Code Section 436.222 was repealed in 1995 and its substance recodified in Section 129173. See 1995 Cal. Stat. ch. 415, §§ 9, 79.5.

For other provisions concerning receivers, see Sections 565-570, 708.610-708.630, 712.060, 1422. See also Civ. Code § 3439.07; Corp. Code §§ 1801, 1803, 16504; Fam. Code § 290; Ins. Code §§ 1064.1-1064.12.

Code Civ. Proc. § 638 (amended). Reference by agreement

Comment. Section 638 is amended to delete the reference to a "docket," because courts no longer maintain a record denominated a "docket" in civil cases. Formerly, justice courts

maintained a docket in civil cases, which was a record of actions taken in open court, as well as documents filed and other proceedings in the case. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a "docket"), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the "docket" and other records of the court). Now actions taken in open court are recorded in the minutes of a superior court. Gov't Code § 69844; see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other proceedings in a civil case are recorded in the register of actions. See Gov't Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior court). Because the minutes are the proper record for reflecting an agreement in open court, and Section 638 already refers to the minutes, the reference to the "docket" may be deleted without substituting a reference to the register of actions.

A technical change is also made for conformity with preferred drafting style.

Code Civ. Proc. § 685.030 (amended). Satisfaction of judgment

Comment. Subdivision (e) of Section 685.030 is amended to eliminate the difference in treatment between limited and unlimited civil cases.

For the register of actions in superior court, see Gov't Code §§ 69845, 69845.5. For the register of actions in municipal court, see Code Civ. Proc. §§ 1052, 1052.1.

A technical change is also made for conformity with preferred drafting style.

Code Civ. Proc. § 720.160 (amended). Undertaking by creditor where third party claims ownership or possession

Comment. Section 720.160 is amended to provide for an undertaking of \$10,000 (or twice the amount of the execution lien, whichever is less), regardless of the jurisdictional classification of the case. The \$10,000 undertaking amount is the same as the amount of an attachment undertaking. See Section 489.220 (attachment undertaking).

Code Civ. Proc. § 720.260 (amended). Undertaking by creditor where third party claims security interest or lien

Comment. Section 720.260 is amended to provide for an undertaking of \$10,000 (or twice the amount of the execution lien, whichever is less), regardless of the jurisdictional classification of the case. The \$10,000 undertaking amount is the same as the amount of an attachment undertaking. See Section 489.220 (attachment undertaking).

Code Civ. Proc. § 912 (amended). Certification to trial court of result on appeal

Comment. Section 912 is amended to delete the reference to a "docket," because courts no longer maintain a record denominated a "docket" in civil cases. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a "docket"), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the "docket" and other records of the court). Formerly, justice courts maintained a docket in civil cases, which was a record of actions taken in open court, as well as documents filed and other proceedings in the case. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a "docket"), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the "docket" and other records of the court). Now actions taken in open court are recorded in the minutes of a superior court. Gov't Code § 69844; see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other proceedings in a civil case are recorded in the register of actions. See Gov't Code §§

69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior court).

Code Civ. Proc. § 1012.5 (repealed). Use of facsimile transmission

Comment. Section 1012.5 is repealed as obsolete. The pilot project established by this section has expired.

Code Civ. Proc. § 1134 (amended). Entry of judgment

Comment. Section 1134 is amended to divide the section into subdivisions and to eliminate the \$10 filing fee for a limited civil case. Under this amendment, the filing fee is \$15 regardless of the jurisdictional classification of the case.

The reference to “all courts” in subdivision (a) is deleted as obsolete. It derived from an era when a confession of judgment might have been entered in any of several courts, depending on the amount of the judgment and the jurisdiction of the court. *Cf.* Section 1132(a) (“Such judgment may be entered in any court having jurisdiction for like amounts.”).

The attorney’s certificate is made part of the judgment roll in subdivision (c). The certificate is a prerequisite to entry of judgment and must be filed with the defendant’s written and verified statement. Section 1132(b).

Code Civ. Proc. § 1167.25 (repealed). Occupant served prejudgment claim of right to possession

Comment. Section 1167.25 is repealed as obsolete. It relates to a pilot project established in former Section 1167.2, which was repealed by its own terms.

Code Civ. Proc. § 1174.3 (amended). Occupants not named in judgment for possession

Comment. Subdivision (a) of Section 1174.3 is amended to delete an obsolete reference to former Section 1167.25.

Code Civ. Proc. § 1206 (amended). Asserting preferred labor claim in connection with writ of attachment or execution

Comment. Section 1206 is amended to replace the term “docket” with “register of actions,” because courts no longer maintain a record denominated a “docket” in civil cases. Formerly, justice courts maintained a docket in civil cases, which was a record of actions taken in open court, as well as documents filed and other proceedings in the case. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other records of the court). Now actions taken in open court are recorded in the minutes of a superior court. Gov’t Code § 69844; see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other proceedings in a civil case are recorded in the register of actions. See Gov’t Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior court).

Technical changes are also made for conformity with preferred drafting style.

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

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 elements of 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.

It should be noted that subdivision (b) requires the prelitigation offer made by the plaintiff pursuant to Government Code Section 7267.2 to be considered in determining the amount of litigation expenses. In making the determination, the court should discount differences between that offer and the final offer under subdivision (a), to the extent matters such as claimed loss of business goodwill or eventual interest and costs in the proceeding would not have been known to the plaintiff at the time of the earlier offer.

Code Civ. Proc. § 1250.420 (added). ADR authorized

Comment. Section 1250.420 is drawn from Government Code Section 11420.10 (ADR authorized in administrative adjudication). The section is intended to remove any question about the authority of a public entity to refer an eminent domain dispute for alternative dispute resolution. Alternative dispute resolution pursuant to this section is optional, applicable only on agreement of the parties. Nothing in this section limits any authority of parties in any other type of action or proceeding by agreement to refer a dispute that is the subject of the action or proceeding for resolution by alternative dispute resolution.

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

Subdivision (c) parallels the procedure applicable in judicial arbitration. See Sections 1141.20-1141.21. A defendant who elects a trial de novo under this procedure may be subject to assessment of costs and litigation expenses; this is in effect a waiver of the defendant's general protection against assessment of costs and litigation expenses in an eminent domain proceeding. See, e.g., Section 1268.710 (court costs).

Standard protections of confidentiality of communications made in alternative dispute resolution apply to alternative dispute resolution pursuant to this section. See, e.g., Evid. Code §§ 1115-1128 (mediation), 703.5 (testimony by arbitrator or mediator).

Code Civ. Proc. § 1250.430 (added). Stay of trial during ADR

Comment. Section 1250.430 is intended to allow waiver of trial court delay reduction programs and other case processing requirements in order to facilitate productive alternative dispute resolution. This provision may be applied to foster resolution of some or all of the issues between the parties. Nothing in this section limits any authority of the court in any other type of action or proceeding to postpone the date of trial to enable resolution of a dispute by alternative dispute resolution.

Code Civ. Proc. § 1255.010 (amended). Deposit of probable compensation

Comment. Subdivision (b) of Section 1255.010 is amended to prescribe the contents of the written statement or summary of the basis for the deposit appraisal. The detail prescribed is the same as that prescribed for the moving party under Section 1255.030 (increase or decrease in amount of deposit) and for the written statement and summary under Government Code Section 7267.2 (precondemnation offer). The requirement in subdivision (b)(3) that the statement or summary include detail relating to damages to the remainder applies equally in a situation where no compensation for damages to the remainder is provided due to a complete offset by benefits to the remainder.

Code Civ. Proc. § 1255.030 (amended). Increase or decrease in amount of deposit

Comment. Section 1255.030 is amended to prescribe the supporting data that may be required for a motion to increase or decrease the amount of the deposit. The detail prescribed is the same as that prescribed for the written statement or summary under Section 1255.010 (deposit of probable compensation) and for the written statement and summary under Government Code

Section 7267.2 (precondemnation offer). It should be noted that the information provided by the moving party under this section is protected from use at trial to the same extent as other evidence related to the deposit or withdrawal. See Section 1255.060 (limitations on use of evidence in connection with deposit).

Code Civ. Proc. § 1258.220 (amended). Date of exchange

Comment. Section 1258.220 is amended to make the exchange date 90, rather than 60, days before trial on the issue of compensation (but not earlier than nine months after the case was filed). As used in subdivision (b), “months” refers to calendar months. See Section 17(4).

The statutory exchange date of 90, rather than 60, days before trial remains subject to the authority of the court to provide relief on motion of a party and showing of good cause. The practicalities of preparing sufficiently to enable a fair exchange within the prescribed period may, in the circumstances of a particular case, constitute good cause for a later exchange date. The need to commence trial within one year in order to preserve the date of valuation may, in the circumstances of a particular case (such as where the date of valuation is not otherwise established by a deposit of probable compensation), constitute good cause for an exchange date less than 90 days before commencement of trial on the issue of compensation. *Cf.* Sections 1263.110 (date of valuation fixed by deposit), 1263.120 (trial within one year).

Code Civ. Proc. § 1258.260 (amended). Contents of statement of valuation data

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 for consistency with contemporary statutory drafting techniques.

Code Civ. Proc. § 1260.040 (added). Resolution of legal issues affecting valuation

Comment. Section 1260.040 is intended to provide a mechanism by which a party may obtain early resolution of an *in limine* motion or other dispute affecting valuation. It should be noted that the procedure provided in this section is limited to resolution of legal issues that may affect compensation; it may not be used to ascertain just compensation. *Cf.* Cal. Const. art. I, § 19 (just compensation ascertained by jury unless waived).

Nothing in this section precludes the use of other procedures for the same purpose, including, without limitation, bifurcation of issues and control of the order of proof pursuant to statute, or other pretrial procedure pursuant to court rule.

FAM I L Y C O D E

Fam. Code § 2024 (amended). Notice concerning effect of judgment on will, insurance, and other matters

Comment. Section 2024 is amended to refer to the effect of dissolution or annulment of marriage on the designation of a former spouse as attorney-in-fact, nonprobate transfers to a former spouse, and joint tenancy survivorship as between former spouses. See Prob. Code §§ 3722, 4154, 4727(e) (power of attorney), 5600 (nonprobate transfer), 5601 (joint tenancy).

Fam. Code § 2040 (amended). Automatic temporary restraining order

Comment. Section 2040 is amended to clarify the scope of the automatic temporary restraining order with respect to estate planning changes.

Subdivision (a)(4) restrains modification of a nonprobate transfer “in a manner that affects the disposition of property subject to the transfer.” Modifications that are restrained as affecting the disposition of property include a change of beneficiary and a donor’s modification of the terms of

a power of appointment (this would not include exercise of a power of appointment by a donee). Modifications that are not restrained include naming a new trustee or successor trustee (so long as the change does not affect the trustee's powers or duties with respect to disposition of trust property).

Subdivision (b)(2) provides that the restraining order does not restrain revocation of a nonprobate transfer, provided that notice of the change has been filed and served on the other party. This does not mean that a nonprobate transfer is necessarily subject to revocation by one party without the consent of the other party. The question of whether a nonprobate transfer is subject to unilateral revocation is governed by the terms of the nonprobate transfer and applicable substantive law. See, e.g., Prob. Code § 5506 (action by all surviving joint owners required to cancel beneficiary registration of jointly-owned security); 31 C.F.R. § 353.51 (2000) (restricting changes in ownership of jointly-owned Series EE savings bond).

Subdivision (b)(3) provides that the restraining order does not restrain elimination of a right of survivorship, provided that notice of the change has been filed and served on the other party. This is consistent with *Estate of Mitchell*, 76 Cal. App. 4th 1378, 91 Cal. Rptr. 2d 192 (1999) (restraining order does not restrain severance of joint tenancy).

Subdivision (b)(4) provides that the restraining order does not restrain creation of one or more revocable or irrevocable unfunded trusts. However, the transfer of property to fund a trust would be restrained under subdivision (a)(2). An unfunded trust created during a dissolution proceeding could serve as a receptacle for property subject to a pour-over provision in a will. Such a trust could also be funded by property that has been released from restraint by the restraining order.

Subdivision (d) defines "nonprobate transfer" for the purposes of this section. The definition expressly incorporates instruments described in Probate Code Section 5000, including a "marital property agreement." Thus, an agreement between spouses as to how to divide community property between them on either of their deaths is a nonprobate transfer for the purposes of this section. See Prob. Code § 100(b) (agreement as to division of community property on death of spouse).

FOOD AND AGRICULTURAL CODE

Food & Agric. Code § 11937 (amended). Certification to director of result in court

Comment. Section 11937 is amended to delete the reference to "docket entries," and substitute a reference to the register of actions, because courts no longer maintain a record denominated a "docket" in civil cases. Formerly, justice courts maintained a docket in civil cases, which was a record of actions taken in open court, as well as documents filed and other proceedings in the case. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a "docket"), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the "docket" and other records of the court). Now actions taken in open court are recorded in the minutes of a superior court. Gov't Code § 69844; see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other proceedings in a civil case are recorded in the register of actions. See Gov't Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior court).

The amendment also deletes the clause authorizing the judge to substitute for the clerk if there is no clerk. That provision is obsolete because every superior court has a clerk. See Gov't Code §§ 24000(c) (county clerk), 26800 (county clerk as clerk of superior court). Additionally, a judge has authority to perform any act that a court clerk is allowed to perform. Code Civ. Proc. § 167.

GOVERNMENT CODE

Gov't Code § 946.6 (amended). Petition following public entity's rejection of application to present late claim

Comment. Section 946.6 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution, and the consequent elimination of associated judicial districts. See Section 38 (judicial districts).

Section 946.6 is also amended to clarify the jurisdictional classification of a proceeding for relief from the requirements of Section 945.4 following rejection of an application for leave to present a late claim. This is declaratory of existing law. See Code Civ. Proc. § 85 (limited civil cases) & Comment. See also Code Civ. Proc. § 88 (unlimited civil case).

Gov't Code § 7267.2 (amended). Precondemnation offer

Comment. Section 7267.2 is amended to elaborate the written statement and summary requirement, and to make clear that the public entity may satisfy the requirement by providing the property owner a copy of the appraisal. The provision is drawn from California Code of Regulations, Title 25, Section 6182 (relocation assistance and real property acquisition guidelines). The detail prescribed is the same as that prescribed for the written statement and summary under Code of Civil Procedure Section 1255.010 (deposit of probable compensation) and for the moving party under Section 1255.030 (increase or decrease in amount of deposit). The elaboration provided in this section is not intended as an exclusive listing of the contents of the written statement and summary; other information may be required by law or may be otherwise necessary or desirable.

Gov't Code § 11340.8 (repealed). Electronic communication

Comment. Section 11340.8 is repealed. Those of its provisions that duplicate the requirements of Section 11340.85 are redundant and have not been continued. Those provisions that are not duplicative have been continued as follows: The introductory statement of intent is continued in Section 11340.85(f) without substantive change. The mandatory aspect of subdivision (a), requiring an agency to accept comments submitted by facsimile or email, is continued in Section 11340.85(b)(4). Subdivision (b)(6)-(9) is continued in Section 11340.85(c)(6)-(9) without substantive change.

Gov't Code § 11340.85 (amended). Legislative intent regarding Bureau of State Audits

Comment. Section 11340.85 is amended to harmonize its requirements with those of former Section 11340.8.

Subdivision (b)(4) is amended to provide that agencies are required to accept comments by facsimile or electronic mail. The mandatory aspect of this rule is drawn from former Section 11340.8(a). Subdivision (b)(5) makes clear that an agency is not required to accept rulemaking petitions by facsimile or electronic mail.

Subdivision (c)(1) is amended to improve its clarity. This is a nonsubstantive change. Provisions requiring a "public notice" as defined in paragraph (1) include Sections 11346.4 (notice of proposed action), 11346.8(a) (notice of hearing), 11346.8(b) (notice of continuance or postponement of hearing), and Section 44 of Title 1 of the California Code of Regulations (notice of changes to proposed regulation).

Subdivision (c)(6)-(9) continues former Section 11340.8(b)(6)-(9) without substantive change.

Subdivision (f) continues the introductory statement of intent in former Section 11340.8 without substantive change.

Gov't Code § 11342.595 (amended). "Proposed action"

Comment. Section 11342.595 is amended to correct a technical defect. It is the notice of proposed action, not the proposed action itself, that is published in the California Regulatory Notice Register. See Section 11344.1(a) (contents of California Regulatory Notice Register).

Gov't Code §§ 11805-11807 (repealed). Performance budgeting

Comment. Sections 11805-11807 are repealed as obsolete. The pilot project established by these sections has expired.

Gov't Code § 14035.1 (repealed). High density residential development near mass transit guideway station

Comment. Section 14035.1 is repealed as obsolete. The section implements a pilot project that has expired.

Gov't Code § 14045 (repealed). Residential development near mass transit

Comment. Section 14045 is repealed as obsolete. The pilot project established by this section has expired.

Gov't Code § 14680.8 (repealed). State property management

Comment. Section 14680.8 is repealed as obsolete. The pilot project established by this section has expired.

Gov't Code §§ 15290-15300 (repealed). Homeless relief pilot project

Comment. Sections 15290-15300 are repealed as obsolete. The pilot project established by these sections has expired.

Gov't Code § 65083 (repealed). Residential development with increased density in close proximity to mass transit guideway stations

Comment. Section 65083 is repealed as obsolete. The section implements a pilot project that has expired.

Gov't Code § 65460.2 (amended). Transit village plan

Comment. Subdivision (h) of Section 65460.2 is amended to correct an obsolete reference to former Section 14045.

Gov't Code § 65913.5 (repealed). Density bonus for developer of housing within one-half mile of mass transit guideway station

Comment. Section 65913.5 is repealed as obsolete. The section implements a pilot project that has expired.

Gov't Code § 65917 (amended). Purpose of density bonus

Comment. Section 65917 is amended to correct an obsolete reference to former Section 65913.5.

Gov't Code § 68086 (amended). Official reporters and official reporting services

Comment. Section 68086 is amended to delete obsolete references to former Code of Civil Procedure Section 270.

Gov't Code § 69845.6 (repealed). Suspension of maintenance of register of actions

Comment. Section 69845.6 is repealed as obsolete. The pilot project established by this section has expired.

Gov't Code § 72055 (amended). First filing fee in limited civil case

Comment. Subdivision (a) of Section 72055 is amended to delete the requirement that the amount of the demand in a limited civil case be stated on the first page of the first paper immediately below the caption. It is sufficient to state whether the amount demanded exceeds \$10,000, so as to permit determination of the proper filing fee. For formatting requirements, see Cal. R. Ct. 201(f)(8). See also Code Civ. Proc. § 422.30 (caption of complaint in limited civil case shall identify case as a limited civil case). Technical changes are also made for conformity with preferred drafting style.

HEALTH AND SAFETY CODE

Health & Safety Code §§ 1339.51-1339.61 (repealed). Chronically or terminally ill children

Comment. Sections 1339.51-1339.61 are repealed as obsolete. The pilot project established by these sections has expired.

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

Comment. Subdivision (a)(1) of Section 7100 is amended to make clear that an agent under a power of attorney for health care is not automatically liable for the costs of disposition of remains. The agent can be liable under this section, however, if the agent (1) makes a specific agreement to pay the costs of disposition or (2) makes decisions, in the absence of an agreement, that result in costs. In the latter case, where there is no specific agreement to pay, the agent is not liable unless the estate or other fund is insufficient. See Section 7100.1; see also Prob. Code §§ 11421 (payment of funeral expenses from estate), 11446 (funeral expenses from estate, not community property).

Subdivision (a)(1) is also amended to make clear that the rights and duties of agents under powers of attorney for health care are subject in the first instance to determination under the Health Care Decisions Law. Thus, if an agent has been granted authority to direct disposition of remains under Probate Code Section 4683(b)(3), then the agent would fall within this section, if the agent assumes that authority, and would be liable as provided in subparagraphs (A) and (B) of subdivision (a)(1). But if the agent has not been granted that authority, either explicitly or by a general grant of authority under the Health Care Decisions Law, the agent does not have any rights, duties, or liabilities under Section 7100(a)(1).

The limitations in subdivision (a)(1) apply only to the person when acting as agent and not where the statute imposes a duty or liability based on some other relationship, such as a spouse under subdivision (a)(2) or a child under subdivision (a)(3).

Health & Safety Code §§ 25242.5-25242.6 (repealed). Hazardous Waste Reduction Internship

Comment. Sections 25242.5-25242.6 are repealed as obsolete. The pilot project established by these sections has expired.

Health & Safety Code § 32354 (repealed). Rural California professional liability loan program

Comment. Section 32354 is repealed as obsolete. The pilot project established by this section has expired.

Health & Safety Code § 43840 (amended). Alcohol-fueled vehicles

Comment. Section 43840 is amended to delete subdivision (d), which is obsolete. The pilot project established by that subdivision has expired.

Health & Safety Code § 43841 (repealed). Alcohol-fueled vehicles

Comment. Section 43841 is repealed as obsolete. The pilot project which it implements has expired.

Health & Safety Code § 43841.5 (repealed). Alcohol-fueled vehicles

Comment. Section 43841.5 is repealed as obsolete. The pilot project which it implements has expired.

Health & Safety Code § 50502.5 (repealed). High density residential development

Comment. Section 50502.5 is repealed as obsolete. The section implements a pilot project that has expired.

LABOR CODE

Lab. Code § 4612 (repealed). Employer-provided health care

Comment. Section 4612 is repealed as obsolete. The pilot project established by this section has expired.

PENAL CODE

Penal Code §§ 1000.30-1000.36 (repealed). Treatment of child sexual abuse perpetrators

Comment. Sections 1000.30-1000.36 are repealed as obsolete. The pilot project governed by these sections has expired.

Penal Code § 1348.5 (repealed). Representation of child in family sexual abuse cases

Comment. Section 1348.5 is repealed as obsolete. The pilot project established by this section has expired.

Penal Code § 2053.3 (repealed). Prisoner cell study

Comment. Section 2053.3 is repealed as obsolete. The pilot project established by this section has expired.

Penal Code § 5020 (repealed). Individualized prisoner education

Comment. Section 5020 is repealed as obsolete. The pilot project established by this section has expired.

Penal Code § 5058 (amended). Administration of prisons and parole

Comment. Section 5058 is amended to facilitate revision and reorganization of pilot program and emergency rulemaking provisions. Subdivisions (a) and (b) are revised to refer to the new sections.

Subdivision (c)(2) is amended to correct an obsolete reference to the State Administrative Manual.

Former subdivision (d)(1) is superseded by Section 5058.1 (pilot program regulations). Former subdivision (d)(2) is continued in Section 5058.2 (imminent danger) without substantive change.

Former subdivision (e) is superseded by Section 5058.3 (emergency rulemaking).

The superfluous phrase “or the director’s designee” is deleted from the section. This is a nonsubstantive change. The director has general authority to delegate statutory responsibilities. See Section 5055. See also Gov’t Code § 11343 (director or director’s designee may certify regulation for filing with Secretary of State). Use of the phrase in only some of the provisions of Section 5058 could create an implication that the director’s power to delegate is limited in provisions that do not use the phrase.

Penal Code § 5058.1 (added). Pilot program regulations

Comment. Section 5058.1 continues former subdivision Section 5058(d)(1) without substantive change, except as described below:

Subdivision (a) defines “pilot program” for the purposes of this section. While there is no general statutory definition of “pilot program,” a survey of statutes establishing pilot programs reveals certain common characteristics: experimental purpose and limited duration and scope. See, e.g., Bus. & Prof. Code § 3537.15 (limited implementation “to test validity and effectiveness” of program before full implementation); Fam. Code § 3032 (evaluation of program to be reported to Legislature). See also Third New International Dictionary 1716 (1971) (“pilot” means “serving on a small scale ... in checking technique or cost preparatory to full scale activity”). Subdivision (a) is consistent with this common usage. Pilot programs may include programs initiated by the Department of Corrections in response to a court order or negotiated settlement directing the department to establish the program.

Subdivisions (b)-(d) provide that the exemption for regulations implementing a pilot program applies to amendment and repeal of a regulation, and not just adoption.

Subdivision (b)(1) requires that the certification that a regulation relates to a pilot program include a description of the pilot program and of the method by which the results of the pilot program will be evaluated.

Subdivision (b)(3) corrects an erroneous reference to Section 6(b)(3)(F) of Title 1 of the California Code of Regulations.

Subdivision (b)(4) corrects an obsolete reference to the State Administrative Manual.

Subdivision (d) makes clear that the duration of a rulemaking action implementing a pilot program is two years from the date that the pilot program commenced, regardless of when the rulemaking action is taken. Thus, a change to the regulations implementing a pilot program does not extend the two-year maximum duration of the program.

The superfluous phrase “or the director’s designee” is not continued. This is a nonsubstantive change. The director has general authority to delegate statutory responsibilities. See Section 5055. See also Gov’t Code § 11343 (director or director’s designee may certify regulation for filing with Secretary of State). Use of the phrase in only some of the provisions of Section 5058 could create an implication that the director’s power to delegate is limited in provisions that do not use the phrase.

Penal Code § 5058.2 (added). Imminent danger

Comment. Section 5058.2 continues former Section 5058(d)(2) without substantive change. The first sentence of subdivision (a) has been revised to eliminate a superfluous and ungrammatical reference to “imminent danger.” The cross-reference in subdivision (b) has been revised to reflect the reorganization of provisions formerly in Section 5058.

The superfluous phrase “or the director’s designee” is not continued. This is a nonsubstantive change. The director has general authority to delegate statutory responsibilities. See Section 5055. See also Gov’t Code § 11343 (director or director’s designee may certify regulation for filing with Secretary of State). Use of the phrase in only some of the provisions of Section 5058 could create an implication that the director’s power to delegate is limited in provisions that do not use the phrase.

Penal Code § 5058.3 (added). Emergency rulemaking

Comment. Section 5058.3 continues former Section 5058(e) without substantive change, except as described below:

The introductory clause of subdivision (a) provides that the special emergency rulemaking procedure applies to amendment and repeal of a regulation, and not just adoption.

Note that the 160-day effective period provided in subdivision (a)(1) applies to all emergency rulemaking by the department, regardless of whether the director files a statement of emergency or a statement of operational need.

Subdivision (a)(2) requires a written explanation of the need for emergency rulemaking where the Department proceeds with emergency rulemaking on the basis of operational necessity, rather than on the basis of emergency. The written explanation is not required if the agency follows the general emergency rulemaking procedure and makes a showing of emergency pursuant to Government Code Section 11346.1(b).

The option of filing a statement of operational need, rather than a statement of emergency, only applies to the initial adoption and one re-adoption of an emergency regulation. This continues former Section 5058(e)(3). Note that re-adoption of emergency regulations is governed generally by Government Code Section 11346.1(h).

Subdivision (a)(3) extends the period for review of an emergency regulation by the Office of Administrative Law, where the Department proceeds with emergency rulemaking on the basis of operational necessity pursuant to subdivision (e)(2), rather than on the basis of emergency. The review period is not extended if the Department follows the general emergency rulemaking procedure and makes a showing of emergency pursuant to Government Code Section 11346.1(b). *Cf.* Gov't Code § 11349.6(b) (review period for emergency rulemaking in general).

The superfluous phrase "or the director's designee" is not continued. This is a nonsubstantive change. The director has general authority to delegate statutory responsibilities. See Section 5055. See also Gov't Code § 11343 (director or director's designee may certify regulation for filing with Secretary of State). Use of the phrase in only some of the provisions of Section 5058 could create an implication that the director's power to delegate is limited in provisions that do not use the phrase.

Penal Code § 6247 (repealed). Public inebriate reception center

Comment. Section 6247 is repealed as obsolete. The pilot project established by this section has expired.

Penal Code § 13823.20 (repealed). Foot patrols in high intensity drug-related crime areas

Comment. Section 13823.20 is repealed as obsolete. The pilot project established by this section has expired.

Penal Code §§ 13894.5-13894.9 (repealed). Fingerprinting of persons convicted of driving under the influence

Comment. Sections 13894.5-13894.9 are repealed as obsolete. The pilot project established by these sections has expired.

Penal Code § 14113 (repealed). Community violence prevention and conflict resolution

Comment. Section 14113 is repealed as obsolete. The pilot projects established by this section have expired.

Penal Code § 14114 (amended). Program priorities

Comment. Section 14114 is amended to replace an obsolete reference to former Section 14113 with the substance of the former provision.

Penal Code § 14119 (amended). Pilot programs and workshops

Comment. Section 14119 is amended to delete an obsolete reference to former Section 14113, and an obsolete commencement date.

PROBATE CODE

Prob. Code § 4123 (technical amendment). Permissible purposes of general power of attorney

Comment. Subdivision (a) of Section 4123 is amended to recognize the limitations on the scope of this division. Powers of attorney for health care are governed by the Health Care Decisions Law, Division 4.7 (commencing with Section 4600). This division — the Power of Attorney Law, Division 4.5 (commencing with Section 4000) — does not apply to powers of attorney for health care. See Section 4050 (types of powers of attorney governed by this division).

Prob. Code § 4609 (amended). “Capacity”

Comment. Section 4609 is amended to generalize the capacity definition to avoid the implication that the definition would only apply in situations where there is proposed health care. Thus, the definition applies to an individual’s capacity to make or revoke an advance health care directive, as well as to the making of a health care decision. In the latter case, the final clause provides additional guidance on the application of the capacity standard.

For provisions invoking capacity definition, see Sections 4651 (authority of person having capacity not affected), 4658 (determination of capacity and other medical conditions), 4670 (authority to give individual health care instruction), 4671 (authority to execute power of attorney for health care), 4682 (when agent’s authority effective), 4683 (scope of agent’s authority), 4695 (revocation of power of attorney for health care), 4715 (disqualification of surrogate).

See also Sections 4657 (presumption of capacity), 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).

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

Comment. Section 4659 is amended to clarify an ambiguity that existed in prior law. See former Section 4702. As amended, the exception in subdivision (b) does not apply to supervising health care providers. Consequently, the bar on supervising health care providers acting as agents or surrogates for their patients, as provided in subdivision (a), is absolute. If a supervising health care provider is the spouse of a patient, he or she would need to cease acting as the patient’s primary physician or other supervising health care provider in order to undertake responsibilities as an agent under a power of attorney for health care or as a surrogate health care decisionmaker. The extension of the relationship exception in subdivision (b)(1) to include registered domestic partners is new. See Fam. Code § 297 *et seq.* (domestic partner registration).

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

Comment. Section 4711 is amended to clarify the relation between a surrogate designation under this section and a formal agent designation in a power of attorney for health care under Section 4671 and related provisions, and to provide additional qualifications on surrogacy designations. 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.

Consistent with the statutory purpose of effectuating patient intent, subdivision (a) recognizes the patient’s ability to name a person to act as surrogate health care decisionmaker. As amended, this section no longer distinguishes between surrogates named orally and surrogates named in a

written communication to the supervising health care provider. Whether it is communicated to the supervising health care provider orally or in writing, the surrogate designation must be promptly recorded in the patient's health care record. See also Section 4731 (supervising health care provider's duty to record relevant information).

Subdivision (b) provides a maximum limit of 60 days on the duration of surrogate designations under this section. If the patient has an agent under a power of attorney for health care, the agent's authority is suspended during the time the surrogacy is in effect. See subdivision (d). If the patient names an agent in a power of attorney for health care executed after making a surrogate designation, the agent would have priority over the surrogate as provided in Section 4685 (agent's priority). As recognized in the introductory clause, the patient may specify a shorter period for the surrogate designation, by personally informing the supervising health care provider. A limitation might be phrased in terms of a period of time or as a condition, such as until the agent designated in the patient's power of attorney for health care becomes available.

Subdivision (c) makes clear that the limits on the duration of a surrogacy designation affect only the special surrogate rules in this section, and not the ability of the person who had been designated as surrogate to make or participate in making health care decisions for the patient under other principles. *Cf.* Section 4654 (compliance with generally accepted health care standards). After expiration of the period specified in subdivision (b), this section does not affect who may make health care decisions for adults lacking capacity.

Subdivision (d) makes clear that designation of a surrogate under this section suspends, but does not revoke, the appointment of an agent under a power of attorney for health care, unless the patient expresses the intent to revoke the agent's appointment, under the terms of the general rule in Section 4695(a). Subdivision (d) reverses the implication in background material that a surrogate designation made directly to the supervising health care provider revoked a previous designation of an agent. See Background from Uniform Act in Comment to Section 4711 as enacted, 1999 Cal. Stat. ch. 658, § 39 (operative July 1, 2000).

See also Sections 4617 ("health care decision" defined), 4619 ("health care institution" defined), 4635 ("reasonably available" defined), 4639 ("skilled nursing facility" defined), 4641 ("supervising health care provider" defined).

Heading of Chapter 3 (commencing with Section 4765) (technical amendment)

Comment. The chapter heading is amended to accurately reflect the contents of the chapter. Appeals under the Probate Code are governed generally by Part 3 (commencing with Section 1300) of Division 3. See Section 1302.5 (grounds for appeal under Health Care Decisions Law).

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

Comment. Section 4766 is amended to add the grounds for a petition specified in subdivision (e). This subdivision is consistent with the provision applicable to compel compliance with powers of attorney for property matters in Section 4541(f). The remedy provided by this subdivision would be appropriate where the third person has a duty to honor the authority of an agent or surrogate. See, e.g., Sections 4685 (agent's priority), 4733 (duty of health care provider or institution to comply with health care instructions and decisions).

The extent to which a third person may be compelled to comply with decisions of an agent or surrogate is subject to other limitations in this division. See, e.g., Sections 4652 (excluded acts), 4653 (mercy killing, assisted suicide, euthanasia not approved), 4654 (compliance with generally accepted health care standards), 4734 (right to decline for reasons of conscience or institutional policy), 4735 (right to decline to provide ineffective care).

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), 4623 ("individual health care instructions"

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

Prob. Code § 4769 (amended). Notice of hearing

Comment. Subdivision (b) of Section 4769 is amended for consistency with Section 4766(e) (petition to compel third person to honor health care instructions or authority of agent or surrogate).

See also Sections 4607 (“agent” defined), 4623 (“individual health care instructions” defined), 4625 (“patient” defined), 4633 (“principal” defined), 4643 (“surrogate” defined).

Prob. Code § 5003 (amended). Protection of property holders

Comment. Subdivision (a) of Section 5003 is amended to make clear that the section applies where a nonprobate transfer has been caused to fail by operation of Section 5600.

Subdivision (e) provides for compensation where a person serves a bad faith notice of a contrary claim to property held for the purpose of a nonprobate transfer. This provision is similar to Section 13541(d) (compensation where notice slanders title to community property after spouse’s death).

Prob. Code § 5302 (amended). Sums remaining in account on death of party

Comment. Section 5302 is amended to make clear that the transfer on death of funds in a multiple party account is subject to Section 5600, which causes a nonprobate transfer to a former spouse to fail if the former spouse is not the transferor’s surviving spouse. See Section 5600 (effect of dissolution of marriage on nonprobate transfer).

Prob. Code § 5600 (added). Failure of nonprobate transfer to former spouse

Comment. Subdivision (a) of Section 5600 establishes the general rule that a nonprobate transfer to a former spouse fails if, at the time of the transferor’s death, the former spouse is not the transferor’s surviving spouse, due to the dissolution or annulment of their marriage. “Dissolution or annulment” does not include legal separation. This is consistent with the law governing wills. See Sections 6122(d), 6227. “Surviving spouse” is defined in Section 78. “Nonprobate transfer” does not include life insurance. See subdivision (e).

Paragraph (1) of subdivision (b) provides that a nonprobate transfer to a former spouse does not fail by operation of subdivision (a) if, at the time of the transferor’s death, the nonprobate transfer is not subject to revocation by the transferor. This precludes operation of subdivision (a) where a nonprobate transfer is irrevocable on execution, or later becomes irrevocable by the transferor (for reasons other than the death or incapacity of the transferor). The irrevocability of a trust can be established by certification of the trust’s contents. See Section 18100.5.

Paragraph (2) of subdivision (b) provides that a nonprobate transfer to a former spouse does not fail on the transferor’s death if there is clear and convincing evidence that the transferor intended to preserve the nonprobate transfer. For example, if after divorcing, the transferor modified the beneficiary terms of a trust without changing the designation of the former spouse as primary beneficiary, this might be sufficiently clear and convincing evidence of the transferor’s intent to preserve the nonprobate transfer to the former spouse so as to prevent the operation of subdivision (a).

Subdivision (c) governs the effect of failure of a nonprobate transfer under this section. For the effect of a failed nonprobate transfer of property, see Section 21111. For the effect of a failure of a trustee designation, see Section 15660.

Subdivision (d) makes clear that nothing in this section affects the rights of a good faith purchaser or encumbrancer for value who relies on the apparent failure of a nonprobate transfer under this section or who lacks knowledge of the failure of a nonprobate transfer under this section. For the purpose of this subdivision, “knowledge” of the failure of a nonprobate transfer includes both actual knowledge and constructive knowledge through recordation of a judgment of

dissolution or annulment or other relevant document. See Civ. Code § 1213 (recordation as constructive notice to subsequent purchasers and mortgagees). The rights of a subsequent purchaser or encumbrancer are also protected if the purchaser or encumbrancer relies on an affidavit or declaration executed under Section 5602. The remedy for a person injured by a transaction with a subsequent purchaser or encumbrancer for value is against the transacting former spouse and not against the purchaser or encumbrancer.

In general, Section 5003 protects a property holder from liability for transferring the property according to the terms of the instrument making the nonprobate transfer, even if the nonprobate transfer has failed by operation of subdivision (a).

This section may be preempted by federal laws with respect to employer-provided benefits. See *Egelhoff v. Egelhoff*, 121 S. Ct. 1322 (2001) (ERISA preempts state law revoking spouse's rights as beneficiary of employer-provided life insurance). It is therefore especially important on dissolution or annulment of marriage to review beneficiary designations for employer-provided benefits.

Prob. Code § 5601 (added). Severance of joint tenancy between decedent and former spouse

Comment. Subdivision (a) of Section 5601 establishes the general rule that a joint tenancy between a decedent and the decedent's former spouse is severed if, at the time of the decedent's death, the former spouse is not the decedent's surviving spouse, due to the dissolution or annulment of their marriage. "Dissolution or annulment" does not include legal separation. This is consistent with the law governing wills. See Sections 6122(d), 6227. "Surviving spouse" is defined in Section 78. This effectively reverses the common law rule that dissolution or annulment of marriage does not sever a joint tenancy between spouses. See, e.g., *Estate of Layton*, 44 Cal. App. 4th 1337, 52 Cal. Rptr. 2d 251 (1996).

Note that property acquired during marriage in joint tenancy form is presumed to be community property on dissolution of marriage or legal separation. See Fam. Code § 2581. See also *In re Marriage of Hilke*, 4 Cal. 4th 215, 841 P.2d 891, 14 Cal. Rptr. 2d 371 (1992) (community property presumption applies after death of former spouse if court has entered judgment dissolving marriage and reserved jurisdiction over property matters). This section does not affect the community property presumption and does not affect property characterized as community property under that presumption.

This section applies to both real and personal property joint tenancies, and affects property rights that depend on the law of joint tenancy. See, e.g., Veh. Code §§ 4150.5, 5600.5 (property passes as though in joint tenancy). This section does not affect United States Savings Bonds, which are subject to federal regulation. See *Conrad v. Conrad*, 66 Cal. App. 2d 280, 284-85, 152 P.2d 221, 223 (1944) (federal law controls).

The method provided in this section for severing a joint tenancy is not exclusive. See, e.g., Civ. Code § 683.2.

Where a joint tenancy involves three or more joint tenants, severance by operation of this section converts the decedent's interest into a tenancy in common, but does not sever the joint tenancy as between the other joint tenants. For example, husband, wife, and a third person create a joint tenancy during husband and wife's marriage to each other. On husband's death, wife is not husband's surviving spouse and the joint tenancy is severed by operation of this section. Husband's one third interest becomes a tenancy in common and does not pass by survivorship. The remaining two thirds remain in joint tenancy as between the third person and the former wife.

Paragraph (1) of subdivision (b) provides that a joint tenancy is not severed by operation of subdivision (a) if the joint tenancy is not subject to severance by the decedent (for reasons other than the decedent's death). For example, if the decedent is subject to a court order or binding agreement prohibiting severance of the joint tenancy by the decedent, then the joint tenancy is not severed by operation of subdivision (a).

Subdivision (c) makes clear that nothing in this section affects the rights of a good faith purchaser or encumbrancer who relies on an apparent severance by operation of this section or who lacks knowledge of a severance by operation of this section. For the purpose of this

subdivision, “knowledge” of a severance of joint tenancy includes both actual knowledge and constructive knowledge through recordation of a judgment of dissolution or annulment or other relevant document. See Civ. Code § 1213 (recordation as constructive notice to subsequent purchasers and mortgagees). The rights of a subsequent purchaser or encumbrancer are also protected if the purchaser or encumbrancer relies on an affidavit or declaration executed under Section 5602. The remedy for a person injured by a transaction with a subsequent purchaser or encumbrancer is against the transacting joint tenant and not against the purchaser or encumbrancer.

Prob. Code § 5602 (added). Certification of rights under this part

Comment. Section 5602 provides a procedure for certifying that a person’s rights to real property transferred on the death of a spouse or former spouse, by an instrument making a nonprobate transfer or by operation of joint tenancy survivorship, are not affected by this part. See also Code Civ. Proc. § 2015.5 (certification or declaration under penalty of perjury); Prob. Code §§ 210-212 (recording evidence of death affecting title to real property).

Prob. Code § 5603 (added). Court’s authority not limited

Comment. Section 5603 clarifies the effect of this part.

Prob. Code § 5604 (added). Application of part

Comment. Section 5604 governs the application of this part.

Under subdivision (c), where a dissolution of marriage, or other event terminating a person’s status as a decedent’s surviving spouse occurs before January 1, 2000, that person’s rights as a nonprobate transfer beneficiary or joint tenant of the decedent are not affected by Section 5600 or 5601. See Section 78 (“surviving spouse” defined).

Prob. Code § 6202 (repealed). Spouse defined

Comment. Section 6202 is repealed to eliminate the inconsistency in the operation of Section 6122 and Section 6227. Section 6122 revokes a disposition to a former spouse in a will executed before or during the testator’s marriage to the former spouse. For the purposes of a statutory will, Section 6202 defines a “spouse” as a person who is married to the testator at the time the testator signs the statutory will. This means that Section 6227 only revokes a disposition to a former spouse in a statutory will that is executed after the testator’s marriage to the former spouse. See Estate of Reeves, 233 Cal. App. 3d 651, 284 Cal. Rptr. 650 (1991).

Prob. Code § 21111 (amended). Failed transfer

Comment. Section 21111 is amended to clarify the treatment of a failed transfer by will, trust, life insurance policy, or other instrument transferring property at death, where the transferring instrument does not provide for the transfer of a residue.

PUBLIC RESOURCES CODE

Pub. Res. Code §§ 25920-25925 (repealed). Energy efficient mortgages

Comment. Sections 25920-25925 are repealed as obsolete. The pilot project established by these sections has expired.

Pub. Res. Code § 48695 (repealed). Used oil filter recycling

Comment. Section 48695 is repealed as obsolete. The pilot project established by these sections has expired.

VEHICLE CODE

Veh. Code § 2802.5 (repealed). Commercial vehicle inspection facilities

Comment. Section 2802.5 is repealed as obsolete. The pilot project established by this section has expired.

Veh. Code § 4764.1 (repealed). Collection of unpaid parking penalties

Comment. Section 4764.1 is repealed as obsolete. The pilot project established by Sections 4764.1-4764.4 has expired.

Veh. Code § 4764.2 (repealed). Collection of unpaid parking penalties

Comment. Section 4764.2 is repealed as obsolete. The pilot project established by Sections 4764.1-4764.4 has expired.

Veh. Code § 4764.3 (repealed). Collection of unpaid parking penalties

Comment. Section 4764.3 is repealed as obsolete. The pilot project established by Sections 4764.1-4764.4 has expired.

Veh. Code § 4764.4 (repealed). Collection of unpaid parking penalties

Comment. Section 4764.4 is repealed as obsolete. The pilot project established by Sections 4764.1-4764.4 has expired.

Veh. Code § 16370 (amended). Failure to satisfy judgment for damage from operation of motor vehicle

Comment. Section 16370 is amended to delete the reference to “docket entries,” and substitute a reference to the register of actions, because courts no longer maintain a record denominated a “docket” in civil cases. Formerly, justice courts maintained a docket in civil cases, which was a record of actions taken in open court, as well as documents filed and other proceedings in the case. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other records of the court). Now actions taken in open court are recorded in the minutes of a superior court. Gov’t Code § 69844; see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other proceedings in a civil case are recorded in the register of actions. See Gov’t Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior court). Section 16370 is amended to refer not only to the register of actions but also to a comparable court record of another jurisdiction, because the provision applies to judgments rendered by courts in other states, not just judgments rendered by the California courts. See Section 16250 (“judgment” defined); see also Section 16251 (“cause of action” defined).

Veh. Code § 16373 (amended). Certification to judgment creditor

Comment. Section 16373 is amended to delete the reference to “docket entries,” and substitute a reference to the register of actions, because courts no longer maintain a record denominated a “docket” in civil cases. Formerly, justice courts maintained a docket in civil cases, which was a record of actions taken in open court, as well as documents filed and other proceedings in the case. See former Gov’t Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other records of the court). Now actions taken in open court are

recorded in the minutes of a superior court. Gov't Code § 69844; see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other proceedings in a civil case are recorded in the register of actions. See Gov't Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior court).

The amendment also deletes the clause authorizing the judge to substitute for the clerk if there is no clerk. That provision is obsolete because every superior court has a clerk. See Gov't Code §§ 24000(c) (county clerk), 26800 (county clerk as clerk of superior court). Additionally, a judge has authority to perform any act that a court clerk is allowed to perform. Code Civ. Proc. § 167.

Veh. Code § 16376 (amended). Action against nonresident

Comment. Section 16376 is amended to insert subdivisions and eliminate the reference to “the docket of a court not of record,” which is obsolete because all courts are “courts of record.” Cal. Const. art. VI, § 1.

Veh. Code § 16379 (amended). Payment of judgment in installments

Comment. Section 16379 is amended to delete the reference to “docket entries,” and substitute a reference to the register of actions, because courts no longer maintain a record denominated a “docket” in civil cases. Formerly, justice courts maintained a docket in civil cases, which was a record of actions taken in open court, as well as documents filed and other proceedings in the case. See former Gov't Code §§ 71614 (1953 Cal. Stat. ch. 206, § 1, repealed by 1977 Cal. Stat. ch. 1257, § 71) (judge of justice court shall keep a book denominated a “docket”), 71614.5 (1959 Cal. Stat. ch. 671, § 2, repealed by 1977 Cal. Stat. ch. 1257, § 72) (clerk or judge of justice court shall keep the “docket” and other records of the court). Now actions taken in open court are recorded in the minutes of a superior court. Gov't Code § 69844; see also *Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). Documents filed or lodged and other proceedings in a civil case are recorded in the register of actions. See Gov't Code §§ 69845 (clerk of superior court may keep a register of actions), 69845.5 (alternative to maintaining register of actions in superior court).

WELFARE AND INSTITUTIONS CODE

Welf. & Inst. Code § 729.11 (repealed). Juvenile offender substance abuse treatment program

Comment. Section 729.11 is repealed as obsolete. The pilot project established by this section has expired.

Welf. & Inst. Code § 1760.3 (repealed). Graffiti removal pilot project

Comment. Section 1760.3 is repealed as obsolete. The pilot project established by this section has expired.

Welf. & Inst. Code § 8016 (repealed). Financial services for seniors

Comment. Section 8016 is repealed as obsolete. The pilot project established by this section has expired.

Welf. & Inst. Code § 11265.5 (amended). Testing of reporting systems

Comment. Subdivision (b)(4)(A) of Section 11265.5 is amended to delete an obsolete reference to former Section 18920.

Welf. & Inst. Code § 14115.6 (repealed). Independent billing for services by nurse-practitioner

Comment. Section 14115.6 is repealed as obsolete. The pilot project established by this section has expired.

Welf. & Inst. Code § 14133.61 (repealed). Micrographics document location and retrieval system practitioner

Comment. Section 14133.61 is repealed as obsolete. The pilot project established by this section has expired.

Welf. & Inst. Code § 16515 (repealed). Respite care services for children

Comment. Section 16515 is repealed as obsolete. The pilot project established by this section has expired.

Welf. & Inst. Code §§ 18210-18215 (repealed). Food delivery

Comment. Sections 18210-18215 are repealed as obsolete. The pilot project established by these sections has expired.

Welf. & Inst. Code § 18600 (repealed). Services for newly blind and severely visually-impaired persons over 55

Comment. Section 18600 is repealed as obsolete. The pilot project established by this section has expired.

Welf. & Inst. Code § 18919 (repealed). Food stamp cash out

Comment. Section 18919 is repealed as obsolete. The pilot project established by this section has expired.

Welf. & Inst. Code § 18920 (repealed). Food stamp reporting systems

Comment. Section 18920 is repealed as obsolete. The pilot project established by this section has expired.

Welf. & Inst. Code §§ 18990-18991 (repealed). Grandparent phonefriend project

Comment. Sections 18990-18991 are repealed as obsolete. The pilot project established by these sections has expired.