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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
AUGUST 18, 2006  
BURBANK

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A meeting of the California Law Revision Commission was held in Burbank on August 18, 2006.

**Commission:**

*Present:* Edmund L. Regalia, Chairperson  
David Huebner, Vice Chairperson  
Sidney Greathouse  
Pamela L. Hemminger  
Frank Kaplan  
William E. Weinberger

*Absent:* Diane F. Boyer-Vine, Legislative Counsel  
Noreen Evans, Assembly Member  
Susan Duncan Lee  
Bill Morrow, Senate Member

**Staff:** Nathaniel Sterling, Executive Secretary  
Brian P. Hebert, Assistant Executive Secretary  
Steven E. Cohen, Staff Counsel  
Barbara S. Gaal, Staff Counsel

**Consultants:** None

**Other Persons:**

Marybeth O. Green, California Association of Community Managers  
Carol Hochstatter, Bakersfield  
Ray Helsing, California Association of Community Managers  
Charlotte Ito, State Bar Trusts & Estates Section  
Craig Page, California Land Title Association  
Nancy Salzman, California Association of Community Managers  
Mary Pat Toups, Laguna Woods  
Norma J. Walker, Bakersfield

C O N T E N T S

Minutes of June 22-23, 2006, Commission Meeting ..... 2  
Administrative Matters..... 2  
    Election of Officers ..... 2  
    Schedule of Future Meetings..... 2  
    Personnel Matters ..... 3  
    Report of Executive Secretary ..... 3  
Legislative Program..... 3  
Study H-855 – Statutory Clarification and Simplification of CID Law ..... 5  
Study J-1402 – Statutes Made Obsolete By Trial Court Restructuring: Part 3..... 5  
Study L-3032 – Beneficiary Deeds ..... 5  
Study T-100 – Technical and Minor Substantive Statutory Corrections ..... 8

MINUTES OF JUNE 22-23, 2006, COMMISSION MEETING

- 1       The Commission approved the Minutes of the June 22-23, 2006, Commission  
2 meeting as submitted by the staff, subject to the following correction:  
3       On page 12, line 17, the word “staff” was deleted.

ADMINISTRATIVE MATTERS

4   **Election of Officers**

- 5       The Commission considered Memorandum 2006-27, relating to the election of  
6 Commission officers. The Commission elected David Huebner as Chairperson  
7 and Sidney Greathouse as Vice Chairperson for the term commencing September  
8 1, 2006, and ending August 31, 2007.

9   **Schedule of Future Meetings**

- 10       The Commission considered Memorandum 2006-28, relating to the  
11 Commission’s schedule of future meetings. The Commission changed the  
12 beginning and ending times of the October 2006 meeting, changed the date of the  
13 June 2007 meeting, and added an additional day to the October 2007 and  
14 December 2007 meetings. As so revised, the Commission adopted the following  
15 schedule of future meetings.

|    |                     |                   |
|----|---------------------|-------------------|
| 16 | <b>October 2006</b> | <b>Burbank</b>    |
| 17 | Oct. 27 (Fri.)      | 8:00 am – 6:30 pm |
| 18 |                     |                   |

|    |                      |                    |
|----|----------------------|--------------------|
| 1  | <b>December 2006</b> | <b>Burbank</b>     |
| 2  | Dec. 8 (Fri.)        | 9:00 am – 4:30 pm  |
| 3  | <b>March 2007</b>    | <b>Sacramento</b>  |
| 4  | Mar. 1 (Thur.)       | 9:00 am – 4:30 pm  |
| 5  | <b>April 2007</b>    | <b>Sacramento</b>  |
| 6  | April 26 (Thur.)     | 9:00 am – 4:30 pm  |
| 7  | <b>June 2007</b>     | <b>Sacramento</b>  |
| 8  | June 28 (Thur.)      | 9:00 am – 4:30 pm  |
| 9  | <b>August 2007</b>   | <b>Burbank</b>     |
| 10 | Aug. 24 (Fri.)       | 9:00 am – 4:30 pm  |
| 11 | <b>October 2007</b>  | <b>Burbank</b>     |
| 12 | Oct. 25 (Thur.)      | 10:00 am – 5:00 pm |
| 13 | Oct. 26 (Fri.)       | 9:00 am – 4:30 pm  |
| 14 | <b>December 2007</b> | <b>Burbank</b>     |
| 15 | Dec. 13 (Thur.)      | 10:00 am – 5:00 pm |
| 16 | Dec. 14 (Fri.)       | 9:00 am – 4:30 pm  |

17 **Personnel Matters**

18 The Commission met in closed session pursuant to Government Code Section  
19 11126(a) to consider the prospective retirement of its Executive Secretary and  
20 succession to that position. The Commission adopted the following resolution:

21 Pursuant to Section 8284 of the Government Code, the  
22 California Law Revision Commission appoints Brian Hebert as  
23 Executive Secretary of the California Law Revision Commission  
24 and directs the Chairperson to sign any necessary documents on  
25 behalf of the Commission. The appointment is effective November  
26 6, 2006, or such other date as Nathaniel Sterling retires from the  
27 position of Executive Secretary of the California Law Revision  
28 Commission.

29 **Report of Executive Secretary**

30 The Executive Secretary reported that the state budget adopted for 2006-2007  
31 includes funding for the Commission at its current level.

LEGISLATIVE PROGRAM

32 The Commission considered Memorandum 2006-29 and its First Supplement,  
33 relating to the Commission's 2006 legislative program. The staff orally updated

1 the chart attached to the memorandum with the information that AB 770  
2 (Mullin) was approved by the Senate Appropriations Committee on August 17  
3 and that AB 1302 (Horton) was approved by the Senate Appropriations  
4 Committee on August 7.

5 The Executive Secretary noted that the Commission's legislative program for  
6 2006 was not as successful as its legislative program for previous years. The  
7 Executive Secretary attributed that to various factors, which may help guide the  
8 Commission's work in the future:

9 (1) **Creation of new state agency.** Two bills dealt with the Commission  
10 recommendation to create the office of state CID ombudsperson. Although one  
11 of the bills is still alive and may yet be enacted, the bills proved to be highly  
12 contentious, requiring numerous hearings and numerous amendments and  
13 compromises, and consuming a tremendous amount of staff resources that could  
14 more profitably have been devoted to other projects. The Executive Secretary  
15 suggested that the lesson for the Commission is to stick to its core competencies  
16 of substantive and procedural law, and avoid getting into governmental  
17 organization.

18 (2) **Recommendation with known problems.** One of the bills that died —  
19 relating to waiver of privilege by disclosure — was recommended by the  
20 Commission knowing that there was significant opposition from politically  
21 powerful sources. The Executive Secretary suggested that the lesson for the  
22 Commission is to attempt to seek consensus, if at all possible, rather than to  
23 persevere with a recommendation that is likely not to be enactable.

24 (3) **Study of politically sensitive area.** One of the bills that died was a two  
25 year bill that was not listed on the Commission's legislative program chart for  
26 2006 because it was never set for hearing in its first house. That was the  
27 recommendation on financial privacy. The Executive Secretary suggested that  
28 the lesson for the Commission is to avoid a study in a politically sensitive area,  
29 particularly an area where there may be concern about the Commission's  
30 involvement. In the case of financial privacy, the Commission did not have the  
31 option to avoid the study since the Legislature directed the Commission to do it.  
32 That situation may occur again in the future.

33 The Commission expressed concern about the increasingly common practice  
34 of assigning a study to the Commission as a compromise solution to a bill that  
35 has been introduced but runs into problems in the Legislature. Some of these  
36 bills may be politically charged or relate to a matter otherwise inappropriate for

1 Commission study. The Commission discussed the problem but came to no  
2 conclusion concerning it.

3 (4) **Unexpected problems.** One bill that died — ownership of amounts  
4 withdrawn from joint account — encountered problems with committee staff.  
5 That was not foreseeable. The Executive Secretary drew no lessons from the  
6 experience, other than the importance of working closely with committee staff.

7 STUDY H-855 – STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

8 The Commission considered Memorandum 2006-33 and its First and Second  
9 Supplements, and material distributed at the meeting (attached to the Third  
10 Supplement), discussing a staff draft on the clarification and simplification of  
11 CID law.

12 The Commission approved the staff draft and the staff recommendations for  
13 revisions to that draft, subject to the following decision: the staff will work with  
14 interested parties to develop better language to indicate the meaning of “current”  
15 as it is used in the statement of an association’s current regular assessment  
16 pursuant to proposed Civil Code Section 5555(c)(4).

17 STUDY J-1402 – STATUTES MADE OBSOLETE BY  
18 TRIAL COURT RESTRUCTURING: PART 3

19 The Commission considered Memorandum 2006-31, together with material  
20 distributed at the meeting (attached to the First Supplement to Memorandum  
21 2006-31), relating to trial court restructuring. The Commission approved the draft  
22 attached to Memorandum 2006-31 as a tentative recommendation to be  
23 circulated for comment.

24 STUDY L-3032 – BENEFICIARY DEEDS

25 The Commission considered Memorandum 2006-30, together with its First  
26 Supplement, relating to the staff draft tentative recommendation on the  
27 revocable transfer on death (TOD) deed. The Commission approved the draft as  
28 a tentative recommendation, to be circulated for public comment, subject to the  
29 following decisions and subject to staff editorial revisions.

1 **Interest in Real Property**

2 The Commission approved the proposed addition of language to the  
3 definition of “real property” to include an easement, license, permit, or other  
4 right in property, as set out in the memorandum.

5 **Effect of Revocable TOD Deed on CPWROS**

6 Draft Section 5666 (community property) should be recast to state the effect of  
7 joinder or non-joinder of the spouses, along the following lines:

8 **§ 5666. Community property**

9 5666. (a) A revocable transfer on death deed of community  
10 property made ~~without the joinder of the transferor’s spouse by~~  
11 one spouse acting alone is effective only as to the transferor’s one-  
12 half interest in the property. A revocable transfer on death deed of  
13 community property joined in by both spouses is effective as to the  
14 interests of both spouses.

15 (b) A revocable transfer on death deed of community property  
16 with right of survivorship made ~~without the joinder of the~~  
17 transferor’s spouse by one spouse acting alone is governed by the  
18 rules applicable to property held in joint tenancy under Section  
19 5664.

20 **Simultaneous Death Issues**

21 The Comments to draft Sections 5664 (joint tenancy property) and 5666  
22 (community property) should be revised to describe the effect of simultaneous  
23 death, as set out in the memorandum.

24 **Effect of Other Law**

25 The Commission added to the tentative recommendation the following  
26 provision, as set out in the memorandum:

27 **§ 5604. Effect of other law**

28 5604. (a) Nothing in this part affects the application of any other  
29 statute governing a nonprobate transfer on death to a revocable  
30 transfer on death deed, including but not limited to any of the  
31 following provisions that by its terms or intent applies to a  
32 nonprobate transfer on death:

33 (1) Division 2 (commencing with Section 100) (general  
34 provisions).

35 (2) Part 1 (commencing with Section 5000) of this division  
36 (provisions relating to effect of death).

37 (3) Division 10 (commencing with Section 20100) (proration of  
38 taxes).

39 (4) Division 11 (commencing with Section 21101) (construction  
40 of wills, trusts, and other instruments).

1 (b) Notwithstanding subdivision (a), a provision of another  
2 statute governing a nonprobate transfer on death does not apply to  
3 a revocable transfer on death deed to the extent this part provides a  
4 contrary rule.

5 **Comment.** Section 5604 makes clear that the revocable TOD  
6 deed law is supplemented by general statutory provisions  
7 governing a nonprobate transfer. The specific cross references in  
8 this section are illustrative and not exclusive. General provisions  
9 referenced in this section include effect of death on community  
10 property, establishing and reporting fact of death, simultaneous  
11 death, effect of homicide or abuse, disclaimer, provisions relating to  
12 effect of death, nonprobate transfers of community property,  
13 nonprobate transfer to former spouse, proration of taxes, rules for  
14 interpretation of instruments, and limitations on transfers to  
15 drafters.

16 This part may in some instances limit the effect of a provision  
17 otherwise applicable to a nonprobate transfer on death. See, e.g.,  
18 Section 5620 & Comment (capacity to make deed).

## 19 **Statutory Forms**

20 The Commission discussed the concept of a series of single-purpose statutory  
21 forms for the revocable TOD deed, but decided to proceed in the tentative  
22 recommendation with a single form that includes some basic options in draft  
23 Section 5642. A note following the form should solicit comment on whether  
24 multiple single-purpose forms would be preferable. The note should also inquire  
25 whether use of the statutory form should be mandatory, pointing out that if use  
26 of the form is mandatory, the form will need to offer more options and  
27 alternatives.

28 With respect to the statutory form deed, the Commission deleted the  
29 references to alternate beneficiaries. The form should be simplified by referring  
30 to “Name of Beneficiary(ies)” rather than “Names of Additional Beneficiaries  
31 [optional].” The form should provide that in the case of multiple beneficiaries,  
32 the deed passes the property to them equally as tenants in common. The form  
33 should also include simple language relating to the consequences of a beneficiary  
34 predeceasing the transferor, perhaps referring in general terms to the Probate  
35 Code.

36 The statutory form draft should include an optional provision that would  
37 allow an intervening life estate before the ultimate beneficiaries become entitled  
38 to possession. The preliminary part of the tentative recommendation, which  
39 solicits comment on the concept of allowing fractionation between a life estate

1 and remainder interest, should be expanded to make commenters aware of  
2 potential problems that could result, including waste or encumbrance of the  
3 property by the life tenant. A similar note should be added following the draft  
4 form. The staff should also research the question of judicial supervision of  
5 disputes between the fractional interests in the context of a transfer of this type  
6 and report the results of the research to the Commission in connection with its  
7 review of comments on the tentative recommendation.

8 **Comment Period**

9 The Commission decided on a relatively short public comment period, from  
10 the last part of August through the first part of October. This is to enable the  
11 Commission to make any necessary revisions at its October and December  
12 meetings before the January 1, 2007, statutory deadline for finalizing its report on  
13 this matter.

14 **STUDY T-100 – TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS**

15 The Commission considered Memorandum 2006-34, which recommends that  
16 the Commission adopt the staff draft recommendation incorporating the  
17 technical and minor substantive statutory corrections in this study and Study J-  
18 1322 as a final recommendation for presentation to the Legislature.

19 The Commission adopted the staff draft recommendation as a final  
20 recommendation for printing and presentation to the Legislature.

21

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

APPROVED AS CORRECTED  
(for corrections, see Minutes of next meeting)

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary