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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
OCTOBER 14, 2010  
DAVIS

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A meeting of the California Law Revision Commission was held in Davis on October 14, 2010.

**Commission:**

*Present:* Justice John Zebrowski (ret.), Chairperson  
Stephen Murphy, Vice-Chairperson  
Diane Boyer-Vine, Legislative Counsel  
Mark Dundee  
Pamela L. Hemminger  
Susan Duncan Lee

*Absent:* Ellen Corbett, Senate Member  
Noreen Evans, Assembly Member  
Sidney Greathouse

**Staff:** Brian Hebert, Executive Secretary  
Barbara Gaal, Chief Deputy Counsel  
Catherine Bidart, Staff Counsel  
Steve Cohen, Staff Counsel  
Debora Larrabee, Administrative Analyst  
Michael Lew, Law Clerk

**Consultants:** Nathaniel Sterling

**Other Persons:**

Sandra Bonato, State Bar Real Property Law Section  
Lucinda Calvo  
Kevin Johnson, Dean, UC Davis School of Law  
Michael Joseph  
Jennifer Maquire  
Kerry Mazzoni, Executive Council of Homeowners  
Jackie McGrath, Alzheimer's Association  
Marjorie Murray, California Alliance for Retired Americans  
Dick Pruess, Community Associations Institute  
Curtis C. Sproul, State Bar Real Property Law Section

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MINUTES OF AUGUST 19, 2010, COMMISSION MEETING

The Commission approved the Minutes of the August 19, 2010, Commission meeting, with one correction: on page 9, line 21, the Minutes should have indicated that the Commission also considered the First Supplement to Memorandum 2010-37.

ADMINISTRATIVE MATTERS

**Miscellaneous**

Dean Kevin Johnson, of the UC Davis School of Law, welcomed the Commission and expressed his hopes for a productive collaboration between the School of Law and the Commission. The Executive Secretary also expressed a desire for productive collaboration, and thanked Dean Johnson and UC Davis School of Law for their gracious assistance to the Commission.

The Commission recognized its former Chairperson, Susan Duncan Lee, for her service as Chairperson in 2009-2010.

**Meeting Schedule**

The Commission considered Memorandum 2010-38, relating to the Commission’s meeting schedule. The Commission made no change to the schedule for its December 15-16, 2010, meeting in Burbank.

### **Report of Executive Secretary**

The Executive Secretary noted that the position held by former Commissioner Ali Jahangiri is now vacant.

The Executive Secretary recognized Debora Larrabee for her service on the Commission's staff. He also reported the possibility that Ms. Larrabee would be laid off to achieve mandatory salary savings.

Finally, the Executive Secretary reported that the Commission's former Executive Secretary Nathaniel Sterling has created a charitable fund, to be administered by the UC Davis School of Law, to support collaboration between the Commission and UC Davis law students.

### **New Topics and Priorities**

The Commission considered Memorandum 2010-39 and its First and Second Supplements, relating to new topics and priorities. Jackie McGrath of the Alzheimer's Association presented information on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"), and encouraged the Commission to study that topic.

The Commission approved the staff recommendations in the memorandum, particularly the workplan at pages 42-43. The Commission decided to prioritize work on UAGPPJA to the extent possible given its other obligations.

## LEGISLATIVE PROGRAM

### **Status of Bills**

The Commission considered Memorandum 2010-40, relating to the Commission's 2010 legislative program and other bills of interest to the Commission. No Commission action was required or taken.

#### **SB 189 (Lowenthal) — Mechanics Lien law**

The Commission considered Memorandum 2010-41, reporting on the status of Senate Bill 189 (Lowenthal). No Commission action was required or taken.

#### **SB 1080 & SB 1115 (Public Safety) — Deadly Weapons**

See entry in these minutes for Study M-300.

STUDY H-855 — STATUTORY CLARIFICATION AND  
SIMPLIFICATION OF CID LAW

The Commission considered Memorandum 2010-46 and its First Supplement, Memorandum 2010-47 and its First Supplement, the first four pages of Memorandum 2010-48 and the first four pages of its First Supplement, presenting and discussing public comments on the tentative recommendation on *Statutory Clarification and Simplification of CID Law* (Feb. 2010). The Commission approved all of the staff recommendations in those materials, with the following exceptions and additional decisions:

**Proposed Civ. Code § 4125**

Proposed Civil Code Section 4125 was revised as follows:

4125. (a) A “condominium project” means a real property development consisting of condominiums.

(b) A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, ~~or~~ water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof.

(c) The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, ~~or~~ water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support.

(d) An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

**Proposed Civ. Code § 4155**

Proposed Civil Code Section 4155 was revised as follows:

4155. (a) A “managing agent” is a person who, for compensation or in expectation of compensation, exercises control over the assets of a common interest development.

(b) A “managing agent” does not include any of the following:

(1) ~~A full-time employee of the association.~~

~~(2)~~ A regulated financial institution operating within the normal course of its regulated business practice.

~~(3)~~ (2) An attorney at law acting within the scope of the attorney’s license.

In addition, language was added to proposed Civil Code Sections 5375 and 5380 to exempt a full time employee of an association from the definition of “managing agent” for the purposes of those provisions.

#### **Proposed Civ. Code § 4160**

The Commission directed the staff to further analyze the appropriateness of proposed Civil Code Section 4160(b).

#### **Proposed Civ. Code § 4163**

Civil Code Section 4163 was deleted. The existing definition of “occupant” was restored to the provisions that would continue existing Civil Code Section 1364. In any proposed provisions in which the term “occupant” had been substituted for “resident,” the term “occupant” was restored.

#### **Proposed Civ. Code § 4165**

Proposed Civil Code Section 4165 was revised along the following lines:

4165. “Operating rule” means a regulation adopted by the board that applies ~~generally to the management and operation of the common interest development or the conduct of the business and affairs of the association~~ to a matter listed in subdivision (a) of Section 4355.

#### **Definitions of “Annual Budget Report,” “Annual Policy Statement,” “Individual Notice,” and “General Notice”**

The Commission added definitions of the terms “annual budget report,” “annual policy statement,” “individual notice,” and “general notice” to the proposed law, along the lines proposed on pages 37 and 39 of Memorandum 2010-47.

### **Definition of “Recording”**

The Commission directed the staff to further analyze whether a single definition of “recording” should be used in the Davis-Stirling Common Interest Development Act.

### **Definition of “Regular Assessment” and “Special Assessment”**

The Commission decided against adding definitions of the terms “regular assessment” and “special assessment” to the proposed law.

### **Proposed Civ. Code § 4205**

Proposed Civil Code Section 4205 was revised as follows:

4205. (a) The governing documents may not include a provision that is inconsistent with the law. To the extent of any inconsistency between the governing documents and the law, the law controls.

(b) The articles of incorporation may not include a provision that is inconsistent with the declaration. To the extent of any inconsistency between the articles of incorporation and the declaration, the declaration controls.

(c) The bylaws may not include a provision that is inconsistent with the declaration or the articles of incorporation. To the extent of any inconsistency between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration control.

(d) The operating rules may not include a provision that is inconsistent with the declaration, articles of incorporation, or bylaws. To the extent of any inconsistency between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration control.

~~(d) This section does not apply to a stock cooperative.~~

### STUDY H-856 — COMMERCIAL AND INDUSTRIAL COMMON INTEREST DEVELOPMENTS

The Commission considered Memorandum 2010-45, presenting a draft of the preliminary part of a tentative recommendation on *Commercial and Industrial Common Interest Developments*. The Commission approved the distribution of a tentative recommendation, which would include the draft preliminary part and proposed legislation approved at prior meetings, subject to the following decisions:

**Civ. Code § 1373**

The proposed amendment to existing Civil Code Section 1373 was revised as follows:

1373. (a) This title does not apply to a commercial or industrial common interest development, as defined in Section 6556 ~~that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located.~~

**Proposed Civ. Code §§ 6600, 6612**

Proposed Civil Code Section 6600 was revised to parallel proposed Civil Code Section 4205, as revised in the Commission's concurrent study of *Statutory Clarification and Simplification of CID Law*. See entry in these Minutes for Study H-855. Proposed Civil Code Section 6612 was deleted.

**Proposed Civ. Code § 6870(d)**

Proposed Civil Code Section 6870(d) was revised as recommended on page 4 of Memorandum 2010-45.

**Proposed Civ. Code § 6806**

Proposed Civil Code Section 6806, which would continue existing Civil Code Section 1366.4, was deleted from the proposed legislation. Subject to review by the Chairperson, the preliminary part of the tentative recommendation will be revised to expressly indicate that Section 1366.4 would not be continued, and to solicit public comment on that approach.

**Proposed Civ. Code § 6850**

Proposed Civil Code Section 6850 was revised as follows:

6850. If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents, the board shall adopt and distribute to each member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the governing documents.

The board of directors shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members pursuant to this section.

Subject to review by the Chairperson, the staff will further revise the provision to make clear that an association member is entitled to receive a copy of an association's existing schedule of monetary penalties on request.

In addition, the staff will consider whether the language of the provision can be made clearer, in connection with its pending review of proposed Civil Code Section 5850, the analogous provision of the tentative recommendation on *Statutory Clarification and Simplification of CID Law*.

### **Nomenclature**

The tentative recommendation was revised to replace the term "nonresidential common interest development" with the term "commercial and industrial common interest development" (or where grammatically appropriate, "commercial or industrial common interest development").

### **Preliminary Part Revision**

The Commission made the following revisions to the draft preliminary part of the tentative recommendation:

- (1) On page 5, line 31, the word "four" was deleted and replaced with "three."
- (2) On page 5, lines 36 through 38 were deleted. The substance of the deleted lines was continued as the first sentence of the paragraph beginning on line 2 of page 6.

### **Incorporation of Changes Made in Study of *Statutory Clarification and Simplification of CID Law***

Subject to review by the Chairperson, the tentative recommendation will be revised to incorporate, to the extent relevant, decisions made to date in the Commission's study of *Statutory Clarification and Simplification of CID Law*.

### **Conforming Revisions**

Subject to review by the Chairperson, the tentative recommendation will be revised to include any technical amendments that are necessary to correct cross-references to the existing Davis-Stirling Common Interest Development Act.

STUDY J-1450 — TRIAL COURT RESTRUCTURING: APPELLATE JURISDICTION  
OF BAIL FORFEITURE

The Commission considered Memorandum 2010-43, discussing appellate jurisdiction of bail forfeiture and presenting a draft of a tentative recommendation. The Commission approved the circulation of the draft as a tentative recommendation.

STUDY J-1452 — TRIAL COURT RESTRUCTURING: WRIT JURISDICTION  
IN A SMALL CLAIMS CASE

The Commission considered Memorandum 2010-44, which presents a draft of a tentative recommendation on writ jurisdiction in a small claims case. The Commission approved the circulation of the draft as a tentative recommendation.

STUDY M-300 — DEADLY WEAPONS

The Commission considered Memorandum 2010-42, relating to nonsubstantive reorganization of the deadly weapon statutes. The Commission made the following decisions:

**Penal Code § 12021.5**

To reflect the enactment of Assembly Bill 2263 (Yamada), the Comment to the amendment of Penal Code Section 12021.5 was revised as follows:

**Comment.** Section 12021.5 continues former Section 12021.5 (as operative Jan. 1, ~~2011~~ 2012) without change, except that subdivisions (c)(5)-(6) are revised to correct cross-references to the definitions of “rifle” and “shotgun.”

See also Section 12001 (“firearm” defined).

**Penal Code § 12022.2**

To reflect the enactment of Assembly Bill 2263 (Yamada), the Comment to the amendment of Penal Code Section 12022.2 was revised as follows:

**Comment.** Section 12022.2 continues former Section 12022.2 (as operative Jan. 1, ~~2011~~ 2012) without change, except that subdivision (b) is revised to correct a cross-reference to the definition of “violent offense.”

See also Section 12001 (“firearm” defined).

#### **Penal Code § 12022.4**

To reflect the enactment of Assembly Bill 2263 (Yamada), the Comment to the amendment of Penal Code Section 12022.4 was revised as follows:

**Comment.** Section 12022.4 continues former Section 12022.4 (as operative Jan. 1, ~~2011~~ 2012) without change.  
See also Section 12001 (“firearm” defined).

#### **Penal Code § 16288**

To reflect the enactment of Senate Bill 408 (Padilla), the Commission previously approved the addition of Section 16288 (“body armor”) to the Penal Code. See Minutes (Aug. 2010), p. 4.

The Commission approved the following Comment for new Section 16288:

**Comment.** Section 16288 continues former Section 12370(f) without substantive change.

#### **Penal Code § 31360**

To reflect the addition of new Section 16288, the Comment to Penal Code Section 31360 was revised as follows:

**Comment.** Section 31360 continues former Section 12370(a)-(d) without substantive change.  
See ~~Section~~ Sections 16288 (“body armor”), 17320 (“violent felony”).

#### **Disposition Table and Supplemental Disposition Table**

To reflect the enactment of Senate Bill 408 (Padilla), the disposition table and supplemental disposition table for the Commission’s report on *Nonsubstantive Reorganization of Deadly Weapon Statutes* was revised as shown on pages 3-4 of Memorandum 2010-42.

#### **Report on Senate Bill 1080 (Committee on Public Safety)**

Subject to insertion of the disposition table and supplemental disposition table with the revisions noted above, the Commission approved for publication the draft report on Senate Bill 1080 that is attached to Memorandum 2010-42.

#### **Report on Senate Bill 1115 (Committee on Public Safety)**

The Commission approved for publication the draft report on Senate Bill 1115 that is attached to Memorandum 2010-42.

STUDY T-102 — OBSOLETE CROSS-REFERENCES TO  
FORMER CODE OF CIVIL PROCEDURE SECTION 116.780(D)

The Commission considered Memorandum 2010-50, which presents a draft of a tentative recommendation on obsolete cross-references to former Code of Civil Procedure Section 116.780(d). The Commission decided that the comma at line 25 of page 3 of the draft should be in regular typeface, not in strikeout font.

Subject to that change, the Commission approved the draft for circulation as a tentative recommendation. While the tentative recommendation is circulating, the staff should investigate whether the term “reassignment” is currently used in the codes, and whether that is the best term to use in Code of Civil Procedure Section 116.820.

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

\_\_\_\_\_ Date

\_\_\_\_\_ Chairperson

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