Note Changes may be made in this tentative agenda. For meeting information, call (415) 497-1731

May 2, 1977

Time

May 12 - 7:00 p.m. - 10:00 p.m.
May 13 - 9:00 a.m. - 5:00 p.m.
May 14 - 9:00 a.m. - 12:00 noon

Place

Room 6024
State Capitol
Sacramento

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Sacramento

May 12-14, 1977

1. Minutes of April 7-8, 1977, Meeting (sent 4/22/77)

2. Administrative Matters

   Suggested Schedule for Future Meetings
   See attached schedule

   Report on 1977 Legislative Program Generally

   Memorandum 77-27 (to be sent)

   Schedule for Work on Topics

   Memorandum 77-28 (sent 4/29/77)

   Discussion of Work on Nonprofit Corporations Study

   Consultant on Homestead Study

   Memorandum 77-29 (sent 4/28/77)

   Indexing Contract

   Memorandum 77-32 (enclosed)

3. Study 63.70 - Evidence of Market Value of Property

   Memorandum 77-30 (sent 4/22/77)

4. Study 39.200 - Enforcement of Judgments (Comprehensive Statute)

   Memorandum 77-3 (sent 1/21/77)
   Draft Statute (attached to Memorandum)

   Note. We will start with Section 703.710 of the draft statute; Sections 705.110-705.190 were covered at the February 1977 meeting and will not be discussed at the May meeting.

5. Study 39 - Attachment of Property Subject to Security Interest

   Memorandum 77-31 (enclosed)
   Tentative Recommendation (attached to Memorandum)
   Attachment Law With Official Comments (distributed for previous meetings)

CALIFORNIA LAW REVISION COMMISSION

SUGGESTED SCHEDULE FOR FUTURE MEETINGS

PREVIOUSLY APPROVED

JUNE

June 9 - 7:00 p.m. - 10:00 p.m. — Los Angeles
June 10 - 9:00 a.m. - 5:00 p.m.
June 11 - 9:00 a.m. - 12:00 noon

JULY

July 7 - 7:00 p.m. - 10:00 p.m. — San Francisco
July 8 - 9:00 a.m. - 5:00 p.m.
July 9 - 9:00 a.m. - 4:00 p.m.

SUGGESTED

AUGUST

No Meeting

SEPTEMBER

September 8 - 7:00 p.m. - 10:00 p.m. — Los Angeles
September 9 - 9:00 a.m. - 5:00 p.m.
September 10 - 9:00 a.m. - 4:00 p.m.

OCTOBER

October 6 - 7:00 p.m. - 10:00 p.m. — San Francisco
October 7 - 9:00 a.m. - 4:30 p.m.

NOVEMBER

November 3 - 7:00 p.m. - 10:00 p.m. — Los Angeles
November 4 - 9:00 a.m. - 5:00 p.m.
November 5 - 9:00 a.m. - 12:00 noon

DECEMBER

December 1 - 7:00 p.m. - 10:00 p.m. — San Francisco
December 2 - 9:00 a.m. - 4:00 p.m.

Note. December meeting will be held only if necessary to complete work of legislative program for 1978 session.

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

MAY 12, 13, AND 14, 1977

Sacramento

A meeting of the California Law Revision Commission was held in Sacramento on May 12, 13, and 14, 1977.

Present: John N. McLaurin, Chairman
John J. Balluff, May 12 and 13
Beatrice P. Lawson
Jean C. Love, May 12 and 14
John D. Miller
Thomas E. Stanton, Jr., May 14

Absent: Howard R. Williams, Vice Chairman
George Deukmejian, Member of Senate
Alister McAlister, Member of Assembly
Bion M. Gregory, Ex officio

Assemblyman Alister McAlister, the Assembly member of the Commission, made a brief statement to the Commission on May 13 but did not participate in the discussions or decisions at the May meeting.

Members of Staff Present:

John H. DeMoully
Stan G. Ulrich
Nathaniel Sterling
Robert J. Murphy III, May 12 and 13

Consultants Present:

Professor Stefan A. Riesenfeld, Creditors' Remedies, May 13 and 14

The following person was present as observer on day indicated:

May 12

Norval Fairman, CALTRANS, Legal, San Francisco

ADMINISTRATIVE MATTERS

Minutes of April Meeting Approved as Corrected

The Minutes of the April 7 and 8, 1977, meeting were corrected by substituting "execution" for "exectuion" in the last line of page 2. As thus corrected, the Minutes were approved.

Future Meetings

The Commission discussed changing the place of the June meeting to San Francisco and the July meeting to Los Angeles. Commissioner Miller indicated that this change might be more convenient to him. However, after the meeting, the staff discovered that it was not possible to arrange for adequate meeting rooms in the new locations. Accordingly, after checking with Commissioner Miller after the meeting, it was decided not to change the place of the June and July meetings.

Future meetings are scheduled as follows:

JUNE	
June 9 - 7:00 p.m. - 10:00 p.m.	Los Angeles
June 10 - 9:00 a.m. - 5:00 p.m.	
June 11 - 9:00 a.m. - 12:00 noon	
JULY	
July 7 - 7:00 p.m. - 10:00 p.m.	San Francisco
July 8 - 9:00 a.m. - 5:00 p.m.	
July 9 - 9:00 a.m. - 4:00 p.m.	
AUGUST	
No Meeting	
SEPTEMBER	
September 8 - 7:00 p.m. - 10:00 p.m.	Los Angeles
September 9 - 9:00 a.m. - 5:00 p.m.	
September 10 - 9:00 a.m. - 4:00 p.m.	
OCTOBER	
October 6 - 7:00 p.m. - 10:00 p.m.	San Francisco
October 7 - 9:00 a.m. - 4:30 p.m.	
NOVEMBER	
November 3 - 7:00 p.m. - 10:00 p.m.	Los Angeles
November 4 - 9:00 a.m. - 5:00 p.m.	
November 5 - 9:00 a.m. - 12:00 noon	
DECEMBER	
December 1 - 7:00 p.m. - 10:00 p.m.	San Francisco
December 2 - 9:00 a.m. - 4:00 p.m.	

Note. December meeting will be held only if necessary to complete work on legislative program for 1978 session.

Report on 1977 Legislative Program

The Commission noted Memorandum 77-27 (handed out at the meeting) which contained the following report on the 1977 legislative program.

Adopted or Enacted

Res. Ch. 17, Statutes of 1977 - Continues authority to study previously authorized topics; authorizis Commission to drop two topics

Sent to Governor

AB 13 - Damages in Unlawful Detainer Actions

Set for Hearing in Second House

AB 393 - Wage Garnishment (Tentative hearing date--May 17)

AB 570 - Liquidated Damages (Set for hearing on June 7)

AB 85 - Enforcement of Sister State Money Judgments (Set for hearing on June 7)

AB 1007 - Use of Keepers on Writs of Execution (Tentative hearing date--June 7)

Hearing in First House Delayed

SB 623 - Nonprofit Corporations (conforming revisions) (Bill set for hearing on May 3 but not taken up because not enough favorable votes; bill not set for second hearing)

SB 624 - Nonprofit Corporations (comprehensive statute) (Bill set for hearing on May 3 but not taken up because not enough favorable votes; bill not set for second hearing)

Not Yet Introduced

Recommended Legislation Relating to Effect on Attachment of Bankruptcy Proceedings and Assignments for Benefit of Creditors (Harold Marsh has indicated he is inclined to amend the Commission's recommended legislation into Senate Bill 221 which has already passed the Senate)

The Commission also discussed the nonprofit corporation bills. No decision was made on whether to devote further Commission attention to these bills. It was suggested that the Commission defer further consideration of this matter until the fall of 1977. However, the Commission decided that, before any decision is made on further Commission work in connection with this subject, the views of the two legislative members of the Commission should be obtained. The staff is to prepare a letter to be sent (under the Chairman's signature) to each of the legislative members of the Commission to solicit their views on what action would be appropriate for the Commission to take under the circumstances. When the responses are received, the Commission will give further consideration to this matter.

Contract With Charles Adams as Consultant on Homestead Study

The Commission unanimously approved, and directed the Executive Secretary to execute on behalf of the Commission, a contract with Mr. Charles Adams, an associate in the firm of Paul, Hastings, Janofsky, and Walker in Los Angeles, to prepare a background study on homesteads.

The study should include the following matters:

(1) The procedure that would be necessary if the declared homestead were abolished and a claimed homestead substituted.

(2) The necessary revisions in the existing claimed homestead exemption provisions.

(3) The necessary revisions in existing law if the declared homestead were abolished. Specifically, the study should consider the probate homestead problem and the marital dissolution homestead problem and the transitional provisions to cover existing declared homesteads.

The study should also consider the law of other states where relevant to problems under consideration in the study. Consideration should be given to codification or modification of case law rules under various homestead provisions covered by the study.

The study should be delivered in a form suitable for publication in a law review within 18 months of the approval of the contract by the state.

The compensation should be $3,500 for preparing the study and attending Commission meetings and legislative hearings. Travel expenses for travel at the request of the Commission through its Executive Secretary would be paid in addition to the $3,500 compensation but would be limited to $500 and would be generally in accord with the rate paid to members of boards and commissions appointed by the Governor as provided in other contracts for background studies.

A partial payment of $3,200 would be authorized when the background study is completed. The remaining $300 would be paid when the work on this aspect of the Commission's recommendation is prepared in tentative recommendation form. The contract will expire on June 30, 1979. In all other respects, the contract will follow the general form for research contracts of the Law Revision Commission.

The Commission expressed concern that Mr. Adams might not have time to produce the required study in time for use by the Commission because of the pressure of private law practice. Before the contract is executed, the Executive Secretary should discuss the problem frankly with Mr. Adams and obtain a specific commitment from Mr. Adams that he believes he has the time and can take the time to produce the study by a deadline and will produce a schedule for production of the study. The schedule would call for production of an outline of the article by a specified date (indicating the problems to be covered by the study) and for the completion drafts of portions of the article by specified dates so that the Commission will be able to determine whether the study is on schedule. Professor Riesenfeld indicated he would be willing to review these drafts and send his comments to Mr. Adams. Possibly the Commission would consider the drafts as they are produced.

Contract With Jenny A. Jones for Indexing Volume 13

The Commission considered Memorandum 77-32 relating to a contract for indexing approximately 1,200 pages of material in Volume 13 of the Commission's Reports, Recommendations, and Studies.

The Commission approved, and directed the Executive Secretary to execute on behalf of the Commission, a contract with Ms. Jenny A. Jones, an attorney who is an indexer for Continuing Education of the Bar, to index approximately 1,200 pages of material in Volume 13 of the Commission's Reports, Recommendations, and Studies. The compensation, computed at a rate of $1.25 per page, would be $1,500. The contractor would deliver the index on cards, ready to go to the printer, and the Commission's staff would add entries for the approximately 340 pages to be indexed by the Commission's staff. The contract would require that the completed index be delivered within three months from the time the contract has been approved by the state and the material to be indexed has been delivered to the indexer. Contractor will be required to visit the Commission's office at Stanford to discuss the index and to deliver the completed index.

Schedule of Work on Topics

The Commission considered Memorandum 77-28 but decided not to consider its schedule of work on topics at this time. It was suggested that this matter would more appropriately be considered in the fall when the Commission prepares its Annual Report. At that time, not only the existing topics but also possible future topics can be taken into consideration.

Commissioner Love suggested that an effort be made to solicit suggestions for new topics. Her concern, shared by other members of the Commission, is that there may be other topics that are more important and more in need of Commission study than those already on the Commission's agenda. A review of suggested topics, together with the topics already authorized for study, would enable the Commission to determine those topics that would be most important and appropriate for Commission study rather than merely continuing to devote Commission resources to topics already authorized for study without consideration of more important problems that are currently in need of study by the Commission.

The possibility was briefly discussed of publishing a general notice soliciting topics in a publication going to all lawyers and judges or sending a letter soliciting topics to selected law professors, lawyers, and judges. Any such notice or letter would need to make clear that the Commission would be able to add only a very limited number of new topics to its agenda. Commissioner Love indicated that she would provide the staff with further thoughts on the matter prior to the next meeting.

The staff is to write to the State Bar Committee on Condemnation and to request that the State Bar Committee advise the Commission as to the areas of inverse condemnation law that should be studied by the Law Revision Commission and the priority to be given to the various areas. This matter will be considered again in the fall when the Commission determines the schedule for work in the future.

STUDY 39.160 - ATTACHMENT (PROPERTY SUBJECT TO SECURITY INTEREST)

The Commission considered Memorandum 77-31 and the staff draft of the Tentative Recommendation Relating to Attachment of Property Subject to Security Interest attached thereto. The tentative recommendation was approved to be distributed for comment, subject to the following changes:

Preliminary Part

The reasons for the recommended legislation should be more fully explained on page 1 of the preliminary part. The text accompanying note 43 on page 7 should state that the security interest in the negotiable document is perfected by the secured party's possession.

§ 488.335. Goods subject to perfected security interest

The last sentence of the Comment to Section 488.335 should also state that the levy of attachment reaches the defendant's right under Civil Code Section 2903 to redeem the property from the lien.

§ 488.360. Proceeds from disposition of inventory subject to lien

Where inventory which has been levied upon by filing a notice with the Secretary of State is leased to create chattel paper, the attachment lien should continue in the chattel paper and, upon the return of the inventory, should continue in the inventory. Accordingly, the phrase "identifiable cash proceeds (as that term is used in Section 9306 of the Commercial Code)" should be revised to read proceeds (as that term is used in Section 9306(1) of the Commercial Code). This amendment will represent a return to the substance of Section 488.360(c) before the 1976 amendments but will specifically clarify the meaning of proceeds.

§ 488.440. Property subject to perfected security interest

The last sentence of subdivision (c) should be revised to provide that, after satisfaction of the security interest, the secured party may (rather than shall) pay any excess payments or proceeds to the levying officer. This change makes the rule applicable where a garnishee is a

secured party consistent with the rule generally applicable to garnishees provided by Section 488.540. The Comment to this section should discuss more fully the relationship between the parties and the remedies available for enforcement of the attachment lien where, for example, the account debtor improperly ceases making payments to the secured party. The sixth sentence of the Comment should be revised to explain the nature of the qualification referred totherein.

§ 488.500. Lien of attachment, effective date

On page 22, the sentence in the Comment to Section 488.500 referring to the conflict in the decisions should note that these are decisions under the U.C.C. and that the purpose of the proposed amendments is to resolve the conflict for the purposes of the Attachment Law.

§ 488.550. Liability of garnishee

Subdivision (a) of Section 488.550, which defines "obligor" for the purpose of this section making a garnishee liable to the plaintiff for the value of the defendant's interest in property controlled by the obligor, should be amended to cover secured parties who are garnished in the manner provided in the tentative recommendation.

STUDY 39.200 - ENFORCEMENT OF JUDGMENTS
(COMPREHENSIVE STATUTE)

The Commission continued its consideration of Memorandum 77-3 and the attached staff draft of the Enforcement of Judgments Law. The Commission made the following decisions:

CHAPTER 3. EXECUTION

Article 4. Sale

§ 703.640. Disposition of proceeds of sale

The problems involved in drafting a statute comprehensively prescribing the priorities for the distribution of proceeds from an execution sale were discussed. The Commission made tentative policy decisions to enable Professor Stefan A. Riesenfeld to prepare a draft of such a provision and as an indication to the consultant on the homestead study of the Commission's inclinations. The existing law should be continued subject to the following exceptions and the changes embodied in Chapter 6 (Third-Party Claims).

(1) Attachment liens on real property should not be dissolved by the declaration of a homestead but should continue in the excess value.

(2) A judgment creditor should be able to obtain a judgment lien on the excess value over the exempt amount of the real property by recording the abstract of judgment. However, the judgment lien should always be subject to a properly claimed homestead exemption.

(3) A judgment creditor should not have to follow an appraisal procedure within a specified time after levy of execution as is currently required by the Civil Code.

(4) If the homestead property is to be sold, only prior liens should have to be paid off. Liens which are subordinate to the lien upon which the property is to be sold should not affect the price which must be bid before the property may be sold.

(5) The homestead exemption should carry over into proceeds whether the property is sold voluntarily or involuntarily.

(6) Judgment liens recorded at different times should have the same priority in after-acquired property.

Article 5. Redemption

After considering Article 5 of the draft statute in detail, the Commission directed the staff to prepare a background memorandum on alternative schemes designed to prevent the sale of the judgment debtor's real property at too low a price. The tentative decisions noted below should be implemented if the basic approach of providing for judgment debtor redemption within 90 days is selected.

§ 703.710. Property subject to redemption

The Comment should provide more information concerning the equitable right to redeem.

§ 703.720. Elimination of liens by sale

Section 703.720 should provide that proceeds should be prorated between lienholders of equal rank.

§ 703.730. Persons entitled to redeem

It should be made clear that a person who has encumbered land as a guarantor for the judgment debtor has the right to redeem it from an execution sale.

§ 703.750. Deposit of redemption price

Subdivision (b) should be revised to read substantially as follows:

> (b) Rents from the property received by the purchaser and the fair rental value of the property to the extent of the value of the purchaser's use and occupation thereof may be set off against the interest payable on the redemption price pursuant to paragraph (4) of subdivision (a).

§ 703.760. Evidence of interest of successor in interest

This section should be revised, in relevant part, as follows:

> 703.760. If a successor in interest to the judgment debtor redeems the property, the successor in interest shall . . . file with the levying officer a certified copy of the ~~judgment under which the right to redeem is claimed or of~~ a recorded conveyance . . . .

[§ 703.765. Request for statement of redemption price]

A procedure should be devised to facilitate the determination of the redemption price as suggested on page 12 of Memorandum 77-3. Not later than 80 days after the sale, the person seeking to redeem could

send a notice of intention to redeem to the purchaser. Within 10 days after the notice is sent, the purchaser should file a statement of the redemption price with the levying officer and send a copy to the person seeking to redeem. The purchaser would be bound by the statement as of the time of its preparation. However, prior to payment of the stated redemption price to the levying officer, the purchaser should be permitted to supplement the stated redemption price by filing another statement with the levying officer. The purchaser would not be entitled to interest on the other items making up the redemption price past the time when the statement should have been filed. If the person seeking to redeem has to resort to the summary proceedings provided in Section 703.770 to obtain a statement of the redemption price, such person should be entitled to costs and reasonable attorney's fees.

§ 703.770. Disagreement on redemption price; summary proceeding

This section will have to be revised to be consistent with proposed Section 703.765. It should be made clear that the deposit of the undisputed amount of the redemption price is not a waiver of the right to offset the costs and attorney's fees collectible under Section 703.765. When the petition is filed, the petitioner should be required to file a receipt from the levying officer for the deposit of the undisputed amount of the redemption price. The attorney, rather than the clerk, should set the date for the hearing. Once a petition is filed, the levying officer should retain the deposited amount until the conclusion of the proceedings unless otherwise ordered by the court.

§ 703.780. Issuance of deed of sale or certificate of redemption

The staff should draft provisions to deal with the situation where a party to the proceedings under Section 703.770 appeals the determination of the redemption price or the amount of attorney's fees. It was suggested that, where the purchaser appeals on the ground that the redemption price is too low or that the attorney's fees are too high, the purchaser should have to give an undertaking to prevent the issuance of the certificate of redemption. Where the person seeking to redeem appeals on the ground that the redemption price is too high or that the attorney's fees are too low, such person should have to give an undertaking to obtain redemption.

CHAPTER 6. THIRD-PARTY CLAIMS PROCEDURE

The Commission requested the staff to prepare a memorandum which would give an overview of the problems involved in dealing with the rights of third persons in property which is caught up in proceedings to enforce a judgment. The memorandum should discuss the need to recognize, and the procedures for recognizing, third-party interests before and after a levy of execution. The issues include the use of levy of execution to test fraudulent conveyances, the extent to which a third person should be entitled to receive notice where the property is registered or recorded not solely in the name of the judgment debtor, the use of supplementary proceedings and creditor's suits to determine the interests of third persons, the extent to which third persons should be expected to resort to third-party claims procedures to vindicate their interests in property levied upon, and whether third persons may be required to make a third-party claim or forfeit any interest in the property.

An introductory Comment should follow the chapter heading to summarize the purpose of the third-party claims procedures.

Article 1. General Provisions

§ 706.110. "Secured party"

The need for this definition was questioned; however, the decision on its retention was deferred until the entire chapter could be reviewed to see if it serves a valuable purpose.

Article 2. Third-Party Claims

§ 706.210. Manner of making third-party claim

Subdivision (b) should be revised to make clear that, in the case of a security interest, the interest which may be claimed for the purpose of being paid off is the amount actually due and owing, taking into account an acceleration of the entire amount pursuant to the security agreement. Two copies of the security agreement should be attached to the third-party claim--one for the levying officer to retain for the sake of eventual purchasers at a sale and the other to be transmitted to the judgment creditor. The staff should consider the manner in which

the statute should provide that, if the secured party does not claim the acceleration of the secured interest in the third-party claim, any prior defaults are waived.

§ 706.220. Demand to judgment creditor for undertaking or deposit

Paragraph (a)(2) should refer to the amount demanded in the third-party claim rather than the "reasonable value of the interest stated in the claim."

§ 706.230. Judgment creditor's undertaking or deposit

The last sentence of subdivision (a) should be revised to make clear that the judgment creditor may prepay the security interest in a case where the entire amount is not currently due only where such prepayment is permitted by the security agreement.

§ 706.250. Interest of third person in property sold

The Comment to this section should state that the lien of a third person subject to which property may be sold does not include the judgment creditor's lien obtained by subrogation to the rights of the secured party.

Article 4. Judgment Creditor's Demand for Third-Party Claim

§ 706.410. Judgment creditor's demand for third-party claim

The Commission discussed in general the desirability of permitting the judgment creditor to force a third person to file a third-party claim. The expansion of this principle of existing Section 6896(8) to cover third persons who are not secured parties was questioned, but a decision was postponed until the memorandum surveying the entire area of third-party interests is considered. It was also suggested that the judgment creditor might be afforded the right to obtain a statement of indebtedness under the security agreement similar to the right available to a debtor under Commercial Code Section 9208.

STUDY 63.70 - EVIDENCE OF MARKET VALUE OF PROPERTY

The Commission considered Memorandum 77-30 and the attached letter from Assemblyman Victor Calvo and a copy of Assembly Bill 1166 proposing a change in Section 822 of the Evidence Code.

The Commission directed the Executive Secretary to send a letter to Assemblyman Victor Calvo along the following lines:

> The Commission at its May 12-14 meeting reviewed your letter of April 11 requesting its comments concerning your Assembly Bill 1166.
>
> The Commission makes recommendations only after it has studied an area and obtained the comments of other persons knowledgeable in the field. Section 822 of the Evidence Code, for example, was enacted after an extended period of study by the Law Revision Commission, the State Bar of California, and many other interested persons and organizations. For a discussion of the difficult policy issues presented by permitting consideration in determining fair market value of sales made to one having the power of condemnation, see the enclosed recommendation and study of the Law Revision Commission on pages A-37--A-40. See also the Commission's recommendation concerning this provision of Section 822 on Page A-7 of the enclosed recommendation and study.
>
> Accordingly, the Commission would not be in a position to recommend a change in Section 822 until it has made a study of the experience under the section, prepared and distributed a tentative recommendation to interested persons and organizations, and reviewed the comments of interested persons and organizations. However, in response to your request, the Commission plans to review Section 822 to determine whether any revisions are needed in the section. We have written to the State Bar Committee on Condemnation (which we understand has already undertaken a study of Assembly Bill 1166) and have requested that the committee provide the Commission with a preliminary expression of its views concerning Assembly Bill 1166. We also have requested that the State Bar Committee on Condemnation review the problem of sales made to one having the power of condemnation to determine whether any change should be made in Section 822. When the views of the State Bar Committee on Condemnation are received, the Commission will make an independent tentative decision on what revisions, if any, it feels are needed in Section 822. If the Commission concludes revision is needed, the Commission will prepare a tentative recommendation, which it will distribute for review and comment. The Commission will review the comments to determine the recommendation, if any, it will submit to the Legislature with respect to Section 822.
>
> We will be pleased to send you all materials we produce on this matter and copies of all comments received.

The staff was also directed to write to the State Bar Committee on Condemnation to request the views of that committee on Assembly Bill 1166 and on whether any change should be made in the law relating to the use of sales made to one having the power of condemnation in determining fair market value of property.

APPROVED

_____
Date

_____
Chairman

_____
Executive Secretary