

<p>DATE & TIME:</p> <p>January 12 (Thursday) 1:30 pm - 6:00 pm</p> <p>January 13 (Friday) 9:00 am - 2:00 pm</p>	<p>PLACE:</p> <p>Orange County Airporter Inn 18799 MacArthur Blvd. Irvine, CA 92715 (714) 833-2770</p>
<p>NOTE: Changes may be made in this Agenda. For meeting information, please call (415) 494-1335.</p>	

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

THURSDAY, JANUARY 12

1. Minutes of December 1-2, 1988, Commission Meeting (sent 12/09/88)

2. Administrative Matters

Meeting Schedule

Memorandum 89-18 (sent 12/09/88)

Communications from Interested Persons

3. 1989 Legislative Program

Attached to Final Agenda

4. Study L-2010 - 1989 Probate Cleanup Legislation (Urgency Bill)

Memorandum 89-12 (sent 12/16/88)

5. Study L-1061 - Brokers' Commissions in Probate

Memorandum 89-16 (sent 12/14/88)

6. Study L-1025 - Probate Law and Procedure (Notice to Creditors)

Memorandum 89-1 (Comments on Tentative Recommendation) (sent 12/16/88)

Tentative Recommendation (attached to memorandum)

First Supplement to Memorandum 89-1 (sent 12/30/88)

7. Study L-3010 - Trustees' Fees

Special Memorandum 89-2 (Comments on Tentative Recommendation) (sent 12/16/88)

Order of Tentative Recommendation (attached to memorandum)

Business First Supplement to Memorandum 89-2 (sent 1/3/89)

on Jan.

12 at

3:00 pm

8. Study L-1036/1055 - Compensation of Estate Attorney and Personal Representative

Memorandum 89-3 (Comments on Tentative Recommendation) (sent 12/27/88)

Tentative Recommendation (attached to memorandum)

First Supplement to Memorandum 89-3 (sent 12/27/88)

Second Supplement to Memorandum 89-3 (sent 12/28/88)

Third Supplement to Memorandum 89-3 (sent 12/30/88)

Fourth Supplement to Memorandum 89-3 (sent 1/3/89)

9. Study L-1037 - Employment of Persons to Assist Personal Representative

Memorandum 89-19 (sent 12/28/88)

10. Study L-1060 - Multiple-Party Accounts in Financial Institutions

Memorandum 89-4 (Comments on Tentative Recommendation) (sent 12/28/88)

Tentative Recommendation (attached to memorandum)

First Supplement to Memorandum 89-4 (to be distributed at meeting)

11. Study L-3007 - In-Law Inheritance

Memorandum 89-17 (sent 12/20/88)

Draft of Tentative Recommendation (attached to Memorandum)

First Supplement to Memorandum 89-17 (sent 1/9/89)

FRIDAY, JANUARY 13

12. Study N - Administrative Law

Special Memorandum 89-15 (sent 12/15/88)
Order of Model State Administrative Procedure Act (1981) (attached)
Business
on Jan.
13 at
9:00 am

13. Study F-641/L-3020 - Limitations on Disposition of Community Property

Memorandum 88-47 (sent 6/6/88)
Draft of Tentative Recommendation (attached to Memorandum)

Note. We will continue review of this memorandum commencing with Section 5125.240 (gifts) on page 14 of the attached draft.

First Supplement to Memorandum 88-47 (Kinyon Letter) (sent 8/15/88)
Second Supplement to Memorandum 88-47 (Comments on Draft) (sent 10/12/88)
Third Supplement to Memorandum 88-47 (State Bar Corporations Committee Comments) (sent 12/30/88)

14. Study H-111 - Assignment and Sublease

Special Memorandum 89-5 (Comments on Tentative Recommendation) (sent
Order of 12/16/88)
Business Draft of Tentative Recommendation (attached to memorandum)
on Jan. First Supplement to Memorandum 89-5 (Further Comments) (sent
13 at 12/30/88)
11:00 am

Memorandum 89-6 (Residential Tenancies) (sent 12/14/88)
Consultant's Report (attached to memorandum)

Memorandum 89-7 (Tenant Remedies) (sent 12/14/88)
Background Study (attached to memorandum; another copy attached to
Second Supplement to Memorandum 88-64 [8/9/88])

Memorandum 89-8 (Landlord Remedies) (sent 12/15/88)
Background Study (attached to memorandum; another copy attached to
First Supplement to Memorandum 88-64 [8/9/88])

Memorandum 89-9 (Rule in Dumpor's Case) (sent 12/14/88)
Background Study (attached to memorandum; another copy attached to
Fifth Supplement to Memorandum 88-64 [8/5/88])

Memorandum 89-10 (Involuntary Transfers) (sent 12/15/88)
Background Study (attached to memorandum; another copy attached to
Third Supplement to Memorandum 88-64 [8/5/88])

Memorandum 89-11 (Use Restrictions) (sent 12/14/88)
Background Study (attached to memorandum; another copy attached to
Fourth Supplement to Memorandum 88-64 [8/9/88])

15. More Administrative Matters

Commissioner Attendance at Meetings
Memorandum 88-79 (sent 11/7/88)

MEETING SCHEDULE

January 1989

12 (Thursday) 1:30 p.m. - 6:00 p.m. Orange County
13 (Friday) 9:00 a.m. - 2:00 p.m.

February 1989

9 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles
10 (Friday) 9:00 a.m. - 2:00 p.m.

March 1989

9 (Thursday) 1:30 p.m. - 6:00 p.m. San Francisco
10 (Friday) 9:00 a.m. - 2:00 p.m.

April 1989

13 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles
14 (Friday) 9:00 a.m. - 2:00 p.m.

May 1989

18 (Thursday) 1:30 p.m. - 6:00 p.m. San Francisco
19 (Friday) 9:00 a.m. - 2:00 p.m.

July 1989

13 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles
14 (Friday) 9:00 a.m. - 2:00 p.m.

September 1989

7 (Thursday) 1:30 p.m. - 6:00 p.m. Sacramento
8 (Friday) 9:00 a.m. - 2:00 p.m.

October 1989

12 (Thursday) 1:30 p.m. - 6:00 p.m. Los Angeles
13 (Friday) 9:00 a.m. - 2:00 p.m.

November-December 1989

Nov. 30 (Thurs.) 1:30 p.m. - 6:00 p.m. San Francisco
Dec. 1 (Fri.) 9:00 a.m. - 2:00 p.m.

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
JANUARY 12-13, 1989
IRVINE

A meeting of the California Law Revision Commission was held in Irvine on January 12-13, 1989.

Commission:

Present:	Forrest A. Plant Chairperson Roger Arnebergh Tim Paone	Ann E. Stodden Vaughn R. Walker Bion M. Gregory (Jan. 12) Legislative Counsel
Absent:	Elihu M. Harris Assembly Member Bill Lockyer Senate Member	Edwin K. Marzec Vice Chairperson Arthur K. Marshall

Staff:

Present:	John H. DeMouilly Nathaniel Sterling	Stan G. Ulrich Robert J. Murphy III
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Consultants:

William G. Coskran, Landlord and Tenant Law (Jan. 13)

Other Persons:

C. Scott Boone, Sanwa Bank of California, Pasadena (Jan. 12)
Edward V. Brennan, California Probate Referees' Association, San Diego (Jan. 13)
Ronnie Brown, HALT of San Diego, La Jolla (Jan. 12)
Deborah Chalfie, HALT, Washington, D.C. (Jan. 12)
Dorothy Delaney-Gauger, California Legal Reform Groups, Chula Vista (Jan. 12)
Ronald P. Denitz, Tishman West Management Corporation, Los Angeles (Jan. 13)
Irwin D. Goldring, State Bar Estate Planning, Trust and Probate Law Section, Los Angeles
Michael Harrington, California Bankers Association, San Francisco (Jan. 12)
Elize Hollander, HALT, Santee (Jan. 12)
John Huntington, Attorney General's Office, Los Angeles (Jan. 13)

David E. Lich, Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association, Beverly Hills (Jan. 12)
James Mattesich, Brandenburger and Davis, Sacramento (Jan. 12)
Rod Merrill, California Bankers Association, Los Angeles (Jan. 12)
Valerie J. Merritt, State Bar Estate Planning, Trust and Probate Law Section (Jan. 12)
Maurine C. Padden, California Bankers Association, Sacramento (Jan. 12)
M. J. Pritchett, Orrick, Herrington & Sutcliffe, San Francisco (Jan. 13)
Dick Ratkovic, California Bankers Association and Santa Monica Bank, Santa Monica (Jan. 12)
Barbara Ratner, HALT, Santa Ana Heights (Jan. 12)
Barry Russ, State Bar Family Law Section (Jan. 13)
Shelley B. Thompson, California Bankers Association, Los Angeles (Jan. 12)
Michael V. Vollmer, State Bar Estate Planning, Trust and Probate Law Section, Irvine
H. Neal Wells III, State Bar Estate Planning, Trust and Probate Law Section, Irvine (Jan. 12)
Michael Whalen, Los Angeles County Bar Association, Probate and Trust Law Section, Los Angeles (Jan. 12)
LeVone A. Yardum, California Probate Referees' Association, Encino (Jan. 12)

ADMINISTRATIVE MATTERS

MINUTES OF DECEMBER 1-2, 1988, MEETING

The Commission approved the Minutes of the December 1-2, 1988, meeting without change.

MEETING SCHEDULE

The Commission extended the meeting hours of the February meeting so that the February 9 meeting will be from 10:00 am to 6:00 pm. The staff should also consider extension of the February 10 meeting hours until 4:00 pm if that appears desirable in view of the workload.

The March meeting was originally scheduled for two days, Thursday, March 9, and Friday, March 10. The Commission cancelled the March 10 portion of the meeting, and extended the meeting hours of the March 9 meeting so that the meeting will be from 10:00 am to 6:00 pm.

The Commission also relocated the April 13-14 meeting from Los Angeles to Sacramento, as suggested by the staff in Memorandum 89-18.

1989 LEGISLATIVE PROGRAM

The staff made the following report on the 1989 Legislative Program.

MEASURES INTRODUCED

Assembly Bill 155 — Notice to Creditors (Introduced by Assembly Member Harris on December 19, 1988). This is an urgency bill. The bill will be revised to reflect any changes made at the January meeting. The recommendation relating to this bill has not yet been approved to print.

Assembly Bill 156 — Probate Cleanup Bill (Introduced by Assembly Member Harris on December 19, 1988). This is an urgency bill. The bill makes technical and clarifying revisions in provisions recently enacted upon recommendation of the Law Revision Commission. We will add to this bill all the cleanup provisions that the Commission decides (during the next several months) to recommend for 1989. We will not publish a separate recommendation relating to this bill.

Assembly Bill 157 — Technical Creditors' Remedies Revisions (Introduced by Assembly Member Harris on December 19, 1988). This bill makes technical corrections in the Enforcement of Judgments Law. The recommendation relating to this bill has been approved for printing and is now being printed as a part of our Annual Report. The bill is ready for hearing by the Assembly Judiciary Committee.

Assembly Bill 158 — General Probate Bill for 1989 (Introduced by Assembly Member Harris on December 19, 1988). As introduced, this bill includes only the provisions relating to no contest clauses. The Commission has approved the recommendation relating to no contest clauses for printing. As the Commission approves recommendations on additional aspects of probate law for 1989, the recommended legislation will be added to Assembly Bill 158 unless the recommended legislation on a particular subject is controversial, in which case a separate bill will be introduced for the controversial legislation.

Senate Concurrent Resolution No. 11 (Introduced by Senator Lockyer on December 19, 1988). This resolution continues the Commission's authority to study previously authorized topics.

OTHER MEASURES APPROVED BY COMMISSION FOR INTRODUCTION

Revision of Commission's Enabling Statute (Bill in Form Suitable for Introduction Delivered to Assembly Member Harris on January 5, 1989, for Consideration for Introduction). This bill would authorize the Commission to study and recommend technical and minor substantive revisions without prior legislative approval for the study.

ADDITIONAL MEASURES UNDER STUDY FOR SUBMISSION IN 1989

Trustees' Fees

**Compensation of Estate Attorney and Personal Representative (including
Employment of Persons to Assist Personal Representative)**

Multiple-Party Accounts in Financial Institutions

Assignment and Sublease

Limitations on Disposition of Community Property

In-Law Inheritance

IMPORTANT DEADLINES

February 3, 1989 - Last day to submit bill requests to the Office of
Legislative Counsel

March 10, 1989 - Last day to introduce a bill in 1989

In light of these deadlines, the Commission will introduce spot bills for matters on which the Commission is still working, and will amend in the substance of the matters when work is complete.

STUDY F-641/L-3020 - LIMITATIONS ON DISPOSITION OF COMMUNITY PROPERTY

The Commission deferred consideration of this matter pending receipt of comments from the Executive Committee of the State Bar Family Law Section. The matter should not be scheduled for consideration before the March meeting, based on the State Bar's commitment to have comments for the Commission after February 4.

STUDY H-111 - ASSIGNMENT AND SUBLEASE

The Commission considered Memorandum 89-5, the First Supplement to Memorandum 89-5, and Memorandum 89-10, together with a letter distributed at the meeting from Howard Lind on behalf of the Northern California Area Commercial and Industrial Subsection of the State Bar Real Property Section (attached to these Minutes as Exhibit 1),

relating to comments received on the assignment and sublease tentative recommendation. The Commission commenced, but did not complete consideration of the material. The Commission directed the staff to seek to have legislation introduced that embodies the decisions made by the Commission so far, with the understanding that the Commission may amend the legislation to incorporate additional decisions made on completion of consideration of the material.

The Commission made the following decisions concerning the recommendation.

Civil Code § 1951.4 (amended). Continuance of lease after breach and abandonment

Subdivision (a) was revised to provide in substance:

(a) The remedy described in this section is available only if the lease provides for this remedy. In addition to any other provision in the lease for the remedy described in this section, a provision in the lease in substantially the following form satisfies this subdivision:

The landlord has the remedy described in California Civil Code Section 1951.4 (landlord's right to continue lease in effect after tenant's breach and abandonment, subject to tenant's right to sublet or assign).

Comment. Subdivision (a) is amended to provide a "safe harbor" of specific language that satisfies the requirement that the lease provide for the remedy in this section. The amendment should not be construed to imply that no other form of language will satisfy the requirement. Whether any other language will satisfy the requirement depends on the language used and the understanding of the parties.

The Commission made the following basic policy decisions, to be implemented in the draft of subdivision (b):

(1) If the lease provides the landlord the lock-in remedy but is silent as to the right of the tenant to assign or sublet (the law implies the right to assign or sublet without restriction), the landlord should be able to use the lock-in remedy.

(2) If the lease provides the landlord the lock-in remedy but subjects the right of the tenant to assign or sublet to the landlord's consent, and the lease is silent as to whether the landlord's consent must be reasonable (the law implies a requirement that the landlord be reasonable), the landlord should be able to use the lock-in remedy.

(3) If the lease provides the landlord the lock-in remedy but prohibits assignment or sublease, the landlord may not later waive the prohibition and use the lock-in remedy.

(4) If the lease provides the landlord the lock-in remedy but subjects the right of the tenant to assign or sublet to the landlord's sole discretion and right to be unreasonable, the landlord may not later waive the lease clause and use the lock-in remedy.

(5) If the lease provides the landlord the lock-in remedy but subjects the right of the tenant to assign or sublet to specific standards or conditions that are unreasonable, the landlord may not waive the standards and conditions and use the lock-in remedy if they were unreasonable at the start, but may waive them and use the lock-in remedy if they were reasonable at the start.

(6) If the lease provides the landlord the lock-in remedy but subjects the right of the tenant to assign or sublet to the landlord's sole discretion and right to be unreasonable unless the landlord uses the lock-in remedy, the landlord may not elect to be reasonable and use the lock-in remedy.

In addition, subdivision (b)(2) should be recast in the form of a presumption, rather than in the form of a burden of proof, thus:

~~The lessee has the burden of proof that the lessor requires compliance with a standard or condition that is unreasonable.~~ For purposes of this paragraph, a[n express] standard or condition in the lease is presumed to be reasonable; this presumption is a presumption affecting the burden of proof.

Subdivision (c)(3) should be relocated from the statute to the Comment. The provision states that the following does not constitute a termination of the lessee's right to possession: "A provision in the lease that the lessor may elect either to consent to a subletting or assignment or to terminate the lessee's right to possession, so long as the lessor does not make the election to terminate the lessee's right to possession."

§ 1995.020. Definitions

The staff should see whether there is a convenient way to define "transfer" in subdivision (e) without using the word being defined in the definition.

§ 1995.210. Right to transfer absent a restriction

The portion of the Comment relating to good faith and fair dealing was revised as follows:

~~The provisions of this chapter are intended to completely supersede~~ Neither the law governing unreasonable restraints on alienation (see, e.g., Civil Code § 711) and nor the law governing the implied covenant of good faith and fair dealing (see, e.g., California Lettuce Growers v. Union Sugar Co., 45 Cal. 2d 474, 289 P. 2d 785 (1955)) ~~as they relate to restrictions on transfer of a tenant's interest in a lease. See Comment to Section 1995.250 prevents the enforcement of a restriction on transfer in accordance with the express terms of the restriction.~~

Commissioner Paone did not participate in this decision.

§ 1995.220. Transfer restriction strictly construed

The Comment should note that case law governing construction of lease restrictions on involuntary transfers is preserved.

Application to Existing Leases

The statute should address generally its applicability to existing leases on matters other than the Kendall case (which is addressed specifically).

STUDY L-1025 - NOTICE TO CREDITORS

The Commission considered Memorandum 89-1 and the First Supplement thereto, together with a letter distributed at the meeting from the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section (attached to these Minutes as Exhibit 2), relating to comments received on the notice to creditors tentative recommendation. The Commission approved the recommendation for printing and submission to the Legislature after making the following changes.

Code of Civil Procedure § 353 (amended). Statute of limitations

The Comment to this section should state:

However, the one year statute of limitations is intended to apply in any action on a debt of the decedent, whether

against the personal representative under Probate Code Sections 9350 to 9354 (claim on cause of action), or against another person, such as a distributee under Probate Code Section 9392 (liability of distributee), a person who takes the decedent's property and is liable for the decedent's debts under Sections 13109 (affidavit procedure for collection or transfer of personal property), 13156 (court order determining succession to real property), 13204 (affidavit procedure for real property of small value), and 13554 (passage of property to surviving spouse without administration), or a trustee.

The Comments to the relevant Probate Code sections should also refer back to Code of Civil Procedure Section 353. This could be done in connection with the Probate Code reenactment.

The Commission also approved amendment of Probate Code Section 551 to read:

551. Notwithstanding Section 353 of the Code of Civil Procedure, if the limitations period otherwise applicable to the action has not expired at the time of the decedent's death, an action under this chapter may be commenced within one year after the expiration of the limitations period otherwise applicable.

Comment. Section 551 is amended to make clear that the general one-year limitation period for commencement of an action on a cause of action against a decedent under Code of Civil Procedure Section 353 does not apply to an action under this chapter.

And the Commission approved amendment of the introductory portion of Probate Code Section 9201(a) to read:

(a) ~~Notwithstanding any other provision of this part statute,~~ if a claim of a public entity arises under a law, act, or code listed in subdivision (b):

Comment. Subdivision (a) of Section 9201 is amended to make clear that it applies notwithstanding statutes located in places other than this part. Specifically, Section 9201 applies notwithstanding Code of Civil Procedure Section 353 (general statute of limitations running one year from the decedent's death).

Probate Code § 9392. Liability of distributee

A new subdivision (c) was added to this section to read:

(c) Nothing in this section affects the rights of a purchaser or encumbrancer of property in good faith and for value from a person who is personally liable under this section.

Comment. Subdivision (c) is a specific application of the general purpose of this section to subject a distributee to personal liability but not to require recision of a distribution already made.

STUDY L-1036/1055 - COMPENSATION OF ESTATE ATTORNEY
AND PERSONAL REPRESENTATIVE

The Commission considered Memorandum 89-3, the attached *Tentative Recommendation Relating to Compensation of Estate Attorney and Personal Representative*, and the First, Second, Third, and Fourth Supplements. The Commission decided to abandon its tentative recommendation to keep the statutory percentage fee for the estate attorney. Instead, the Commission decided to recommend the Uniform Probate Code scheme for compensation of the estate attorney. Under this scheme, the fee of the estate attorney is a matter for private agreement between the personal representative and the attorney. Any interested person may petition the court for review of the reasonableness of the fee. Unless someone petitions for court review, the fee would not be subject to court approval. This decision is consistent with the way attorney fees are determined in most legal matters, and will have the aggregate effect of reducing attorneys' fees for large estates and increasing attorneys' fees for small estates. The Commission was persuaded by representatives of the State Bar and HALT (a consumer organization) that this is a desirable change.

The Commission decided to keep the statutory percentage fee for the personal representative. Unlike the fee of the estate attorney which is subject to arm's length negotiation between the attorney and the personal representative, the personal representative's fee, if negotiated, would have to be negotiated with the decedent's heirs or devisees. And it is often difficult to determine the value of the services of the personal representative. If the personal representative's fee is fixed by private agreement, the Commission thought it would lead to intra-family disputes. The statutory percentage fee for the personal representative avoids putting the personal representative in a difficult position, and avoids intra-family disputes over the fee of the personal representative.

Probate Code § 5130. Definition of "joint account"

The substance of the following was added to the Comment to Section 5130:

The definition of "joint account" embraces all of the following:

(1) *Joint account with right of survivorship.* See Sections 5301(a) and 5302(a).

(2) *Joint account without right of survivorship.* This is a special type of joint account where there is clear and convincing evidence of an intent not to have survivorship. The terms of the account may include an express statement making clear that there is no survivorship right (see subdivision (a) of Section 5302) or the account may be designated as a "tenancy in common" account (see Section 5306).

(3) *Joint account held by a husband and wife with right of survivorship that can not be changed by will.* This is a joint account held by a husband and wife that is not specifically designated in the account agreement as a "community property" account where there is no clear and convincing evidence of an intent that there be no survivorship right. The statute creates a presumption that if the parties to an account are married to each other, whether or not they are so described in the deposit agreement, their net contribution to the account is presumed to be and remain their community property. See Section 5305. The rules stated in Section 5301(a) and 5302(a) apply to this type of joint account, including a rule that the right of survivorship of the surviving spouse cannot be changed by will. However, if the deposit agreement or the terms of the account *clearly indicates an intent that there be no survivorship right*, either spouse can designate one or more P.O.D payees (or Totten trust beneficiaries) to take that spouse's share of the account upon the death of that spouse and, absent such a designation, the share of the deceased spouse becomes a part of the estate of the deceased spouse.

(4) *Joint account held by husband and wife that is specifically designated as a "community property" account.* This is a joint account held by a husband and wife that is specifically designated in the account agreement as a "community property" account. Section 5307 provides that this type of account is governed by the rules that apply to community property generally. Accordingly, unless the parties have agreed otherwise, the right of survivorship of the surviving spouse can be changed by will (deceased spouse by will devises her or her one-half share of the account to a person other than the surviving spouse). Also, the deposit agreement or the terms of the account can include, for example, a provision that the one-half share of a spouse will pass on the death of that spouse to one or more P.O.D payees (or Totten trust beneficiaries) upon the death of that

spouse. On the other hand, absent a contrary agreement or a contrary disposition, the surviving spouse will take the one-half share of the deceased spouse as community property.

The staff should review the statute to be sure that it is clear that a P.O.D. payee can be designated to take the one-half share of a spouse upon the death of that spouse.

Probate Code § 5136. Definition of "party"

The second sentence of subdivision (a) of Section 5136 was deleted. This sentence is superseded by the revision made in Section 5122(b). The deleted sentence reads:

Unless the context otherwise requires, "party" includes a guardian, conservator, personal representative, or assignee, including a levying creditor, of a party.

Probate Code § 5152. Definition of "trust account"

The definition of "trust account" (Section 5152) was deleted. The general definition of "Totten trust account" in Section 80 of the Probate Code (and the other general Probate Code definitions) will apply to the Multiple-Party Accounts Law. The Multiple-Party Accounts Law will be revised to substitute "Totten trust account" for "trust account" where the reference means a Totten trust account.

The staff will consider whether to combine the provisions relating to Totten trust accounts with the provisions relating to P.O.D. accounts.

Probate Code § 5203. Creation of multiple-party relationships

Subdivision (a) of Section 5203 was revised to substitute "payee(s)" for "beneficiary(ies)" in paragraph (3) and to add the three additional paragraphs set out below:

(4) Joint account of husband and wife with right of survivorship: "This account/certificate of deposit is jointly owned by the named parties, who are husband and wife, and is presumed to be their community property. On the death of either of them, ownership passes to the survivor."

(5) Community property account of husband and wife: "This account/certificate of deposit is the community property of the named parties. The ownership during lifetime of both of the spouses and upon the death of one of the spouses is determined by the law applicable to community property generally."

(6) Tenancy in common account: "This account/certificate of deposit is owned by the named parties as tenants in common. On the death of any party, the ownership of that party in the account passes to the named pay-on-death (P.O.D.) payee(s) of that party or, if none, to the estate of that party."

Subdivision (b) of Section 5203 was revised to delete the last sentence of subdivision (b). The substance of the remainder of subdivision (b) was approved (statute applies even where account agreement does not use the form language in subdivision (a) of section), but the staff should review the language to determine if the wording can be made more understandable.

Section 5204. "Agency" account

Subdivision (g) of this section was deleted.

Section 5302. Right of survivorship

The staff should review this section, especially subdivision (d), to make sure it is clear that upon the death of a party to a tenancy in common account only the interest of that tenant in common is transferred to the decedent's estate, not the entire account.

Probate Code § 5303. Rights of survivorship determined by form of account at time of death; methods for change of terms of account

The following was added to the Comment to Section 5303:

Merely changing the terms of the account to eliminate survivorship rights does not affect the right of the financial institution to make payments in accordance with the terms of the account. See also Section 5405.

Probate Code § 5305. Presumption that sums on deposit are community property

Subdivision (c) of Section 5305 be revised to read as set out below (see below for new Section 5307 to be added to the statute):

(c) ~~Notwithstanding subdivision (a)~~ Except as provided in Section 5307, a right of survivorship arising from the express terms of the account or under Section 5302, a beneficiary designation in a trust account, or a P.O.D payee designation, cannot be changed by will.

Probate Code § 5306 (amended). Account expressly described as a "tenancy in common" account

Section 5306 was revised to read:

5306. For the purposes of this chapter, if an account is expressly described in the account agreement as a "tenancy in common" account, no right of survivorship arises from the terms of the account or under Section 5302 unless the terms of the account or deposit agreement expressly provide for survivorship.

Probate Code § 5307. Account expressly described as a "community property" account

A new Section 5307 was added to the statute to read in substance:

5307. For the purposes of this chapter, except to the extent the terms of the account or deposit agreement expressly provide otherwise, if the parties to an account are married to each other and the account is expressly described in the account agreement as a "community property" account, the ownership of the account during lifetime and after the death of a spouse is governed by the law governing community property generally.

Section 5406. Payment of account held in trust form where financial institution has no notice that account is not a Totten trust account

Section 5406 was revised to read:

5406. The provisions of this chapter that apply to the payment of a Totten trust account apply to an account in the name of one or more parties as trustee for one or more other persons if the financial institution has no other or further notice in writing that the account is not a Totten trust account as defined in Section ~~5101~~ 80.

Introduction of spot bill; preparation of revised Recommendation

The staff is to have a spot bill prepared and introduced (containing the revised definitions). The spot bill will be used for the Commission's recommended legislation on multiple-party accounts if the recommendation appears to be at all controversial. If the recommended legislation appears to be noncontroversial, the recommended legislation will be added to the general probate bill for 1989 (AB 158).

The staff is to prepare a revised Recommendation which will incorporate the decisions made at the January meeting. The revised Recommendation will be considered at the February meeting.

STUDY L-1061 - BROKERS' COMMISSIONS IN PROBATE

The Commission considered Memorandum 89-16 concerning commission where broker is purchaser. The Commission approved a new Section 10160.5 to be added to the Probate Code. The Commission revised the staff draft attached to the Memorandum by deleting from subdivision (b) the words "whether substantial or insubstantial". As revised, the section will read:

Probate Code § 10160.5 (added). No commission where broker is purchaser

10160.5. The estate is not liable to a broker under a contract for the sale of real property or for any fee, commission, or other compensation or expenses in connection with sale of the property in either of the following cases:

(a) Where the broker, directly or indirectly, is the purchaser of the property.

(b) Where the broker representing the purchaser to whom the sale is confirmed has any interest in the purchaser.

Comment. Section 10160.5 is added to change the rule in Estate of Levinthal, 105 Cal. App. 3d 691, 164 Cal. Rptr. 628 (1980), that a broker in an estate sale is entitled to a commission even though the purchaser is an entity in which the broker has an interest. Section 10160.5 is consistent with Estate of Toy, 72 Cal. App. 3d 392, 140 Cal. Rptr. 183 (1977), that a broker may not receive a commission when there is complete identity between broker and purchaser, and broadens that rule to apply in the Levinthal situation where there is not complete identity between broker and purchaser but the broker does have an interest in the purchasing entity, whether that interest is substantial or insubstantial. Thus, for example, the broker would not be entitled to a commission if the purchaser is a corporation in which the broker owns stock.

This section should be included in the Commission's general probate bill (AB 158).

STUDY L-2010 - 1989 PROBATE CLEANUP LEGISLATION

The Commission considered Memorandum 88-12 relating to matters for inclusion in the 1989 urgency cleanup bill on Probate, introduced by Assembly Member Harris as AB 156. The Commission approved for inclusion the amendments of Probate Code Sections 8405 and 10452 as set out on page 2 of the memorandum.

STUDY L-3007 - IN-LAW INHERITANCE

The Commission deferred consideration of this matter until the February meeting, at which time it expects to have additional input from its consultants Professors Niles and Bird.

STUDY L-3010 - TRUSTEES' FEES

The Commission considered Memorandum 89-2 and the *Tentative Recommendation Relating to Trustees' Fees*. (Due to time pressures, the First Supplement to Memorandum 89-2 was not considered; this material will be resubmitted in February.) The Commission also considered a letter from Kenneth M. Klug on behalf of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, which was distributed at the meeting. (See Exhibit 3.) Commissioner Stodden abstained from voting on this study.

The Commission made the following decisions:

§ 15642. Removal of trustee

The comment to this section should contain a cross-reference to Section 15680 (trustee entitled to reasonable compensation).

§ 15690. "Trustee's fee" defined

§ 15691. Application of article

These sections should be revised to provide a different treatment for transaction fees. Transaction fees should be defined to include

fees of a routine and recurring type and to exclude fees such as those for preparation of tax returns. The transaction fees subject to special treatment would be those fees that are listed on a schedule. In order to avoid having to track possible increases in each fee that may be charged to each trust, the statute should apply to the aggregate yearly transaction fees charged a trust. If the transaction fees do not exceed 5% of the total annual fees charged a particular trust, an increase in transaction fees applicable to that trust would not trigger the notice procedure of the statute. This rule would replace the 10% *de minimis* rule in Section 15691(b) of the tentative recommendation. The staff, working with representatives of the California Bankers Association and Commissioner Paone, is to prepare a revised draft implementing these principles for consideration at the February meeting.

§ 15692. Notice of proposed fee increase

The notice of proposed fee increase should be given only to the beneficiaries whose interests in the trust would be affected by the fee increase. Thus, if fees are paid exclusively out of income, only income beneficiaries would be given notice, not remainder beneficiaries.

§ 15694. Increased fee allowed if no objection

The one objector rule should be replaced by a rule requiring objections from 50% or more of the affected beneficiaries. Each affected beneficiary, whether entitled to income, remainder, or both, would have one vote. If half or more of these beneficiaries object to a proposed fee increase within the time allowed, the trustee would not be able to implement the fee increase without court approval or consent.

§ 15697. Resignation or removal if all beneficiaries object

The recommendation should retain the rule requiring the unanimous agreement of all beneficiaries to whom income or principal is required or authorized in the trustee's discretion to be currently distributed or to receive a distribution of principal if the trust were terminated when notice is given.

Editorial Changes

In the second sentence of the last paragraph of the explanatory text, on page 6, the word "petition" should be "position."

STUDY N - ADMINISTRATIVE LAW

The Commission considered Memorandum 89-15, relating to the proposed procedure for the administrative law study. The Commission adopted the procedure proposed in the memorandum.

The Commission unanimously adopted a motion directing the Executive Secretary to execute on behalf of the Commission a contract with Professor Michael Asimow to prepare a study of administrative adjudication. The study should cover the entire field of administrative adjudication in a series of reports delivered to the Commission from time to time as they are completed. The first reports should be submitted by September 30, 1989, and the remainder by September 30, 1990. The study should use the 1981 Model State Administrative Procedure Act as a vehicle to present issues and make sure the field is covered comprehensively. The study should analyze existing California law and discuss relevant policy and practice concerning each issue. Views of agencies, judges, practitioners, and other interested persons should be considered, but the consultant should give the Commission his best judgment as to whether existing law should be retained or whether any changes should be made, whether based on the Model Act, on the law of another jurisdiction, or otherwise. Compensation for the study is to be \$10,000, plus travel expenses not exceeding \$1,000 in attending Commission meetings and legislative hearings, when requested by the Commission through the Executive Secretary. Compensation is to be made in up to four partial payments; each payment is to be made when the reports delivered by the consultant clearly exceed the portion of the total study to which the payment relates. The contract should conform to the standard form of contract used by the Law Revision Commission for expert consultants.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

Minutes
Jan. 12-13, 1989

WENDEL, ROSEN, BLACK, DEAN & LEVITAN

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JACOB LEVITAN (1934-1988)

January 5, 1989

JAN 09 1989

RECEIVED

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Study H-111: Restrictions on Lease Transfers

Dear Nat:

As I mentioned to you on the telephone this morning, the Northern California Area Commercial and Industrial Subsection of the State Bar Real Property Law Section met last month and discussed the commercial lease law assignment and subletting tentative recommendations.

Those members of the Commercial and Industrial Subsection attending this meeting believed that one of the proposed changes to Civil Code Section 1951.4 would work an injustice to tenants. Specifically, the proposed revisions to this Section 1951.4 would afford a landlord the right to avail itself of the remedy provided therein as long as the landlord did not unreasonably withhold its consent to a proposed assignment or subletting at the time of a breach under the lease, notwithstanding language in the lease which would allow the landlord to withhold consent on something other than a reasonable basis.

For example, should a tenant breach its lease, the tenant would not know whether the landlord had the obligation to mitigate damages because the landlord would be seeking damages under Civil Code Section 1951.2, or alternatively whether the tenant would be called upon to mitigate damages by finding a replacement tenant or subtenant because of the landlord's election to avail itself of the remedy afforded by Civil Code

Mr. Nathaniel Sterling
January 5, 1989
Page 2

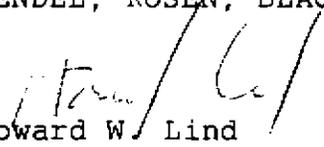
WENDEL, ROSEN, BLACK, DEAN & LEVITAN

Section 1951.4. In order to protect itself, the tenant would have to make the effort to market the premises and locate a replacement tenant/subtenant. However, upon locating a satisfactory substitute, the tenant may find that the landlord unreasonably withholds its consent to the proposed assignee/subtenant. At this point, it becomes clear that the landlord could not avail itself of 1951.4 and would have to seek monetary damages under 1951.2. However, the tenant might have been required to exert a great deal of time and effort in order to ascertain that it had no obligation to mitigate damages.

I apologize for the delay in providing you with this information, but the Executive Committee of the Real Property Section, which met a few days after our Subsection meeting, was apprised of the Subsection's position on this particular matter, and there was the possibility that the Executive Committee would desire to let its position on this matter be known.

Very truly yours,

WENDEL, ROSEN, BLACK, DEAN & LEVITAN


Howard W. Lind

HWL:pg

cc: Ronald P. Denitz, Esq.
William Coskran, Esq.
Michael Carbone, Esq.
Michael A. Dean, Esq.
Laurence M. May, Esq.
Joel Hall, Esq.

Jan. 12-13, 1989

CA LAW REV. COMM'N

ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA

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January 9, 1989

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444 Castro St. Suite 900
Mountain View, CA 94041

John H. DeMouly
Executive Director
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303

Re: LRC Memo 89-1 & First Supplement

Dear John:

I have enclosed a copy of Anne Hilker's report on Memo 89-1, Notice to Creditors. The report has been reviewed by the Executive Committee and represents the opinion of the Section. The report is to assist in the technical and substantive review of those sections involved.

Very truly yours,

James V. Quillinan
Attorney at Law

JVQ/hl

Encls.

cc: Valerie Merritt

Terry Ross

Irv Goldring

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January 9, 1989

REPLY TO: Anne K. Hilker, Esq.
333 S. Grand Avenue
Los Angeles, CA
90071

James V. Quillinan, Esq.
Diemer, Schneider, Luce
& Quillinan
444 Castro Street, Suite 900
Mountain View, California 94041

Re: 89-1 and First Supplement

Dear Jim:

The Commission's circulation of the proposed creditor's claims statute produced substantial comment on two key points, and on behalf of Team 3 and the Executive Committee Neal Wells and I wish to support the Commission, in line with our previous correspondence, on those points.

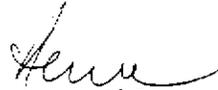
First, many of the comments protested that the claims procedure proposed is overly complicated. However, simply put, the new scheme results only in an expanded late claims procedure and a new one-year statute of limitations.

Second, and the Executive Committee believes more importantly, there must be no liability on the personal representative for failure to search for and provide notice to creditors except in instances of bad faith. Any difficulties arising from such a failure are appropriately borne by the beneficiaries of the estate, who bear all the other risks and benefits arising in the course of administration of an estate.

James V. Quillinan, Esq.
January 9, 1989
Page 2

Neal will plan on attending the discussion of
this item by the Law Revision Commission this week.

Sincerely,



Anne K. Hilker
Captain, Team 3

AKH:bm

cc: Andrew S. Garb, Esq.
Charles G. Schulz, Esq.
Leonard W. Pollard, II, Esq.
H. Neal Wells, III, Esq.
John A. Gromala, Esq.
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January 11, 1989

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Palo Alto, California 94303-4739

CA LAW REV. COMM'N

JAN 13 1989

R E C E I V E D

Re: Memo 89-2; Tentative Recommendation
Relating to Trustees' Fees

Dear John:

The Estate Planning, Trust and Probate Law Section Executive Committee supports the Tentative Recommendation, which we consider the best product we have seen to accomplish the objectives sought. In general, we fully support the position of the staff as discussed in the staff notes following the official comments. Personally, I would rank this Tentative Recommendation among the best works of the Law Revision Commission.

As to specifics, we agree with the staff's position regarding Section 15690. When clients inquire about trustees' fees, they use the term generically to include all costs paid to the trustee. Excluding transaction charges from trustees' fees would leave a gap in the operation of the statute.

We concur with the staff conclusion that the suggested compromise to Section 15694 is a reasonable one. Under that compromise, it would take a majority of the income beneficiaries and a majority of the principal beneficiaries to object before the mechanism of the statute is triggered.

Mr. John H. DeMouilly
January 11, 1989
Page 2

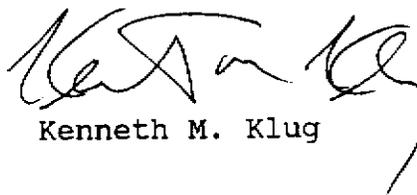
That compromise makes sense where trustees' fees are allocated half to principal and half to income under the Principal and Income Act. Some trusts allocate all of the trustees' fees to income. In that event, the principal beneficiaries would have no standing to object. Accordingly, we believe that the mechanism of the statute should be triggered by objection raised by a majority of the persons whose interests are affected by the fee increase. (Notwithstanding the foregoing, the removal and substitution of a new trustee should require unanimity, not merely consent of those persons who are affected by the proposed fee increase.)

We strongly support the staff's position as set forth in the staff note following Section 15697. In order for the remedy to be effective, the beneficiaries, acting together, must be able to remove and replace the trustee without Court involvement. Requiring a judicial procedure as the sole method of dealing with fee increases is no remedy at all, because the cost of a judicial proceeding is likely to exceed the amount of the fee increase. What we don't need is a statute which merely results in the beneficiaries paying lawyers' fees instead of trustees' fees. What we need is a statute which will accomplish the objectives in the most practical, cost-efficient manner. The Tentative Recommendation does just that.

We expressly take no position on the portion of the Tentative Recommendation relating to exemplary damages.

We have not reviewed the First Supplement to Memo 89-2. Since that supplement does not relate to trustees' fees, we believe it requires further study and should be deferred.

Very truly yours,



Kenneth M. Klug