MINUTES OF MEETING

CALIFORNIA LAW REVISION COMMISSION

APRIL 15, 2004

SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on April 15, 2004.

Commission:

Present: Frank Kaplan, Chairperson

William E. Weinberger, Vice Chairperson Diane F. Boyer-Vine, Legislative Counsel

Bill Morrow, Senate Member

Edmund L. Regalia

Absent: Ellen Corbett, Assembly Member

Staff: Nathaniel Sterling, Executive Secretary

Brian P. Hebert, Assistant Executive Secretary

Barbara S. Gaal, Staff Counsel

Consultants: None

Other Persons:

Michael Anderson, Lincoln

Sandra M. Bonato, Executive Council of Homeowners, San Jose

Kornelia Brewer, Seal Beach

Oliver Burford, Executive Council of Homeowners, San Jose

Douglas B. Christison, Pleasanton

Tiffany Conklin, Office of Assemblyman Tom Harman

Jerry S. Craft, Roseville

Carol Franz, Seal Beach

Pamela Haines, Rancho Murieta

Wilbur Haines, Rancho Murieta

Carole Hochstatter, Bakersfield

Steve Ingram, Consumer Attorneys of California, Sacramento

Bonnie Laderman, Springfield Homeowners Association, Rocklin

Patricia March, Springfield Homeowners Association, Rocklin

Patrick L. McLane, Lincoln

Joanne McNabb, Office of Privacy Protection, Department of Consumers Affairs, Sacramento

Marjorie Murray, Congress of California Seniors, Sacramento

Sil Reggiardo, State Bar Trusts and Estate Section, Executive Committee, Sacramento

Larry Robinson, Springfield Homeowners Association, Rocklin

Charlotte Ross-Fisher, Lincoln
Denny Valentine, Lincoln
Norma J. Walker, Bakersfield
David Warner, Department of Real Estate, Sacramento
Larry Whitaker, Lincoln

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MINUTES OF FEBRUARY 6, 2004, COMMISSION MEETING

- 1 The Commission approved the Minutes of the February 6, 2004, Commission
- 2 meeting as submitted by the staff, subject to the following correction:
- On page 8, line 34: The words "and its First Supplement" were added
- 4 following the reference to Memorandum 2004-3.

ADMINISTRATIVE MATTERS

5 Fiftieth Anniversary Year of California Law Revision Commission

- In honor of the Commission's 50th anniversary year, the Commission's
- 7 legislative members Assembly Member Ellen M. Corbett and Senator Bill
- 8 Morrow authored a commendatory resolution. The resolution is dated
- 9 February 23, 2004, the 50th anniversary of the first Commission meeting. The
- 10 resolution was presented to the Commission by Senator Morrow. The resolution
- 11 concludes:
- That the attention of the public be drawn to the California Law Revision Commission as it celebrates its fiftieth anniversary, and that Commission members, past and present, be extended the appreciation of the public for the role they have played in carrying
- out Commission objectives for the benefit of the people of the state.

Report of Executive Secretary

- 2 The Executive Secretary made the following report:
- 3 Commission Membership

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- We have not heard from the Governor's office concerning gubernatorial
- 5 appointments to the four vacancies on the Commission.
- 6 Commission Budget
- 7 The Governor's proposed 2004-2005 budget for the Commission maintains
- 8 funding at the current level, which is about half the Commission's normal
- 9 funding. The budget has been approved as proposed by the budget
- subcommittees in both houses. However, we have been advised of a possible
- 11 further reduction of 3% for all state agencies.
- 12 Law Student Resources
- Our efforts to obtain satisfactory law student assistance during the summer,
- whether by way of internship or the work study program, are continuing but so
- 15 far have not borne fruit.
- 16 National Conference of Commissioners on Uniform State Laws
- 17 The Executive Secretary is an associate member of NCCUSL and ordinarily
- 18 attends the conference since Uniform Acts proposed at the conference frequently
- 19 come before the Commission. The Executive Secretary has not attended the
- 20 conference for the past two years due to the state's fiscal situation. This year's
- 21 conference will be of particular interest to the Commission, since revision of the
- 22 Uniform Durable Power of Attorney Act will come before the conference, as well
- as other matters on the Commission's calendar of topics. Unless the fiscal
- 24 situation improves, the Executive Secretary will attend this year at his personal
- 25 expense.
- 26 Personnel Matters
- 27 The Executive Secretary briefed the Commission on staff leave plans for the
- 28 summer.

LEGISLATIVE PROGRAM

The Commission considered Memorandum 2004-14, relating to the Commission's 2004 legislative program. The staff orally updated the chart attached to the memorandum with the information that:

- The two common interest development bills AB 1836 (Harman) and AB 2376 (Bates) are set for hearing in the Assembly Judiciary Committee on May 4. For further information concerning these bills, see the entry in these Minutes under Study H-851 Common Interest Development Law.
- The discovery reorganization bill AB 3081 (Assem. Judic. Comm.) — was approved by the Assembly Judiciary Committee on April 13.
- The unincorporated associations bill SB 1746 (Ackerman) was approved by the Senate Judiciary Committee on April. 13. For further information concerning this bill, see the entry in these Minutes under Study B-501 Unincorporated Associations.

STUDY B-400 – FINANCIAL PRIVACY

The Commission considered Memorandum 2004-15 and the attached staff draft tentative recommendation, relating to financial privacy. The Commission approved the tentative recommendation to circulate for public comment. The tentative recommendation should not solicit comment on the possibility of assigning followup work to the Office of Privacy Protection or the Office of Attorney General, but should simply recommend that the Commission do the work, contingent on adequate funding being provided for it.

STUDY B-501 – UNINCORPORATED ASSOCIATIONS

The Commission considered Memorandum 2004-24, reporting on legislative changes to SB 1746 (Ackerman), which would implement the Commission's recommendation on *Unincorporated Associations*, 33 Cal. L. Revision Comm'n Reports 729 (2003). The staff supplemented the memorandum with an oral report, indicating that proposed Corporations Code Section 18620 would be deleted from the bill. That section addresses the potential liability of a member or agent of a nonprofit association for a tort of the association. The Senate Judiciary Committee staff had raised concerns about possible unintended consequences of the section. The Commission decided to study the issue further, with the intention to address it in future legislation.

STUDY H-851 – NONIUDICIAL DISPUTE RESOLUTION UNDER CID LAW

- The Commission considered Memorandum 2004-23 and its First Supplement, discussing proposed changes to two bills that would enact Commission recommendations:
 - AB 1836 (Harman) would implement the recommendation on *Alternative Dispute Resolution in Common Interest Developments,* 33 Cal. L. Revision Comm'n Reports 689 (2003).
 - AB 2376 (Bates) would implement the recommendation on Common Interest Development Law: Architectural Review and Decisionmaking, 34 Cal. L. Revision Comm'n Reports __ (2004).

The Commission approved the staff recommendations, with one modification; the amendment to proposed Civil Code Section 1369.560 was revised to read as follows:

1369.560. (a) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that alternative one or more of the following conditions is satisfied:

- (1) Alternative dispute resolution has been completed in compliance with this article.
- (2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.
 - (3) Preliminary or temporary injunctive relief is necessary.
- (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless one of the following conditions is satisfied:
- (1) The party commencing the action certifies in writing that one of the other parties to the dispute refused alternative dispute resolution before commencement of the action, or that preliminary or temporary injunctive relief is necessary.
- (2) The <u>the</u> court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

STUDY H-853 – STATE OVERSIGHT OF COMMON INTEREST DEVELOPMENTS

The Commission considered Memorandum 2004-20 and its First, Second, and Third Supplements, discussing possible state oversight of common interest developments. The Commission directed the staff to prepare a preliminary draft proposal for state oversight, consistent with the following decisions:

(1) In developing the proposal, the staff should consult with relevant legislative committees and with agencies that could be candidates

for assignment of oversight duties. In particular, the staff should inquire as to the political feasibility of creating a state oversight program.

- (2) The proposal should draw from existing regulatory oversight models, both within and outside of California.
- (3) The proposal should provide for administrative adjudication of common interest development disputes, after exhaustion of less formal dispute resolution mechanisms.

STUDY J-504 – CIVIL DISCOVERY: NONSUBSTANTIVE REFORM

The Commission considered Memorandum 2004-16 and its First Supplement, concerning correction of obsolete cross references to civil discovery provisions. The Commission approved the draft attached to the First Supplement as a tentative recommendation to be circulated for comment.

STUDY J-111 – STATUTE OF LIMITATIONS FOR LEGAL MALPRACTICE

The Commission considered Memorandum 2004-21 and its First Supplement, concerning whether a special statute of limitations or a statute of repose is needed for estate planning malpractice. The Commission adopted the staff's recommendation to refer this issue back to the State Bar for further consideration and development of a proposal that would be acceptable from the perspective of clients and beneficiaries, as well as estate planning attorneys. The State Bar is better-situated to investigate the options than the Commission, because the Bar can explore nonlegislative solutions and interact with insurers on behalf of attorneys collectively. If the Bar or a Bar group develops a proposal that would require modification of the statute of limitations for legal malpractice, and clearly documents the need for such a reform, it may then be appropriate for the Commission to reactive this aspect of its study on the statute of limitations for legal malpractice.

☐ APPROVED AS SUBMITTED	Date
APPROVED AS CORRECTED (for corrections, see Minutes of next meeting)	Chairperson
(Executive Secretary