

---

MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
OCTOBER 22, 2009  
SACRAMENTO

---

A meeting of the California Law Revision Commission was held in Sacramento on October 22, 2009.

**Commission:**

*Present:* Susan Duncan Lee, Chairperson  
Justice John Zebrowski (ret.), Vice-Chairperson  
Diane Boyer-Vine, Legislative Counsel  
Sidney Greathouse  
Ali Jahangiri  
William E. Weinberger

*Absent:* Ellen Corbett, Senate Member  
Noreen Evans, Assembly Member  
Pamela L. Hemminger  
Frank Kaplan

**Staff:** Brian Hebert, Executive Secretary  
Barbara Gaal, Chief Deputy Counsel  
Catherine Bidart, Staff Counsel  
Steve Cohen, Staff Counsel  
Cindy Dole, Visiting Fellow

**Consultants:** None

**Other Persons:**

Kerry Mazzoni, Executive Council of Homeowners  
Elaine Roberts Musser  
Dick Pruess, Community Associations Institute  
Nichole Rapier, University of California Davis Law School student

CONTENTS

Minutes of August 28, 2009, Commission Meeting .....	2
Administrative Matters.....	2
Report of Executive Secretary .....	2
Meeting Schedule.....	3
New Topics and Priorities .....	3
Legislative Program.....	5
Study H-403 — Marketable Record Title: Notice of Option .....	6
Study H-855 — Common Interest Development Law: Statutory Clarification and Simplification of CID Law .....	6
Study M-300 — Nonsubstantive Reorganization of Deadly Weapon Statutes.....	10

MINUTES OF AUGUST 28, 2009, COMMISSION MEETING

1       The Commission approved the Minutes of the August 28, 2009, Commission  
2 meeting, with the following corrections:

- 3       • On page 5, line 22, add “1363.05.”
- 4       • On page 5, after line 25, add “Civil Code Sections 1363.810-  
5       1363.850, 1367.6, and 1369.510-1369.590, relating to dispute  
6       resolution.”
- 7       • On page 5, line 26: change “(d)-(f)” to “(d)-(e).”

ADMINISTRATIVE MATTERS

8       **Report of Executive Secretary**

9       *Personnel*

10       There is no action yet by the Governor on the two Commission seats that  
11 expired on October 1, 2009. The current incumbents may hold over for up to 60  
12 days.

13       The Executive Secretary recognized University of California Davis Law  
14 School student Nichole Rapier. Ms. Rapier is serving as an extern during the Fall  
15 2009 semester.

16       *Budget*

17       The Executive Secretary reported that it has become necessary to reduce  
18 personnel costs slightly in order to remain within the Commission’s 2009-2010  
19 budget. That will be accomplished through a voluntary reduction in staff hours.

1 **Meeting Schedule**

2 The Commission considered Memorandum 2009-37, relating to the  
3 Commission's meeting schedule. The Commission decided against making any  
4 change to the starting time of the December 2009 meeting.

5 **New Topics and Priorities**

6 The Commission considered Memorandum 2009-38 and its First and Second  
7 Supplements, relating to new topics and priorities. The Commission made the  
8 following decisions:

9 *Ability of Personal Representative To Purchase Estate Property at Auction*

10 This topic should be referred to the State Bar Trusts and Estates Section for  
11 consideration.

12 *Sanctions Under Code of Civil Procedure Section 128.6*

13 This topic should be referred to the Office of Legislative Counsel for possible  
14 inclusion in the next maintenance of the codes bill.

15 *Statutory References to the "Tort Claims Act"*

16 This topic should be referred to the Office of Legislative Counsel for possible  
17 inclusion in the next maintenance of the codes bill.

18 *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*

19 The Legislative Counsel reported that the California Commission on Uniform  
20 State Laws plans to formally request that the Law Revision Commission study  
21 this uniform act. The Law Revision Commission will consider that request next  
22 fall, in connection with next year's memorandum on new topics and priorities.

23 *Program of Work for 2010*

24 The Commission approved the work program recommended at pages 39-44  
25 of Memorandum 2009-38, which is consistent with the Commission's traditional  
26 scheme of priorities. That program can be summarized as follows:

- 27
- 28 • Manage the Commission's legislative program for 2010, including  
29 the major bill on mechanics liens and perhaps the major bill on  
30 deadly weapons.
  - 31 • Continue to work on trial court restructuring.
  - 32 • Begin to work on the study of charter schools and the Government  
Claims Act.

- 1 • Continue to work on the recodification of the Davis-Stirling  
2 Common Interest Development Act (“Davis-Stirling Act”).
- 3 • Continue to work on application of the Davis-Stirling Act to a  
4 nonresidential common interest development (“CID”).
- 5 • If time permits, begin to work on miscellaneous other areas of CID  
6 law in which the application of the Davis-Stirling Act appears  
7 inappropriate or unclear.
- 8 • If staff resources are available, recommence work on civil  
9 discovery.
- 10 • Seek guidance from the judiciary committees regarding evidence  
11 law, and perhaps proceed with some issues if that appears  
12 advisable and staff resources permit.
- 13 • After Nathaniel Sterling completes his background study,  
14 commence work on creditors’ rights against nonprobate assets and  
15 application of family protection provisions to nonprobate  
16 transfers.
- 17 • If David Gould completes his background study on assignments  
18 for the benefit of creditors, review his report and determine  
19 whether further work on this topic is warranted.
- 20 • Possibly recommence work on presumptively disqualified  
21 fiduciaries after the fate of SB 105 (Harman) becomes clear.
- 22 • If staff resources permit, possibly work on (1) the study of venue  
23 in a civil case, (2) the California State Sheriffs’ Association’s  
24 suggestions regarding electronic transmission of a creditor’s  
25 instructions to a sheriff or marshal, or (3) correction of obsolete  
26 cross-references to former subdivision (d) of Code of Civil  
27 Procedure Section 116.780.

28 *Resolution of Authority*

29 The Commission will not seek introduction of a new resolution of authority  
30 until 2011.

31 The Commission deferred decision on whether to take the following steps in  
32 its next resolution of authority:

- 33 (1) Seek removal of the Commission’s authority to study special  
34 assessments for public improvements.
- 35 (2) Request authority to study discovery conducted in California for  
36 purposes of a criminal case pending in another state.

37 The staff should raise these issues in next fall’s memorandum on new topics and  
38 priorities.

LEGISLATIVE PROGRAM

1 The Commission considered Memorandum 2009-39, reporting generally on  
2 the status of the Commission's 2009 legislative program. No action was required  
3 or taken.

4 The Commission also considered Memorandum 2009-45 and its First  
5 Supplement, reporting specifically on SB 189 (Lowenthal). That bill would  
6 implement the Commission's recommendation on *Mechanics Lien Law*, 37 Cal. L.  
7 Revision Comm'n Reports 527 (2007).

8 The Commission considered a number of stakeholder group concerns about  
9 SB 189. For each concern, the Commission decided whether it would assent to a  
10 proposed revision to address the concern. The staff will communicate those  
11 decisions to Senator Lowenthal so that he can decide whether to make any of the  
12 proposed revisions.

13 The Commission assented to the following revisions:

- 14 (1) Delete proposed Civil Code Section 8004, which would define  
15 "commencement" of a work of improvement.
- 16 (2) Delete proposed Civil Code Section 8026(b), which would create a  
17 rebuttable presumption that materials delivered to a work of  
18 improvement are used in the work of improvement.
- 19 (3) Revert to existing law governing notarization of mechanics lien  
20 documents before recordation of those documents, as proposed at  
21 pages 11-13 of Memorandum 2009-45.
- 22 (4) In proposed Civil Code Section 8150, which defines completion of  
23 a private work of improvement, replace "substantial completion"  
24 with "actual completion."
- 25 (5) Replace proposed language requiring notice to an owner when  
26 recording a lien claim with new language that would continue the  
27 similar provisions of 2009 Cal. Stat. ch. 109 (AB 457 (Monning)).
- 28 (6) Replace proposed language relating to recordation of a lis  
29 pendens after commencement of an enforcement action, with new  
30 language that would continue the similar provisions of 2009 Cal.  
31 Stat. ch. 109 (AB 457 (Monning)).
- 32 (7) Revise proposed Civil Code Section 8204, which relates to the  
33 time to give preliminary notice to more closely track the language  
34 used in existing law, as proposed at pages 31-32 of Memorandum  
35 2009-45.
- 36 (8) Revise proposed Civil Code Section 8480 to eliminate proposed  
37 new grounds for summary removal of an invalid lien claim. The  
38 existing ground (based on expiration of time to file an  
39 enforcement action) would be preserved.

- 1 (9) Make stylistic changes to proposed Civil Code Sections 8600 and  
2 8602, which relate to private work payment and performance  
3 bonds, as proposed at pages 20-21 of Memorandum 2009-45.
- 4 (10) Delete proposed Public Contract Code Section 42240, which  
5 would allow a public entity to record a notice of completion for a  
6 part of a public work in specified circumstances.
- 7 (11) In proposed Public Contract Code Section 45040, which relates to  
8 a public work performance bond, replace “the beneficiary” with  
9 “any obligee named in the bond.”

10 (Note that Commissioner William Weinberger recused himself from  
11 participation in the discussion of item (10) above.)

12 The Commission did not assent to make any change to proposed Civil Code  
13 Section 8608 or proposed Public Contract Code Section 45090, which would  
14 specify who may make a claim against a payment bond.

15 STUDY H-403 — MARKETABLE RECORD TITLE: NOTICE OF OPTION

16 The Commission considered Memorandum 2009-43 discussing public  
17 comment on the tentative recommendation on *Marketable Record Title: Notice of*  
18 *Option*. The Commission approved the tentative recommendation as its final  
19 recommendation. The staff will make any stylistic changes to the tentative  
20 recommendation that are required in order to convert that report into a final  
21 recommendation, subject to review and approval of those changes by the Chair.

22 The Commission decided against expanding the scope of this study.

23 STUDY H-855 — COMMON INTEREST DEVELOPMENT LAW: STATUTORY  
24 CLARIFICATION AND SIMPLIFICATION OF CID LAW

25 The Commission considered Memorandum 2009-44 and its First Supplement,  
26 discussing public comments on the staff draft that was attached to Memorandum  
27 2009-33 (which was considered and provisionally approved by the Commission  
28 at its August 28, 2009, meeting).

29 The Commission decided to make the following changes to that draft:

30 **Proposed Civ. Code § 4035. Notice to Association**

31 The Commission revised proposed Section 4035 to expressly authorize the  
32 use of certified mail:

33 4035. If a provision of this part requires that a document be  
34 “delivered to the association,” the document shall be delivered by

1 first-class mail, postage prepaid, or by certified mail, to the person  
2 designated in the annual policy notice (Section 5310) to receive  
3 documents on behalf of the association. If no person has been  
4 designated to receive documents, the document shall be delivered  
5 to the president or secretary of the association.

6 **Proposed Civ. Code § 4040. Individual Notice Delivery**

7 The Commission revised proposed Section 4040(a) to remove a reference to  
8 “personal delivery” of notice:

9 4040. (a) If a provision of this part requires “individual notice,”  
10 the notice shall be delivered to the person to be notified by one of  
11 the following methods:

12 (1) ~~Personal delivery.~~

13 (2) First-class mail, postage prepaid, addressed to the person at  
14 the address last shown on the books of the association or otherwise  
15 provided by the person.

16 (3) (2) E-mail, facsimile, or other electronic means, if the person  
17 has agreed to that method of delivery.

18 **Proposed Civ. Code § 4045. General Notice Delivery**

19 The Commission revised proposed Section 4045 to remove a reference to  
20 Internet posting and to clarify the procedure used to request that “general  
21 notices” be sent by “individual notice” delivery methods:

22 4045. (a) If a provision of this part requires “general notice,” the  
23 notice shall be provided by one or more of the following methods:

24 (1) Any method provided for delivery of an individual notice  
25 (Section 4040).

26 (2) Inclusion in a billing statement, newsletter, or other  
27 document that is delivered by one of the methods provided in this  
28 section.

29 (3) Posting in a location that is accessible to all members,  
30 ~~including on an Internet website~~, if the location has been  
31 designated in the annual policy notice (Section 5310) for the posting  
32 of general notices by the association.

33 (4) Publication in a periodical that is circulated primarily to  
34 members of the association.

35 (5) If the association broadcasts television programming for the  
36 purpose of distributing information on association business to its  
37 members, by inclusion in the programming.

38 (b) Notwithstanding subdivision (a), if a member requests to  
39 receive general notices by individual delivery, ~~a general notice~~ all  
40 general notices to that member shall be delivered pursuant to  
41 Section 4040. The option provided in this subdivision shall be  
42 described in the annual policy notice (Section 5310).

1 **Proposed Civ. Code § 4060. Minimum Font Size in Member Notices**

2 The Commission added proposed Section 4060 to generalize existing  
3 minimum font size requirements:

4 4060. In any notice, ballot, report, or other writing that the  
5 association is required to prepare and deliver to a member  
6 pursuant to this part, the text shall be printed in a 12 point font or  
7 larger.

8 **Proposed Civ. Code § 4365. Member Referendum on Operating Rule Change**

9 The staff will analyze whether the Corporations Code provisions referenced  
10 in proposed Section 4365 are in conflict with member election requirements, and  
11 will report its findings at a future Commission meeting.

12 **Proposed Civ. Code § 4920. Board Meeting Notice**

13 The Commission revised proposed Section 4920 to remove subdivision (b),  
14 which was then added as new proposed Section 4923:

15 4920. (a) Unless the time and place of meeting is fixed by the  
16 governing documents, or unless the governing documents provide  
17 for a longer period of notice, members shall be given notice of the  
18 time and place of a board meeting, except for an emergency  
19 meeting held pursuant to Section 4923, at least four days prior to  
20 the meeting. Notice shall be given by general delivery (Section  
21 4045). The notice shall contain the agenda for the meeting.

22 ~~(b) An emergency meeting of the board may be called by the~~  
23 ~~president of the association, or by any two members of the~~  
24 ~~governing body other than the president, if there are circumstances~~  
25 ~~that could not have been reasonably foreseen which require~~  
26 ~~immediate attention and possible action by the board, and which of~~  
27 ~~necessity make it impracticable to provide notice as required by~~  
28 ~~this section.~~

29 ~~(c) If the association is organized as a nonprofit mutual benefit~~  
30 ~~corporation, notice of a board meeting is also governed by Section~~  
31 ~~7211 of the Corporations Code.~~

32 4923. An emergency meeting of the board may be called by the  
33 president of the association, or by any two members of the  
34 governing body other than the president, if there are circumstances  
35 that could not have been reasonably foreseen which require  
36 immediate attention and possible action by the board, and which of  
37 necessity make it impracticable to provide notice as required by  
38 Section 4920.



1 **Proposed Civ. Code § 5115. Ballots**

2 The Commission added a new subdivision to proposed Section 5115 to  
3 require that the text of a proposed amendment of a governing document be  
4 included in the ballot when voting to approve such an amendment:

5 5115....  
6 (e) In an election to approve an amendment of the governing  
7 documents, the ballot shall include the text of the proposed  
8 amendment.

9 **Proposed Civ. Code § 5200. Record Inspection**

10 A note will be added after proposed Section 5200, inviting comment on  
11 whether the provision authorizing inspection of the association's general ledger  
12 should be expanded to also provide for inspection of "the accompanying  
13 journal."

14 **Proposed Civ. Code § 5250. Records To Be Retained**

15 A note will be added after proposed Section 5250, inviting comment on  
16 whether there are any other record types that should be listed in the section.

17 **Proposed Civ. Code § 5255. Record Retention Periods**

18 A note will be added after proposed Section 5255, inviting comment on  
19 whether the retention periods provided in that section should be changed or  
20 eliminated.

21 **Proposed Civ. Code §§ 5300-5320. Annual Reports**

22 The Commission deleted language that would have permitted distribution of  
23 a *summary* of the review of the association's financial statement. As under  
24 existing law, an association would be required to distribute the full review  
25 document, rather than a summary.

26 The Commission also revised proposed Sections 5300, 5305, and 5310, to  
27 make clear that the deadlines in those sections apply to delivery of the indicated  
28 reports, as well as their preparation.

29 The Commission revised proposed Section 5320 to restore the existing  
30 requirement that notice of availability of a full report be printed in a boldface  
31 font.

1 **Proposed Civ. Code § 5900. Internal Dispute Resolution**

2 The Commission deleted proposed Section 5900(c), which would have  
3 exempted two types of board decisions from the application of the internal  
4 dispute resolution process.

5 **Inconsistent Terminology**

6 The staff will analyze the draft to determine whether the terminology used in  
7 existing law could be made more consistent, without introducing unintended  
8 changes in meaning.

9 **Technical Corrections**

10 The Commission approved the staff recommendations regarding technical  
11 corrections made at pages 32-35 of Memorandum 2009-44.

12 STUDY M-300 — NONSUBSTANTIVE REORGANIZATION OF  
13 DEADLY WEAPON STATUTES

14 **Legislation Enacted in 2009**

15 The Commission considered Memorandum 2009-41 and its First Supplement,  
16 relating to legislation enacted in 2009 that affects Title 2 of Part 4 of the Penal  
17 Code (Penal Code §§ 12000-12809).

18 In the list at the top of page 6 of the First Supplement, “§ 27540(f)” should be  
19 replaced with “§ 27540(f)-twice.”

20 Subject to that correction, the Commission approved all of the revisions  
21 recommended in Memorandum 2009-41 and its First Supplement. The staff  
22 should incorporate those revisions into the final printed version of the  
23 Commission’s recommendation, and into the bill to implement that  
24 recommendation.

25 **Statutory References to Former Law**

26 The Commission considered Memorandum 2009-42, relating to provisions  
27 proposed by the Commission that would refer to a former law. Commissioner  
28 Boyer-Vine reported that the revisions recommended in that memorandum are  
29 acceptable to the Office of Legislative Counsel.

30 The Commission approved all of those revisions. The staff should incorporate  
31 them into the final printed version of the Commission’s recommendation, and  
32 into the bill to implement that recommendation.

1 **Corrections of 6/24/09 Pre-Print Report**

2 The Commission considered Memorandum 2009-46, relating to corrections of  
3 the 6/24/09 pre-print report on *Nonsubstantive Reorganization of Deadly Weapon*  
4 *Statutes*. The Commission approved all of the corrections noted in that  
5 memorandum. The staff should incorporate those revisions into the final printed  
6 version of the Commission's recommendation, and into the bill to implement  
7 that recommendation.

8 **Further Revisions**

9 The staff reported that it has not yet checked for new legislation that affects  
10 the conforming revisions in the 6/24/09 pre-print report. Further revisions of the  
11 Commission's report may be necessary to reflect such legislation. The staff will  
12 keep the Commission posted on this matter, and discuss it with the Chair and  
13 Vice-Chair between Commission meetings if needed.

14 In addition, Commissioner Boyer-Vine noted that bills are still pending in  
15 ongoing extraordinary sessions of the Legislature. If any of those bills are  
16 enacted and revise one or more provisions that are included in the Commission's  
17 report, the staff should inform the Commission and make recommendations on  
18 how to proceed.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Chairperson

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