

**ANNUAL REPORT OF THE
NEW JERSEY LAW REVISION COMMISSION
1988**

Report to the Legislature of the State of
New Jersey as provided by C. 1:12A-9.
February 1, 1989

I. COMPOSITION OF THE COMMISSION

Albert Burstein, Chairman, Attorney-at-Law,
Appointed 1987

Bernard Chazen, Attorney-at-Law,
Appointed 1987

Edward O'Connor, Chairman, Senate Committee on
the Judiciary, Ex officio

Hugo M. Pfaltz, Jr., Attorney-at-Law,
Appointed 1987

Ronald J. Riccio, Dean, Seton Hall Law School
Ex officio

Howard T. Rosen, Attorney-at-Law,
Appointed 1987

Thomas J. Shusted, Chairman, Assembly Committee on
the Judiciary, Ex officio

Peter Simmons, Dean, Rutgers Law School - Newark,
Ex officio

Richard G. Singer, Dean, Rutgers Law School - Camden,
Ex officio

John M. Cannel, Executive Director
Maureen E. Garde, Counsel
John J. Burke, Staff Attorney (October 1988)
Judith Ungar, Staff Attorney (January 1989)

II. HISTORY AND WORK OF THE COMMISSION

The Law Revision Commission was created by L.1985, c. 498, and charged with the duty to:

- a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it for the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to (1) Remedy the defects, (2) Reconcile conflicting provisions found in the law, and (3) Clarify confusing and excise redundant provisions found in the law;
- b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;
- c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and
- d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant to its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

This Commission is new and 1988 was its second year of operation, but the concept of permanent, institutionalized statutory revision and codification is not new in New Jersey. The first Law Revision Commission was established in 1925. That commission produced the Revised Statutes of 1937. The intent of the Legislature was that the work of revision and codification continue after the Revised Statutes, and so the Law Revision Commission continued in operation. After 1939, its functions passed to a number of successor agencies. Most recently, statutory revision and

codification were among the duties of Legislative Counsel (C. 52:11-61). By L.1985, c.498, the particular functions of statutory revision and codification were transferred to the New Jersey Law Revision Commission.

In 1988, the Commission undertook major projects in the areas of court reorganization and recordation of title documents, and began a title by title survey of the New Jersey statutes as a first step toward recodification. The Commission also undertook review of several uniform laws. Summaries of those projects are included in this report.

III. PROJECTS AND RECOMMENDATIONS

A. Revision of the Laws Relating to the Structure of the Court System

The law relating to the structure of the New Jersey court system was enacted in 1951 as part of the codification of Title 2A of the statutes. At the time of that enactment, the structure of the court system was very different from what it is at present. Many courts of limited jurisdiction, including county courts, juvenile and domestic relations courts, county district courts, and others existed at that time. Those courts have since been abolished and their jurisdictions transferred to the Superior Court. The process culminated in constitutional amendments approved in 1978 and 1983 creating a unified statewide court system.

The statute implementing these amendments (L.1983, c.405) was not a thorough-going revision and codification, however, but the ad hoc enactment of specific laws transferring jurisdiction and court structure from the old courts to the Superior Court. Most of the old law was superseded rather than repealed. The result is that many statutes continue in Title 2A which have no effect, and there are many references to courts which no longer exist. It takes considerable care in reading the statutes to know the extent to which various sections have continuing effect and some care to understand the correct impact of the court references. The law as it appears in Title 2A does not reflect the current unified court system or its administration as such.

The Commission has now completed a tentative draft of a report and recommendations on this project. The draft has been circulated for public comment. The report includes a draft of statutes to replace what is now Chapters 1, 1A, 2, 3, 6, 11, and part of 4 of Title 2A. There are 34 sections in the draft, which would replace 189 current sections.

The proposed material is intended to continue the substantive effect of all of the replaced sections and reflect current practice in the court system. The difference between the length of the proposed material and the length of its current sources is explained by the fact that the statutes now contain a large number of superseded sections or sections which relate to subject matters not relevant within a unified court system.

The proposed statutes deal with the whole of the relevant subject matter of the replaced material and do so clearly and comprehensively. The tentative draft report also includes a full set of comments to the proposed sections, as well as a table of dispositions with notes explaining what is recommended as to each of the current sections and the reasons supporting the recommendations.

The Commission expects to receive comments from interested parties and to complete a final draft of the report and recommendations for submission to the Legislature within the next 60 days.

B. Revision of the Laws Relating to Recordation of Title Documents

During the last year, the Commission began a project to recodify certain of the statutes relating to the recordation of instruments affecting title to real estate. At the end of October, a tentative draft of a report and recommendations was circulated for public comment. The Commission considered the comments and made changes in its recommendations. The Commission expects to file its final report and recommendations with the Legislature within 30 days.

The Commission began this project in response to a request from the County Officers Association, the membership of which includes the county clerks and registers of deeds who are responsible for maintaining the recordation system. The Association expressed the concern of the recording officers that the many detailed requirements for recordation that have accreted over the years were imposing a significant burden on recording offices. The requirements increase the time necessary to check documents for compliance, and necessitate the rejection of a great many documents lodged for recordation. The problem is exacerbated by the substantial increase in the number of land transactions over the last decade.

The issues raised by the recording officers are important not merely for the obvious public interest in the smooth functioning of government. The orderly operation of our real estate and financial markets depends upon the efficient operation of the land title recordation system. For example, if a document is lodged for recordation but must be rejected for some technical reason, the interest based on that document may be subordinated to one created by a later document recorded before resubmission of the first document, thus frustrating the expectations of the parties. Documents lodged for recordation but not promptly indexed due to backlogs may be

more difficult for title searchers to locate, a situation which undermines the most basic function of the recordation system. The proliferation of technical requirements for recordation has substantially increased the risk that some documents which do not satisfy the prerequisites will nevertheless be recorded. The status of these improperly recorded documents is questionable.

As a preliminary matter, the Commission began by considering all of the current requirements for recordation contained in Title 46 of the Revised Statutes with the purpose of reducing these requirements to the minimum number that would serve the purposes of recordation and meet any other important public interests. In codifying the requirements for recordation, the Commission found it appropriate to revise certain related statutes in Title 46, which, although they do not set forth requirements for recordation, are critical to the interpretation of the recordation requirements.

The Commission recommendation entails the revision of Chapters 12, 13, and 14, and parts of Chapters 15 and 18 of Title 46. In place of the thirty sections in the current law, the Commission proposes only six sections. The first, key section gathers in one place all of the prerequisites for recordation of an instrument affecting real estate. It reduces the number of requirements for recordation and makes clear that a recording officer is obliged to record any document which appears to meet the requirements. The second section outlines the requirements for cancellation of a mortgage. The current statutory material on this subject is now found in seven sections. The third, fourth and fifth sections together constitute a clearer statement of the methods for acknowledging or proving a document. At present, there is no such statement; the seven statutes dealing with this subject are neither complete nor consistent with each other. The last

defines "signature." Such a definition is not now found in the statutes and is available only in case law. The Commission also recommends amendments to two sections relating to the real estate transfer tax, simplifying the requirements imposed by these sections without impairing their purpose.

C. Consideration of Uniform Laws promulgated by the National Conference of Commissioners on Uniform State Laws

The Commission's enabling legislation provides that it is the duty of the Commission to receive and consider suggestions and recommendations from the National Conference of Commissioners on Uniform State Laws, among others, for the improvement and modification of the laws of New Jersey. During 1988 the Commission considered a number of Uniform Acts and has reported or will report shortly to the Legislature on four of those acts.

1. 1977 amendments to Article 8 of the Uniform Commercial Code

In 1977, amendments were proposed to Article 8 of the Uniform Commercial Code to deal with the issues raised by the use of uncertificated securities. Article 8 is concerned with the transfer of investment securities, a subject formerly covered by the Uniform Negotiable Instruments Law. As originally promulgated, Article 8 reflected the stock transfer system then in use and still in use today, which deals with investment securities that are issued as paper certificates. Thus, the provisions of the original version of Article 8 are drafted in terms which anticipate the issuance of paper certificates which are held and transferred physically.

Subsequent to the promulgation of the original version of Article 8 the use of electronic recordkeeping became more commonplace and the drafters of the U.C.C. determined that the article should be redrafted to facilitate the issuance of uncertificated securities.

Article 8 has been adopted in 35 states, including New York, California and Delaware. A bill that would enact these amendments in New Jersey was introduced in the Assembly last year as A-962. The Commission has recommended to the Legislature that the bill be passed. The

recommendation of this Commission echoes the recommendation of the Corporation Law Revision Commission in its recent report to the Legislature that the 1977 amendments to Article 8 should become law in New Jersey. See Report of the Corporation Law Revision Commission (March 1986, with changes through March 1, 1987), at 52.

2. Article 2A (Leases) of the Uniform Commercial Code

In 1987, Article 2A, a completely new article of the Uniform Commercial Code containing rules governing the leasing of personal property was promulgated. Previously, the Uniform Commercial Code did not deal with lease transactions as such, and governed them only if they could be defined as secured transactions governed by Article 9 or sales of goods governed by Article 2.

Even before the final official text of Article 2A was promulgated in 1987 it became the subject of much debate among scholars and practitioners. A California Bar Association committee issued a highly regarded study which set forth specific criticisms and proposed amendments to the official text. The version of Article 2A proposed by that study, including some important differences from the Official Text, was adopted in California in September 1988. A bill to enact a version of Article 2A based closely on the California law has been introduced in the Massachusetts Legislature. The Association of the Bar of the City of New York has begun a study with the intention of recommending a similar version for New York.

The Commission has undertaken the exacting task of examining the several versions of the comprehensive and lengthy provisions of the new article. The Commission staff is working closely with drafters in California, Massachusetts and New York in order to draft a version of the Article that is

not only appropriate for adoption in this state but also conforms as closely as possible to the versions that are expected to be adopted in those and other states. In that way, the goal of enacting a uniform law on leases of personal property will be achieved.

3. The 1987 Uniform Anatomical Gift Act

The 1987 Uniform Anatomical Gift Act ("1987 U.A.G.A.") promulgated by the National Conference of Commissioners on Uniform State Laws (N.C.C.U.S.L.) is a successor to the 1968 Uniform Anatomical Gift Act ("1968 U.A.G.A.") which has been enacted in all 50 states and the District of Columbia. The purpose of the 1968 U.A.G.A., adopted in New Jersey in 1969, was to facilitate the making of anatomical gifts by resolving a number of legal issues surrounding such gifts. The 1968 Act succeeded in its purpose by, among other things, simplifying the making of anatomical gifts through the recognition of the universal donor card, and by clarifying the procedure for the making of such gifts by a decedent's family members in the absence of a gift made during the donor's lifetime.

Since the publication of the 1968 Act, medical science has advanced in many areas relating to organ transplantation, creating a larger pool of people who could benefit from various transplantation procedures. However, the number of donors has not kept pace with the need for organs. The limited supply of organs available for transplantation has caused problems, including competition among transplantation programs for organs, rising even to the phenomenon of televised pleas for organ donations for specific donees.

The New Jersey version of the 1968 U.A.G.A. has been amended twice in the last four years in response to the increased need for organs for transplantation. The 1985 New Jersey amendment (the routine inquiry law)

directs hospitals to ascertain routinely whether hospital admittees have agreed to be organ donors, and to retain information concerning anatomical gifts in order to facilitate the discharge of organ donors' intentions upon death. The 1987 New Jersey amendment (the required request law) directs hospitals to inform the families of decedents of the option to make an anatomical gift and requires a certification to that effect to be entered on all death certificates. The 1987 New Jersey required request law also directs the Department of Health to develop programs for increasing public awareness of the need for organ donations and for facilitating the distribution of donated organs.

The 1987 U.A.G.A. was proposed by the N.C.C.U.S.L. in response to the same impetus which prompted the 1985 and 1987 New Jersey enactments--the increased need for organ donations. In addition to making technical and organizational changes in the text of the 1968 U.A.G.A., the 1987 version simplifies the manner of making an anatomical gift and clarifies the law with respect to the rights of donees on the death of donors. In addition, provisions of the old Act which may have been interpreted as limitations on anatomical gifts have been revised.

The Commission has submitted a report to the Legislature recommending the adoption of the 1987 U.A.G.A. While the Commission has recommended that the Legislature adopt the 1987 U.A.G.A., the Commission's recommendation is qualified. The Commission believes that the Legislature should consider in particular several sections of the 1987 U.A.G.A. which differ from the approach of this State's 1985 routine inquiry law and 1987 required request law. Because these laws involve recent legislative policy judgments, the Commission has taken no position on whether the 1987 U.A.G.A. provisions should be enacted in their place.

The Commission's recent report to the Legislature on the 1987 U.A.G.A. describes the provisions of the present New Jersey version of the 1968 U.A.G.A. and of the 1987 U.A.G.A., and analyzes the differences between them.

D. Codification

During the last year, the Commission has continued its examination of options related to more general recodification of the New Jersey statutory law. A number of different processes are available for this recodification ranging from general mechanical recompilation of the whole of the statutes to revision or codification of the law on particular subjects or within particular statutory titles.

To begin the process of codification and to provide information on which a decision could be made, this year the Commission embarked on a systematic examination of the existing statutory law of New Jersey on a title-by-title basis. The Commission staff has nearly completed a written analysis, chapter by chapter, of each title of the Revised Statutes. The analysis sets forth the history of each chapter in the form of notes on the source of the law in each chapter and the history of amendments to each chapter. It includes a brief description of the substantive content of each chapter and an evaluation of its technical condition, including problems of organization or numeration resulting from repealed amendments and additions.

The chapter-by-chapter analysis provides the basis upon which the Commission will make recommendations to the Legislature on the subject of recodification of the statutory law of New Jersey. Over the coming year, the Commission intends to develop specific recommendations concerning the overall process by which recodification should be undertaken.

One immediate project of this year's title-by-title analysis is a list of statutes which the Commission recommends for repeal. Some of these statutes are invalid, having been declared unconstitutional or superseded by later statutes. Others are archaic and no longer necessary as part of the

codification law in this state. Some of these are very old and have been out of date for many years. A report will be filed shortly listing each section recommended for repeal and outlining the reasons for repeal. Included in the list of statutes recommended for repeal are provisions regulating the milling of grain and the sale of ice and providing remedies for trespass by swine.

IV. PROJECTS UNDER CONSIDERATION

At the end of 1988, the Commission had two projects under active consideration: the drafting of a statute codifying the law on the liability of notaries public, and the drafting of an amendment to a section of the administrative procedure act.

A. Notaries' Liability

The statutes establishing the office of notary are found at C. 52:7-10 to 21. While these sections provide in detail for the appointment of notaries, they specify neither the functions that a notary performs nor the notary's duty in regard to those functions. For a statement of the duty owed by a notary, one must turn to case law. Reported decisions hold that a notary who takes an oath or acknowledgment must be satisfied of the identity of the person whose oath of acknowledgment is taken. However, these decisions do not clearly define what constitutes adequate identification. The Commission is now considering whether to undertake a project to draft a statute to define the duty owed by a notary to be satisfied of the identity of a person whose oath or acknowledgment is being taken and how a notary may satisfy that duty.

B. Administrative Procedure Act.

The Appellate Division recently decided DiMaria v. Board of Trustees of the Public Employees Retirement System, 225 N.J. Super. 341 (App. Div. 1988), involving the issuance of final decisions pursuant to the Administrative Procedure Act. The decision involved C. 52:14B-10(c), which provides that unless an administrative agency renders a decision either affirming, reversing or modifying the decision of the administrative law judge in a contested case within 45 days, the decision of the administrative law judge is automatically affirmed. The court construed this statute to permit

agencies to satisfy the 45-day requirement by issuing decisions which are not final decisions accompanied by findings of fact and conclusions of law. The result effectively gives administrative agencies an unlimited period of time in which to render final decisions which the parties to contested cases may rely on or appeal. The court itself in its opinion expressed dissatisfaction with this result and suggested that it might be appropriate to amend the Administrative Procedure Act to change the result. The Commission is now considering whether to undertake a project to draft an appropriate amendment to the Administrative Procedure Act.

Respectfully submitted,

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