

MINUTES OF COMMISSION MEETING
September 23, 1999

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7th Floor, Newark, New Jersey were Commissioners Albert Burstein, Vito Gagliardi, Jr., and Peter Buchsbaum. Grace Bertone and Professor William Garland attended on behalf of Commissioners Rayman Solomon and Patrick Hobbs, respectively.

Also attending were: William J. Yorke, Executive Officer, Legalized Games of Chance Control commission; Veronica A. Hursthouse, Deputy Executive Officer, Department of Law and Public Safety, Division of Consumer Affairs; and Laurie Ruffenach, Deputy Attorney General, Legislative Counsel

Minutes

The Commission accepted the Minutes of July 22, 1999.

Preliminary Matters

The Commission, after learning that there had been no public comment, directed staff to release the Tentative Report relating to the Probate Code.

Maureen Garde, Counsel to the Commission, reported on the status of pending federal legislation related to electronic commerce, signature and contracts, which essentially forces State legislation to enact the Uniform Electronic Transactions Act (UETA) in order to avoid preemption of State laws. Ms. Garde noted that the Commission had previously decided against recommending UETA for enactment in this State. Ms. Garde recommended that staff begin to study the uniform act to anticipate the possible, but far from certain, enactment of the federal legislation.

Rehabilitative Sentencing of Drug Offenders

John Cannel advised the Commission that the draft tentative report dealt with a sentencing issue arising from the recent decision of the New Jersey Supreme Court in State v. Soricelli, 156 N.J. 525 (1999). Under that decision, a person who was drug dependent at the time of the offense but receives treatment and so is not drug dependent at sentencing is not eligible for drug treatment and must receive a term of incarceration. The draft report would alter the result of the case and give the court discretion to impose a non-custodial sentence.

Deputy Attorney General Laurie Ruffenach informed the Commission that legislation had been filed that would address this issue and other issues. The bill, S1253, had been reported out by the Senate committee and was awaiting Senate action. Ms. Ruffenach suggested that the Commission might wish to make recommendations to change certain provisions of that bill. She indicated that the New Jersey prosecutors were likely to support S1253 as opposed to a competing bill emanating from the Commission.

Chairman Burstein directed Mr. Cannel to study the bill and to contact John Tumulty about it.

Legalized Games of Chance

Mr. Yorke and Ms. Hursthouse informed the Commission that their respective offices welcome and support the Commission decision to review the law governing games of chance. Mr. Yorke stated that the main problem confronted by the Commission on Legalized Games of Chance centers around the definition of "gambling." He mentioned that the vagueness of the definition appeared to bring within its scope promotional campaigns and amusements that clearly the public does not perceive as gambling and that the public and the industry consider well-entrenched and legal practices.

Mr. Yorke and Ms. Hursthouse offered to meet with Commission staff to outline the major problems facing the regulation of games of chance and to help define the parameters of the project. They also indicated that anti-gambling groups are unlikely to oppose categorically any expansion of legalized games. The anti-gambling groups' main concern is the funding of treatment programs.

Mr. Cannel told the Commission that because of a provision of the New Jersey Constitution, any revision in this area might require a referendum. The Commission did not find that this was a reason to table the project. The Commission directed staff to begin work on the project and invited the Commission on Legalized Games of Chance and the Consumer Protection Department to participate in the project.

Common Interest Ownership

Mr. Cannel reported that the issue of recording deeds to property belonging to a common interest ownership form might require a separate section of the draft report. Mr. Cannel also reported the results of a meeting with

Assemblyman Christopher "Kip" Bateman and persons interested in the adoption of legislation in this area. Most attendees claimed that the uniform act on the subject was difficult to read and understand. In this regard, the Commission's alternative was attractive because it is less arcane. Since the legislation will have to be read by Board Directors and management of condominium and co-op associations, a plain English law is preferable to the technical product of the Uniform Law Commissioners.

The Uniform Act, Mr. Cannel noted, is most concerned with problems stemming from the transfer of ownership from the sponsor to the Association. It is less focused on the modern issues in the area. Now, given the maturity of many communities, the problems stem mainly from the relationship between the Board and individual unit owners.

The Commission then considered the following issues of the draft tentative report:

1. Subjects that may be governed by rule rather than amendment of the master deed - A major issue involves the power of the Board to make a change affecting the entire community. A rule generally may be amended by vote of the Board; in contrast, amendment of the master deed requires approval of 67% of the unit owners. The question is what matters a board may change by rule and what matters may be changed only by amending the master deed. The discussion centered on distinguishing between the trivial and the substantial. For example, a change in pool hours appears to be appropriate for change by rule whereas a change in how a unit may be used appears to require change only by amendment. The conventional term in the business for defining important rights is vested interest, but that term is nowhere defined. Changes such as relocation of unit boundaries clearly require master deed amendment. This would include conversion of two units to one larger unit and vice versa. The Commission asked staff to draft a provision resolving this question.

2. Allocation of repair burdens - Master deeds define what property is part of the individual unit, common elements and limited common elements. However, it is unlikely that any master deed can cover every feature of property in a given community. The Commission decided to create a presumption that physical elements of property not classified in the master deed are presumptively common elements and the responsibility of the association. For example, if skylights in a roof are not defined in the master deed as constituent elements of a particular unit then by default they are common elements.

3. Encroachment - The Commission considered the problem of what happens when the physical size of the unit differs from its described size on drawings or representations made to the buyer. The uniform act handles the problem by saying that the unit is physically encroaching on an adjacent unit has an automatic easement for the encroachment. The Commission rejected this approach and decided on a provision based on a current industry practice. Master Deeds commonly give title to the physical unit as built not as described. The Commission instructed staff to draft a provision that gives a unit buyer title only to that which physically comprises the unit, not title to that which may be described in a drawing or be represented in an advertisement. The buyer's remedy is a money claim against the wrongdoer.

4. Right of access - The Commission considered the problem of rights of public officials such as firemen and police officers and others, such as process servers, to gain access to common elements. The Commission was concerned that the characterization of property in these communities as "private" may interfere with the functioning of these officers and officials but did not want to give officials more right to enter the property of condominiums than other property. The Commission directed staff to draft a provision stated that public officials have the right for reasons of public health safety and welfare to gain access to private property as designated within these communities to the same extent as to similar property under other kinds of ownership.

New Projects

The Commission asked staff to prepare a memorandum setting forth the status of new projects approved at the July 1999 meeting.

Miscellaneous

Ms. Garde informed the Commission of the progress of the Uniform Computer Information Transactions Act (UCITA) and UCC Revised Article 2. She stated that the National Conference of Commissioners on Uniform State Laws (NCCUSL) had voted to promulgate UCITA as a stand-alone uniform law, rather than an article of the UCC, because of ALI's opposition to its provisions. She also noted that UCITA had opposition from 24 state Attorneys General, including New Jersey's, as well as some business groups including Prudential and Johnson and Johnson.

Mr. Cannel and Ms. Garde further noted that Barry Evenchick, a New Jersey Uniform Law Commissioner and Carlyle Ring, a member of the UCITA drafting committee wished to address the Commission and urge adoption of UCITA in New Jersey. Chairman Burstein designated the November 1999 meeting for their visit.

Ms. Garde then gave a brief history of the drafting of UCC Revised Article 2. The revision was completed in 1999 and scheduled for vote before the Conference in August 1999. She noted that industry groups persuaded NCCUSL to remove the revision from its agenda and to authorize a new drafting committee to produce a second version. Ms. Garde stated that a New Jersey Legislator was interested in introducing the original, ALI approved version of Revised Article 2. The Commission determined that it had no opposition to staff working up a New Jersey draft of Revised Article 2 for the potential sponsor.

The next meeting is scheduled for October 14, 1999.