

MINUTES OF COMMISSION MEETING
January 18, 2001

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. Professor William Garland attended on behalf of Commissioner Patrick Hobbs and Grace Bertone, Esq., attended on behalf of Commissioner Rayman Solomon.

Also attending was Charles Centinaro, Assistant Counsel, from the Office of Governor's Counsel.

Minutes

The Commission asked staff to correct the Minutes of the December 14, 2000: change "were" to "was" and insert "of before term "Governor's Counsel" on page 1, second paragraph; correct the misspelling of Commissioner Gagliardi's name in the first paragraph of topic "Structured Settlements"; and correct the sentence in the third paragraph of the topic "Structured Settlements." The Commission accepted the Minutes of the December 14, 2000 meeting as amended.

Proposed 2001 Meeting Schedule

The Commission re-scheduled to November 8, 2001 the meeting scheduled for November 15, 2001. The Commission decided to delay rescheduling the date of the December 2001 meeting.

UCITA

Maureen Garde explained the "Interim Report" prepared for the Commission and distributed at the meeting. The Report was prepared in response to the Commissioner's request for a summary of work done thus far on UCITA. The Interim Report contains a letter to Senator Kyrillos, the sponsor of the UCITA bill, and attached to that letter is a statement of the issue of concern thus far identified by the Commission. Some of the concerns regarding these issues are embodied in proposed amendments contained in the Interim Report. The bound material contains the most recent copy of UCITA and all documents believed to be helpful in understanding UCITA. Ms. Garde also had prepared a "Frequently Asked Questions" to help users understand this complex law.

Ms. Garde reported that Senator Kyrillos has decided not to move the bill in this session and that he will reintroduce it in the next session. The Senator has

acknowledged the objections of various interest groups and the difficult legal questions UCITA raises. Ms. Garde suggested that the Interim Report could serve the purpose of allowing the Legislature to review these issues prior to voting upon the Kryillos bill, in the unlikely event that the bill did unexpectedly move to a committee hearing before the Commission completed its work.

The Commission decided not to table the project indefinitely as requested by Connie Ring. Ms. Garde suggested that the Commission consider sending the Interim Report or a similar document to NCCUSL to communicate the Commission's concerns. It might have an impact on any change NCCUSL might consider in the current version of UCITA. Ms. Garde noted that UCITA has come to a halt in other jurisdictions due to concerns similar to those raised by the Commission.

Commissioner Burstein stated he would talk to Barry Evenchick about the project and stated that he felt the Commission was obliged to make some form of final recommendation to the Legislature on UCITA. Ms. Garde noted the exceptional efforts made by Susan Mastrillo in preparing the Interim Report.

The Commission asked staff to revise the language in the cover letter referring to the interest groups that support UCITA, to expressly state the opposition of the library associations. The Commission thanked Ms. Garde for her work.

Common Interest Ownership

Mr. Cannel reported that he did not receive any commentary during the comment period set for the Tentative Report. The supporters of the Report have not responded because they support it. The Report is one product among many products competing for Legislative enactment. Many bills are pending but none is moving. Professor Garland has identified several technical errors. Mr. Cannel stated that the Commission has done all it can do on this project. Several legislators have expressed an interest in the Report.

The boards want broad powers to deal with difficult unit owners. On the other side, unit owners maintain that boards always abuse their position of authority. Mr. Cannel stated that common interest ownership is an important piece of legislation as it merges a municipal body and private corporation. Making decisions as to who has what powers raises hard issues. In addition,

condominium complexes vary greatly from small to large, each having its own set of interests.

The Commission voted to approve the Final Report.

Recording

Mr. Burke suggested that the project had the capacity to affect many parties and those parties might have a different view of going from a paper based system to an electronic one. He suggested that the Commission hold a hearing to elicit comments from various groups and legislators.

Commissioner Buchsbaum stated that it might be useful to reach out more broadly to other parties and he liked the idea. Commissioner Burstein noted that the approach would be the reverse of what the Commission usually does – that is, produce a report and then solicit commentary, but he thought it beneficial to field these views earlier. Commissioner Buchsbaum noted that the mortgage “securitization” is conducted electronically without problem. Mr. Burke stated that one purpose of the hearing would be to identify issues that would have to be resolved to establish an electronic system. He also stated it might be a way to prevent the project from encountering late opposition. Mr. Cannel will draw up a list of likely people to invite to the hearing.

The Commission instructed Mr. Cannel to simplify the fee payment formula and to produce provisions on maps.

Ms. Garde stated that UETA would permit electronic systems to be used in government. That enabling law is practically in place. But the UETA does not address how these systems will be implemented. Each individual county, for example, should not have a unique electronic filing system. Ms. Garde mentioned that several private companies have developed systems which enable government to accept electronic recordings. These companies would bring a great deal of information.

The Commission asked staff to begin to develop the proposal.

Regarding TR-10. Notices of Settlement, on page 9 of the memorandum uses two terms, “conveyance” and “lien” and the distinction between the two is not clear in the proposal. Mr. Cannel stated that he would treat each

individually; if the concepts are the same or overlap, it might be possible to unify the provisions.

Regarding OE-1. Effect of recording, on page 13, a question was raised as to whether the record must be indexed to be effective. Mistakes are made and sometimes the deed is not indexed. The question is who can correct it easier and who should bear the cost of error? Professor Garland argued that the person who recorded could check later with the county clerk to make certain it is indexed. That party therefore is not as innocent as the party relying on the recording system. Other Commissioners stated that they were equally innocent and the question is who would bear the loss.

Commissioner Burstein stated that placing a duty upon the person recording the deed to follow up and ascertain whether the clerk has in fact indexed the deed is adding an additional, and not necessarily justifiable, layer of cost to the transaction. Ms. Garde proposed that the clerk issue a receipt that has been indexed. The Title Companies generally perform this function.

Other Projects

The Commission decided to begin two new projects:

Title to Abandoned Property

The Commission approved a project to study the manner in which a municipality can gain possession of abandoned property or force an owner to make repairs. Commissioner Buchsbaum explained that currently, a municipality has three alternatives: (1) Uniform Construction Code, (2) repair and lien statutes, and (3) property maintenance codes under Title 26. They have common ground but each requires different notice procedures and hearing schedules. These three methods should be unified.

Election Law - Title 19

The Commission approved a project to study and revise the election law. The issue is timely in view of the contested national election results in Florida. Commissioner Burstein served on a commission that proposed revised election statutes in the 1970's but the legislation implementing the commission report was not enacted.

Miscellaneous

The next meeting is scheduled for February 15, 2001.