

MINUTES OF COMMISSION MEETING
February 15, 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, Hugo Pfaltz, Jr., 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 January 18, 2001 meeting: with regard to the recording project, in the first paragraph add, after the work "Commission" the phrase "before issuing a report"; add "or Derelict" before the word "Property" in "Title to Abandoned Property"; in the second line of the second paragraph of Common Interest Ownership change "always" to "sometimes" as the language is too strident. The Commission accepted the Minutes as amended.

UCITA

Chairman Burstein received a letter from Carlyle Ring stating what NCCUSL intends to do during the period for which they asked the Commission to delay action. Some items contained in the Interim Report may be addressed by NCCUSL, for example a library amendment. However, NCCUSL does not have any intent to disturb the core provisions of UCITA. Senator Kyrillos has received a copy of the Interim Report; the Commission will schedule a UCITA meeting with NCCUSL representatives sometime in the Spring 2001. Professor Nimmer expects to attend the meeting and address the Commission.

Commissioner Gagliardi asked Ms. Garde if she believed an additional meeting with NCCUSL representatives would be productive. Ms. Garde stated that she would be unable to attend the meeting as she is resigned her position with the Commission to take a position with a New York law firm. Ms. Garde expressed her gratitude to the Commissioners for their support for the 13 years she has worked for the Commission. Chairman Burstein stated that the Commission would miss her profoundly that it has been a wonderful experience working with her. He stated that the Commission highly regarded her work product and that she would always be welcome at the Commission.

Mr. Cannel suggested that the Commission schedule for the meeting in late spring. However, Chairman Burstein stated that the meeting might not be useful given the intransigence of NCCUSL as to major issues. Ms. Garde explained that it was likely NCCUSL would modify some provisions and therefore an additional meeting might be useful.

Sentencing of Drug Offenders

The recommended amendment would allow persons who seek treatment for drug problems prior to sentencing not to have that fact held against them at sentencing. The project is a response to the recent decision, State v. Soricelli, 156 N.J. 525 (1999). Currently, the courts believe they have no choice but to impose a jail term. Commissioner Garland stated he had several suggestions of a technical nature; the Commission asked Mr. Cannel to correct the project per Commissioner Garland's suggestions. The report was adopted as amended.

Recordation of Title Documents

Mr. Cannel stated that he had included materials on maps in his latest draft. The new material combines substantive and technical requirements for recordation. The Commission stated these changes require feedback from experts in the area.

Tr-1. Clarify that the list in the heading of (b) is exhaustive, and change the word "include" to "are" or "are limited to." In (b)(6), replace the phrase "on any of the above" with "assignments, discharges and releases." In (8), correct a typographical error - "courts" should be "court." In (b)(8), change "court of record" to "Superior Court" with respect to condemnation commissioners. In (b)(12), replace the term "required or permitted" to be recorded with the term "directed or permitted." In 1(b), rework subsection entirely to avoid repetitive use of the term "real estate." Also, research the question of whether options to buy and rights of first refusal are recorded, able to be recorded, or should be recorded.

Tr-2. UETA states that "signature" includes an electronic signature. The Commission asked whether the proposed statute should have language parallel to that used in UETA, such as "any signature authorized by law." Ms. Garde said that the word "document" appears to suggest "paper." The word of art for electronic document is "record." UETA does not oblige state agencies to accept electronic signatures. However, Ms. Garde noted that federal ESIGN provides

that electronic records and signatures are valid; ESIGN covers deeds, since deeds involve transactions in interstate commerce. Also discussed was whether Congress has the power to force states to accept these records for filing. First, is an intra-state filing a transaction in interstate commerce? Second, does Congress have the constitutional authority to force states to accept electronic records and signatures? UETA gives state agencies the authority to accept or reject records for filing. But this interpretation of UETA conflicts with federal ESIGN. Ms. Garde stated that New Jersey probably should gear up for the acceptance of electronic records whether or not required to do so by federal ESIGN. Commissioner Gagliardi proposed to resolve these ambiguities by providing definitions of key terms in the proposed statute. Commissioner Pfaltz preferred the phrase "signature/mark authorized by law." The Commission asked Mr. Cannel to draft a definition section and to be expansive regarding future technology developments.

Commissioner Buchsbaum suggested that the major changes the Commission has contemplated making to the recordation system must be publicly reviewed. The cost of the system is borne by the county; that is the source of resistance to accept decisions of the Secretary of State. But the subject matter requires uniformity. Commissioner Burstein stated that the principle is worthy of public discussion and that collateral matters can be handled separately.

Clarify Tr-2(a)(6). The words "book and page" should be added as an alternative to document identifying number. There is a time lag between recording of title documents and assigning them a book and page number. The person recording first gets a document number - a relatively recent innovation; then, the book and page number follow. Commissioner Buchsbaum stated that since a person recording a document gets a "document number" or "book or page," there is no reason to add an additional term. If mortgage is of record, Commissioner Garland stated it must have a book and page. Perhaps the language should be generalized by using a phrase like "or otherwise sufficiently identified" in (a)(6). The Commission was divided on this issue. Mr. Cannel stated he would draft a provision.

Tr-3. In (a)(2) the term "public document" is unclear; Commissioner Buchsbaum stated that it could be anything in the world. Mr. Cannel stated that a public document must relate to land under Tr-1. He stated that Tr-3 is an exception to Tr-2, which provides that these documents do not need to be acknowledged. Commissioner Buchsbaum did not like the amorphous

boundaries of the term "public document." The Commission directed Mr. Cannel to provide content for the term. Chairman Burstein said to make a reference in the commentary.

Commissioner Garland stated that everything affecting real estate should be recorded to enable reliance on the recording system. However, that suggestion poses a problem with regard to government regulations. Government cannot be forced to record its interests in property in order to enforce restrictions. However, when governmental restrictions affect a single piece of property, the restrictions should be recorded. Municipalities maintain restrictions on individual properties.

Tr-4. Abandon the county-by-county approach to form uniform requirements in section Tr-4 and to provide for a single set of requirements for the whole state.

Tr-5. Conform subsection (a)(1) to reflect the change in approach to Tr-4; provide reference that nothing here applies to maps. In (b), delete the phrase "delivered in writing;" and put a period after the word "document." In (d), just say "notwithstanding this section" i.e., delete "the requirements of."

Tr-6. Use language "Upon request" in place of "If requested."

Tr-7. In (a), the proposed statute does not contain reference to the miscellaneous book. Where are leases recorded? Maps are in a separate index. The Commission asked Mr. Cannel to check the accuracy of the four categories in (a). In (c), say "client" not "constituent." In (d) and (e), replace "under the names of" with "in the names of." Obtain information on how clerks presently handle recordation and where documents are indexed.

Tr-8. Make generic "assignment, extension or postponement or any modification." Put in "book or page" language.

Tr-9. This section concerns sequence of recording and the race to the courthouse. Current law relies on date of document on simultaneous recordings. If dates of documents are identical, there is no rule.

Tr-10. In (f) add words "is filed" at the end.

Disabilities

Ms. Garde stated that in 1997 the Probate Code term "mental incompetent" was changed to the term "incapacitated;" similar changes were made in several other provisions of the New Jersey Statutes. These changes were made only in definitional provisions, however; they were now carried through in the substantive provisions of the statutes. One aspect of the project on statutory terms referring to disabilities was to recommend amending the substantive provisions themselves to conform to the definitional changes. The memorandum and accompanying amendments sent to the Commissioners with the meeting materials set forth the recommended changes and analyzed particular issues as to certain statutes. Ms. Garde noted that she had not made any changes in the gender references in the sections in order to focus on the main issues in the project, but that such changes would need to be made either later in the project or in the bill-drafting stage of the project.

Ms. Garde explained that simultaneous with the recommended statutory amendments, Ms. Garde had drafted a letter which she proposed be sent from the Essex County Bar Association Committee on the Rights of Persons with Disabilities (the ECBA Committee is cooperating with the Commission's project) to the Supreme Court Committee on Court Rules. In response to that draft letter, Ralph Neibart, the chairman of the ECBA Committee, expressed reservations about the appropriateness of the changes in the Court Rules. That letter was circulated to the Commissioners.

Ms. Garde stated that she would respond to Mr. Neibart's letter. Ms. Garde stated that she hoped that the Commission would continue with the project, and that she planned to remain involved in her capacity as a member of the ECBA Committee.

Miscellaneous

The next meeting is scheduled for March 15, 2001.