

**MINUTES OF COMMISSION MEETING**  
**March 26, 2002**

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey, were Commissioners Albert Burstein, Hugo Pfaltz, Jr., Vito Gagliardi, Jr., and Peter Buchsbaum. Professor Bernard Bell, Rutgers Law School, attended on behalf of Commissioner Stuart Deutsch; Professor William Garland, Seton Hall Law School, attended on behalf of Patrick Hobbs, and Grace Bertone, McElroy, Delvaney & Deutsch, attended on behalf of Rayman Solomon.

Minutes

The minutes of February 21, 2002 were accepted subject to the following corrections: (1) page three, the word "counsel" should be spelled "council," and (2) the Minutes should reflect that the Commission did not receive any input from Edward McGlynn or William Yorke on the Games of Chance Project specifically related to the proposal for an exception designed to exempt games with insubstantial prizes intended for children.

Distressed Property

The Commission considered the latest draft report on the Distressed Property Act, discussed each provision at substantial length and reached the following conclusions.

Section 1. Terms and Definitions

Subsection (b)(1), which contains the definition of the term "commercial property", was changed to read "a structure at least 75% of which is used, or approved for use as, non-residential space or facilities."

Subsection (b)(2), which contains the definition of the term "developed real property", was amended to include completed or partially constructed buildings.

Subsection (b)(3), which contains the definition of "residential property", was amended to include all non-commercial property.

The Commission also asked staff to delete or to move to the appropriate substantive provisions the definitions of the terms "owner" and "tenant" in subsection (a). As to subsection (c), defining the term vacancy for commercial properties, the requirement of using 50% of the available floor area was lowered to 25%. As to subsection (d), defining the criteria for finding that a property is neglected, the term "serious" was deleted from subsection (d)(2) leaving the phrase "health or safety standard," and the phrase "beyond the landlord's control" was added to subsection (d)(4) dealing with repeated and ongoing code violations.

### Section 3. Notice before adding property to inventory

The Commission discussed at substantial length Section 3 requiring the code enforcement official to notify the owner of the property that his property has been determined to be “distressed property.” The discussion centered principally on the due process requirements the law must afford to the owner, the problem of defining the term “owner” and the rights of lien holders.

The Commission decided that the code enforcement official must send notices to the owner and to all lien holders notifying them of the potential listing of the property on the municipal inventory of distressed properties. The notice would inform the parties of the pending listing, identify the deficiencies in the property, set a timetable for correction of the complained of deficiencies, inform the parties of their right to object and inform them of the failure to take any action.

In effect, the code enforcement official must do a title and judgment search prior to sending out the notices. The Commission rejected the proposal of limiting the initial notice to the owner of record only. The concern was that the owner of record might not be the real owner in interest and that subsequent to the filing of the complaint under Section 6 to force a sale or appoint a receiver, a lien holder would have the opportunity to derail the remedy by fixing the property and asking the court to remove it from the inventory.

Section 3(a)(1) was amended to replace the word “basis” with the word “conditions.” Section 3(a)(2) was amended to add the phrase, “including an identification of the deficiencies of the distressed property.” The Commission asked staff to move subsection (d) to Section 4.

### Section 4. Municipal hearing

The Commission made one amendment to Section 4: insert the word “written” before the term “decision” and delete the word “written” before the term “copy.”

### Section 5. List of distressed properties

The Commission asked staff to clarify in subsection (a) that the inventory is a public record. Also, as to subsection (c), the Commission altered the language, by requiring the owner to prove that the property was improperly placed on the inventory in order to remove that property from the inventory by summary action.

Section 6. Court proceeding

The Commission asked staff to delete subsection (a)(2); the notice requirement changes in Section 3 obviated that subsection. The Commission also asked staff to change “may” to “shall” in subsection (b).

Section 7. Sale

The Commission discussed this provision at length and considered the options of a public auction and a private sale. The Commission decided that the term “recognized market” for the sale of real property did not identify any particular market and would lead to confusion. Options considered were sales under the foreclosure law, the Local Land and Buildings Act and real estate market sales. The Commission expressed concerns about high prices, qualified bidders, corruption in the sale process and delivery of good title to the buyer. The Commission explored the idea of creating qualified bidders’ lists and public notice of sales to these persons. The Commission asked staff to restate this provision based on the discussion.

Section 9. Tax certificates

The Commission asked staff to clarify that the option to forego the sale of tax certificates must be made by the municipality specifically under N.J.S.A. 54:5-114.1.

Section 10. How owner retakes property after appointment of receiver

The Commission asked staff to conform the substantive provision with the caption since the former did not make it clear that this section applied only to receivership actions.

Election Law

The Commission was advised that there would be a speaker, Eric A. Fischer, present at the next meeting to address the status of voting technologies. The Commission also was advised that staff would prepare a single document of all work done up to this point for consideration as a draft Tentative Report.

Games of Chance

The Commission asked staff to write letters to William Yorke and Edward McGlynn asking them to submit comments to the proposed “kiddie exception” so that the Commission could decide the issue at the next meeting and release a Final Report and Recommendations.

Miscellaneous

The next meeting was scheduled for April 18, 2002