

MINUTES OF COMMISSION MEETING
May 15, 2003

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 A. Gagliardi, Jr., and Daniel F. Becht. Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch, Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs and Grace Bertone, of McElroy, Deutsch & Mulvaney attended on behalf of Rayman Solomon.

Also present were David Ewan, Consultant to the New Jersey Land Title Association; Donna Thompson and Ira Vinett of the National Vehicle Leasing Association; Paul Garfinkle, of Intek Leasing; Art Gallagher of Gallco Leasing; and Steven Feibus of Anthracite Leasing Co. and the Chairman of the New Jersey Chapter of the National Vehicle Leasing Association (“NVLA”).

Minutes

The April minutes were accepted with the following corrections: (1) on page 4, paragraph 3, the stand-alone “ing” should be removed from the second sentence; (2) John Cannel will speak with Commissioner Buchsbaum to clarify his comment at the last meeting regarding the Distressed Property project and ask him if he was referring specifically to abandoned residential properties; (3) on page 3 in the second full paragraph, the letter “a” will be removed from the first line; and (4) the typographical error in the spelling of the name of Commissioner Bertone’s firm will be corrected.

Welcome

Chairman Burstein formally welcomed the new member of the Commission, Commissioner Daniel F. Becht. Commissioner Becht said that he looks forward to active service on the Commission and has made efforts regarding changes to his schedule so that he can attend the Commission meetings regularly.

Recordation of Documents

John Cannel raised the issue of cancellation (as opposed to discharge) of a mortgage. David Ewan, Consultant to the New Jersey Land Title Association, supported eliminating the cancellation and retaining the discharge form. Chairman Burstein suggested that the status quo be maintained on this issue pending public comment. Changes to the report were suggested as follows:

1-1(a): Commissioner Garland suggested that in the definition of “paper documents” the phrase “created and stored on paper” be eliminated. Professor Bell

suggested that the definition of "document" include numbers (1) and (2) so that it parallels the definition of "recorded" in (b).

1-2(o): Professor Garland asked if the Commission wanted to limit the definition of "master deed" to the definition in the Condominium Act. Commissioners Burstein and Gagliardi both suggested that the definitions relating to condominiums and cooperatives be changed to read "as defined by law" to broaden them in the event other statutes are changed.

1-3(a)(5): Professor Garland observed that the "it" after the statutory cite is repetitive and should be removed.

1-4: Professor Garland noted that where the language reads "the document is the original trust document", "the original" should be replaced with "an original". Mr. Ewan, said that in 1-4(h), Larry Feinberg suggested changing the word "permitted" to "required." Mr. Cannel said that since the language deals with an exception to recording prerequisites, he wanted to discuss this issue with Mr. Feinberg directly and the Commission agreed that this point will be left open until he has done so.

1-5: Commissioner Gagliardi suggested that "cover sheets" be removed from the heading. In section 1-5(b)(3), Professor Bell asked if the language should read "other names in which the document", or if "under which" would be more appropriate. Commissioner Gagliardi suggested that the word "by" be substituted for "in". Mr. Cannel said that all references to "in" and "under" will be changed to "by." Professor Garland asked if in 1-5(b) the language should permit cover sheets to be integrated into the document even if they are not electronic. Mr. Cannel explained that as the terms were being used, "integration" refers to the coding of the key terms into the document so that a search of the document will take the searcher directly to those terms. Chairman Burstein asked how many counties presently use cover sheets. Mr. Ewan responded that only Middlesex does, although it is anticipated that Monmouth County will begin soon, and then Ocean County. Chairman Burstein suggested that the language under discussion be left in its present form pending comments from the Clerks.

1-7: Professor Garland said that (l) now contains a disjunctive. It was agreed that "and" would be substituted for "or."

1-10: David Ewan commented that in section 1-10 the entire section could be eliminated, which would leave just the index for checking the history of a recorded document. Two states have already done that. Professor Garland suggested that Staff delete marginal notations, and explain in a comment why it was deleted, stressing the desire to reduce the opportunity for human error, to see if anyone has an objection. It was agreed that the section will be removed, and an explanation will be placed in the introduction.

1-11: Professor Garland indicated that section 1-11(a) refers to “chapter” but it is not clear what chapter is being referenced. Mr. Cannel said that since the information referred to is contained in a single section, the reference to “chapter” would be replaced with “as used in this section.” Chairman Burstein asked that the double “a” in the second line of section 1-11(a) be removed.

1-13: Chairman Burstein suggested that in the comment, second paragraph, the reference to “small difference” be changed to “difference,” and that in the last paragraph of the comment, fourth line down, the language “a conveyance that because it was unwritten” be improved. Professor Garland asked that the language “transfer of possession is notice” be changed since the transfer of possession is frequently by notice, but not always.

2-4: Professor Garland said that the reference in section 2-4(a) to “section 1(c)” is incorrect. Mr. Ewan requested that the reference to subsection (c) in the comment to section 2-4 be stricken since a question has been raised as to whether the Administrative Code provision may be incorrect.

2-9: Professor Garland distributed proposed language. New Jersey presently has a complicated fee structure that is not being changed by this revision, with some per page charges and some per document. Mr. Ewan told the Commission that the NJLTA supports a per document fee structure. Chairman Burstein suggested that the section remain in its present form. He suggested adding to the comment to this section that a per document fee was considered but no conclusion was reached, and the Commission awaits the comments of Clerks and other relevant parties.

3-7: Professor Bell suggested that the heading stop after the words “block maps.” Chairman Burstein requested that Staff see if the report should use the term “municipality” rather than “city.”

3-8: Commissioner Gagliardi suggested that the heading for section 3-8 read “Approval and filing of duplicates of filed maps”.

The Commission agreed by consensus to release a second tentative report to elicit comments from interested parties.

Garage keepers' Lien

Steven Feibus, Chairman of the New Jersey Chapter of the National Vehicle Leasing Association (“NVLA”), explained that various members of the organization had slightly different views on this area of the law. He is an independent lessor, meaning that he leases cars unaffiliated with a dealership or bank. His biggest single problem is that he ends up with cars impounded in tow yards, and is never notified. He indicated that he has

spent months looking for vehicles only to be told later that he owed thousands of dollars in storage fees.

Chairman Burstein asked when Mr. Feibus learned of the lessee's loss of the vehicle. Mr. Feibus responded that sometimes he learned when the lessee stopped making payments, and that to the extent lessors are going to be held responsible for any charges, they need notification. Generally the lessors use a standard contract which does not mention towing or storage charges, but does contain general language holding the lessee responsible for any charges incurred for the vehicle. These charges generally become a problem after a lessee skips and the lessor is left in a position where it is asked to pay to reclaim the vehicle. Mr. Feibus indicated that it is not clear whether those charges become a lien on the vehicle, but he said that if the charges remained unpaid, parts might be removed from the vehicle. As a result, as soon as he receives notification that a car he leased is in a particular location, he immediately will try to dispatch a tow truck and retrieve the vehicle in order to mitigate his damages.

In response to Chairman Burstein's inquiry as to how a garage keeper would know that the vehicle was leased, Mr. Feibus indicated that a simple registration check with the Department of Motor Vehicles would reveal the name and address of the lessor. Mr. Feibus also explained that reputable lessors are licensed by the State, and that as licensed companies, they are easy to locate and contact.

Mr. Cannel noted that there are three categories of charges that must be considered: (1) repairs; (2) storage ancillary to repairs; and (3) towing and storage if the vehicle is abandoned, stolen, parked improperly, etc. He said that the draft done to this point has not made any provision for the third category. Mr. Feibus said that notice of repairs is probably the most difficult category because generally, the lessor is notified only after the repair is already done, any repairs are the lessee's responsibility and the lessors do not care to know about the bulk of repairs.

Paul Garfunkel, of Intek Leasing, said that one of his vehicles was parked illegally and, as a result, taken into a tow yard. The towing yard's position is that they are not responsible for looking up the owner of a vehicle for 30 days. Mr. Garfunkel said that he did not hear about the vehicle for six months. The position of the towing yard is that it will not release the vehicle until it has been paid in full.

Donna Thompson, attorney, and member of NVLA, explained that there is simply no enforcement of the lessor's entitlement to the return of the vehicle for a payment of something less than the full amount of the charges imposed. Since there is no provision in the law for attorneys' fees or any penalty, the garages or towing companies simply say "so sue me" and it is not cost-effective to sue over every vehicle. She recommended a provision in the law providing that if a garage or similar entity acts in bad faith, it would be liable for attorney fees.

Ira Vinett, NVLA, said that notification is key, and was easily resolved with a lienholder search through DMV for \$5. He suggested that a dollar threshold could be implemented, and if a repair shop is going to take in a project over a certain dollar limit, it should be required to do minimal research to see who actually owns the vehicle. It is a hardship for the lessor to have to pay a considerable sum just to take a car back when there was no advance notification that its security was in jeopardy. He proposed a \$1000 threshold for repairs. Professor Garland asked whether it would help to put a lienholder on the registration. Typically the lienholder is listed on the title. Professor Garland indicated that the threshold at which notification is required might depend on the ease with which the garage keeper can locate the information. If the garage keeper only has to look at the registration, the threshold could be lower; if a government search is required, that is a higher threshold. Commissioner Gagliardi suggested that a difficulty with establishing a threshold is that there are times when unanticipated work has to be done, and that a garage keeper who undertakes such work without notification should bear the risk of loss. Mr. Feibus indicated that there is also a question of timing.

Art Gallagher, of Gallco Leasing, suggested that lessors should be chargeable for only the reasonable cost of repair. He explained that he experienced a situation in which he was charged a \$4000 "restocking fee" by the garage keeper for parts that had been ordered for repairs, but had not even been received by the garage at the time he was there to retrieve the vehicle. Professor Bell asked why the lessor would have to be notified if a lessee takes in a vehicle for repairs and has both the intention and the means to pay for those repairs. Mr. Gallagher said that the situation varies based on the nature and extent of the proposed job and the cost. If it was a proposal for \$3000 for a job that he knew to cost about \$800, he would want to know about it and have input. Professor Bell asked whether if a customer wanted to have a repair done at a specific shop, the lessor would want to have a right to say "no" to that shop, or require the lessee to take it to another shop for repairs. Mr. Feibus said again, that the answer was dependent on the scope of the proposed repair. He said that if it was a substantial repair, he might want to have input. If it was a replacement of a head gasket for a couple hundred dollars, then he might not require information, he suggested that he would check the language of his documentation and get back to the Commission on this issue.

Professor Bell asked if these issues actually came up as conflicts, or whether these were more academic issues. Members of NVLA said that they rarely came up, and that the more common problem was charges for months of storage of the vehicle after work was done. Mr. Feibus suggested that perhaps there should be a provision in the law for the return of all parts that have been replaced with the vehicle, to demonstrate that the work has actually been done. By the time the vehicle is in the hands of the lessor, it may be months or even years later.

Professor Garland asked the guests how it would affect them if the law said that if a lessor puts itself on the registration and provides an 800 number; the lessor is required to be notified of charges to be incurred as a result of a repair or towing. One guest said that he did not object even if the law said that the lessor could be charged for the \$5 DMV search to identify the lessor. Mr. Feibus indicated that he wouldn't even have a problem with a \$2000 threshold. He said notification is really important in areas of major repair, including engine work, and transmission or electrical system. He said he does not want to be notified every time someone goes in for an oil change

Chairman Burstein thanked the guests who were present for coming to the meeting and sharing their information with the Commission. He explained that the Commission would also like to hear from the garage keepers, that tonight's guests will be kept apprised of the Commission's work in this area, and that they could review all documents prepared on the Commission's website. Mr. Feibus will send the Commission a form contract commonly used by Association members.

Title 39

Staff was instructed to continue with the preliminary revisions. Professor Bell asked if attention was being paid to penalties for the various infractions. Mr. Cannel advised that the penalties did not seem to have a rational pattern but depended more on when a particular law was passed then on the severity of the offense.

Miscellaneous

The next meeting is scheduled for June 19, 2003.