

MINUTES OF COMMISSION MEETING
September 11, 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 and Vito A. Gagliardi, Jr. 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.

Also present were David Ewan, Consultant to the New Jersey Land Title Association, and Bill Dressler and Pat Fiumara from the New Jersey Gasoline Retailers Association.

Minutes

The minutes of the July 17, 2003 meeting of the Commission were accepted as submitted.

Title Recordation

John Cannel asked the Commission if it wanted to reconsider the issue of marginal notations. Chairman Burstein noted that earlier the Commission had decided against keeping the notations. Mr. Ewan, Consultant to the New Jersey Land Title Association said that the notations effectively tamper with an original document, which violates one of the primary rules of archival documents. Professor Garland said that they also increase the possibility of human error. The Commission determined that marginal notations would not be included. Chairman Burstein said that explanation should be put into the commentary.

Professor Garland observed that the Clerks recommended deleting the requirement of indexing for recording in section 1-1. Mr. Cannel noted that this would seriously undermine the provision on the legal effect of recording. Professor Garland said that he would be willing to give the Clerks more time to process a document. Mr. Cannel clarified that the Clerks' position is that any time limit is unworkable because they cannot control when there may be an influx of documents into their offices. Chairman Burstein said that this is happening now with mortgage closings and refinancing in Bergen County.

Commissioner Gagliardi said that it would be irresponsible to eliminate the time limit and detrimental to consumers. Removing the time limit would remove hope for a remedy on behalf of someone injured by a Clerk's failure to comply with the statute. Chairman Burstein asked if 'unworkable' meant unenforceable and asked if anyone had ever pursued a Clerk's failure to comply with the deadline currently included in the statute. Mr. Ewan indicated that the Land Title Association had previously filed a lawsuit, which resulted in consent orders. Mr. Ewan advised that neither the Land Title Association nor the State Bar Association wanted the time limit removed from the statute. Professor Bell

asked if the time limit issue was a 'political' one, and if anyone would run against an incumbent Clerk on that basis, or include it in a campaign. Mr. Cannel explained that there were instances in which this was an issue, and that the inclusion of a time limit in the statute made it look like a particular Clerk was not doing the job. The Commission decided to keep the two-day time limit.

Mr. Cannel raised the Clerks' request to change all instances of "filed" to "recorded." Article 9 fixture filings do not and should not meet the requirements for recorded documents. When a question was raised about the difference between filing and recording, Mr. Ewan said that with filed documents, a copy is retained by the Clerk, while with a recorded document, an image is retained by the Clerk but the original is returned to the party recording it. The Commission decided to add a provision specifying that the mechanics of filing be handled the same way as for recording.

In Section 1-2, Professor Garland suggested that the reference to court minutes could be removed, that (h) should refer to "courts of record" and that (n) should be removed as other sections cover its subject matter. Chairman Burstein concurred. Mr. Cannel noted that street address seemed to be a legitimate addition to the draft listing but Mr. Ewan said that the Bar Association and the Land Title Association were concerned that the inclusion of the street address requirement would be yet another reason to reject a document submitted for recording. Chairman Burstein agreed that this is a legitimate concern. Mr. Ewan said that no one had expressed any concerns about the requirement for a lot and block number. Mr. Cannel will consult the League of Municipalities about the need for street addresses. The Commission decided not to add the requirement for a street address.

In Section 1-4, Mr. Cannel suggested that the Clerks' recommendation, "trustee's deeds," is too restrictive, and suggested "documents establishing a trust" instead. Mr. Ewan said that the Trust Section of the Bar suggested "documents establishing or evidencing a trust". Regarding section 1-4(c), Mr. Cannel conveyed the Clerks' concern that a lawyer submitting a document that should be acknowledged might try to slip it in under this section. Professor Garland suggested the use of "documents not otherwise mentioned in this Act" and Mr. Ewan proposed "documents other than those mentioned in section 1-2." The Commission agreed on Mr. Ewan's proposed language.

In Section 1-5, Mr. Cannel said that in 1-5(b), if there will be summaries, a price must be placed on not providing a summary, and noted that the proposed language deals with the issue mentioned by the Clerks. Mr. Ewan suggested "documents accepted for recording" should read simply "documents." Mr. Cannel said that the use of "electronic synopsis" in this section is clearer than the language in the previous draft, "integrated cover sheet." Mr. Ewan raised the issue of the language in 1-4 saying that the Clerk is free to index from the documents and Mr. Cannel said that in indexing, it had been determined that the Clerk should be able to index from the whole document rather than a cover sheet. Mr. Ewan said that if this was the case, there should be a link to section 1-8(h) since if the

cover sheet is submitted, any liability for errors rests on the person who submitted the cover sheet and the Clerk should be required to index from the cover sheet rather than the whole document. If the Clerk is allowed to index from the whole document rather than the index submitted, there is no way to determine where liability properly rests.

Professor Garland suggested that section 1-5(b) should be reordered to first mention the cover sheet, what it contains and then what happens if one is not filed. He noted that the Clerks also wanted to remove the statement of grounds from this section. Mr. Cannel responded that this was part of the issue concerning the time limits.

Mr. Cannel said that the provision allowing a person to request that a document be indexed under additional names duplicates current law. Professor Garland said that as long as the fee the Clerks can charge equals or exceeds the cost of performing the task, the Clerk is required to perform the task.

Mr. Cannel said that section 1-9(b) will be removed and the remaining subsections rearranged. He advised that the Clerks dislike notices of settlement, and the extension and discharge provisions, adding that while it was possible to avoid a separate form of "extension," it is not possible to avoid a separate discharge form which can be critical to remove a notice from the property. Mr. Ewan explained that both the Bar Association and the Land Title Association feel that the notices of settlement are very useful and that both groups approved the extension to 60 days and the draft language. The discharge was thought to be important, especially if the instrument will have a life span of 60 days. Professor Bell asked if the Bar Association or the Land Title Association had the opportunity to speak with the Clerks and Mr. Ewan said that the Land Title Association has made efforts to do so.

Mr. Ewan said that in Section 2-1, the language duplicates the existing law that has been on the books since 1968. He suggested that if anything gets on the record this way, it does not affect the validity of the title or make it unmarketable, but that if this section is removed, there may be the perception that it did have that effect. Chairman Burstein said to leave as is.

Mr. Cannel said that the procedure suggested in Section 2-6 was similar to that available for prosecutors whose funding is inadequate. While there was a concern about making an Assignment Judge a "super-government" there did not appear to be a better way to permit the Clerks to seek the funds necessary to perform their functions in compliance with the statute. Professor Bell asked if the language referring to "sufficient funds to comply with this Chapter" referred to a court order entered in some other action. Mr. Cannel said that any court order would arguably be based on the chapter. Chairman Burstein said to send the language in question to the Administrative Director of the Courts for his reaction.

Concerning payment of recording fees, the Commission determined that as a matter of public policy, the Clerks should not accept anything more than the actual charge. Mr. Ewan said that the Bar Association wanted to know if the provision could be modified to state that if there were an overpayment, the Clerk would record the document then send a notice when returning the recorded document asking the sender what he or she wished to do about the overage. Professor Garland suggested that a reasonable time be provided to return the overage. This was clarified as suggesting that the Clerk be required to record the document but then be given sufficient time to return the overage to see if the initial check clears without a problem.

With regard to fees for the recording of electronic documents, the Clerks suggested to Mr. Cannel that the fees set up by the Commission were insufficient. Mr. Ewan said that the Land Title Association and the Bar Association believe that a per document fee is the appropriate approach. He supplied a chart based on figures from Gloucester and Bergen Counties that seemed to support the fees set forth in the draft by the Commission. Professor Garland moved, and Commissioner Gagliardi seconded the motion to accept the "Proposed Per Document Fee" included as column V of the chart supplied by Mr. Ewan.

Regarding maps, Mr. Cannel said that he was not able to comment on the Clerks' requested changes. Mr. Ewan said that the Bar Association had said no to the Clerks' changes reflected in 3-4(a) and 3-5 because some maps have to be approved by DEP or DOT.

In Section 4-1, Mr. Cannel said that he saw no reason why the Division of Archives and Records Management should not consult with the Clerks, but had concerns about requiring Clerk approval. Commissioner Gagliardi suggested that the words "and review and approval by" be removed from that section and that the phrase "in consultation with" be retained. The Commission agreed.

Mr. Ewan pointed out that mortgages endorsed for cancellation (1-4(c)) should be removed from the draft and it was determined that its continued presence was an oversight. The Commission thanked Mr. Ewan for all of his help in this matter and indicated that it hoped to be able to approve a report for release at the next meeting.

Garage Keeper's Liens

Section 1. Chairman Burstein directed that the word "service" in the title be replaced by the word "repair." Professor Bell observed that there is no definition of "repairs" and that repairs does not necessarily mean modification to an engine. Mr. Cannel will include a definition of repair. Professor Bell said that the information that had been in (c) would be useful.

Pat Fiumara, New Jersey Gas Retailers Association, said that Section 1(b) requiring a written estimate and a signature before a garage can commence work, is problematic

because if an individual drops off a car when the garage is open the garage may proceed with repairs without a written authorization. Bill Dressler, also with New Jersey Gas Retailers Association, said that the attorney for the Association wanted to add language stating that the lien granted to garage keepers has priority over other liens and interests. Mr. Cannel will make add this in Section -2.

Section 6. Commissioner Gagliardi said that in Section 6(b), the language calling for written notice should be consistent and should say “at least 30 days written notice” and “at least 5 days written notice”.

Mr. Cannel said that this report would be ready to be issued as a tentative report at the next meeting.

Title 39

Mr. Cannel briefly summarized the meeting between Staff and individuals from the DMV held August 11 in Trenton. A preliminary review of volume one of Title 39 having been completed, the next step will be a second draft in which modifications are made to the language. The draft will be presented at the October meeting.

Weights and Measures

John Burke said that much of Title 51 is covered by federal law and impacts interstate commerce. He explained that the memorandum submitted for the meeting simply highlights obvious pieces that could be repealed. The section pertaining to anthracite, for example, was deemed unconstitutional years ago, and has yet to be removed from the statute. He also noted that there is a federal agency in existence that is focused on uniformity between the states in the areas covered by this Title.

Miscellaneous

Chairman Burstein asked if there was any news on the Distressed Property piece. The Commission is still waiting to see what happens with pending bills. Chairman Burstein asked for information on the status of each of the pertinent bills for the next meeting.

Mr. Cannel said that the Transportation project would be sent to the Department of Transportation as a Tentative Report.

The next meeting is scheduled for October 16, 2003.