

MINUTES OF COMMISSION MEETING
December 15, 2005

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Commissioners Albert Burstein, Grace Bertone of McElroy, Deutsch & Mulvaney attended on behalf of Commissioner Rayman Solomon and Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch.

Also in attendance was David Ewan of the New Jersey Land Title Association (“NJLTA”).

Minutes

The Minutes of the November 2005 meeting were modified to remove a typographical error on page 5, the word “recission” on the fourth line and were otherwise accepted as submitted.

Title 39

Laura Tharney reported that representatives from the Motor Vehicle Commission were unable to attend this meeting as scheduled because of the inclement weather, but advised that they anticipate attending the January meeting. Both Ms. Tharney and John Cannel had the opportunity to speak with their contact at the MVC on the morning of the meeting, and he indicated that the MVC is supportive of the goals of the project.

The licensing, registration, license plates and equipment provisions will be ready for review at the January meeting. In addition, a chart detailing the location of the provisions of the current law in the draft statute will be supplied in advance of the meeting. Chairman Burstein said that it would be premature for the Commission to comment on the materials at this time, but at the January meeting, the Commission hopes to discuss with the MVC representatives their general comments on Volume 1 of the revision of Title 39 and their thoughts on the release of that Volume as a Tentative Report in order to elicit comments.

Residential Mortgage Satisfaction Act

John Cannel indicated that the draft includes a new provision on release of a particular parcel of property from a multi-parcel mortgage, Section 308. David Ewan suggested that there might be a better way to deal with the issue.

Chairman Burstein raised the issue of the definition of “address for giving notice” which includes the language “for the purpose of a particular type of notice”. Mr. Cannel said that language will be removed.

Chairman Burstein asked if the definition of “entitled person” is intended to cover

easements. Mr. Cannel replied that the Commission tentatively decided last time that anyone with a recorded interest should be able to get a payoff statement, but that he was not sure an easement holder would be included in that group. Chairman Burstein asked if a judgment creditor would be able to obtain the information. Mr. Cannel said that a judgment creditor is an entitled person. He added that while you do not want curiosity seekers to be able to obtain the information, a concern had been raised by Professor Garland that the definition of people who could get the information was not broad enough to include all persons who have a legitimate interest in obtaining a payoff statement. Chairman Burstein suggested that the concern raised by Professor Garland may be so remote that by trying to address it, we will create more problems. Mr. Cannel noted that junior lienholders do have an interest that perhaps should be protected. The Commission decided tentatively remove the phrase “recorded interest in the property” and replace it with “recorded lien on the property”. Chairman Burstein suggested that the matter would be held open until Professor Garland was present to respond to the issue.

Professor Bell asked if there was any guidance from the Uniform Law Commissioners. Mr. Cannel said that since this was new language, they had not addressed the issue. Professor Bell asked if they had discussed Professor Garland’s concerns and Mr. Ewan responded that at the meetings he attended, they had not. Chairman Burstein asked Staff to flag this issue so that it could be addressed at the next meeting.

Mr. Ewan raised the point that definition number 9, defines “payoff amount” as “the sum necessary to satisfy a secured obligation” and noted that a partial payoff will not satisfy the obligation. Mr. Cannel explained that while he would like this section apply to partial payoffs, he is not satisfied with the manner in which it does so in the current draft. He suggested that if language clarifying that issue could be included in the definition of “payoff amount” it would enable Staff to clean up language found in other sections of the draft. Staff will continue to work on this issue.

Mr. Ewan said that definitions 14 and 16 have to be rearranged since they are not in alphabetical order. Also, he pointed out that the language in 14 is a holdover from the Uniform Act but there has been commentary to the effect that since the language is written in the conjunctive, it is unclear what the authority of a mortgage servicing company is. There is no indication on the payoff statement that the mortgage servicing agency has the authority to provide a payoff statement, yet the premise behind a one-touch system is that payoff statements documents should be reliable since sellers and buyers are relying on them. Commissioner Bertone noted that if the mortgage servicer could not discharge the mortgage, there would be total chaos. Mr. Ewan added that the concept behind the Act is a lien clearing device, not a debt clearing device. Chairman Burstein mentioned that there is a kind of inherent reservation of right in the event that there is an incorrect number. Mr. Ewan agreed, adding that the other side also reserves all of the standard defenses, creating a situation in which the general rule is “as long as we follow all of your instructions, the lien will be cleared”.

Chairman Burstein requested that in Section 103, the word “notification” in the first line be eliminated. Regarding Section 201(a)(1) Chairman Burstein asked what the

language requiring “the basis of a person’s entitlement” is supposed to encompass and how extensive must the information provided be. Mr. Cannel responded that at least an assertion of right would be required. Chairman Burstein expressed concern that the generality of the language militates against its effectiveness since if an individual asserts that he or she has a recorded easement, that person should be required to provide it. He suggested that if the Commission does not mean that, we are cluttering up the statute unnecessarily. Mr. Cannel said that if Mr. Jones is writing regarding Mr. Smith's mortgage, the bank will not likely release the information without some indication of who Mr. Jones is.

Mr. Ewan said that in Section 201(a)(4) and (5) the term “mortgage holder” should be substituted for creditor. Also in 201 (a)(5) after the words “real property encumbered” the word “by” should be inserted before “it”. Chairman Burstein asked if it was necessary to retain Section 201(k). Since there are still situations in which a person will attempt to obtain the information wrongly, it was determined that the subsection will remain in the draft, but the language will be changed to read “A person not entitled to a payoff statement, who requests and receives it...”.

Chairman Burstein questioned the provision in Section 202(a) regarding what it means to have a reasonable opportunity to act upon a corrected payoff statement. Mr. Ewan suggested that this language may have to remain vague because of the variety of circumstances which may arise. Commissioner Bertone suggested that including an arbitrary deadline to eliminate vague language may cause more problems than it solves. Chairman Burstein said that while he had concerns about the language, it may not be feasible to make it more specific, noting that operationally, there is a practicality to the current system that ought to be allowed to continue.

Mr. Ewan said that in Section 204(a)(4) the term “secured creditor” should be “mortgage holder.”

Mr. Ewan suggested that in Section 303(a)(1), subsection (a) is subject to subsections (b) and (c), but subsection (a)(1) should not be. Mr. Cannel said that the “subject to” language will be moved to the beginning of (2). Chairman Burstein noted that adding additional language might be clearer and avoid the cross-referencing that can cause mischief in interpretation.

In Section 304(1 1/2), Mr. Ewan asked if the Commission wished to specify recorded assignments, rather than unrecorded assignments, noting that NCCUSL did not want any reference to assignments. Mr. Cannel said that the problem is that the satisfaction document does not necessarily identify the authority of the entity sending that document to say that the mortgage is satisfied. As a result, there will be nothing that ties an affidavit to the current mortgage holder. Mr. Ewan said that the current law accepts satisfaction documents as an act of faith. Such documents have to refer to the mortgage being discharged, but do not necessarily indicate any authority to satisfy. Referring to assignments only provides one more basis on which to reject the document, so it is easier if there is no reference to assignments.

Mr. Ewan said that Section 304(6) has to be qualified to address one-touch processing. Also, he noted that in Section 304(7)(a) the use of the term “satisfied” is a problem since for one-touch processing, you have to use the language “paid in accordance with instructions” since a payoff may not satisfy an obligation completely. Mr. Cannel said the language would be revised.

Mr. Cannel also said that in Section 305, Staff will remove the language "Assignments of mortgage". He also asked whether it was necessary to have both a form and a statement of requirements in the draft, asking whether the form could stand in for the statement of requirements. It was determined that, as with other recorded documents (such as a notice of settlement), the draft would say that the document shall be in substantially the following form, and then the form will be provided.

Mr. Ewan noted that in Section 305(4), in order to allow for a one-touch system, the language that currently reads "and I know that the mortgage has been satisfied" should be replaced with “and I know that a payoff has been made in compliance with the payoff instructions”. Mr. Cannel said that a problem is that sometimes mortgages include obligations other than money. Chairman Burstein noted that such a situation could be dealt with in the payoff letter. Mr. Ewan said that in the form, partial releases must be addressed so that an entire mortgage is not marked satisfied erroneously. There simply should be a way to clarify that if the release is partial, a legal description of the parcel released has to be included.

In Section 308, Mr. Ewan suggested that “payoff statement” be substituted for mortgage as the first term on the second line.

Mr. Cannel pointed out that Section 401 would be removed, since the Act is no longer uniform.

Meeting dates

The next meeting of the Commission is scheduled for January 19, 2006.

Miscellaneous

The Commission determined that Staff will no longer receive the New Jersey Reports and the New Jersey Superior Court Reports in bound book form, and that Staff will access that information on the web, for an anticipated savings of approximately \$2,000 annually.