

MINUTES OF COMMISSION MEETING
November 16, 2006

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Commissioners Vito A. Gagliardi, Jr., Albert Burstein, Andrew O. Bunn, and Sylvia Pressler. Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

Minutes

The Minutes of the October 19, 2006 meeting were accepted as submitted.

Poor Law

Judy Ungar reported that on November 14 John Cannel and she met with six people from the Division of Family Development within the Department of Human Services. Beginning in January, Mr. Cannel and Ms. Ungar will meet monthly with them, to systematically revise the areas of Title 44 with which they are most familiar. Six to eight months is a realistic estimate of the time needed to complete the project.

Legislative Update

John Cannel provided an update regarding Commission projects currently under consideration in the Legislature. The Title Recording piece has been released from the Urban Affairs Committee. A Senate Committee has released Background Checks for School Employees; it now needs to go through full Senate and to the Governor.

Mr. Cannel reported that he had made a presentation to the Senate Committee regarding the Common Interest Ownership Act. Chairman Gagliardi noted a front-page article in the most recent New Jersey Lawyer, which explains how a bill becomes law, and contrasts the NCCUSL's industry bill with the version which citizens' groups support. He explained that there was a reference to the Common Interest Ownership Act in that article contrasting the NCCUSL version with the version that is supported by citizen's groups. Mr. Cannel said that the Senate Committee knows what the Commission is doing in this area and has given the Commission efforts a very good reception.

Common Interest Ownership Act

Professor Garland said that in the section "Removal of a Unit Owner," the language in subsection (a)(2) "residing in a unit" should be replaced by "occupying a unit." Mr. Cannel agreed, saying that in all instances the word should be "occupying."

Commissioner Pressler said that all of subsection (a) should be expressed in the active voice to clarify it.

Professor Garland said that in the third sentence of the Comment to the “Removal” section the word “or” should be removed. The beginning of the piece, he said, should clarify that the project applies only to condominiums and cooperative apartments. Definitions should go in the front of the text.

The motion to release the project as a Tentative Report passed unanimously. Commissioner Burstein said that the timing is good.

Uniform Foreign-Country Money Judgments Recognition Act

Chairman Gagliardi said that he did not recall the Commission’s previously handling a NCCUSL matter in such a summary manner. Mr. Cannel said that the Commission usually does not print out large acts in their entirety when it foresees adopting them.

Professor Garland said that the language of the last full paragraph on page three of the memo concerning a limitations period (“the judgment is effective in the foreign country or 15 years from the date the judgment becomes effective in the foreign country.”) does not make sense. Mr. Cannel said that he would check on the matter and correct it.

The Commission determined that the Report recommending adoption of the Act, subject to correction if necessary, be released to the Legislature, unless Mr. Cannel considers the correction so substantial that the Commission should review it. Chairman Gagliardi asked that the next packet mailed to the Commissioners advise them of the outcome.

Residential Mortgage Satisfaction Act

Mr. Cannel said that the Residential Mortgage Satisfaction Act is already in bill drafting, because the project has a sponsor who has asked that it be drafted.

Professor Garland said that Section 4(c)(1) refers to 3(a)(3) and (a)(4), but that there is no (a)(4). Mr. Cannel suggested this should be a reference to 3(a) and Commissioner Pressler said that it should be a reference to (3) in its entirety.

Professor Garland said that, on page 5, at the end of (4)(k), there is language regarding liability to a landowner for actual damages plus a penalty of \$500. In Section 6(d) the draft includes language calling for actual damages plus \$500, but in that instance the \$500 is not referred to as a penalty. Commissioner Bunn suggested that Section 6(d) was a liquidated damages provision. Commissioner Pressler said that both sections should say, “liable to landowner for actual damages or \$500 whichever is greater.”

Chairman Gagliardi said that in Section (7)(b), there should be an “and” between (a) and (b).

Professor Garland questioned the language of Section 9(b)(1). Mr. Cannel said that the title insurance industry feels strongly that the language of that section not be changed. Chairman Gagliardi said that the first sentence would be improved by redrafting. Commissioner Pressler said that the language in Section 13(a) should read, “the recording of an affidavit constitutes the satisfaction of a mortgage provided it substantially complies....”

Professor Garland pointed out that that in Section 12(3) an individual is certifying that he or she has reasonable grounds to believe, while in 12(4) the individual is saying, effectively, “I know the mortgage has been paid.” Commissioner Bunn said that this was appropriate since 12(3) is a minimum baseline, while 12(4) is an option.

Professor Garland asked if in Section 17, regarding the award of attorney’s fees, the word “charge” should be replaced with “action.” Commissioner Pressler suggested that the language be replaced instead with the following: “unless there is a determination that the action was brought in bad faith.”

Title 39

Laura Tharney reported that contrary to the information in her memorandum, there are other states, Colorado, for example, that divide offenses and penalties into groups. She asked for input from the Commission as to whether or not there is a preference for grouping or tiering the penalty provisions. If so, Ms. Tharney asked if the Commission preferred to leave references to penalties in the individual sections of the statute and simply refer to them as a “Class 1 offense” or to strip the penalty provisions out of the various sections in which they currently appear and consolidate them into one or several sections.

Chairman Gagliardi asked that Ms. Tharney obtain information from the MVC or the Traffic Safety Officers before selecting a course of action with regard to penalties. If the response of those entities to the idea of grouping penalties is favorable, the preference of the Commission, as expressed by Commissioner Bunn, is to leave references to offenses in the individual statutory sections and then to refer to them as “a Tier 1 penalty,” as appropriate. Commissioner Bunn said that Colorado’s statute looks good and is coherent. Commissioner Pressler agreed, but suggested using the word “class” or “level” in place of “tier” as that term is used in Megan’s Law, and is associated with that statute. When asked how many classes of penalties might be used, Ms. Tharney said that based on her work so far in grouping the penalties, she anticipates around five classes, although some offenses or groups of offenses, such as the DUI offenses, would be kept out of the class system.

Ms. Tharney said that she thought that she would be able to attend at least one meeting of the traffic safety officers before the next Commission meeting, and would advise the Commission of any input regarding the classification of penalties. She said that she would also pose the question to the MVC.

Ms. Tharney proposed a new approach for the distribution of the tentative draft: completing the draft of Volume II, which is the last of the volumes in which she anticipates any substantial changes; completing Volume III; and disseminating the entire package of Title 39 for input. To complete Volume II, she plans to modify existing language to reflect provisions found in other states that appear to be particularly appropriate, such as the specialty license plates provisions, reference to the federal regulations in the equipment provisions, language clarifying the prohibition against television screens visible to the driver of a vehicle, provisions regarding snowmobiles and ATVs, and language permitting victims of domestic violence and their dependents to decline to give their residence addresses in applications for driver's licenses, etc.

Ms. Tharney also will add more detailed information to the Section comments, so that individuals reading the draft can track the changes more closely. Commissioner Bunn suggested beginning with a detailed table of contents. Ms. Tharney said that she would do so, adding that she has a partial table of dispositions, but will have to complete it before circulation of the project. She said that she hopes to have comments on the penalty issue for the December meeting, but that she did not anticipate being able to complete Volume II by that time.

New Projects

Mr. Cannel said that a Judge called regarding one matter in the Criminal Code; he will do a memo for the Commission on it.

Commissioner Bunn mentioned the Municipal Land Use Law, specifically zoning boards' authority to grant variances. The Superior Court has held that the statute is being misapplied. Commissioner Pressler said that the problem is with 40:55D-70(c)(1) and (c)(2), particularly (c)(2). Mr. Cannel will research the matter and consult with Judge Peter Buchsbaum.

Miscellaneous

The next meeting of the Commission is scheduled for December 21, 2006.