

MINUTES OF COMMISSION MEETING
December 19, 2007

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

Also in attendance were Lawrence Fineberg, Esq. and Edward Eastman, Esq. of the New Jersey Land Title Association.

Minutes

The Minutes of the November 15, 2007 Commission meeting were unanimously accepted as submitted with a few changes to typographical errors as follows: (1) on page 3, in the paragraph above "School Background Checks", in the third line from bottom of the paragraph, "have" should be replaced with "has"; (2) in the second line from the bottom of that same paragraph, the word "was" should be replaced with "would be"; (3) on page 4, in the fifth line of the first paragraph, "decision" should be substituted for "jurisdiction"; and on page 5, the end of both paragraphs should include the words "it was adopted unanimously".

Adverse Possession

Supplemental materials from the Attorney General's Office were distributed to the Commission members at the meeting and John Cannel briefly summarized those materials, noting that while the documents did not raise new substantive legal issues, they did raise practical issues. Among those issues was the fact that the State can, under current law, impose conditions on the transfer of riparian rights. Imposing a condition, while it may impair the transfer of rights in the land, is arguably not a taking; therefore no payment would be required. One example is the walkway along the Hudson River, which is to run from Bayonne to the New York State line

A draft was submitted at the meeting containing language changes to the report proposed by Commissioner Pressler. These changes included a modification to the language of subsection (a), to combine subsections (a) and (b) and delete (b) as a separate section. Subsection (c) was revised, including the addition of the words "county or counties" to the second line at the end of (c)(2) to reflect the fact that documents are sometimes recorded in more than one county.

Commissioner Pressler also asked when the period of 40 years referred to in the statute commences, since it is not clear from the original draft. She expressed concern regarding situations in which possession pre-dated the 40 year period but the 40 year period for purposes of the statute does not start until recording occurs. The Commission determined that the language of the draft should reflect that possession is based on a

recorded instrument or an instrument of record by including a reference to the “instrument or instruments describing the property and recorded as required by law”.

Mr. Fineberg expressed appreciation to the Commission for listening to the comments that he and Mr. Eastman provided and addressing them in the draft. He suggested that Commissioner Pressler’s version is somewhat clearer than current draft, and supports the use of that new language. Mr. Fineberg also suggested that since “possession” in this context means that a person or his or her predecessor in title possessed for 40 years, for the sake of clarity, the statute should say “person or predecessor in title have possessed.” The Commission discussed the issue of tacking and it was agreed that a section should be added to define “person” to include “predecessors in privity”. Mr Fineberg also addressed the need for consistency and matching the language of subsection (a) to (c). John Cannel said Staff would conform the language of subsection (a) to that of (c).

Mr. Fineberg noted that the adoption of the draft statute would not have a practical negative effect on the State’s current scheme for dealing with situations covered by the statute as set forth in the current regulations.

It was determined that the Commission would review this issue again at the next meeting and would, at that time, consider the impacts, including any benefits, to the State.

UPMIFA

John Burke noted a correction made to page two of the draft, clarifying that only 13 states have adopted this uniform law. He also explained that, on page four, there is a new footnote regarding the source of the non-profit corporation act in New Jersey. It had been brought to the attention of the Commission that the source of that New Jersey act is not the revised model act but the New Jersey Business Corporation Act which existed at the time of the implementation of the New Jersey statute (although the new act has been in effect since 1988).

Mr. Burke explained that a new paragraph has been inserted in page five of the draft pertaining to the standard of care of the trustee under the New Jersey law on non-profits as well as the revised model law and the New Jersey Business Corporation Act. Mr. Burke explained that while there is no significant substantive difference between those Acts, since they all adopt the business judgment rule, the language of the acts varies. The new draft law includes basically a good faith, prudent standard in keeping with the standard imposed in like cases under similar circumstances.

There is a reference on page eight to the standard in the Uniform Act which does not conform to New Jersey’s non-profit law. It has been recommended to the Commission that the word “person” include both for-profit and non-profit corporations. On page 14, subsection (d) of paragraph 4, was rejected by the Commission and deleted.

The Commission considered the issue of modifications to the use of the funds in question. Subsection 6(a), on page 15, was the subject of considerable discussion. It had been recommended to the Commission that the donor's spouse and children be permitted to modify the use of the funds selected by the original donor. The Commission determined that subsection 6(a) would be revised to state the following: "provided the donor consents in a record, or if the donor is deceased and the donor's surviving spouse, if there is one and, if not, the donor's children unanimously consent in a record." Commissioner Pressler noted that the guardian can always act on behalf of the incapacitated donors.

Subsection 6(b) was also modified to state, in the fifth line down, that: "The institution shall give notice to the Attorney General of the application, in accordance with the Rules of Court"

Subsection 6(c) was clarified to include both "charitable purpose of the institution or charitable intent of donor." The last sentence of that section shall also be changed to conform to the changes made to subsection 6(b) described above. Chairman Gagliardi suggested that, after a charitable gift is made, an institution may evolve away from the intent of a donor. He suggested that, in such a case, the institution should be able to act in circumstances that the donor did not anticipate but that are not contrary to the donor's intention. An example is a donor who left money to the March of Dimes to combat polio. Now that polio is considerably more rare, its eradication is no longer the primary goal of the March of Dimes, which devotes its money to other issues. If the goal of the organization after the donation is different than the donor intended, it can be helpful to have language referring to both the charitable purpose of the donor and the charitable intent of the organization in the statutory language.

The words "commercially reasonable industry standards" will be removed from subsection 6(d) of the draft since it does not seem like the most appropriate language for a statute pertaining to charitable institutions. The main purpose of that subsection is to relieve the institution from having to make an application for court approval under certain circumstances but, since it must meet the criteria of both (c) and (d) and cross referencing to subsections (c) and (d) will be included. Commissioner Pressler's proposed language will replace the language currently included in the draft of subsection (d).

A new subsection 6(e) will be added which states that: "Notice to the Attorney General herein required shall also be given by certified and ordinary mail to any charity designated in the trust instrument as a contingent or alternate beneficiary." Commissioner Pressler expressed a preference for the phrasing "shall be given" rather than "must be given" since it comports with the New Jersey drafting style but it was agreed that there was no real substantive difference between the use of the word "shall" and the word "must."

Revisions to the draft as described above will be considered in January.

Title 39

Laura Tharney briefly described the meetings she has attended in an effort to increase the visibility of the Title 39 project, to meet individuals whose comments on the draft would be valuable to the Commission and to encourage comments on the revised draft. She explained that various individuals have committed to review the sections of Title 39 most pertinent to their areas of expertise and experience. Ms. Tharney explained that the project has some momentum, and relevant groups are awaiting its completion and release.

Ms. Tharney then explained that the Introduction to the Draft Tentative Report that was provided to the Commission was in rough form and, while it was being used to highlight certain elements of the project, would be further revised before its release. The introduction basically includes several sections setting forth the reasons for the revision, some of the relevant history of the statute, and language describing the changes to the three volumes that currently comprise Title 39.

In Volume One, the licensing and registration sections were the most heavily revised since they were mixed together in the current statute and were interspersed with sections pertaining to other topics. These provisions were not substantively changed, but were rearranged for ease of use. No substantive changes have been made to the sections of the statute pertaining to the graduated driver's license since the Governor's Teen Driver Study Commission is studying this issue extensively and is expected to issue recommendations in March 2008. The sections pertaining to license plates were also heavily revised, not to change the substance but to consolidate them. Ms. Tharney noted that the sections of the statute that deal with equipment require additional revision after comment and more research since certain of those sections appear to have been superseded by federal regulation but may need to be retained in the statute in some form to avoid gaps in statutory coverage.

In Volume Two, the sections pertaining to the general penalty, and the penalty provisions were the most heavily revised. In the draft, individual penalties, the severity of which appeared to have more to do with the time period in which they were enacted than with the current perception of the severity of the offense, were replaced with references to a classification system for offenses. Instead of listing a penalty in each individual statutory section that describes an offense, the statute was changed to include a reference to Class A through Class E offenses. The section of the statute that currently contains only the general penalty provision now includes the classification system with the punishments for offenses in classes A through E listed in the statute. Potential benefits and difficulties associated with a classification system were acknowledged and the Commission will await feedback on the penalty classification system.

Volume Three was revised more in form than in substance. Ms. Tharney observed that there is more work to be done but, since this volume deals with financial provisions, including mandatory insurance coverages, and there is considerable case law interpreting many of the provisions, all revisions to the language are being done with an eye not only toward the statute, but to the case law interpreting the statute.

The suggested time frame for concluding the comment period was May of 2008. It was noted that in the Introduction, on page 10 in the section pertaining to commitments for review of the project, there was a reference to “organizations both within and outside of the State”. It will be clarified that this refers to state entities and private entities, not entities outside of the State of New Jersey.

The Commission determined that the Introduction should state, on the first page, in strong clear language, that the Commission was awaiting comments from all different groups. Commissioner Burstein observed that the Chairs of the various legislative committees should be known in January 2008, and the offices of the pertinent Chairs should be contacted as soon as possible.

Ms. Tharney explained that the final section in the Introduction will not remain in the draft but was included to explain the procedure for review to the Commission.

Chairman Gagliardi asked how material will be delivered. Ms. Tharney explained that it is presently about 511 pages long. It will be put on the Commission’s website in its entirety with hyperlinks to individual chapters so that individuals who are willing to review the material and provide comments can focus on the sections most relevant to them. It is anticipated that the Commission will consider the report in a topic-by-topic manner after input is received from the field in order to make certain that the project moves forward in a size manageable for appropriate review. Ms. Tharney explained that the Commissioners have already seen the project in its entirety except for certain sections of Volume 3 that were not heavily revised, and agreed that it would be best for each section to be presented again to the Commission only after comments are received. Written submissions and special appearances by officials or interested observers are possible and the Commissioners will defer to Ms. Tharney as to how best to achieve this. The Commission suggested that it is likely that Title 39 will not be on the agenda for January or even February until comments begin to be received and updates are made. The Commission approved release of Title 39 as a Tentative Report.

Miscellaneous

John Cannel advised the Commission of the meeting that he and Marna Brown attended with Patrick Greene and Charles Kenny of Peckar and Abramson in River Edge. Both Mr. Greene and Mr. Kenny were very helpful in identifying issues of concern in the area of construction lien law. Additional revisions are underway.

John Cannel also advised that he was contacted regarding proposed changes to issues concerning the laws regulating alcoholic beverages, including the statutory language limiting how many licenses a single person or entity can own and other economic issues to consider. Commissioner Burstein suggested that since the Commission is currently working on a number of larger projects, now might not be the

best time to add a large and complicated project to the schedule. Consideration of project will be deferred.

Proposed meeting dates for 2008 will be discussed at the January meeting.

A motion to adjourn was made by Commissioner Burstein and seconded by Commissioner Bunn. The next meeting of the Commission is scheduled for Thursday, January 17, 2008.