

MINUTES OF COMMISSION MEETING

February 18, 2016

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 Virginia Long, and Commissioner Andrew Bunn. Professor Bernard W. Bell, of Rutgers Law School, attended on behalf of Commissioner Ronald K. Chen; Professor Edward A. Hartnett, of Seton Hall University School of Law, attended on behalf of Commissioner Kathleen M. Boozang; and Grace C. Bertone, Esq., of Bertone Piccini LLP, attended on behalf of Commissioner John Oberdiek.

Bruce Shapiro, of the New Jersey Realtors, was also in attendance.

Minutes

The following were provided to correct the Minutes of the January 2016 Commission meeting: (1) the removal of the reference to Rayman Solomon, which was replaced with the name of the current commissioner, John Oberdiek, and (2) the inclusion of the motions recorded during the meeting; with these corrections, the Minutes of the January 2016 meeting were unanimously approved on motion of Commissioner Bunn, seconded by Commissioner Hartnett.

Removal of Residential Tenants – N.J.S. 2A:18-61.1

Michael Tadros discussed a Memorandum requesting Commission authorization to research and analyze the term “building” as it appears in N.J.S. 2A:18-61(l)(3) of the Anti-Eviction Act, to determine whether revising the statutory language would clarify this subsection based on the decision of the New Jersey Supreme Court in *Cashin v. Bello*.

Mr. Tadros explained that, in the *Cashin* case, the courts considered the definition of the word “building” to determine whether it denotes “a single, unattached physical structure – an interpretation that would permit ouster of the tenant – or whether ‘building’ includes all structures owned by an individual that are located on the same parcel of land.” Ultimately, the New Jersey Supreme Court determined that the term referred to a single unattached physical structure, noting that the dictionary definition of the term usually refers to a “roofed and walled structure built for permanent use” but that “ambiguity can arise” when a statute is “subject to varying plausible interpretations.”

Laura Tharney explained that Staff brought this issue to the attention of the Commission because there are many pro se litigants in this area of the law who may not have ready access to the Court’s decision or appreciate its importance. Chairman Gagliardi and Commissioner Long

acknowledged that the number of pro se litigants in this area of the law heightens the Commission's interest in this issue. Commissioner Bunn advised Staff to look into the briefs filed in *Cashin*, particularly the amicus curiae briefs, if any, to determine whether revisions to the statutory language will be likely to clarify the subsection.

The Commission authorized Staff to begin work in this area after recommending that the briefs of the parties and any amici be obtained, if possible, to inform Staff's consideration of the issues.

Uniform Common Interest Ownership Act

John Cannel discussed the Draft Tentative Report, focusing on the revisions made to sections 2-103 and 2-117. He indicated that the revisions were incorporated to reflect the guidance provided by the Commission at the January meeting. Commissioner Bunn suggested clarifying section 2-103 subsection b. by replacing the phrase "does not apply to" with "will only" in the following clause, "The rule against perpetuities will only defeat any provision of the declaration, bylaws or rules." Similarly, in section 2-103, subsection c. will read, "limitations on restraints on alienation will only defeat provisions of the declaration restricting sales or leasing of units if they violate the Law Against Discrimination."

Commissioner Hartnett suggested simplifying the language in section 2-117 subsection a.(1) by replacing the phrase "which quorum shall, unless the declaration requires a larger percentage, be 50 percent of the membership" with the phrase "which quorum shall be not less than 50 percent of the membership" so that the subsection reads as follows, "The declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units representing at least 67 percent of a quorum of the members, which quorum shall be not less than 50 percent of the membership in the association qualified to vote."

The Commission voted unanimously to release the Tentative Report with the modifications agreed upon during the meeting on a motion by Commissioner Hartnett, seconded by Commissioner Bunn.

Bulk Sale Tax Notification – N.J.S. 54:50-38

Susan Thatch explained that the covering Memorandum for the Draft Tentative Report summarized the modifications to the Report, which proposed revisions to the language of N.J.S. 54:50-38, extending the bulk sale exemption to properties owned jointly by one or more individuals, trusts, or estates. Commissioner Bunn inquired whether with the proposed revisions to subsection 2(a) were broad enough to include all of the contemplated ownership schemes.

Since the addition of subsection 2(a)(ii) contemplates ownership by more than one party who would otherwise be exempt, and since, as Commissioner Bertone observed, a “tenancy in common” is implied unless otherwise stated, the revisions as proposed now include multiple individual, non-business owners of property who are currently excluded by the statute. As a result, it is anticipated that the drafting is broad enough to address the concern raised without exceeding the scope deemed appropriate by the Legislature.

Ms. Thatch stated that she will continue outreach to knowledgeable parties for input and comment on these provisions. Bruce Shapiro spoke on behalf of the New Jersey Realtors and informed the Commission that his organization supports the proposed revisions because they address confusion and questions regularly raised by the members of that organization.

On a motion by Commissioner Bunn, seconded by Commissioner Hartnett, the Commission voted unanimously to release the Tentative Report.

New Jersey Electronic Legal Material Act

Susan Thatch began her discussion of the Revised Tentative Report by highlighting the changes that were made in response to the comments received. Ms. Thatch explained that Michele L. Timmons, the Minnesota Revisor of Statutes, provided formal comments and observed that deleting the concept of “official” in Section 4 might make it burdensome for the public to determine whether online information is trustworthy.

Commissioner Hartnett explained that Section 2, subsection d.(4), may be confusing to readers because it consolidates references to joint resolutions and proclamations of the Governor. Since joint resolutions are issued by the Legislature, and proclamations by the Governor, it was determined that these categories would be divided into two separate subsections. During the course of the discussion of Section 4, John Cannel noted that it creates a presumption that the online information is an official copy. Staff was directed to examine the impact of the presumption, the rebuttable nature of the presumption, and the issue of whether an entity might pass a regulation that would overcome the impact of the presumption of “official” status. Commissioner Hartnett suggested that Staff look at the United States Code and consider following the federal model to establish a hierarchy of authorities. Commissioner Bunn recommended replacing the phrase “presumed to be an official copy of the legal material” in Section 4 subsection b. with the phrase “shall be an official copy of the legal material.”

Chairman Gagliardi noted the reference in Section 9 to the “prerogative writs in the Appellate Division of the Superior Court” and suggested that generally referring to the Superior Courts, instead of just the Appellate Division will best reflect the standards of practice in New Jersey. The modified section will read “Any party, including a member of the public, may

institute a proceeding in lieu of prerogative writs in the Superior Court to enforce the provisions of this act.”

Chairman Gagliardi also suggested adding a language explaining the rationale for the change of the title of the act from Uniform Electronic Legal Material Act to the “New Jersey Electronic Legal Material Act” in the Report.

Staff will modify the Report in response to the discussion at the meeting, and will represent an updated Report at the next meeting

Uniform Probate Code

Vito Petitti summarized a Memorandum related to the Uniform Probate Code (UPC), enacted in 17 states and the U.S. Virgin Islands. He informed the Commission that the document reflected the preliminary research work of two pro bono students at Rutgers School of Law – Camden. The students worked independently to prepare a matrix comparing sections of the UPC to corresponding sections of the NJ probate statutes, pointing out instances in which there is no counterpart to the UPC in New Jersey law in order to provide to Staff a perspective as to the potential complexity of the project. Mr. Petitti characterized the comparisons contained within the Memorandum as only a sampling of the students’ work because the UPC is 800 pages long. Acknowledging that Staff would ordinarily move forward with a project resulting from the work of the Uniform Law Commission, Mr. Petitti was requesting authorization from the Commission to proceed with work in this area because of the potential scope of this project and the commitment of resources that it would require. He asked for authorization to conduct further research and engage in some outreach with the intent of recommending all or part of the latest version of the UPC for adoption in New Jersey.

Mr. Cannel stated that the UPC is divided into articles so it might make sense to address one article at a time. Commissioner Bunn asked whether any other state has adopted the UPC. Mr. Petitti replied that New Jersey adopted the 1969 version of the UPC, but the 1991 version of the UPC has been enacted in only 17 jurisdictions. He further explained that the 1991 version was last amended in 2010.

Commissioner Bunn noted that this area abhors change. Commissioner Bertone stated that certain sections of Title 3B need revision, such as guardianship and writings intended to be a will. Commissioner Bunn stated that it would be helpful if the work was divided into articles. Chairman Gagliardi agreed and said that a large project such as this will be more palatable in smaller sections. Staff was directed to reach out to practitioners in this area in order to determine which of the articles of the UPC cover areas of the law that are most in need of work in New Jersey and to begin work accordingly.

Miscellaneous

Laura Tharney provided a brief legislative update, indicating to the Commission that bills based on UIFSA were released from the Assembly and Senate Judiciary Committees on February 8th, and that a bill based on the Commission's project pertaining to notaries was held by the Senate Judiciary Committee for amendments.

The Commission meeting was adjourned upon motion of Commissioner Long, seconded by Commissioner Hartnett.