

MINUTES OF COMMISSION MEETING

January 17, 2008

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 Andrew O. Bunn, and Commissioner Sylvia Pressler. Grace C. Bertone of McElroy, Deutsch, Mulvaney & Carpenter, LLP attended on behalf of Commissioner Rayman Solomon and Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

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

Minutes

The Minutes of the December 19, 2007 Commission were unanimously accepted with the following changes: (1) on page 1, in the last paragraph, the word “statutory” at the beginning of the second line is to be replaced with “statute”; (2) on page 2, in the last paragraph of the Adverse Possession section, the word “take” in the final sentence if the section is to be removed; (3) on page 2, in the first paragraph of the UPMIFA section, the reference to the “New York Business Corporation Act” is to be replaced with a reference to the “New Jersey Business Corporation Act”; (4) on page 3, in the third line of the first paragraph, the word donor is to be replaced with “donor’s”; and (5) also on page 3, in the fourth paragraph, the extra spaces after the (c) are to be removed. With those changes the Minutes were accepted after a motion by Commissioner Bunn, seconded by Professor Garland.

Adverse Possession

Mr. Fineberg recommended minor changes to the most recent version of the Draft Final Report (January 7, 2008) as noted in his January 15, 2008 memo to John Cannel distributed to the Commission. He noted that the last paragraph of the Introduction to the Draft Final Report refers to a thirty-year time frame for possession rather than forty, which he believes was inadvertently left over from the previous draft.

Mr. Fineberg also suggested that subsection (a) of the substantive provision should say “shall be barred from any claim of right” rather than of “riparian rights.” With regard to Mr. Fineberg’s proposed repealer language, Mr. Cannel explained that it was the custom of the Commission not to include repealer subsections in drafts.

Mr. Fineberg pointed out that in his draft, he had tried to correct the language in the comments section which cross- referenced a previous draft and to conform the numbering system to the current format of the text.

John Cannel explained that with regard to riparian lands, he had intended that everything would be for 40 years. The fact that the provision can be read another way suggests that the language should be further revised.

Commissioner Bunn raised questions about the draft language, as did Professor Garland. There was considerable discussion about possible modifications to the language in an effort to eliminate potential misunderstandings. The Commission determined that the language as reflected in Mr. Fineberg's draft should be further changed as follows: (1) in subsection (a), on the last line, the language should be changed to read "provided that, during that period, possession has been:"; (2) in subsection (a)(2), the language "under a claim of right to the property that is" shall be removed, as shall the words "a claim of"; (3) in subsection (c) the words "the possession:" shall be added after "provided"; (4) in subsection (c)(1) the word "meets" shall be inserted at the beginning of the subsection; (5) in subsection (c)(2), the words "the person's possession" at the beginning of the subsection are to be removed; (6) subsection (c)(3) shall be revised to read "is attended by the payment of all real estate taxes and other assessments."; and (7) subsection (d) shall read "The required period of possession shall include possession by the person and all others with whom the person is in privity."

Mr. Eastman remarked that he has come across a certain scenario that is not sufficiently addressed in the revision. He described a situation in which, after 20 years of possession of a side yard with no record title, the possessor brings a quiet title action to declare he is owner of the lot. He suggested that, subsection (a) as it is drafted in the revision, will not result in title ownership of the lot. Commissioner Bunn suggested that the title issue should only apply to subsection (c) because the other subsections discuss a "claim of right" which only affects possession and not title.

Addressing the question of whether squatters can ever be given title, Mr. Cannel noted that New Jersey always has done so and Commissioner Pressler commented that a squatter's position is inconsistent with a claim but not with actual title. A "claim of right" in black letter law is inconsistent with the claim of ownership, but not with the actual ownership itself.

Mr. Eastman also noted that in riparian cases, the filed map goes on record and a person buys based on that filed map. The builder, however, may extend the improved property a foot beyond what's stated on the map. The owner then possesses the property for 40 years with that extra foot. Under this reading, that owner would have good rights as per the filed map but not as far as the extra foot beyond map is concerned because that extra foot is not described within the deed.

Commissioner Gagliardi said that the Commission needs to see another draft final report for the next meeting.

Uniform Prudent Management Funds Act

John Burke explained that all of the decisions of the Commission made at the last meeting are integrated in the current and pointed out to the Commission all changes made to the draft as a result of the Commission's comments at the last meeting.

Commissioner Bunn asked what happens if the donor is divorced? Mr. Burke advised that the language used in the draft is "surviving spouse of donor" with the assumption that there is only one surviving spouse. Chairman Gagliardi pointed out that if the donor is divorced, there is no spouse at all. With regard to Section 6, subsection (a) (2), it was agreed that the word "if" was not necessary and the section should begin with "The donor is deceased without a surviving spouse". Also, the extra "if" is not needed at the end of subsection (a) before subsection (1) begins.

Mr. Burke noted the most significant change in this draft was the modification of subsection (d). The Commission made further modifications to the language of subsection d so that it begins: "An institution should release, in whole or in part, a restriction..." In subsection (d)(3) the language should read "the institution will use the property..."

With the proposed revisions noted, Commissioner Pressler moved to issue a final report. Commissioner Bunn seconded the motion. The motion was carried.

Uniform Laws

John Cannel spoke with the legislative counsel at the National Conference of Commissioners on Uniform State Laws (NCCUSL) in Chicago and was advised that the five projects listed in his Memorandum were NCCUSL priorities for the coming year.

Commissioner Gagliardi indicated he believed the Commission has an obligation to present to the legislature our views after looking at NCCUSL's projects. To that end, Commissioner Gagliardi directed Staff to provide the Commission with a brief memorandum on each of the Uniform Laws in the Memorandum as the basis for the Commission's recommendation to the Legislature.

Mental Incapacity

Commission Staff had begun a project on this issue many years ago, but ceased work on it because of concerns about the constitutional provision. Now that the constitution has changed, the outmoded language is appropriate for change. Commissioner Pressler expressed her concern regarding the fact that the court has removed the word "mentally" from the former references to "mentally incapacitated" in all probate rules. Commissioner Bunn noted that a lot of the statutes speak about "restoration of sane mind" while he believes the words "return to competence" is a good alternative. The Commission agreed that anything that dealt with criminal insanity, however, should not be changed.

John Cannel explained that the captions to statutory sections are not enacted; they are not law and cannot be amended. Laura Tharney commented that most people do not know that and think they have meaning. Commissioner Gagliardi stated that we should include, in a footnote or introductory note, that while we are aware that the captions are not part of the law, we recommend they be changed by the publishing entity to reflect the modified language.

Professor Garland asked if there were an explanation in the statute of what must occur in order for a person to be institutionalized. Commissioner Pressler explained that the standard for civil commitment set forth by court rule and involves, basically, a person who is a danger to himself or others. Mr. Cannel advised that if the Commission is not revising any statutes for providing commitment or taking away a person's rights, it is not necessary to include the standard in the statute. Commissioner Bunn encouraged Staff to keep in mind the original purpose of the project, modifying the law in a limited way based on one new sentence in the State Constitution. The Commission's also authorized Staff to review whether the use of the phrase, "mental retardation" was still appropriate.

Miscellaneous

Laura Tharney reported briefly on a meeting she had earlier in the day with Chief Administrator Sharon Harrington and the Senior Staff of the MVC regarding the Title 39 project. The MVC agreed to review sections of the draft tentative report that pertain to the MVC. Ms. Tharney indicated that she did not expect much in the way of comment by the next meeting, but said that Title 39 would be on the agenda and that, at that time, she would advise the Commission about any preliminary contacts with the Legislature.

There was no objection to the proposed meeting dates for 2008, all of which are the third Thursdays of month reserving right to change.

A motion to adjourn was made by Commissioner Pressler and seconded by Commissioner Bunn. The next meeting of the Commission is scheduled for Thursday, February 21, 2008.