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## A Survey of the District of Columbia Law Revision Commission

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## A SURVEY OF THE DISTRICT OF COLUMBIA LAW REVISION COMMISSION\*

Law reform in the United States is a constant concern of legal scholars,<sup>1</sup> jurists,<sup>2</sup> legislators,<sup>3</sup> and the general community.<sup>4</sup> Striking a balance between the ever-changing legal needs of society and the deeply entrenched

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\* This survey is the first in a series that will review the current and proposed status of the District of Columbia Law Revision Commission. The survey is designed primarily to apprise interested parties of proposed statutory revisions of the D.C. Code. Additionally, it will provide a forum for those in the community who wish to submit their ideas through comments and suggestions made to the D.C. Law Revision Commission and the various student authors of the series.

1. See generally Cardozo, *A Ministry of Justice*, 35 HARV. L. REV. 113 (1921); Keating, *A Proposal for the Law Revision Process*, 31 ALB. L. REV. 45 (1967); Pound, *Anachronisms in Law*, 3 AM. JUDICATURE SOC'Y 142 (1919); Scarman, *The Role of the Legal Profession in Law Reform*, 21 RECORD OF THE N.Y. CITY B.A. 11 (1966); Comment, *Jurisprudence: Legal History: Ministry of Justice*, 20 CORNELL L.Q. 119 (1934).

2. See *infra* notes 5, 8. See also *International News Service v. Associated Press*, 248 U.S. 215 (1918). In a dissenting opinion, Justice Brandeis asserted that:

The unwritten law possesses capacity for growth; and has often satisfied new demands for justice by invoking analogies or by expanding a rule or principle. . . . [W]ith the increasing complexity of society, the public interest tends to become omnipresent; and the problems presented by new demands for justice cease to be simple. . . . It is largely for this reason that, in the effort to meet the many new demands for justice incident to a rapidly changing civilization, resort to legislation has latterly been had with increasing frequency.

*Id.* at 262-63 (Brandeis, J., dissenting).

3. See *infra* notes 14-21 and accompanying text. A statement by Justice Cardozo published in the *Harvard Law Review* and often quoted by the New York and D.C. Law Revision Commissions summarizes the ongoing need for a law revision commission:

The courts are not helped as they could and ought to be in the adaptation of law to justice. The reason they are not helped is because there is no one whose business it is to give warning that help is needed. . . . We must have a courier who will carry the tidings of distress. . . . Today courts and legislature work in separation and aloofness. The penalty is paid both in the wasted effort of production and in the lowered quality of the product. On the one side, the judges, left to fight against anachronism and injustice by the methods of judge-made law, are distracted by the conflicting promptings of justice and logic, of consistency and mercy, and the output of their labors bears the tokens of the strain. On the other side, the legislature, informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. Legislatures and courts move on in proud and silent isolation. Some agency must be found to mediate between them.

Cardozo, *supra* note 1, at 113-14. Accord *Law Revision Commission for the District of Columbia: Hearing on H.R. 7412 and H.R. 7658 Before the Subcomm. on the Judiciary of the House Comm. on the District of Columbia*, 93d Cong., 1st Sess. 21, 40-54 (1973) (statement of Hon.

precedents of our laws<sup>5</sup> is a function generally relegated to a law revision commission<sup>6</sup> or a similar entity. Although the legislative and judicial branches of government both strive to balance the scales of justice through harmonizing established laws with the demands of a modern society, friction between these branches<sup>7</sup> and between legislative bodies makes revision and occasional eradication of state laws an arduous task.<sup>8</sup>

In general, there are three distinct models of law revision commissions in operation today. First, there are those that perform general administrative duties and typically serve as revisers of statutes.<sup>9</sup> A second designation are those that execute formal revisions of the laws by the unification and reorganization of laws dispersed throughout a state code.<sup>10</sup> In these categories,

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John MacDonald, Chairman, New York State Law Review Commission) [hereinafter cited as *Hearing*].

4. One example of law reform in the District of Columbia that had raised public concern was the proposal to lift rent controls. See Green, *End to D.C. Rent Control Proposed*, Wash. Post, Jan. 18, 1985, at D1, col. 3.

5. An Associate Judge of the New York Court of Appeals compared the judicial and legislative branches of government and determined that: "[T]he most obvious difference . . . is the lack of hesitancy which legislators frequently display, when enacting a statute which tends to repeal, replace or change prior law. Judges, on the other hand, usually feel professionally committed to past decisions and, on occasion, to past errors." Keating, *A Proposal for the Law Revision Process*, 31 ALB. L. REV. 45 (1967).

6. See *Hearing*, *supra* note 3, at 40-54. In his statement before the subcommittee, Mr. MacDonald discussed the reasons for the establishment of the New York Law Revision Commission and the Commission's significant activities and effects upon state legislature. New York state was the first state to create a law revision commission in 1934. Since this time, a majority of the states, including California, Pennsylvania, Alabama, Louisiana, and Wisconsin, also established similar commissions. In addition, many provinces in Canada, Australia, Jamaica, and England statutorily created law revision commissions. See *id.* at 40-51.

7. See *supra* notes 3, 5; see also Cardozo, *supra* note 1, at 113 (dividing the struggle into two factions including judges on the one side, and on the other, an "uninformed legislature").

8. Justice Cardozo aired one perspective on the difficulty of changing deeply-rooted laws: We learned the rules in youth when we were students in the law schools. We have seen them reiterated and applied as truths that are fundamental and almost axiomatic. We have sometimes even won our cases by invoking them. We end by accepting them without question as a part of the existing order. They no longer have the vividness and shock of revelation and discovery. There is need of conscious effort, of introspective moods and moments, before their moral quality addresses itself to us with the same force as it does to others. This is at least one reason why the bar has at times been backward in the task of furthering reform.

Cardozo, *supra* note 1, at 122.

9. In general, this type of commission recommends technical, formal revision of the laws as well as stylistic and organizational suggestions. Fundamental policy changes are not within the scope of authority. For example, the state of Wisconsin appoints a Revisor of Statutes to effectuate this type of formal revision in the Wisconsin laws. These duties attach to all forms of law revision commissions. Some, however, may recommend substantive changes to the laws. See *infra* note 12 and accompanying text.

10. The Maryland Law Revision Commission is an example of the type of commission charged with recommending only formal, stylistic improvements. *But see infra* note 11. As a

substantive changes to the laws are technically not permitted; nevertheless, these changes are often inevitable.<sup>11</sup> The final classification of law revision commissions are those vested with broad powers. Commissions within this third category are not limited to making formal revisions, but are authorized to recommend substantive changes as well.<sup>12</sup> The District of Columbia Law Revision Commission (Law Revision Commission or Commission) falls within this third category and is permitted by statute to recommend to the District of Columbia City Council (City Council) substantive fundamental policy changes in the District of Columbia laws.

### I. BACKGROUND OF THE DISTRICT OF COLUMBIA LAW REVISION COMMISSION

A complete revision of the District of Columbia Laws had not been authorized since the early nineteen hundreds.<sup>13</sup> One of the first recommendations for the establishment of a law revision commission in the District of Columbia appeared in the 1972 Report of the Commission on the Organization of the Government of the District of Columbia (Nelsen Commission Report).<sup>14</sup> The Nelsen Commission, established to improve District of Co-

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necessary result of revision efforts, the Maryland Law Revision Commission does make some substantive recommendations.

11. The revised Maryland State Code makes reference to this prohibition against substantive changes in a section entitled "Revisor's Notes" appearing at the end of many Code sections. For example, many subdivisions typically contain language to the effect that "[t]his section is new language derived *without substantive change* . . . ." MD. FAM. L. CODE ANN. § 5-530 (1984) (emphasis added). Moreover, under many of the Editor's Notes following provisions within the Maryland Code are words emphasizing that the intent is to correct references, to delete surplus language, and not to revise the law. *See, e.g.*, MD. NAT. RES. CODE ANN. § 4-1004 (1983).

12. Examples of the third category of commissions are the New York Law Revision Commission and the District of Columbia Law Revision Commission. For further reference to other state commissions, see REPORT OF THE COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA, H.R. DOC. NO. 317, 92d Cong., 2d Sess. 764 (1972) [hereinafter cited as NELSEN COMMISSION REPORT].

13. Although the generally acknowledged date of the District's last revision efforts is in the 1900's, many of the revisions made during this period were not actually revisions at all but verbatim adaptations of even older New York statutes.

14. NELSEN COMMISSION REPORT, *supra* note 12, at 763. The report analyzed the New York Law Revision Commission and its composition of seven members, including members of law faculties and universities. The District of Columbia Law Revision Commission was eventually formed using the New York Commission as its prototype. Michigan, California, and Oregon also modeled their Commissions after New York. *Id.* at 763.

Background information was provided by members of the New York, Philadelphia, and District of Columbia Bars. The Nelsen Commission Report acknowledged the assistance of Mr. Arthur John Keefe, Professor Emeritus at the Columbus School of Law, Catholic University of America, and formerly a member of Cornell University Law Faculty. Professor Keefe

lumbia government efficiency,<sup>15</sup> emphasized the need for continued analysis of the antiquated statutory and common laws.<sup>16</sup> Following the Nelsen Report, two bills<sup>17</sup> were introduced and related hearings conducted before the House and Senate District of Columbia Committees<sup>18</sup> for the establishment of the Law Revision Commission.<sup>19</sup> In 1974, the Law Revision Commission was established to operate on a temporary basis subject to renewal by Congress for the purpose of evaluation, reorganization, and revision of the District of Columbia Code.<sup>20</sup> In 1981, the Law Revision Commission became

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was involved in numerous studies conducted by the New York Law Revision Commission. *Id.* at 764 n.21.

15. Commission on the Organization of the Government of the District of Columbia, Pub. L. No. 91-405, 84 Stat. 845 (1970) (Nelsen Commission's enabling act).

16. NELSEN COMMISSION REPORT, *supra* note 12, at 763-66. One reason in support of creating a law revision commission is that the District of Columbia Corporation Counsel's office has little time for studying legislative shortcomings and formulating recommendations because of the day-to-day burdens of litigation and administrative duties. A law revision commission could serve "to supplement and assist, as well as ultimately to strengthen, the resources available to the chief law-enforcement officials." *Id.* at 765.

17. See H.R. REP. NO. 7412, 93d Cong., 1st Sess. 1 (1973); H.R. REP. NO. 7658, 93d Cong., 1st Sess. 1 (1973). These bills were introduced by the Hon. Charles C. Diggs, Jr., and the Hon. Ancher Nelson, respectively.

18. See *e.g.*, *Hearing, supra* note 3, at 21 (statement of C. Francis Murphy, Corporation Counsel for the District of Columbia). After a brief comparison of both bills, Mr. Murphy asserted that:

The failure to modernize the local code of laws by eliminating unnecessary or undesirable statutes and by updating and streamlining other statutory provisions has fostered needless litigation, complicated law enforcement responsibilities, and resulted in a steady flow of remedial and amendatory legislative proposals to the Congress.

A study of the kind authorized by the bills is long overdue.

*Id.* at 22.

19. Topics of debate over the initial statutory language of H.R. 12,832 included appropriations for the Commission from the United States Treasury rather than the District of Columbia Treasury and the power to request information from any governmental or private agency for the purposes of carrying out the Act. Controversy centered on the power of the Law Revision Commission to "request from any department, agency, or instrumentality of the Federal or District Government any information for carrying out the purposes of the act." See 120 CONG. REC. H7975 (daily ed. March 25, 1974). This language was objected to by Mr. Goldwater in the floor debate on the bill. Mr. Fauntroy, acting as the delegate from the District of Columbia, argued with Mr. Goldwater over the language authorizing collection of information and safeguards for the personal lives of individuals. See *id.* at H7981. The legislative history clarifies and limits the Law Revision Commission's power in that it can only secure information for research material, not for personal information. *Id.*

Another concern, raised in the context of the New York Law Revision Commission, was the undesirable impact of devoting the Commission's efforts to one area of law instead of opening up the priorities of the Commission to the broadest possible base. H.R. REP. NO. 924, 93d Cong., 2d Sess. 12 (1974) (additional views of Rep. Ancher Nelsen on H.R. 12,832).

20. H.R. 12,832, 93d Cong., 2d Sess. (1974); see also H.R. REP. NO. 924, 93d Cong., 2d Sess. (1974); S. REP. NO. 1076, 93d Cong., 2d Sess. (1974).

Frank J. Whalen, Esq., can be credited as a key figure in the establishment of the District of

operational as a permanent agency in the District of Columbia government.<sup>21</sup>

The Law Revision Commission is not a lawmaking entity. Rather, the Commission proposes recommendations to the City Council for approval. Both the legislature and the Law Revision Commission attempt to air all views, to consider all model laws as well as relevant state laws, and to contemplate the ramifications of existing laws.<sup>22</sup> However, the Law Revision Commission's functions can be distinguished easily from the City Council's functions in that it tries to rebuild the statutory structure by reviewing laws on a systematic basis. It also does not succumb to political pressures. The Law Revision Commission's members represent widespread interests in the District of Columbia,<sup>23</sup> and no dominant party or lobbyist influences its de-

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Columbia Law Revision Commission. Mr. Whalen articulated the importance of the Commission by stating that:

[T]he government of the District of Columbia would be assisted materially by the work of such a commission in the following ways: one, proposals for legislative enactment, modifications of existing rules of law, and deletion of antiquated unsuitable provisions would . . . be exposed to study and comment by a much broader segment of the community than occurs under the present system. . . . Two, the bias involved in many legislative proposals can be detected and more equitable solutions given fuller consideration.

*Hearing, supra* note 3, at 54 (statement of Frank J. Whalen, Esq., of Spencer, Whalen & Graham).

21. District of Columbia Law Revision Commission Act of 1974, Pub. L. No. 93-379, 88 Stat. 483 (1974) (codified as amended at D.C. CODE ANN. §§ 49-401 to -405 (1981 & Supp. 1985)) [hereinafter cited as Law Revision Commission Act]. In 1981, the Commission became a permanent agency under the District of Columbia Law Revision Commission Act of 1980, D.C. Law No. 3-119 (1980), 27 D.C. Reg. 5641 (1981). Earlier, the District of Columbia had attempted to establish a revision commission around 1970. However, for lack of funding and language in the D.C. Court Reorganization Act of 1970, this commission did not become operational.

22. Law Revision Commission Act, D.C. CODE ANN. § 49-402 (1981 & Supp. 1985).

23. The District of Columbia Law Revision Commission is made up of 17 members appointed as follows:

(1) Three members shall be appointed by the Mayor of the District of Columbia, 1 of whom shall be a member of the faculty of a law school in the District of Columbia and 1 of whom shall be a nonlawyer; (2) Four members shall be appointed by the Council of the District of Columbia upon the recommendation of the Chairman of the Council of the District of Columbia, 1 of whom shall be a nonlawyer and 1 of whom shall be a member of the faculty of a law school in the District of Columbia; (3) Three members may be appointed by the Joint Committee on Judicial Administration in the District of Columbia, 1 of whom shall be a nonlawyer; (4) One member shall be appointed by the Corporation Counsel of the District of Columbia; (5) Two members may be appointed by the Board of Governors of the District of Columbia Bar; (6) One member shall be appointed by the Director of the District of Columbia Public Defender Service; (7) One member may be appointed by the President of the United States; (8) One member may be appointed by the Chairman of the Committee on Governmental Affairs of the Senate; and (9) One member may be appointed by

cisions.<sup>24</sup> As an impartial agency, the Law Revision Commission is responsible for the skillful examination of common law, statutory law, judicial decisions, and acts of the City Council in order to identify antiquated and inequitable statutory provisions, as well as defects and anachronisms in the District of Columbia laws. Ultimately, it is the Commission's function to recommend solutions to these shortcomings.<sup>25</sup>

Initial areas for revision by the Law Revision Commission included the revision of the criminal laws, compilation of an Administrative Procedure Manual, and the revision of numerous civil laws. The Commission's enabling statute expressly provides that the Law Revision Commission afford special consideration to the examination of the criminal laws.<sup>26</sup> Prior to the creation of the Commission, a comprehensive revision of criminal laws in the District had not been conducted for eighty years.<sup>27</sup>

## II. CRIMINAL LAW REVISIONS

The District of Columbia Law Revision Commission was statutorily created around the time of the enactment of the District of Columbia Self Government and Governmental Reorganization Act (Home Rule).<sup>28</sup> A major congressional dispute concerning the Home Rule issue involved the relinquishment of the criminal law jurisdiction to the City Council.<sup>29</sup> Compromises were made, and Congress agreed to permit a law revision

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the Chairman of the Committee on the District of Columbia of the House of Representatives.

D.C. CODE ANN. § 49-401 (1981 & Supp. 1985)).

24. The current Director of the District of Columbia Law Revision Commission, Mr. James McKay, asserts that the Commission is very different in its evaluation of legislation as compared to the normal procedure for drafting legislation. For example, most legislation is drafted as a result of constituent needs, or drafts submitted by lobbyists, or as a direct result of meeting immediate needs in crises. The Law Revision Commission, however, is afforded the opportunity to consider scrupulously the ramifications of laws and the complexities within the District of Columbia Code.

25. Law Revision Commission Act, D.C. CODE ANN. § 49-402(1) (1981 & Supp. 1985).

26. See D.C. CODE ANN. § 49-402 (1981 & Supp. 1985). The 1981 edition of the D.C. Code does not specifically contain the words abrogating revision of the criminal laws. See also S. REP. NO. 1076, 93d Cong., 2d Sess. 1 (1974). In a report to accompany H.R. 12,832, Senator Eagleton, from the Senate Committee on the District of Columbia, reiterated congressional intention that the Law Revision Commission give special consideration to the criminal laws. The District of Columbia was one of only four jurisdictions that had not or was not in the process of revising its criminal code. *Id.* at 2.

27. See generally H.R. REP. NO. 924, 93d Cong., 2d Sess. 2, 3 (1974).

28. See District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. No. 93-198, 87 Stat. 774 (1973). See also Note, *Home Rule*, 30 CATH. U.L. REV. 767 (1981).

29. Congress delayed giving up control over the criminal laws for two years. Later, this period of delay was extended to four years. See *infra* note 30.

commission to revise the criminal code within a two-year period.<sup>30</sup> The City Council would then be permitted to make necessary modifications to this new criminal code, but only after the council members remained in office for two years. The changes would be subject to veto by either House of Congress.<sup>31</sup> Accordingly, the Law Revision Commission was an important tool in the passage of Home Rule in the District of Columbia.

In 1979, the Law Revision Commission submitted to the City Council the Basic Criminal Code in accordance with the statutory mandate.<sup>32</sup> This Code revision attempts to eliminate inequities, especially in areas where similar acts do not exact similar penalties, and it attempts to simplify the previously complex criminal laws.<sup>33</sup> To complete this endeavor, the Commission

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30. See BACKGROUND AND LEGISLATIVE HISTORY OF H.R. 9056, H.R. 9682, AND RELATED BILLS CULMINATING IN THE DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT OF 1973, 93D CONG. 2D SESS., HOME RULE FOR THE DISTRICT OF COLUMBIA 3041, (Comm. Print 1974) (statements of Charles C. Diggs, Jr., Chairman, Committee on the District of Columbia).

The Commission did not meet the two year limitation due to inadequate funding and unrealistic time constraints. The City Council and the Committee on the Judiciary addressed the need for extending the time for the Commission's work, especially in the criminal law area.

In reference to this original time limitation, City Council Chairperson, David A. Clarke, stated that:

Reforming our local criminal laws is much more comprehensive than what is contained in the Commission's recommendations and such reform is more suitably viewed in the context of years, rather than months, of study by the Committee. . . . [S]imilar reform efforts by state legislators have demonstrated the need for careful and lengthy review and have never been fully accomplished in the time which the Council or even the Commission has had.

INTERIM REPORT ON CRIMINAL LAW REFORM FROM THE COMMITTEE OF THE JUDICIARY, DAVID A. CLARKE, CHAIRPERSON, TO THE MEMBERS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA 3 (June 11, 1980) [hereinafter cited as INTERIM REPORT ON CRIMINAL LAW REFORM].

31. *Contra* Immigration & Naturalization Serv. v. Chadha, 462 U.S. 919 (1983). *Chadha* held that a congressional veto provision within the Immigration and Naturalization Act was unconstitutional. For a full discussion of *Chadha* and the decision's impact on the government of the District of Columbia, see French, *Can Home Rule in the District of Columbia Survive the Chadha Decision?*, 33 CATH. U.L. REV. 811 (1984).

32. HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA, 95TH CONG., 2D SESS., NEW BASIC CRIMINAL CODE FOR THE DISTRICT OF COLUMBIA (Comm. Print 1978) (District of Columbia Law Revision Commission Recommendation) [hereinafter cited as BASIC CRIMINAL CODE].

See INTERIM REPORT ON CRIMINAL LAW REFORM, *supra* note 30, at 1-3. On the issue of criminal law reform, a series of eight public hearings throughout the District focused on generating widespread community discussion of the D.C. criminal laws. In addition, members of the Commission promoted coverage by local publications, attended community meetings, and appeared on public information programs. *Id.* See also *infra* note 34 and accompanying text.

33. The newly revised laws within the BASIC CRIMINAL CODE include: (1) general provisions; (2) inchoate offenses; (3) homicide offenses; (4) assault offenses; (5) abduction and restraint offenses; (6) sexual offenses; (7) arson and property damage offenses; (8) burglary and criminal trespass offenses; (9) robbery, theft, and related offenses; (10) forgery and related



is currently involved in the examination of theft and white collar crimes and may continue to study approximately four hundred and fifty criminal offenses dispersed throughout the District of Columbia Code.<sup>34</sup>

### III. ADMINISTRATIVE LAW REVISIONS

The statutory language of the Commission's enabling act prescribes that the Law Revision Commission study the District of Columbia Administrative Procedure Act<sup>35</sup> and prepare a guidance manual<sup>36</sup> for agencies that would include judicial interpretations and relevant legislative history.<sup>37</sup> As a useful tool that aids District agencies in formulating rules and deciding cases, the Administrative Procedure Manual<sup>38</sup> also addresses fundamental concepts of administrative procedure,<sup>39</sup> the Freedom of Information Act,<sup>40</sup>

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offenses; (11) sentencing of offenders. The BASIC CRIMINAL CODE also includes chapters on bars and defenses and a recommendation on the pardon power for D.C. Code offenses.

Future topics for review include: organized crime control, treatment of youthful offenses; private sector corruption; domestic offenses; gambling offenses; offenses against public morality; environmental protection offenses; weapons offenses; and conformity of criminal offenses outside title 22 of the District of Columbia Code. D.C. CODE ANN. §§ 22-101 to -3701 (1981 & Supp. 1985).

34. 1985 DISTRICT OF COLUMBIA LAW REVISION COMMISSION TENTH ANN. REP. 16-17 (1985) [hereinafter cited as TENTH ANNUAL REPORT]. Consolidating laws under the Theft and White Collar Crimes Act is one example of the Commission's ongoing reorganization efforts. The primary goals are to inform citizens of what constitutes a criminal offense, to clarify statutory language, and to amend criminal penalties to assure consistency in punishments. *Id.* at 16.

35. District of Columbia Administrative Procedure Act of 1975, D.C. CODE ANN. §§ 1-1501 to -1510 (1981 & Supp. 1985) [hereinafter cited as DCAPA].

36. D.C. CODE ANN. § 49-402(b) (1973 & Supp. V 1978) (*amended by* D.C. CODE ANN. § 49-402 (1981 & Supp. 1985)).

37. *Id.* See H.R. REP. NO. 924, 93d Cong., 2d Sess. 1 (1974) (Report of the District Government on the bill, H.R. 12,832, by Walter E. Washington, Mayor Commissioner, to the Honorable Charles C. Diggs Jr.).

A majority of the views expressed concerning H.R. 12,832 related to authorizing the Commission to conduct hearings before administrative agencies, propose uniform rules of practice, and prepare an Administrative Procedure Manual. Walter E. Washington, acting Mayor-Commissioner, suggested that in amending the District of Columbia Administrative Procedure Act, the bill authorize the establishment of a District of Columbia Municipal Code wherein every related City Council law or municipal ordinance would be published and that this Municipal Code be cross-indexed with the D.C. Code. *Id.* at 7.

38. DISTRICT OF COLUMBIA LAW REVISION COMMISSION, DISTRICT OF COLUMBIA ADMINISTRATIVE PROCEDURE MANUAL (1982) [hereinafter cited as PROCEDURE MANUAL]. The Commission asserts that the Manual was never intended to be an exhaustive academic treatise. Rather, the Commission stated that the Administrative Procedure Manual was "designed to set forth the requirements of the DCAPA completely and precisely and . . . to provide practical guidance to agency personnel . . . and to citizens who have an interest in the District's administrative process." *Id.* at 2-3. The 1985 edition of the Procedure Manual is available at the District of Columbia Office of Documents.

39. *Id.* at 5-94.

and related regulations,<sup>41</sup> as well as the procedure for publication of all District of Columbia rules and regulations.<sup>42</sup> The Administrative Procedure Manual, completed in March of 1982, is an invaluable tool for many District of Columbia agencies and legal practitioners.

Another important area of administrative law revision pertains to the consolidation of the District of Columbia insurance laws. The Law Revision Commission recently adopted three insurance recommendations that are currently pending before the City Council.<sup>43</sup> The first of these recommendations, entitled "The Insurance Agents and Brokers Licensing Revision Act," sets forth in an organized and simplified manner the procedures circumscribing licensure and discipline of insurance agents and brokers.<sup>44</sup> This recommendation assures the competency of all licensees resulting in improved consumer protection.<sup>45</sup>

A second recommendation that the Law Revision Commission presented, "The Unfair and Deceptive Insurance Practices Act," defines unfair trade practices in insurance, prohibits unfair methods of competition, and establishes a foundation for enforcement mechanisms.<sup>46</sup> Section 207 of this proposed bill prohibits discrimination in insurance rates based on sex, religion, marital status, and race; and consequently, is a controversial provision.<sup>47</sup> The unisex treatment afforded by this provision<sup>48</sup> is a significant modifica-

40. The DCAPA was augmented to include title II of the District of Columbia Freedom of Information Act, D.C. Stat. 77 (codified as amended at D.C. CODE ANN. §§ 1-1521 to -1542 (1981 & Supp. 1985)) [hereinafter cited as DCFOIA].

41. District of Columbia Government Freedom of Information Regulations, D.C. Mun. Regs. tit. 1 § 401 (1984). See PROCEDURE MANUAL (Appendix C), *supra* note 38, at 217-24. Appendix D of the PROCEDURE MANUAL contains a useful chart comparing the DCFOIA with the analogous provisions in the Federal FOIA. See *id.* at 225-37.

42. The "Legal Publication" section is a 1979 amendment to the DCAPA. Public notice for agency rulemaking and regulations governing compilations of agency rules are two areas modified by this section. D.C. CODE ANN. §§ 1-1531 to -1542, -1611 (1981 & Supp. 1985). See PROCEDURE MANUAL at 161-89.

43. The three recommendations relating to insurance are: (1) The Insurance Agents and Brokers Licensing Revision Act, No. 6-29 (Jan. 1985); (2) The Unfair and Deceptive Insurance Practices Act, No. 6-32 (Jan. 1985); (3) The Surplus Lines Insurance and Nonadmitted Insurers Act, No. 6-31 (Jan. 1985). These three Acts are reprinted in a Commission publication entitled the DISTRICT OF COLUMBIA LAW REVISION COMMISSION, RECOMMENDATIONS RELATING TO INSURANCE I-III (1985) [hereinafter cited as INSURANCE RECOMMENDATIONS].

44. See *id.* at I-1 to -70 (The Insurance Agents and Brokers Licensing Revision Act, No. 6-29 (Jan. 1985)).

45. See generally *id.* at i-iv (background and summary).

46. *Id.* at II-1 to -44 (The Unfair and Deceptive Insurance Practices Act, No. 6-32 (Jan. 1985)).

47. See, e.g., *id.* at II-8. Section 207(a)(1) prohibits an insurer from making "any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any policy or contract of life insurance . . . ." *Id.*

48. This new provision prohibits insurance rate discrimination on the basis of sex, race,

tion of current insurance laws.<sup>49</sup>

The third proposed insurance recommendation regulates modern business practices with special emphasis on the surplus lines insurance area.<sup>50</sup> The Law Revision Commission recently submitted to the City Council a proposed bill entitled "The Surplus Lines Insurance and Nonadmitted Insurers Act,"<sup>51</sup> which governs the placement of special insurance risks with insurance companies not licensed under the District of Columbia Insurance Laws and expands various provisions to conform with modern business practices. These three insurance recommendations pending before the City Council are the result of extensive analysis of the District's insurance laws and would effectively reorganize and update this important body of law. However, examination of the administrative laws is not exhausted because the Administrative Law Task force plans to continue evaluating the insurance laws and to publish a second edition of the Administrative Procedure Manual.<sup>52</sup>

#### IV. CIVIL LAW REVISIONS

Numerous civil laws<sup>53</sup> in the District of Columbia are in need of revision, and the Commission's efforts focus on conforming antiquated laws with

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color, religion, national origin, and marital status. Due to the adjustments needed in insurance risk classifications, the effective date of this provision has been postponed for 24 months. *Id.* at v (background and summary).

49. *See id.* at II-31 to -36 (The Unfair and Deceptive Insurance Practices Act, No. 6-32 (Jan. 1985)).

50. *Id.* at III-1 to -38 (The Surplus Lines Insurance and Nonadmitted Insurers Act, No. 6-31 (Jan. 1985)). Section 102 of the proposed Act defines surplus lines insurance as "the insurance of risks that are resident, located, or to be performed in the District that are permitted by law to be placed through a surplus lines broker with a nonadmitted insurer that is eligible to accept such insurance." *Id.* at III-5. A surplus lines broker, as defined within the Law Revision Commission's recent recommendation entitled "The Insurance Agents and Brokers Licensing Revision Act," is a person who solicits an insurance policy "with an insurer not licensed to transact business in the District which cannot be procured from insurers licensed to do business in the District." *Id.* at I-5 (The Insurance Agents and Brokers Licensing Revision Act, No. 6-29 (Jan. 1985)).

51. *Id.* at III-1 to -23. The proposal was introduced by Chairman Clarke as Bill No. 6-31.

52. The topic for future insurance law consideration by the Administrative Law Task Force that is currently underway is the proposal for a Group Health Insurance Act because the District is one of the few remaining jurisdictions without a comprehensive group health insurance law. TENTH ANNUAL REPORT, *supra* note 34, at 18-19. Future plans also include publishing a second edition of the PROCEDURE MANUAL that will expand the area pertaining to the DCFOIA.

53. Upon the recommendation of the Mayor, the Chairman, Council members, and Chief Judges of the District of Columbia Courts, examination of civil health occupation laws was afforded priority over other civil laws in need of revision. General areas of civil law revision include trusts and estates, laws relating to economic activities, and real property laws. *See infra* notes 69-87 and accompanying text.

modern needs.<sup>54</sup> To adequately ventilate current needs and to identify revisions desired by the District of Columbia community, the Law Revision Commission has statutory authority to receive and to consider recommendations<sup>55</sup> from attorneys, lawyers, judges, public officials, bar associations, and the general public.<sup>56</sup> These recommendations are an invaluable tool for the success of the Commission's work.<sup>57</sup> The solicitation of comments from interested parties is an affirmative effort to incorporate community concerns into the revision efforts resulting in readily accessible, organized laws that are in closer harmony with modern conditions.<sup>58</sup>

Health laws manifest one concentrated area for revision of the District of Columbia civil laws.<sup>59</sup> The Law Revision Commission recently compiled a recommendation, currently pending before the City Council, entitled "The District of Columbia Health Occupations Revision Act," as a first step towards unification and modernization of the District's health laws.<sup>60</sup> Because

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54. See D.C. CODE ANN. § 49-402(2)-(4) (1981 & Supp. 1985). See also H.R. REP. NO. 924, 93d Cong., 2d Sess. 3 (1974) (suggesting that the Law Revision Commission study the civil laws area subsequent to the criminal law revision).

55. D.C. CODE ANN. § 49-402(2) (1981 & Supp. 1985) provides in relevant part: "It shall be the duty of the Commission to . . . [r]eceive and consider proposed changes in the law recommended by the American Law Institute, the Conference of Commissioners on Uniform State Laws, any bar association, or other learned bodies." *Id.* See also *infra* note 57 and accompanying text.

56. See D.C. CODE ANN. § 49-402(3) (1981 & Supp. 1985) (authorizing the Commission to consider suggestions from lawyers, judges, public officials, and the general public).

57. To reflect adequately modern concerns of the D.C. community, input from legal scholars and experts in designated areas (i.e., health occupations) is vital to a successful revision of the D.C. Code. The Law Revision Commission was not authorized by statute to function in a vacuum. In the report accompanying H.R. 12,832, the House Committee on the District of Columbia asserted "that participation by . . . segments of the District of Columbia community is essential to the compiling of recommendations that realistically reflect the modern community and its needs." H.R. REP. NO. 924, 93d Cong., 2d Sess. 5 (1974). The Law Revision Commission is designed to aggregate information from various sources and skillfully study these considerations for the purpose of alleviating anachronisms in the law. See D.C. CODE ANN. § 49-402(4)-(5) (1981 & Supp. 1985).

58. The Civil Law Task Force, responsible for the unification of the health occupation laws, distributed detailed questionnaires to District Health occupation boards to reveal practical problems and substantive improvements required in the health law area. The Civil Law Task Force distributed the provisional recommendation to approximately 100 health-related groups for comment and criticism. These practitioners and consumer groups submitted 40 detailed comments that were carefully studied, and a number of suggestions were eventually incorporated into the recommendation. TENTH ANNUAL REPORT, *supra* note 34, at 10. See *supra* notes 30, 55-57 and accompanying text (in both civil and criminal law areas, the Commission considers community input in the revision efforts).

59. TENTH ANNUAL REPORT, *supra* note 34, at 10-16.

60. See *infra* notes 65, 66 and accompanying text. See also DISTRICT OF COLUMBIA LAW REVISION COMMISSION RECOMMENDATION, DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT, No. 6-30 (Jan. 1985).

many of the present health laws resemble a patchwork of legislative enactments and executive actions,<sup>61</sup> the proposed Health Occupations Revision Act effectuates both substantive and formal revisions to the District's civil laws.<sup>62</sup> A major policy reason behind the Health Occupations Revision Act is the resolution of disparate legislative treatment among District health professionals. The recommendation, developed by the Civil Law Task Force, is an attempt to streamline the statutes relating to a wide variety of health occupations to attain fairness and justice for all health professionals.<sup>63</sup> Additionally, the substantive improvements eliminate unconstitutional provisions,<sup>64</sup> provide for uniform treatment for similar health occupations,<sup>65</sup> and serve to elevate levels of public protection.<sup>66</sup> In general, the proposed Health Occupations Revision Act directly affects the licensure and discipline of all major health professionals in the District of Columbia<sup>67</sup> and, at the same time, improves public access to these professionals under systematized

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61. Laws pertaining to health occupations are scattered throughout title 2 of the District of Columbia Code, title 17 of the District of Columbia Municipal Regulations, Mayors Orders, and many uncodified regulations. See TENTH ANNUAL REPORT, *supra* note 34, at 10. In addition to the aforementioned sources of laws, ordinances, and regulations, many health laws have been effectively superseded by executive orders issued since 1952 to the present. *Id.* at 11.

62. See generally DISTRICT OF COLUMBIA LAW REVISION COMMISSION RECOMMENDATION, DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT, *supra* note 60.

63. See *id.* at i-vii (background and summary).

64. See, e.g., *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). *Bates* held that a restriction upon attorney advertising could not be justified. *Id.* at 383. Moreover, the Court held that commercial speech is entitled to first amendment protection while benefiting society through assuring informed public decisionmaking. *Id.* at 363-66. The effect of this Supreme Court decision upon District of Columbia law is that statutory prohibitions against advertising by dentists and podiatrists are effectively repealed. Furthermore, the requirement that dentists become U.S. citizens is repealed on constitutional grounds under the Supreme Court decision in *Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572 (1976).

65. See TENTH ANNUAL REPORT, *supra* note 34, at 12. See also DISTRICT OF COLUMBIA LAW REVISION COMMISSION RECOMMENDATION, DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT, *supra* note 60, at iii (background and summary). Due to sparse provisions in certain areas of regulation, the laws regulating professional conduct vary from profession to profession. *Id.*

66. Public protection, as the primary goal of the District of Columbia Health Occupations Revision Act, is achieved through representation and input from consumers who receive these professional services. See DISTRICT OF COLUMBIA LAW REVISION COMMISSION RECOMMENDATION, DISTRICT OF COLUMBIA HEALTH OCCUPATIONS REVISION ACT, *supra* note 60, at iii; see also §§ 514-515, at 50-52 (further examples of improved public protection provisions).

Another goal, to increase the availability of these services to consumers, is advanced through this new proposal. For example, acupuncture was traditionally a heavily restricted practice and, under the new Act, this occupation will be regulated to a lesser extent. *Id.* § 102(1), at 6.

67. The eleven Boards include: (1) Board of Clinical Social Work; (2) Board of Dentistry; (3) Board of Medicine; (4) Board of Nursing; (5) Board of Nursing Home Administration; (6) Board of Occupational Therapy; (7) Board of Optometry; (8) Board of Pharmacy; (9) Board of Physical Therapy; (10) Board of Podiatry; (11) Board of Psychology. See *id.* § 101(1), at 5.

regulations. Nevertheless, the need for comprehensive study and revision of District of Columbia civil laws has not dissipated, thus making it crucial that the Commission continue to amend other areas of the civil law.<sup>68</sup>

#### V. FUTURE FOCUS: THE LAW REVISION COMMISSION'S ENSUING REVISION AREA—REAL PROPERTY LAWS

To date, archaic laws, including criminal, civil and administrative laws, remain within isolated sections of the District of Columbia Code despite the Law Revision Commission's past efforts. Numerous civil laws, particularly the real property laws, are inconsistent with the needs of a modern urban society. For example, one provision of the District of Columbia Code addresses the regulations for drainage of lots into public sewers while taking into account farm animals that once grazed in the open fields of the District of Columbia in years past.<sup>69</sup> Obviously, these types of outmoded laws<sup>70</sup> are no longer in "harmony with modern conditions."<sup>71</sup> However, many archaically written laws appear antiquated and irrelevant, yet do retain some modern value and simply require redrafting by the Law Revision Commission.<sup>72</sup> The most recent exploration into the District of Columbia Code by the Law Revision Commission focused upon the real property laws.

The Law Revision Commission is currently undertaking a thorough study of the Title 45 property laws, some of which are direct adaptations from the 1901 Code. In many instances these 1901 statutes are mere codifications of much older laws, which date back to the thirteenth century and the days of Edward I,<sup>73</sup> Henry VI,<sup>74</sup> Henry VIII,<sup>75</sup> and William and Mary.<sup>76</sup> Other

68. See generally 1984 TENTH ANNUAL REPORT, *supra* note 34, at 19-20.

69. See D.C. CODE ANN. § 6-401(1) (1981 & Supp. 1985). This provision states that particular regulations apply when drainage connections are to be made "[w]hen there is on any such original lot or subdivisional lot aforesaid any building . . . or any stable, shed, pen, or place where cows, horses, mules, or other animals are kept, then, and in that instance, such original lot or subdivisional lot shall be connected with a public sewer . . . ." *Id.*

70. See, e.g., D.C. CODE ANN. §§ 6-601 to -604 (1981 & Supp. 1985). These provisions address "water-closet" regulations, permits for maintaining a privy, construction and maintenance regulations, and penalties for violation of these privy regulations. *Id.*

71. D.C. CODE ANN. § 49-402(4) (1981 & Supp. 1985).

72. See *infra* notes 80, 81 and accompanying text.

73. See *infra* note 80 and accompanying text.

74. See, e.g., D.C. CODE ANN. § 45-1203 (1981 & Supp. 1985); see also 11 Hen. 6, ch. 5, § 1 (1433). This § of the District of Columbia Code statute was adopted verbatim from the statute enacted during the reign of Henry VI.

75. See, e.g., D.C. CODE ANN. § 45-1102 (1981 & Supp. 1985); see also 27 Hen. 8, ch. 10, § 2 (1535). The statutory language of this § in the District of Columbia Code, dealing with seizin of jointly held property, makes a direct reference to the events occurring before the year 1535.

76. Compare D.C. CODE ANN. § 45-710 (1981 & Supp. 1985) with 4 & 5 W. & M., ch. 16,

statutes codified within the 1981 edition of the District of Columbia Code are copied verbatim from those laws enacted during the reigns of Queen Ann in the eighteenth century,<sup>77</sup> King George II,<sup>78</sup> and King George III.<sup>79</sup> Comprehension of this historical statutory language is often extraordinarily difficult due to the convoluted phraseology within these English statutes. Several real property laws appear to be obsolete, but, to the contrary, these statutes do contain valid principles that retain some significance in modern times. One example within the 1981 District of Columbia Code of a real property statute with origins in the thirteenth century provides that "[a] man from henceforth shall have a writ of waste in the chancery against him that holdeth by law . . . and he which shall be attained of waste, shall leave the thing that he hath wasted, and moreover shall recompense thrice so much as the waste shall be taxed at."<sup>80</sup> This statute stands for the principle that one who leases property may receive treble damages in compensation

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§ 4 (1692). *But see* D.C. CODE ANN. § 45-921 (1981 & Supp. 1985). Not all District of Columbia Code real property statutes date back to the thirteenth and eighteenth centuries. *See, e.g.*, D.C. CODE ANN. §§ 45-921 to -944 (1981 & Supp. 1985). Statutes within subchapter II pertaining to the Recordation Tax on Deeds were enacted in 1962. *Id.* The majority of the real property laws, however, date back to March of 1901. *See, e.g.*, D.C. CODE ANN. §§ 45-301 to -306; 45-101 to -119; 45-1401 to -1415 (1981 & Supp. 1985). *But see supra* note 13.

77. The following District of Columbia Code sections have derivations that date back to the Statute of Ann. The corresponding District of Columbia Code sections and Statute of Ann derivations are set out respectively:

D.C. CODE ANN. § 45-1431 (1981 & Supp. 1985) and 4 Ann, ch. 16, §§ 9, 10 (1705); D.C. CODE ANN. § 45-509 (1981 & Supp. 1985) and 4 Ann, ch. 16, § 21 (1705); D.C. CODE ANN. § 45-708 (1981 & Supp. 1985) and 7 Ann, ch. 19, § 1 (1708); D.C. CODE ANN. § 45-709 (1981 & Supp. 1985) and 7 Ann, ch. 19, § 2 (1708); D.C. CODE ANN. § 45-1416 (1981 & Supp. 1985) and 8 Ann, ch. 14, § 1 (1709); D.C. CODE ANN. § 45-1410 (1981 & Supp. 1985) and 8 Ann, ch. 14, § 4 (1709).

78. *See, e.g.*, D.C. CODE ANN. § 45-1425 (1981 & Supp. 1985) (statutory derivation from the reign of King George II).

79. *See, e.g.*, D.C. CODE ANN. § 45-1422 (1981 & Supp. 1985) (derived from a statute dating back to King George III).

80. *See* D.C. CODE ANN. § 45-1201 (1981 & Supp. 1985) and 6 Edw., ch. 5, § 1 (1278). The statutory language of § 45-1201 is drawn from Chapter Five from the Statutes of Gloucester enacted during the reign of Edward I. Chapter Five states:

It is Provided also, That a Man from henceforth shall have a Writ of Waste in the Chancery against him that holdeth by Law of England, or otherwise for Term of Life, or for Term of Years, or a Woman in Dower; and he which shall be attained of Waste, shall leese the Thing that he hath wasted, and moreover shall recompense thrice so much as the Waste shall be taxed at. And for Waste made in the Time of Wardship, it shall be done as is contained in the Great Charter. And where it is contained in the Great Charter, that he which did Waste during the Custody, shall leese the Wardship, It is agreed that he shall recompense the Heir his Damages for the Waste, if so be that the Wardship lost do not amount to the Value of the Damages before the Age of the Heir of the same Wardship.

6 Edw., ch. 5, § 1 (1278).

for waste committed by tenants.<sup>81</sup> Although the District of Columbia Law Revision Commission and City Council members may advocate changing the amount of damages or may attempt to redefine the doctrine of waste, the general principle is valid and applicable to current disputes between District of Columbia tenants and landlords. Another illustrative District of Columbia Code section also dating back to the 1200's reaffirms the modern validity of the principles behind the English statutes adopted in the District of Columbia Code. Section 45-1202 of the real property laws states:

Fermors,<sup>82</sup> during their terms, shall not make waste, sale or exile of house or woods, nor of anything belonging to the tenements, that they have to ferm, without special license had by writing of covenant, making mention that they may do it; which thing if they do, and thereof be convict, they shall yield full damage and shall be punished by amercement<sup>83</sup> grievously.<sup>84</sup>

The statutory language of this Code section is clearly outdated; however, the principle, which attaches liability to a person who leases property and removes parts of that property (i.e. timber) without the lessor's permission, is a principle applicable to modern society. Both of these seven-hundred year old statutes exemplify that, although statutory language appears to be a maze of verbiage, the general rule of law retains validity; and therefore, these statutes should not be repealed without due consideration by the Law Revision Commission. The Commission's duty is to study these Code sections and to redraft the verbose language to provide the District of Columbia with comprehensible real property laws.

At the same time, the Law Revision Commission must also improve the

81. D.C. CODE ANN. § 45-1201 (1981 & Supp. 1985); see *Klien v. Longo*, 34 A.2d 359 (D.C. 1943). *Klien*, involving a rooming house where the tenants had abused the property, held that the tenant's acts constituted waste. The lease was forfeited for waste, and the lessee was to compensate the landlord for injury to the reversion. *Id.* at 360.

82. D.C. CODE ANN. § 45-1202 (1981 & Supp. 1985). In Dawson's version of the Statute of the Realm, a margin notation makes reference to the term "fermors" as meaning "farmers." Statute of Marlborough, 52 Hen. 3, ch. 23, § 2 (1267).

83. The term "amercement" is defined as "[a] money penalty in the nature of a fine imposed upon an officer for some misconduct or neglect of duty. . . . At common law, it was assessed by the peers of the delinquent, or the affeerors, or imposed arbitrarily at the discretion of the court or the lord." BLACK'S LAW DICTIONARY 75 (5th ed. 1979). See *Sherman v. Upton*, 242 N.W.2d 666 (S.D. 1976). "An amercement is a money penalty in the nature of a fine imposed upon an officer for some misconduct or neglect of duty." *Id.* at 667.

84. See D.C. CODE ANN. § 45-1202 (1981 & Supp. 1985) and 52 Hen. 3, ch. 23, § 2 (1267). The placement of this law within the Statute of Marlborough is worthy of notation. The language in the D.C. Code was adopted almost verbatim from the 700 year old statute. Interestingly, this statutory prohibition against a lessor committing waste appears directly after a statutory remedy against accountants and is followed by a provision concerning the attendance of persons twelve years of age on inquests. Statute of Marlborough, 52 Hen. 3, chs. 22-24 (1267).



substantive effects of the real property statutes by harmonizing them with modern needs.<sup>85</sup> This is accomplished by thorough consideration of recommendations received from interested members of the public. Recently, in accordance with the enabling statute, the Law Revision Commission solicited commentary on the real property laws from a variety of agencies and law firms in the District of Columbia.<sup>86</sup> The Law Revision Commission reviewed real property law recommendations and proposals for revision from area practitioners and interested community members. The Commission has drafted a tentative work plan for the revision of the real property laws. The following is an unofficial outline of the future real property revision areas.<sup>87</sup>

I. Conveyancing:<sup>88</sup>

- A. Permit the use of power of attorney to execute deeds;<sup>89</sup>
- B. Eliminate the need for recitation of power of attorney in corporate deeds signed by corporate officers;<sup>90</sup>
- C. Eliminate the need for straw deeds between spouses;<sup>91</sup>
- D. Permit personal representatives to sell real property, if permitted by will;<sup>92</sup>
- E. Adopt a curative statute to replace sections 607 to 612 of the D.C. Code;<sup>93</sup> and
- F. Simplify and modernize procedures for performance of notarial acts.<sup>94</sup>

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85. See D.C. CODE ANN. § 49-402(4) (1981 & 5<sup>th</sup> pp. 1985).

86. *Id.* § 49-402(2)-(3).

87. These topic areas are among those placed in the tentative work plan; however, the Commission is not bound in any way to consider these areas, nor will the Commission necessarily revise the real property laws in this particular order. The District of Columbia Law Revision Commission will accept comments and suggestions from legal practitioners and other interested community members.

88. In July of 1985, the District of Columbia Law Revision Commission adopted the Real Property Conveyancing Revision Act. The recommendation has six titles that deal with each aspect of the process by which property ownership is transferred. The substantive titles include: title I—Executions of Deeds by Power of Attorney; title II—Acknowledgements of Deeds of Corporations; title III—Conveyances in Which Grantor is Also Grantee; title IV—Authorization of Conveyances by Personal Representatives; title V—Certain Defective Grants Validated; and title VI—Uniform Law on Notarial Acts. Information regarding this Real Property Conveyancing Act can be obtained by contacting the District of Columbia Law Revision Commission.

89. See D.C. CODE ANN. §§ 45-306, -601 (1981 & Supp. 1985).

90. See *id.* § 45-502.

91. See *id.* § 45-216.

92. See *id.* § 45-742.

93. See *id.* §§ 45-607 to -612.

94. See *id.* §§ 45-602 to -606.

- II. Liens
  - A. Review Code sections pertaining to Mechanics Liens;<sup>95</sup>
  - B. Review priorities generally;<sup>96</sup>
    - 1. Priority of ARM's;
    - 2. Priority of construction loan future advances;
    - 3. Priority of tax and utility liens;
    - 4. Statutory period for presumed extinguishment of liens.
- III. Mortgages and Deeds of Trust:
  - A. Review chapter seven of title 45;<sup>97</sup>
  - B. Provide for a trust release system;<sup>98</sup>
  - C. Simplify trustee substitution procedures;<sup>99</sup>
  - D. Consider adopting presumption of payment of deed of trust notes after time certain;<sup>100</sup>
  - E. Consider the Wet Settlement Act;<sup>101</sup>
  - F. Review foreclosure procedures.<sup>102</sup>
- IV. Waste; review and revise chapter 12 of title 45 generally.<sup>103</sup>
- V. Rules of Interpretation; Forms, Covenants and Warranties:
  - A. Review chapter 4 of title 45 generally;<sup>104</sup>
  - B. Review chapter 5 of title 45 generally.<sup>105</sup>
- VI. Estates in Land:
  - A. Review chapter 2 of title 45 generally;<sup>106</sup>

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95. *See id.* § 38-101.

96. *See id.* §§ 15-104, 16-507, 47-1812.9.

97. *See id.* §§ 45-701 to -720.

98. *See, e.g.,* MD. REAL PROP. CODE ANN. § 3-105(b) (1981); VA. CODE §§ 55-66.3:1, -66.4:1 (1981 & 1985 Cum. Supp.).

99. *See* D.C. CODE ANN. § 45-714 (1981 & Supp. 1985).

100. *See, e.g.,* MD. REAL PROP. CODE ANN. § 7-106 (1981).

101. *See, e.g., id.* § 4-106(b).

102. *See* D.C. CODE ANN. §§ 45-715 to -718 (1981 & Supp. 1985).

103. The Law Revision Commission will compare D.C. CODE ANN. §§ 45-1201 to -1204 (1981 & Supp. 1985) with MD. REAL PROP. CODE ANN. § 14-102 (1981) and VA. CODE §§ 55-211 to -216 (1981) for determining the necessary revisions to statutes that pertain to waste. *See also* D.C. CODE ANN. § 45-1411 (1981 & Supp. 1985).

104. The Law Revision Commission will compare D.C. CODE ANN. §§ 45-401 to -405 (1981 & Supp. 1985) with MD. REAL PROP. CODE ANN. §§ 2-101 to -119 (1981) and VA. CODE §§ 55-48 to -57.1 (1981) prior to recommending changes to this part of the Code.

105. The Commission plans to revise D.C. CODE ANN. §§ 45-501 to -509 (1981 & Supp. 1985). In preparing the recommendation, the laws of other jurisdictions will be reviewed. *See, e.g.,* MD. REAL PROP. CODE ANN. §§ 4-201 to -204 (1981) and VA. CODE §§ 55-48 to -57.1 (1981).

106. *See* D.C. CODE ANN. §§ 45-201 to -223 (1981 & Supp. 1985). The Commission plans to refer to MD. REAL PROP. CODE ANN. §§ 55-1 to -25.1 (1981) when revising this section of the District of Columbia Code.

- B. Determine the status of the Second Restatement on Estates and Future Interests.
- VII. Powers of Appointment:
- A. Review chapter 1 of title 45 generally;<sup>107</sup>
  - B. Review donative transfers.

This general outline for future revision areas is not exhaustive, and many provisions within the real property title require careful study by the Law Revision Commission. The Commission currently is accepting comments and recommendations from local practitioners and interested residents to aid in the revision of the real property laws for the District of Columbia.

## VI. CONCLUSION

The District of Columbia Law Revision Commission is a permanent agency within the District of Columbia established for the express purpose of examining and recommending both formal and substantive improvements to District of Columbia laws. The Commission, by studying defects and anachronisms in the District of Columbia Code and incorporating community input into the recommendations presented to the City Council, has accomplished many successful revision efforts throughout its existence. To date, the Basic Criminal Code, the Administrative Procedure Manual, the District of Columbia Health Occupations Revision Act, and the three recommendations relating to insurance laws are a few examples of the fruits of the Law Revision Commission's efforts. The future revision areas are plentiful, and the Commission's work has a serious and far-reaching effect upon the future of District of Columbia laws. It should be noted, however, that the Law Revision Commission's activities are recommendations and nothing more. Nevertheless, one of the valued results is that communication lines are opened between the legislature, members of the judiciary, and the District of Columbia community. Accordingly, the Commission's work fuses changing legal needs with entrenched legal precedent and ultimately draws the District of Columbia legislature one step closer to attaining the original goals of the Self-Government Act by ensuring that the laws of the Nation's Capital reflect the best of current legal thinking, the most effective legislative drafting, and contemporary community values.

*Catherine T. Clarke*

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107. See D.C. CODE ANN. §§ 45-101 to -116 (1981 & Supp. 1985).