

## Memorandum 2007-47

**Statutory Clarification and Simplification of CID Law  
(Comments on Tentative Recommendation)**

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The Commission has been working to develop a recodification of the statutory law governing common interest developments, primarily the Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”) and elements of the nonprofit mutual benefit corporation law.

In the process of developing a tentative recommendation, we received some comments on issues that had already been reviewed earlier in the process. Those comments were set aside for consideration after the circulation of a tentative recommendation.

In June 2007, the Commission approved the tentative recommendation on *Statutory Clarification and Simplification of CID Law*. The tentative recommendation was circulated for public comment.

The comments received in response to the tentative recommendation, along with the comments received earlier in the study that were set aside for later consideration, are attached in the exhibit as follows:

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The letter from T. Foster included a lengthy exhibit. The exhibit was made up entirely of pages from CLRC materials. Those materials are available on the Commission’s website (clrc.ca.gov). In the interest of conserving resources, they are not duplicated in this memorandum. The relevant pages are listed below:

<p>First Supplement to Memorandum 2001-42, pp. 1- 2; Exhibit pp. 3-7. Memorandum 2001-43, p. 1. Memorandum 2001-44, p. 1. Memorandum 2001-55, p. 1. Memorandum 2001-63, p. 1. Memorandum 2002-9, p. 1; p. 1 of attached draft tentative recommendation. Memorandum 2002-24, p. 1-2. Tentative recommendation on <i>Common Interest Development</i></p>	<p><i>Law</i> (May 2002), cover and p. 7. Memorandum 2002-55, p. 1; p. 5 of attached draft tentative recommendation.</p>
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Memorandum 2002-60, p. 1; p. 11 of attached draft tentative recommendation.	Memorandum 2005-3, p. 1.
Memorandum 2003-18, p. 1.	Memorandum 2005-10, p. 1.
Memorandum 2003-23, p. 1; Exhibit p. 1.	Memorandum 2005-18, p. 1.
Memorandum 2003-31, p. 1.	Memorandum 2005-32, p. 1.
Memorandum 2003-37, p. 1.	Memorandum 2006-4, p. 1.
Memorandum 2003-40, p. 1.	Memorandum 2006-12, p. 1.
Memorandum 2004-20, p. 1.	Memorandum 2006-13, p. 1.
Memorandum 2004-23, p. 1.	Memorandum 2006-25, p. 1.
Second Supplement to Memorandum 2004-27, p. 1.	Memorandum 2006-33, p. 1.
Memorandum 2004-39, p. 1.	Memorandum 2007-2, p. 1.
Second Supplement to Memorandum 2004-39, p. 1-2.	Memorandum 2007-4, p. 1.
First Supplement to Memorandum 2004-47, p. 1.	Memorandum 2007-24, p. 1.
	Second Supplement to Memorandum 2007-24, p. 1.
	Tentative recommendation on <i>Statutory Clarification and Simplification of CID Law</i> (June 2007), cover.

In addition, the letter from Peter Wilke included a lengthy exhibit consisting of documents involving his association's elections and meeting minutes. In order to conserve resources, those materials are not reproduced here, but are available on request.

This memorandum provides only the Exhibit containing the public comments. Discussion of those comments will commence in a supplement to this memorandum. That approach will make it easier to work with the component parts of the memorandum, especially if discussion spans multiple meetings.

The first supplement to this memorandum will begin with an overview of the public comment. In the interest of efficiency, the staff recommends reading that overview before reading the Exhibit to this memorandum.

Respectfully submitted,

Brian Hebert  
Executive Secretary

Exhibit

**EMAIL FROM BOB SHEPPARD  
(MARCH 30, 2007)**

Brian,

I appreciate the Commission's valuable work on the Davis-Stirling Act. I have some comments and concerns about the latest draft (1/16/07) which I would like to share with your staff and the Commission. These include the applicability of provisions of the draft to stock cooperatives, as well as other general comments.

My involvement with housing cooperatives extends back to the late 1970s. I was instrumental in organizing a conversion from rental housing to a limited-equity cooperative in the midwest. This included developing governing documents, creating a business plan, arranging for financing, developing and delivering training for the prospective members, etc. I advocated for the creation of the National Consumer Cooperative Bank (now the NCB) and negotiated one of the first cooperative housing loans with them. I served on the board of directors of a housing cooperative in California and have served on numerous committees in both cooperatives. I have owned and lived in housing cooperative units for over twenty-five years.

My comments follow. Should you have questions or need additional information, please feel free to contact me at your convenience. In particular, if my rationale for any of my comments is unclear, you are welcome to bring them to my attention and I will attempt to clarify them.

Bob

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General Concerns About the Treatment of Cooperatives

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In general there are many parts of the draft which apply to condominiums but not cooperatives. I would like to see each provision of the draft examined from this viewpoint. If a provision could not be applied to cooperatives as they are

presently organized, it should be changed to apply to all types of CID, including cooperatives.

#### Declarations

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The co-ops of which I'm aware have the following governing documents:

- Articles of Incorporation
- Bylaws
- Proprietary Lease
- possibly a Membership Agreement
- policies/"house rules"

I have not seen co-ops record a formal declaration, although some might. Even in post-Davis-Stirling co-ops, many public records do not show such a recordation. Some of the information required to be in the declaration might be strewn across several documents, which might or might not be recorded. I've seen co-op use restrictions appearing generally in the proprietary lease and policies/house rules.

The current staff draft relies heavily on the declaration and I believe that the draft should be revised to also serve those stock cooperatives not having the elements of a declaration.

#### Enforceability, Education

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I agree with previous commentators that there is a great lack of education among both CID homeowners and CID boards of directors. I believe this causes many of the problems which these parties are facing. The other cause I believe contributes to this is a realistic lack of enforceability. The provisions of the CID Open Meeting Act may help to alleviate this. Other provisions in the staff draft include a similar enforcement mechanism which may help with those particular provisions.

In most other cases, however, there will not be a realistically affordable enforcement mechanism. Those unit owners with means will be able to protect themselves from corrupt or ignorant boards, but others will not be able to afford legal counsel.

I believe that until these issues (which have been proposed in previous bills) are addressed, all of the good work that the Commission, it's staff and all of us commentators are doing may come to naught. All of us can proposed wonderful

legislative solutions but unless there is education and enforcement, I believe it may all go to waste.

As a start, the judicial enforcement provisions should, as a minimum, apply to any breach of the governing documents or Davis-Stirling.

### Liens and Foreclosures as Applied to Cooperatives

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In general, an owner of a coop unit would have a lease that has provisions relating to termination of membership, termination of the lease and eviction. I do not know of any coops that provide for liens or foreclosure as a remedy. Since the lease remedies are not in the staff draft, does this mean that coops will be required to foreclose rather than evict?

The draft should bring these issues into confluence.

### All Members as Directors

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I know of several cases where each member is automatically a director. And I believe this may be the case in many co-housing communities, which are usually organized as condominiums. The draft should be carefully scrutinized to discover and resolve such issues.

### Members Making Director Decisions

=====

The draft regulates many decisions traditionally made by directors, requiring that they be made by directors. However, many small coops (and possibly co-housing developments) require that such decisions be made by the entire membership. The draft should have language that allows this.

### Appurtenant Areas

=====

The draft distinguishes between common areas, exclusive use common areas and separate interests. From the language, it appears that only those three designations are permitted to be assigned to any part of a CID. However, some

cooperatives, and possibly other CIDs, have areas that do not fall into any of these categories. They are areas that might be appurtenant to a separate interest or a membership. This appurtenance might last for the term of the member's membership in the CID, regardless of the specific separate interest that is owned by the member.

For example, the member might have the exclusive right to occupy a specific garage or storage space, regardless of which unit they own. This appurtenant space might not be evidenced by a separate ownership or occupancy instrument and the member would be assessed an additional charge for its occupancy. Upon the unit owner selling their unit or voluntarily giving up the appurtenant space, the HOA might either offer it to another unit owner or use it for their own storage purposes.

The draft should incorporate this type of occupancy into its framework.

#### Membership Voting Systems

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Associations may conduct elections entirely within the scope of a single meeting. They may allow for nomination of directors at such a meeting. They may also use supermajority thresholds for the election of directors or other matters. And they may use runoff rounds if the thresholds mentioned above are not met. They may provide for the casting of ballots only during the meeting. All of these methods should be accommodated within the draft.

#### Comments About Specific Sections

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- 4035. The case of no president should be provided for. There may be periods when no one has volunteered for the job.

- 4040. The law should allow the HOA's bylaws to require a more restrictive form of individual notice.

- 4045(b). These types of notices could be easily overlooked. Many credit card companies send out separate notices. I would prefer these types of notices only be allowed if permitted in the bylaws.

- 4045(e). This should be deleted. Not everyone owns or watches a television. Also, the HOA could give the notice once in the middle of the night and claim they had fulfilled the requirements of this section.

- 4050(d). This is ripe for abuse.
  
- 4090. This is a significant loophole that is ripe for abuse and should be closed. Also, the unanimous written consent vehicle should be either completely closed or restricted to emergencies only.
  
- 4145(c). I would call these elements something like "electrical and signal-bearing elements" to refer to any type of electrical conductor, fiber-optic cable, etc. Any type of bearing element that could carry power or a signal should be covered, as should any conduit that encloses these elements. Also, there are cases where an individual conduit might carry these elements to more than one single separate interest.
  
- 4165. Sometimes the bylaws require that an operating rule be approved by the membership. Please allow for that case. Also, any regulation that affects or regulates the rights and responsibilities of a member should be considered an operating rule.
  
- 4190(b). There is at least one case where the share is appurtenant to the lease and the lease carries many of the rights of membership. So I would suggest adding the term "lease" to the list of instruments.
  
- 4505. I don't think the legislature should impose this onto an HOA. The HOA's articles or bylaws should control this, usually by specifying rules of order.
  
- 4515(a). It should be clarified that the bylaws can set a higher threshold.
  
- 4515(b). I don't see a reason for the legislature to dictate to an HOA that they may not break quorum. Only the bylaws or rules of order should be able to restrict the power to break quorum.
  
- 4520(a). "The" agenda (rather than "an" agenda) should be given as part the notice, even if the date is set in the governing documents. Non- board members wishing to attend board meetings on subjects of interest need to know if such a subject will be discussed, so they can plan their schedules accordingly.
  
- 4520(c). Notice of an emergency meeting should be given at the time such a meeting is called, even if it's given at the time the meeting is convened. This will allow any member seeing the notice to attend the meeting.
  
- 4520(d). If a meeting is adjourned to such a time that would follow the scheduled end of a meeting, general notice should be given to all members and

individual notice given to members and directors requesting it. This will allow members having scheduling conflict with the original meeting to possibly attend the continuation of the adjourned meeting.

- 4540(a). The bylaws should determine when the board may adjourn to an executive session, unless a member privacy issue is involved and the member wants an executive session, not the legislature. For example, the membership may have enacted a bylaw provision requiring an open meeting for discussion of contracts with third parties. The legislature should not force the HOA to abandon this.

- 4540(b). The target member may want an open meeting to avoid secret discrimination, retaliation, threats, etc. that might occur during an executive session. The member should have the right to decide whether such a meeting should be open or closed.

- 4540(c). For a member requesting a payment plan, see comments for 4540(b) above.

- 4545. This is a huge loophole to allow directors to conduct all of their business in secret, without the opportunity for accountability. I have seen it used this way. It should not be generally available to the board. I can think of two examples when it might be justified: (a) in an emergency when there are no board members available at the normal meeting place to set up a telephonic conference call and (b) in the case of a CID such as a time-share where it is unlikely for the board to ever meet contemporaneously. If an action without a meeting were to be permitted under these two exceptions, all deliberations (drafting, email, etc.) should be immediately communicated to all members both through general notice (e.g. posting on a bulletin board) and, if by email, by copying all members providing an email address. Members should be permitted to provide feedback to the board by email and possibly other means. The burden of proof of an emergency should be placed on the board. This is a controversial section that should not be included until and unless a careful analysis of the consequences is performed.

- 4550(b). The minutes of an executive session should state the decision made in such session to the extent that it does not compromise the privacy that was the lawful basis of going into such session.

- 4555. I agree that the phrase "without foundation" should be eliminated.

- 4580(b). There are HOAs that require a 2/3s vote of all members to amend their bylaws. I do not think the legislature should impose the lowering of such a standard.

- 4585(b). I don't think the right to break a quorum by withdrawing from a meeting should be prohibited by the legislature. The association's bylaws and/or its rules of order (which should be incorporated into its bylaws) should control this issue.

- 4595(c)(2). I think this subsection would be a little hard for a layperson to read. The association should be able to require that any matter to be considered in a meeting must be in the notice of the meeting in order for the matter to be decided. An exception would be a matter that requires the unanimous consent of all entitled to vote on it.

- 4635(e). The "to the best of one's ability" standard is relative and ambiguous and should be replaced with the "reasonable care" standard.

- Member Elections - Please see my comments near the beginning of these comments.

- 4640(a). Any member election that might result in retaliation against a member if the vote were known should be by secret ballot. This would include rule change votes, where approval of the membership is required and bylaw amendments.

- 4640(f). Cumulative voting is a strategic voting method. For a chance of success, it involves coordination and planning within the factions vying for the election of their minority candidates. Therefore, the requirement that a voter pre-announce their intention to use cumulative voting is crucial to give everyone a level playing field. Anyone intending to cumulate their votes should be required to give notice of their intention to all members, on or before the date that nominations are to be opened.

- 4655(g). If a member gives a proxy and shows up at a meeting before their vote has been cast, the member should have the right to revoke the proxy on the spot and vote in person.

- 4660(generally). Please see my comments above for 4640(f).

- 4660(e). Some associations require a supermajority of all members to elect a director. They do this because they want directors with wide support and want to exclude candidates without it. This section allows the legislature to take this power away from the members by allowing the board to bypass the supermajority requirement. Please remove the second sentence. If an association wants to allow this bypass, they may place language in their bylaws permitting it.

- 4680. Please remove the phrase "without foundation".
  
- 4700(generally). Should there be three categories: (a) things members have a right to inspect, regardless of the governing docs, (b) things members should never have a right to inspect, regardless of what's in the governing docs, (c) things members can inspect if permitted or not prohibited by the governing docs and perhaps (d) things the HOA has discretion to decide whether to make available for inspection (e.g. if it might violate someone's right to privacy that the association has promised to protect)?
  
- 4700(a)(2). E-mail addresses should only be released if the member opts-in.
  
- 4700(b)(1). If an HOA has a record, I see no reason why the member should be prevented from inspecting it.
  
- 4710(a). If a member wants their own record, they should be able to get it without redaction. Perhaps they suspect the HOA has incorrect personal information and may want to correct it or take other action. A member should be able to prevent the redaction of their own information.
  
- 4715(a). Please include email addresses.
  
- 4735(g). Please remove "without foundation"
  
- 4810. A member handbook is a valuable document. It should contain all of the governing documents, including any policies, procedures, house rules, etc. The handbook should be kept up to date by requiring the association to distribute changes to the handbook. They should be codified and hole-punched to maintain maximum usefulness.
  
- 4830. Should this section also include a minimal enforcement provision as is in many other articles (ie \$500 plus fees & costs)?
  
- 5000. Not only should this power derive only from the governing documents, this section should include non-fine disciplinary actions (e.g. taking away a right). Distribution should be made per my comments for 4810 above. If this isn't done, the member will have dozens of unorganized sheets of paper with different rule changes on them, rather than an organized and codified handbook.
  
- 5015. The legislature should not impose this on an association if the governing documents conflict with the section.

- 5500. Many co-ops have a "reserve for replacements", "operating reserve", "tax and insurance escrow reserve" and an operating account. A co-op's reserve for replacements is equivalent to an association's "reserve account". This should be clarified to avoid confusion with designations that a co-op board member would understand.

- 5510. Some co-ops might use funds from the reserve for replacements for capital improvements. Should this be permitted if allowed in the governing documents?

- 5555 et seq. The association might want to use a different format for presenting information (e.g. more columns, etc.). The statute should allow for different formats if the required information is included in them and easy to access.

- 5575(b). The association's member might want to levy a higher assessment to either avoid a special assessment or to save for a capital improvement. Should the legislature prevent them from doing this?

- 5580(a). Since the members would be the ones taking the consequences for failure to fulfill financial obligations, they should be the ones to potentially have the power (through the bylaws) of determining whether or not to allow an increase above 20%. Also, the membership may disagree with the board about an allegation of an obligation.

- 5580(b). A stricter voting requirement in the bylaws should prevail (higher threshold, etc.); it should be the association's decision.

- 5600 et seq. Please see my earlier comments on the applicability of liens to co-ops.

- 5605(a). Coops generally don't have declarations, the late fee is generally in the proprietary lease and/or a late payment policy. Please conform to co-op document names.

- 5610. Do 5610(a) and (c) contradict each other? If they don't, please re-draft so that it's clear to a layperson.

- 6000. There seem to be two issues here: what is required to legally create a CID, and what entities are subject to regulation by the statute. They should be separated, because a lay person reading 6000(a) or (c) might conclude that a co-op that was created without a declaration or parcel map is not subject to the statute.

- 6005. Please include co-op proprietary leases and co-ops not having declarations.

- 6100 et seq. This section doesn't cover the case where the membership, rather than the board, approves an operating rule.

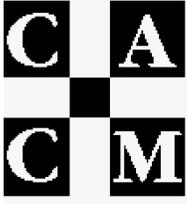
- 6110(a). The governing documents of some smaller co-ops and co-housing developments require members to provide their labor to the association as a condition of their membership and occupancy in the association. This labor allows the association to operate on a self-managed basis. The list of operating rules in this subsection should include rules pertaining to this issue.

### My Comments on Others' Comments

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1/23/07 staff memo:

- I agree with Mr. Doyle's comments in the staff's 1/23/07 memo.
- Because cumulative voting is a strategic system, all members should receive notice that it will be used before the opening of nominations for the election of directors.



California Association of  
Community Managers, Inc.<sup>SM</sup>

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June 21, 2007

Mr. Brian Hebert  
Staff Counsel, California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

RE: Study H-855: Comments to Memorandum 2007-24

Dear Mr. Hebert:

The California Association of Community Managers (“CACM”) submits the following comments to your Memorandum 2007-24.

1. Section 4955 (a), p. 50

CACM suggests that in order to correctly restate Corporations Code §8216, the commission must clarify that the complaint may only be filed by a member, director or officer.

2. Section 5655 (a)(3), p. 75

CACM requests that on line 13, “*owner or the*” be inserted before “*owner’s legal representative.*” The current language is confusing and could be interpreted to mean that service is not necessary on the owner if there is no legal representative.

If you have any questions, please contact our Legislative Advocate, Jennifer Wada, at (916) 448-4000 or at [Jennifer@wadawilliams.com](mailto:Jennifer@wadawilliams.com).

Sincerely,

/s/

Karen Conlon, CCAM  
President, CACM

# Memorandum

Page 1 of 6

**TO:** Mr. Brian Hebert, Assistant Executive Secretary, CLRC

**From:** Donald W. Haney, CPA, MBA

**COPY:** CAI-CLAC, ECHO, CACM

**Date:** 6/22/2007

**SUBJECT:** ACCOUNTING PROVISIONS-STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW-MEMORANDUM 2006-33

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## Introduction

I have been watching the California Law Revision Commission's (the Commission) work on this subject over the years and have been waiting to see how you coped with the accounting issues. While I consider the existing CID law seriously flawed with inappropriate and unnecessary legislative minutia, I understand that your mission is to transform the law as it exists into a more organized and clearer presentation without attempting to resolve potentially controversial issues. I made my first review of the accounting section and you have generally accomplished that mission.

I have been practicing almost exclusively in this area for almost 30 years and have been a licensed CPA for almost 40 years. I have had the opportunity to write and speak on these accounting issues at local, regional and national levels. I consider myself a serious student of these matters and hope you find my comments worthy of consideration.

These comments and proposed language changes represent my first reaction to the Commission's efforts and are intended to bring some precision to the language without being overly technical as well as to minimize mistranslations of a section's meaning, motive or intent. After some further study and reflection I may have others comments to submit for your consideration.

## Definitions

One of the main challenges for the various CID stakeholders in the finance area has been a lack of definitions. Accounting terms and other terms with significant impact have been inserted into the law that are clearly wrong in context or lack required precision. I suggest that in Chapter 5 the Commission consider a definition section. What follows is my first list of words to define, proposed definitions and reasons why the definition is required.

**Accrual Basis** – The accounting practice of recording revenue transactions when earned and recording expense transactions when the obligation is incurred. This practice is further defined and subject to standards established by the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB).

This definition establishes an ascertainable standard of care. The AICPA and FASB establish the United State's accounting standards. By using these standards the legislature gets out of business of establishing accounting rules and terms. (§5500 (b))

**Accounts** – General Ledger accounts. Not to be confused with bank or investment accounts.

The term "account" is used throughout the chapter and the term has a different meaning with each usage depending upon the context. (§5500 (a) and (b))

**Replacement Accounts** – Bank, brokerage, cash, or other such investments designated for future major repairs and replacements (MRRs).

I know that the term "reserve" has gained some traction in this area of the law and has some appeal to lay persons. However, the term "reserve" has no definition or place in corporate accounting, does not exist in GAAP and should be purged from the Chapter. The fairly liquid assets designated for future major repairs and replacements are assets. The related obligations for future major repairs and replacements are liabilities or fund balances depending upon your accounting religion. These concepts are mutually exclusive and occupy different places on the balance sheet.

## Definitions (continued)

**Major Component** – A common area amenity or component which is: not a personal property asset; not a core structural component of the building; that the association is required to maintain at a given standard of care; that has a useful life of greater than one year and less than thirty years; and that the current cost to replace or repair exceeds one percent (1%) of the association’s current year’s regular assessment.

The lack of definition of this term creates incredible “noise” throughout the system. For example, I have a client with a \$2,500,000 annual assessment. Its major components according to the MRR Study consist of 104 items with a current cost to replace of \$4,100,000. Twenty-three (23) of those items meet the above definition and represent 88% of the current cost to replace. Fifty (50) of the items are less than \$5,000 each. The eighty-one (81) components that do not meet the above definition occur fairly smoothly over the years and should simply be part of the annual operating budget. The one percent (1%) of current year assessments test floats well over a wide range of budgets and is a clear ascertainable standard.

**Personal Property Asset** – A physical asset: that the association has the normal bundle of ownership rights (buy, sale, replace, etc.); that has a useful life greater than one year; that is not real property (land, buildings, etc.), whose acquisition cost exceeds some association defined “material amount” (i.e. greater than \$1,000).

These assets should be on the balance sheet and depreciated in accordance with accrual basis rules and not in the MRR study. This definition is required because MRR study specialists are not generally accountants and will erroneously include these items in a replacement study which causes great confusion when CPAs have to take these items out of the MRR study and put them on the balance sheet.

**Major Repair and Replacement Study** – This term should replace all instances of the term “reserve funding study” or “reserve study”.

## Section 4780 – Record retention periods

§4780 (b) (4) Tax returns – The IRS only requires taxpayers to maintain returns for three years. Tax returns do not need to be permanently retained. However, the annual financial reports which represent the association’s financial history should be permanently retained.

## Section 4800 – Annual budget report

In general this rewrite when coupled with the Section 4810 (Member Handbook) cleans up this whole mess. However, I suggest these modifications:

- §4800. (a) From 30 to 90 days before the end of the fiscal year, the board shall prepare and distribute to all members an annual budget report for the next fiscal year.
- (b) The annual budget report shall include at least all of the following information:
- (1) A forecasted balance sheet, cash flow statement, income statement and related disclosures required to comply with Generally Accepted Accounting Principles (GAAP)
  - (2) The “Summary of Major Repair and Replacement Funding Study” prepared pursuant to Section 5555.
- (c) At least thirty (30) days prior to the start of its fiscal or calendar year the association shall deliver a copy of the next year’s budget report to all members at no cost to the members. The association may charge a reasonable fee for additional member requested copies.

For a number of reasons it is extremely important for the board, the members and other stakeholders to complete this annual process and mailing ritual.

## Section 4800 – Annual budget report (continued)

The proper AICPA and GAAP term for this report is “financial forecast”. However, “budget” is probably good enough for this purpose. My concern is that most associations only forecast the income statement. In today’s environment with loans, long term special assessments and other such balance sheet issues, there are significant cash impacts on the balance sheet that do not flow through an accrual basis income statement. Associations could have a zero basis income statement, but a significant reduction in their cash position. This problem and the need for (b) (1) and (2) goes away if the language suggested below for Section 4825 is adopted since those requirements ((b) (1) and (2))are required by GAAP.

## Section 4805. Annual financial statement

The language in this section consists of “cut and pastes” from obsolete Corporation Code language and creates some conflicts with Section 5500. The \$75,000 trigger was put in place in the early 80’s in response to a push by the California Association of Realtors. The dollar level response was done in a hurry at the time. What follows is an attempt set boundaries and requirements based upon units and not dollars and make the language consist with current accounting standards

- §4805. (a) Every association shall prepare an annual accrual basis financial report in at least 12 point type font and deliver it to all members within 120 days after the end of its accounting year at no cost to the member. The association may charge a reasonable fee for additional member requested copies. The annual accrual basis financial report shall be prepared in accordance with the following minimum standards:
- (1) For associations with ten (10) or less units the annual accrual basis financial report shall at least include a balance sheet, a cash flow statement, a revenue and expense statement, and a report by an authorized association officer that comments upon the association’s financial condition and that states that the report was prepared by the association from its books and record without review or audit by independent accountants.
  - (2) For associations with more than ten (10) and equal to or less than seventy-five (75) units the annual accrual basis financial report shall be compiled with full disclosure by a licensee of the California Board of Accountancy in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.
  - (3) For associations with more than seventy-five (75) and equal to or less than two hundred fifty (250) units the annual accrual basis financial report shall be reviewed by a licensee of the California Board of Accountancy in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.
  - (4) For associations with more than two hundred fifty (250) units the annual accrual basis financial report shall be audited by a licensee of the California Board of Accountancy in accordance auditing standards generally accepted in the United States of America.
- (b) The annual report shall include any disclosures required by Corporations Code Section 8322 - Annual statement of transactions with interested persons and indemnification.

These standards are cost effective for the association; provide an appropriate level of disclosure and oversight; use language consistent with current CPA standards; and are independent from monetary inflation. The \$10,000 floor in the Corporations Code was established many years ago (I think 1978) and has not been updated since. A ten unit community with \$200 per month assessments will have annual assessments of \$24,000. The unit count boundaries are suggestions only. These suggested changes only modernize certain terms, establish clear boundaries, reduce costs for many associations, and are consistent with the meaning, motive and intent of the current law. Except for arguments about unit boundaries, they should not be too controversial.

Current accounting standards require any “related party” transactions to be disclosed. Therefore, the Section 8322 requirement may not be required.

## Section 4820 Notice of Availability

The ritual of mailing these annual financial reports to all members should not be optional. While most association members may not have the financial literacy to understand the messages contained in these reports, they need them for sales and refinancing events. The associations need to send them to all members to protect themselves from “failing to communicate” assertions. These reports are all part of the “informed consent” chain of information delivered to members. Members’ access to financial information about their association should be transparent, unfettered and passive. The communication burden should lie with the association.

## Section 4825 Financial statement

If the modifications to Section 4805 suggested above are adopted, there would be no requirement for this section. Moreover, this language conflicts with Section 5500 (b). The most important accounting thing that the CLRC should handle with this rewrite is to establish one clear accounting basis. These corporations manage and maintain millions of dollars of real property assets for the benefit of current and future members as well as other stakeholders. Their accounting, internal control and transaction processing standards should be commensurate with these responsibilities. The accrual basis as defined above is such a clear single standard.

However, if the commission wishes to retain this section, please consider the following replacement language:

§4825. Any annual financial reports or budgets required by this article shall be prepared on the accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as established by the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB).

This language sets a clear, statewide standard and does not leave any wiggle room for confusing and misleading “cash basis”, “modified accrual” or “Other Comprehensive Basis of Accounting (OCBOA)” options. Nor does it permit the omission of important disclosures.

## Section 5500 Accounting

- §5500 (a) The association shall maintain bank or brokerage accounts to handle operating transactions and separate bank or investment accounts to maintain funds designated for future major repairs and replacements.
- (b) The association shall maintain its accounting books and records on an accrual basis as established by the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB).
  - (c) Receipt and disbursement of litigation awards or settlements proceeds from compensatory damage, construction defects or construction design claims shall be clearly disclosed in the association’s books and financial statements.
  - (d) At least quarterly the association’s directors shall review and approve reconciliations of their bank and investment accounts as prepared by their officers or agents.

If the books and records are maintained on the accrual basis as defined, material litigation or settlement activity would be clearly disclosed as part of that standard and (c) would not be required.

## Article 2. Use of Reserve Funds

This Article should be renamed “Use of Funds Designated for Future Major Repairs and Replacements”

The reasons for this change was disclosed on page one of this memorandum.

## **Section 5510. Use of funds designated for future major repairs and replacements**

§5510. (a) Funds designated for future major repairs and replacements may only be used for the following purposes:

1. To repair or replace major components that the association is obligated to maintain.
2. To pursue litigation that relates to the repair or replace major or structural components that the association is obligated to maintain.
3. To use for operating expenses pursuant to Section 5515.

(b) Withdrawal or transfer of funds designated for future major repairs and replacements requires the approval of two association directors or one director and an officer or agent who is not a director.

The concept of a “signature” on a check or similar item has become obsolete. The country’s money movement technology has changed dramatically. The law should respond accordingly.

## **Article 3. Reserve Funding**

I do not have the energy to comment extensively on this Article. You know you are in trouble when the law starts to prescribe forms and their content.

The concept here is fairly simple – Common Interest Developments (CIDs) incur fairly predictable annual operating expenses. They also have to repair and replace major components. These major component expenditures do not occur annually. Therefore, some plan and related accounting process has to be in place that measures these obligations using acceptable commonly known finance techniques, provides the funds to service them and discloses both to their stakeholders. All of these goals are met by GAAP based financial statements and financial forecasts. There really is no need for the legislature to go into this level of detail regarding this matter. However, I do not see any way out here. The legislature, California Association of Realtors, and the reserve study guys have a vested interest in maintaining and deepening the complexity level of this stuff all in the name of consumer protection.

The fundamental question here is – If GAAP is a good enough standard for the SEC to use to protect the investing public, why isn’t it good enough for California Homeowners Associations?

## **Section 5580. Assessment increase**

§5580 (b) (3) The problem with this sub paragraph is the “... more than 5 percent of the budgeted gross expenses...” statement. There are some definitional issues here – do gross expenses include principal payments on loans, the replacement provision, any non cash depreciation charges, budgeted contingency provisions, etc.? To remove these uncertainties consider changing that phrase to “... more than 5 percent of the regular assessment at the end of the preceding fiscal year....” This change conforms the language to §5580 (b) (2), removes any ambiguity related to “gross expenses, and should not be controversial.

## **Section 5600. Payment**

§5600. (c) This sub-paragraph has an interesting history upon which I will not dwell. However, it seems to be a distinction with no effect. In §5605 the association may recover unpaid assessments, reasonable collection costs, reasonable attorney’s fees, late charges, interest, etc. (§5605 does not address fines, an interesting anomaly). Therefore, logic suggests that it does not make any difference how payments are applied. Except for unpaid fines, the association can lien and foreclose on all unpaid amounts regardless of character. It can lien, but not foreclose on unpaid fines. Significant and legitimate unpaid fines can be collected through the small claims court process.

I have not had anybody demonstrate to me that there is any change in outcome based upon the §5600 (c) payment application requirement. I do not know who would be against dropping this language, but it clearly has no effect on the collection process.

## **Section 5605. Delinquency**

§5605 (b) (3) Current law (1366(e) (2)) provides for “A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater...” The proposed replacement sub-paragraph omits the “...or ten (\$10) whichever is greater...” The \$10 or 10% whichever is greater language was inserted in the law in the early 80’s to deal with, surprise, a California state senator who was assessed a late charge by his association for not paying his assessment. He wanted the late charge limited to \$1 and initiated a bill to do so. Cooler heads prevailed for once and the \$10 or 10% rule came about. The idea is that a late charge should be large enough to change behavior, but not obscene. I have a client where the monthly assessments per owner lie between \$2,500 and \$3,200 per month. A \$10 late charge is not going promote prompt payment for these individuals. However, a \$250 charge might and I think would not be considered obscene for their situation. Moreover, I do not think there should be any controversy over merely restating current law that has been in place for over twenty years.

## **Section 5615 Pre-lien notice**

Is there any reason why the “IMPORTANT NOTICE” could not simply be a part of the §4810 “Member Handbook”

**EMAIL FROM BOB SHEPPARD**  
**(JUNE 22, 2007)**

Brian,

Below are my comments on the staff's draft for the upcoming meeting. I have been asked by the board of my cooperative to represent them in addition to myself. Please feel free to refer to the comments that I've previously submitted.

The comments in this email relate primarily to new material in the staff draft. I am also in the process of commenting on issues that were raised at the last Commission meeting. In order to provide as much material to the Commission staff as soon as possible, I am sending you these comments now, with the rest to follow soon, so that the staff may begin to review these comments immediately, without waiting for the remainder.

If you have any questions about my comments, please feel free to contact me at your convenience. Thank you for the important work of the Commission and your staff.

Bob Sheppard  
Walnut House Cooperative  
Berkeley

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Lack of Declarations in Stock Cooperatives

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I've previously written about the lack of the use of declarations in stock cooperatives. I've also examined county recorder indexes of many post-Davis-Stirling stock cooperatives that have been approved by the DRE. None of those that I examined had filed a declaration. One pre-Davis-Stirling cooperative later filed a declaration. The general form of cooperative governing documents that I've examined do not meet the qualifications of a declaration in proposed Sec. 6025. In fact, the way that the section is written is very ambiguous, saying nothing about the definition of a declaration filed before 1/1/86.

I do not believe there is language regulating the authority for the creation of a declaration if a stock cooperative lack one. It would be unlikely that such language

would exist in a cooperative's governing documents. A corrupt board of directors might consider creating a declaration with their own onerous terms, calling it a declaration, and filing it with the county recorder. If such language is missing from the articles of incorporation or bylaws, the statute should regulate this matter. For example, it could require the approval of either all members or a supermajority (e.g. 2/3) of them to approve a new declaration. In such a case, it would be important to assure that older contracts (e.g. proprietary leases, etc.) would have a higher authority than a declaration or other governing documents. Otherwise, members could lose valuable rights agreed to by the cooperative through the creation of a declaration. Please see my comments below on Sec. 6605.

In general, many but not all of the terms of a declaration are included in a cooperative's proprietary lease, which is often not recorded. For example, most leases do not contain a legal description of the separate interest, giving only the street address and unit number. And a cooperative might have more than one lease form in use as they adopt newer leases for newer members. They might also not use the magic words "stock cooperative" in their proprietary lease.

For possible solutions, the definition of "declaration" could be changed, its requirement could be clarified and changed, or individual sections could be tweaked. I've taken the latter approach in my comments below.

I've heard of directors and members of various pre-Davis-Stirling cooperatives who hold the belief that Davis-Stirling does not apply to them, because of the language of Sec. 1352. I believe that clarifying the language would increase the ability of lay directors to understand their legal responsibilities.

#### Liens and Foreclosure in Stock Cooperative

=====  
The draft article "Payment and Collection of Assessments" does not consider that the governing documents of stock cooperatives, particularly the bylaws and proprietary lease, have no provisions permitting the foreclosure of the member's lease interest in their separate interest.

There is a different way these issues are usually resolved. The bylaws allow the cooperative to terminate the membership of the offending member. The proprietary lease provides the mechanism to evict the member from the separate interest. The bylaws provides for a lien or "set-off" against the membership or share. Please conform this article so that it is clear about its applicability to stock cooperatives.

## Comments About Specific Provisions

=====

5500 et seq.: There seems to be an numbering issue after the first Article 3.

5655 and 5660: Please see my comments above about liens and foreclosure.

5700 and 5705: Maintenance responsibilities where there is no declaration. In a stock cooperative, where there is generally no declaration, the right of exclusive occupancy (proprietary lease) generally covers the division of responsibility for maintenance. I'd suggest one of the following:

“Unless the declaration or, if there is no declaration, the written right of exclusive occupancy provides otherwise...”

-or-

“Unless the declaration or, if there is no declaration, the governing documents provide otherwise...”

5710: Wiring. This section should be clear enough to include fiber optic media. The term “wiring” might be construed to exclude non-metallic media.

5745(a): Antennas. I think the draft might not allow associations to prohibit the installation of antennas in the common areas. The following should be added to the end of 5745(a) “...in a member’s separate interest or exclusive use common area.”

5805. See 5700 above.

5875(2) Section 5370 is missing from the draft.

5900(a) This subsection presumes that the board of directors is the body that would grant an exclusive use. I'd suggest changing it as follows:

“(a) Unless the governing documents provide otherwise,  
(1) the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the association may grant exclusive use of any portion of the common area to a member;  
(2) only the board of directors may grant such a right.”

5910.(a) Lien rights. If an unauthorized member of a stock cooperative requests or consents to the furnishing of labor or materials for the common area or separate

interest, there should be no basis for the filing of a lien against the property. The cooperative should be protected from the unauthorized acts of its members, except perhaps in an emergency.

6000(a) See my comments above about declarations in stock cooperatives. This subsection should be replaced with something like this:

“A declaration, provided however, that if a common interest development is a stock cooperative, the use of a declaration is optional.”

6005. Document hierarchy. See my comments above about declarations in stock cooperatives. Written contracts between cooperatives and its members of the right of exclusive occupancy (occupancy agreement) and related written agreements (e.g. membership agreement, agreement for grant of exclusive use common area, etc.) should have the highest document authority, above the declaration, since many cooperatives may not have a document meeting the definition of a “declaration”.

**EMAIL FROM RAVI KAPOOR**  
**(JUNE 24, 2007)**

Thank u very much for the proposed memo. I would like to congratulate commission for their efforts to simplifie the existing laws to the extent possible.

As an affected homeowner, i shall be studying the same and shall revert in case of any comments.

Moreover i would like to compliment you and your staff from the core of my heart as they have endeavour their best to look into the basic issues and have tried to have the best available solutions to the extent possible.

If deem fit proxy form format as sample may be also included to ensure free and fair election.

In practice for one reason or other, in my opinion, the election procedure needs to be ratified and has got ample room for improvement.

With kindest regards,  
ravi kapoor  
15000,Downey Ave #220  
Paramount, CA90723  
06/24/2007

P.S. I am interested to have print out version of the memo.  
it shall be appreciated if u may advise the place/contact address for purchase of the said reports and future reports if needed.  
####

Brian Hebert, Executive Secretary  
California Law Revision Commission  
4000 Middlefield Rd. Rm D1  
Palo Alto, CA 94305-4739

June 25, 2007 Law Revision Commission  
RECEIVED

JUL -2 2007

Dear Mr. Hebert:

File: \_\_\_\_\_

I am a Member of the Heritage Ranch Homeowners Association at Lake Nacimiento in San Luis Obispo County. I have read, with much interest, the Staff Draft Preliminary Part – June 21, 2007.

Your endeavor to rewrite the applicable State Code in more user friendly language is welcomed – “User” being the Association Member, not the legal/accounting professional, though they should also benefit. Perhaps more Members will become concerned about what the Code says about how their Association management is to operate.

An area of the current code that has caused some controversy in our Association is that dealing with Reserves. It seems the Code is quite specific that a Reserve Fund is to be established for maintaining and replacing existing amenities over time. We pay, via assessments, into a Fund. The Reserve Study breaks down the data, by item, and, as is usually the case, items are only partially funded. However, existing amenities have been replaced – and greatly enhanced in the process. Funds accumulated for a replacement project in one year’s study, have been significantly increased in the following year’s study – the year the replacement is scheduled to be done. Meeting new code, and perhaps use of new materials and inflation greater than accounted for, will often require an expenditure greater than the accumulated funds. But we have seen significantly enhanced replacements, size, materials etc, using money from the “Fund” which literally means money is diverted from accumulations for other existing amenities.

It seems reasonable and logical to me, that if an Association Board of Directors wants to replace an existing amenity with a significantly enhanced one, the Board should first get the approval of the Membership and at the same time get the Membership approval to accept a Special Assessment to cover the extra funds required. The funds should not be diverted from other line items in the Reserve Study. Our Board, and I suspect many others, shy away from Specials and they do not get Membership approval on amenity enhancements. Further, a large majority of Members do not know about the Reserve Study or the Fund, let alone how it is used.

The existing Code does not specifically state that new amenities cannot be funded from the Reserve, but that, too, is often deemed a “grey area”.

The Code rewrite would be very helpful if it clearly stated how funds can be obtained for:

- 1) new amenities (not built by a developer)
  - 2) significantly enhanced replacement of an existing amenity
- (Both of the above require increased Reserve Study funding in future years)

I thank you for your consideration of my comments and trust that clarification of the sections on the purpose and use of Reserve Funds will be made in the rewrite.

  
William J. Carley 4743 Egret Lane Paso Robles, CA 93446  
pasopapa@charter.net 805-237-0100

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VANITZIAN

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**Donie Vanitzian**  
*Arbitrator*

June 27, 2007

By fax

Mr. Brian Hebert  
California Law Revision Commission  
3200 5th Avenue  
Sacramento, California 95817

**THE TEMPLE OF BLAME  
AND  
THE JOKE'S ON THE PUBLIC AND  
ALL HOMEOWNERS!**

**RE:MEMORANDUM 2007-2452 --FISCAL IMPACT ON THE STATE**

Dear Mr. Hebert,

“The Law Revision Commission recommends that the existing Davis-Stirling Common Interest Development Act be repealed and replaced with a new statute that continues the substance of existing law in a more user-friendly form.”

How do you people sleep at night? The only thing right now, in need of an “overhaul” is the California Law Revision Commission itself!

This is in response to the ridiculousness of the latest attempt by the California Law Revision Commission not only to continue to be bankrolled by the State’s payroll, but in its implementation of performing an unskilled surgical removal of the Davis-Stirling Act while leaving millions of owners who thought they were finally stitched up, only to realize they will now be bled to death by yet another dull statutory knife. This unmitigated incompetence is beyond comprehension.

What? There’s nothing else that the California Law Revision Commission can occupy its time with other than changing horses in midstream? Signaling right and turning left?

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VANITZIAN

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THE TEMPLE OF BLAME

[MM07-2452]

*Make no mistake, I am NO fan or supporter of the Davis-Stirling Act which I refer to it as the Davis-Stupid Act.* In fact, at this point, I am unsure which entity I dislike or disrespect more, the California Law Revision Commission or the California Legislature.

This massive ploy to wholesale repeal sections of code while at the same time REWRITING it, in my view, and in the view of the -now-75,280 members of my group Home Owners Against Association Tyranny and Manipulation, or HOAATM, is reckless and deceitful. It is an underhanded ploy to not only further confuse owners who have spent decades getting to know the Davis-Stirling Act only to be told -- hey! Guess what?! We're gonna sc\*\*w you over again, oh, and we almost forgot, we get PAID for doing it. But the joke is on you because YOU'RE paying us.

**THESE ACTIONS BY THE CLRC ARE RECKLESS AND UNNECESSARY**

Why is it that the California Law Revision Commission had no problems making ridiculous recommendations year after year to the California legislature on a myriad of common interest development-related legislation, but would not make even ONE recommendation to the same Senate and Assembly bills to include MEANINGFUL and EASILY ENFORCEABLE penalties against recalcitrant boards; fines and criminal liability statutes over agents, third party vendors, management companies and their personnel; titleholder protections against association, boards of directors, attorneys and agents of the association, and their use of owner personal information and identifying factors; financial Code statutes to prohibit any association from allowing or waiving the commingling of association bank accounts?

**THE PROPOSED CHANGES ARE PREJUDICIAL TO OWNERS AND BYPASS THE LEGISLATIVE PROCESS**

It is rather ingenious though; the question being, what better way to disenfranchise the masses that keep demanding accountability. By eviscerating the Davis-Stirling Act, the legislature and the California Law Revision Commission will be able to substantiate wasting another twenty years as they "get to know the codes again." Well, isn't that special.

This wholesale rewrite is a wholesale disruption of repealing an entire code section because the Senate and Assembly couldn't get it right the first time -- if we thought the Davis-Stirling Act was a DISASTER a moron can predict what utter devastation awaits the public with this latest payroll ploy.

In effect, all owners will have to relearn what took them decades to finally "get the hang of." Millions of California owners, seniors among

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VANITZIAN

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6/2007]

THE JOKE\$ ON ALL HOMEOWNERS\$

3

them, will be forced to relearn and seek out laws that have been "tweaked" -- the meanings changed, and the effect on titleholders forever changed as well. **The CLRC's goal disenfranchises deed-restricted titleholders.**

**From the mail I receive, the CLRC has totally discredited themselves, and the owners are far more DISTRUSTING of the legislature, if that is even possible!** \_\_\_\_\_

Very truly yours,

/s/

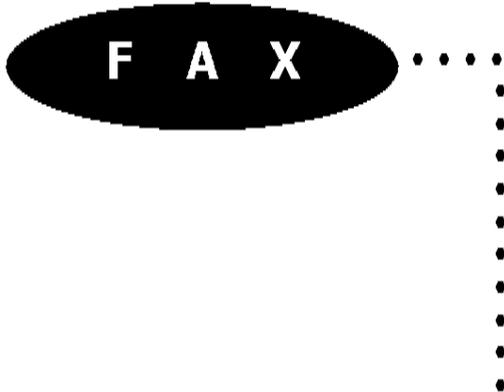
D. Vanitzian

**EMAIL FROM ANN ROSS**  
**(JUNE 30, 2007)**

Message: Dear Mr. Brian Hebert,  
We saw a copy of the following letter on the American Homeowners Resource Center Website (<http://www.ahrc.com>). We agree with this position.

Thank You.

■ **Staff Note.** Ms. Ross attached to her letter a copy of the July 19, 2007 letter by T. Foster of Marina del Rey. The T. Foster letter is included in this exhibit, at page 37. In the interest of conserving resources, it is not duplicated here.



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To: **Brian Hebert**  
Fax number: 16504941827

From: **PC**  
Fax number:  
Business phone:  
Home phone:

Date & Time: 7/2/2007 8:55:06 AM  
Pages: 4  
Re: HOA

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Dear Mr. Hebert,

I agree with Donie Vanitzian.  
I want my property back.

It seemed like a good Idea to have an association to take care of common things, but I have no need to finance another burocracy that has no other purpose than to waste money, make it difficult for me to enhance my property value and to top it off gets away with not disclosing what is really going on behind the door with the management company.

Sincerely  
Thomas Hafen

David R. Hagmaier  
President  
Brea Country Owners Association

July 2, 2007

By Fax 650-494-1827, 916-739-7382

Mr. Brian Hebert  
California Law Revision Commission  
3200 5<sup>th</sup> Avenue  
Sacramento, CA 95817

**Re: Memorandum 2007-2452 – Fiscal Impact on the State**

Dear Mr. Hebert,

Just when is the CLRC going to give relief to Californian's living in Common Interest Developments (CID)? While the commission considers the fiscal impact on the state, who in the legislature does CID homeowners turn to that recognize the fiscal drain on our pocketbooks, which we have endured over the years because of the flawed policies of the Davis-Sterling Act?

While the act has created an industry for attorneys, managers, vendors, and all those associated with such profiteers, it has left homeowners scratching our heads wondering just who works for who in state politics. Now the commission wants to change the rules. I am dumfounded by this form of community governance as it is. What more will the commission possibly use to strike at the hearts of homeowners now?

If it is not enough fighting with our professional management company on a daily basis to entice them to do their job, now we get to study and a new game plan. When do you think voluntary boards will find the time to relearn a new strategy once the commission has finished its rampage? I'm getting too old for this.

I would certainly like to take the time to write an intelligent letter to the commission however, I am at work right now jotting down these few words as quickly as I can while eating my lunch. I will be on the phone with our professional property manager when I get home this evening, seeking answers as to why they failed to notify our members in May about our annual election; that is if I can get a hold of someone. I guess they didn't comprehend our letters to them in April or in May or in June to send out the notices.

Brea Country Owners Assoc.  
July 2, 2007  
Page 2

Please let the commission know that in the past fourteen years of listening to their drivel that their time may be better spent seeking legislation on horse owners that allow their animals to crap on public property and who fail to pick it up? Stay out of our living rooms! You guys don't have enough insight to make the bed. Enough is enough!

Maybe you should have listened to Doni Venitzian when she suggested years ago to toss the Davis -Sterling Act out the window. Did you not get that far in reading her letters? Look at all the time you could have saved. Just maybe a rock will fall from the sky one day and land on someone's head causing you guys in Sacramento to actually begin listening to those of us that live this nightmare day after day. Hey... give me a break, I guy can dream can't he?

I have to go back to work in a few minutes, I hope your day goes well. It will satisfy me knowing one of us had a good day. Be careful and watch where you step, we will be thinking about all of you in anticipation of your next brainstorm. Its been great knowing someone in Sacramento is watching out for us CID homeowners, taxpayers and voters.

Respectfully,

David R. Hagmaier  
President  
Brea Country Owners Association  
1717 N. Brea Blvd.  
Fullerton, CA 92835

July 3, 2007

FAX TO: 650-494-1827 and 916-739-7382

Mr. Brian Hebert  
California Law Revision Commission  
3200 5<sup>th</sup> Avenue  
Sacramento, CA 95817

Re: Memorandum 2007-2482, Fiscal Impact on the State

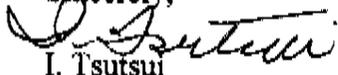
Dear Mr. Hebert:

I read with great concern your proposing to repeal and replace the existing Davis-Stirling Common Interest Development Act with a new statute. The idea of doing this to produce a more "user-friendly" statute may on the surface be well intended, however, if you consider that the statute has already been amended many times, already placing a burden upon boards, management companies and homeowners who are challenged as it is to keep up with the revisions, we don't need yet another change to muddy the waters. It would make things even more complicated for everyone, require even more diligence in deciphering the code interpretations placing an even greater burden on everyone to adhere to the changes.

Having the statute in place has allowed for precedences to be set in the courts. That alone gives the current statute a lasting pre-eminence. Changes to the statute would only add to the cost of legal interpretation of the statute driving up the cost for homeowners as courts wrangle with which statute should prevail in its constitutionality vs. which codes have serious legal holes. The only ones who will gain are the attorneys thus driving up the cost to manage a homeowners association.

As a former board member who served on and off our board over the last six years, I can personally attest to how difficult and costly a change would mean to managing and operating an association. We incurred many problems culminating in the ouster of our prior board (I was not on the board and favored the ouster) and some of the problems can be blamed on the contention in the board's failure to follow the Davis-Stirling codes. For the most part the codes in their current form allowed our membership to regain control of our association which is now being run by competent and informed board members. Please keep the current statute in place for the protection of homeowners and do not open up the floodgate of law suits which will occur following a revision.

Sincerely,



I. Tsutsui

Carlsbad, CA

Ph 760-602-0839 – feel free to call if you have any questions

*Therese Daniels*  
26020 Ridgemoor Rd.  
Sun City, CA 92586  
951-672-9551

Law Revision Commission  
RECEIVED

JUL 23 2007

July 18, 2007

File: \_\_\_\_\_

Mr. Brian Herbert  
California Law Revision Commission  
3200 5<sup>th</sup> Avenue  
Sacramento, CA 95817  
Re: TR-H855

Dear Mr. Herbert,

Why? As a realtor I have to deal with the damage you cause us in this profession, the senior citizen, the fixed income families, and all people struggling to pay their assessments. Why do you want to hurt innocent people with your vicious rewriting of this code? Cease and desist from this pursuit immediately. **Stop this now.**

The quality of survival of my life, career, and millions of others are seriously damaged by your ruthless stupid rewrite. Have you lost all human decency? What is the matter with you? **Do not do this. Stop, stop, stop.**  
**Do you understand me?**

Therese Daniels

*Therese Daniels*

**EMAIL FROM ANTHONY BROWN**  
**(JULY 19, 2007)**

Members of the Commission,

I appreciate the Commission's efforts to help clarify and reorganize the laws governing CIDs. I am a community association manager in Los Angeles, and have been working in the industry for over seven years.

Please take my comments and recommendations into consideration, pertaining to the following proposed Civil Code sections:

§4045(c) – This provision appears to allow general notices to be posted at the property in lieu of mailing. This provision does not address associations that have off-site members. If an association posts a general notice at the property, would it also be required to send a copy of the notice to known off-site owners? Clarification would be helpful.

§4615 – The court should have discretion on setting quorum and ballot requirements for meetings held pursuant to a court order, including the option of having no quorum or ballot requirements for that meeting.

§4640 – This provision should note that owners of multiple separate interests should be sent multiple ballots/envelopes. This would avoid the problem of having to list numerous owned separate interests on a separate envelope, and would avoid having ballots from different members who have varying numbers of votes they are allowed to cast, as determined by the number of separate interests owned.

§4650 – Membership meetings should not be open to the general public. There is no point in making them so, since this section only notes that members can observe the counting of the ballots, but does not allow the public to do so. Allowing the general public to member meetings only invites disruption to the proceedings. Associations should be allowed to create policies as to who, besides members, may attend meetings.

§4675 – Requiring cumulative voting for associations that have governing documents that allow it is a good idea for most associations. However, this will create a burden on the inspectors of election for large associations, who would have to count many more votes.

§4700 – “Written correspondence of the association” is far too broad. Would this apply to email as well? If so, then managers and directors will need to save every email concerning the association, and somehow store them with the HOA records. Most emails aren’t worth keeping, but this would seem to require them all to be saved. Also, this opens up the directors and managers to lawsuits for things that may be said in email that were not necessarily meant for anyone other than the two people corresponding. This would greatly inhibit directors’ and managers’ ability to frankly discuss association matters.

§4710 – This section increases the financial burden on associations that §1365.2 created. In order to prevent lawsuits resulting from incorrect redaction, associations have been forced to hire attorneys to review and redact records. In addition, having to provide a “legal justification for any redaction made” absolutely makes an attorney necessary. While existing code, as well as proposed code §4720, allows the association to charge \$10.00 per hour, up to \$200.00, to redact records, attorneys charge much more than \$10.00 per hour. The association is stuck with the attorney bill, which is then passed-on to the rest of the membership in the form of higher assessments. In addition, the association only has 10 days to retrieve the records, and have an attorney review and redact them. A longer timeframe is needed to allow associations to properly follow these redacting requirements, while protecting the association from liability.

§4720 – This section should also include a provision that the time requirements to provide records begin once the member has agreed to the fee, not when they request the record. If someone submits a request, but accepts the fee 9 days later, the association has only 1 day to prepare and provide the record. The \$200 maximum fee “per written request” is unreasonable. Realistically, a member can request massive amounts of records, which would then need to be redacted by the association’s attorney, within 10 days, and all that the association could recoup in costs would be \$200.00. It is not fair that entire association memberships must pay, in the form of higher assessments, for the costs incurred to comply with records requests from singular members.

§4745 – Since the “redactor” can be sued for making a simple mistake in redacting documents, not only by the person requesting records, but by the person whose information was accidentally given out, associations are forced to use attorneys to redact documents. This section, as well as those listed above, are creating a mandatory redaction process that has a high level of potential liability for the association, as well as personal liability for “redactors.” To mitigate this liability, attorneys have to be used to redact records, which is often an extremely costly expense to associations. Boards will be forced to impose emergency special assessments whenever a homeowner requests records that require redacting.

Members should pay for all actual costs incurred by their association to provide records, not the entire membership.

§4775 – An association is required to provide copies of “written correspondence of the association” (§4700) to requesting homeowners, but they are not required to maintain these records for any period of time?

§4810 – The handbook should be distributed with the budget to the homeowners. There is nothing in the required handbook’s contents that should make the mailing date different from the budget mailing. This creates an unnecessary expense to associations to prepare a separate mailer. §4810(c) refers to the type size used in the annual financial statement. The handbook does not include the annual financial statement. This appears to have been accidentally copied from §4805.

§4900 – Adding a requirement that would create a 90 day process for hiring a new manager is not practical or necessary. Sometimes, associations need to urgently find new management. A provision requiring managers to disclose their credentials to the board prior to entering into a contract is more than sufficient, but a specific timeframe is unnecessary. This should also require that if a manager has no professional credentials, they disclose that fact as well.

§5620 – This section should not prohibit interest from accruing during a payment plan. Often, a decreased interest rate is included in payment plans. A provision noting that interest may only accrue if specified in the payment plan would be reasonable.

§5650 – On first read, it looked as if this section prohibited foreclosure unless the member was over \$1,800.00 AND 12 months delinquent. The wording of this section may cause confusion. The language in §1367.4(b)(2) is less confusing. I suggest reverting to the language in §1367.4(b)(2).

§5700 – §1364 has been a problem for some time. The maintenance responsibilities for exclusive use common area need to be clarified! Clarifying this section would solve MANY conflicts between associations and their members over maintenance responsibility issues. At a minimum, boards should be given authority to create operating rules pertaining to exclusive use common areas that are not already addressed by Civil Code or the declaration.

§5735 – A question that has come up is whether an association can limit the types of pets allowed, to less than all of the listed pets in §5735(b). For example, a rule that states, “Members may have only one fish in a tank no larger than 10 gallons. No other pets are allowed.” could arguably comply with this section. Is it

the Committee's intent that members be allowed to have any one of the listed pets? Some associations have passed "no dog" amendments to their declarations, which, in that case, may be voided. Clarification would be helpful.

Thank you again for taking my comments into consideration.

Sincerely,

Anthony Brown, CMCA, AMS

Management Professionals Inc.  
4030 Spencer Street #104  
Torrance, CA 90503

(310) 802-4808  
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Law Revision Commission  
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JUL 30 2007

File: \_\_\_\_\_

Mr. T. Foster  
Post Office Box 9850  
Marina del Rey, California 90295

July 19, 2007

Mr. Brian Hebert  
California Law Revision Commission  
3200 5th Avenue  
Sacramento, CA 95817

4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

**Re: TR-H855 and the CLRC's wholesale rewrite of Davis-Stirling Act**

So there is no misunderstanding what my letter is about, **I oppose the above-mentioned California Law Revision Commission project** and wholesale rewrite of the Davis-Stirling Act under the guise of TR-H855. In a word, I find the Commission's actions on that topic, "**deceitful.**"

I am also **against** the California Law Revision Commission's **interference** with common interest development titleholders and the laws affecting us in general. Please do not try to justify your untenable actions, I for one, am sick of the Commission's condescension toward anyone who disagrees with it. This project has been up your sleeve for some time, apparently waiting for a lull while the public sleeps so you can push your agenda. **You are pushing this project through as if you know something the rest of us don't.**

I am no fan of the Davis-Stirling Act BUT do not want the California Law Revision Commission to revamp it. Leave it alone. Change the "name" of the "Act" if you have to substantiate your pay checks, but leave the Civil Code Sections pertaining to the present Davis-Stirling Act in place with the same section numbers. **This project will not serve the public interest in any way.** It will also create a fiscal impact on the State of California the likes of which the Commission, given its prior pattern of incompetence, will no doubt gloss over.

The California Law Revision Commission has misled the public into believing that its actions are warranted and much needed. Contrary to that representation, the

Commission is not needed in the area of common interest developments and its mandate, if there is one, should be removed i.e., stripped. In fact, I feel confident in making the statement that with regard to common interest developments, the Commission has done more harm than good.

I've owned my share of condos. I am a Personal Financial Planner, a Registered Representative (Security and Exchange Commission), licensed Insurance Broker, and a Realtor® Broker of over 20 years. While I specialize in commercial property sales many of my clients are also residential sellers who want to dump their condominiums or other common interest development properties that are subject to homeowner associations.

The majority of buyers continue to contact their Realtor® well after the purchase. The reason? They had no idea how BAD living and owning in a common interest development really is.

It is difficult enough to try to sell this type of property without the likes of the California Law Revision Commission sticking its nose where it does not belong. I refer specifically to your obsession to interfere, repeal, influence, and/or make recommendations to California's impressionable Legislature on what the laws should and should not be. **Do not tell me you don't do this—because you do.**

Your influence and frivolous projects pertaining to common interest developments, I dare say, are responsible for the mess that has been perpetuated by Legislators too lazy to understand what their job is and too overpaid to care about the bad legislation they pass.

Perhaps because of the vacuum it has created for itself, you apparently are unaware of the myriad of books and articles which do not speak highly about the California Law Revision Commission, in fact, even JUDGES denigrate the Commission. I have several Real Estate books, one of which is written by a retired Judge, others are written by **attorneys** who are Real Estate **experts** that expose the Commission for what it is and is not. They expose, the laws that do not work and are poorly written, and many of these are inevitably traced back to the novice and uninformed HASTY and impetuous recommendations made and SHOVED DOWN OUR THROATS by the California Law Revision Commission. Some of what the Commission has published to substantiate the bad decisions, is downright embarrassing.

To even contemplate the California Law Revision Commission making a substantial rewrite of the codes that common interest development homeowners are **mandated** to live by and under, is chilling to say the least, bearing in mind the many past screw ups you and the Commission have been responsible for.

Needless to say, too many of the embarrassing Memorandums that I reference

here are over one hundred pages long, therefore, I have only enclosed the pertinent page or two, to which I specifically refer. Just take a look at the ongoing **disaster** (and it IS a disaster Mr. Hebert) that the California Law Revision Commission has created for deed-restricted owners. NOT ONE of these useless Commission "Recommendations" provides per se penalties against boards of directors, management companies, managers, and so on. You did not give us back our full homestead exemptions so that we might better be able to prevent associations and their advisors and vendors from manipulating the laws and the invoices they claim we owe, from stealing our homes -- especially those that are "free and clear."

You did not prevent foreclosures. You did not prevent sabotage during our escrows. Instead, you took away rights to assign our proxies to our personal representatives, family members, and caretakers. You stole our rights as owners to receive ADEQUATE due notice to be able to attend association board meetings. You took away our rights to receive Minutes of those association business meetings without having to pay an arm and a leg, let alone "beg" for the opportunity to merely "read" the minutes, let alone "receive" them -- and without being made to climb up a telephone poll to seek out where the management company or board decided to "hide the minutes" or "post" it, just to be able to "**look**" at the damn thing.

What follows, is Memorandum after Memorandum, Study after Study, **each more useless than the one before it**. To be sure, if anyone's job performance was as poor as the California Law Revision Commission's has been, well, you know what would happen to them.

Frankly, if it were up to me, the California Law Revision Commission would be sued and made to return all the grant money it took from the State -- and give it back to the homeowners.

**May 4, 2001**, Study H-851, Memorandum 2001-03 "Nonjudicial Dispute Resolution Under CID Law: Jurisdiction of Small Claims Court."

"This memorandum reviews the existing law governing jurisdiction of the small claims court and examines the suitability of the small claims process for dispute resolution in the common interest development context. It concludes with possible revisions of the law governing small claims jurisdiction that the Commission may wish to pursue."

**May 3, 2001**, Study H-851, Memorandum 2001-44, "Nonjudicial Dispute Resolution Under CID Law: Role of Attorney General."

**May 4, 2001**, Study H-851, Memorandum 2001-43, "Nonjudicial Dispute Resolution Under CID Law: Jurisdiction of Small Claims Court."

**Comment:** Take a look at the "promise" and resulting mess that the California Law Revision Commission created in this memorandum.

**May 10, 2001,** Study H-851, First Supplement to Memorandum 2001-42, "Nonjudicial Dispute Resolution Under CID Law: General Approach."

**Comment:** Despite the warnings from Donie Vanitzian, the California Law Revision Commission failed to close the loopholes she wrote of, and failed, to fix the problems. In that Exhibit, Ms. Vanitzian states "There should be a moratorium on new CID legislation."

The California Law Revision Commission's response to her:

"The staff notes that the Commission's position as always been that the fact that the Commission is studying a topic should NOT be used in the interim as an EXCUSE to DERAILED needed legislation. Unfortunately, we believe the Commission's study of CID law is being used as an argument by opponents of bills seeking to defeat the bills."

**June 14, 2001,** Study H-851, Memorandum 2001-55, "Nonjudicial Dispute Resolution Under CID Law: Due Process in Association Rulemaking and Decisionmaking."

**August 6, 2001,** Study H-850, Memorandum 2001-63, "Common Interest Development law: Structure of Davis-Stirling Act."

"The Davis-Stirling Common Interest Development Act is found at Civil Code Sections 1350-1376. It is an undifferentiated mass of 44 sections, some of them many pages in length. While the sections tend to follow a roughly logical sequence, locating material within the body of the Davis-Stirling Act is a challenge. . . . [It is] hard to work with . . . may also be a major cause of complaints that the statute fails to deal with a particular issue. . . The staff thinks it would be helpful to provide a general organizational structure to the Davis-Stirling Act. This could be done simply by adding descriptive chapter and article headings to the statute without touching the body of the statute. no renumbering or rearranging of sections would be required. We would add a constructional provision to make clear that the headings that are added do not affect the interpretation or meaning of the sections."

**Comment:** Imagine that! The Commission "would add a constructional provision to make clear that the headings that are added do not affect the interpretation or meaning of the sections." That's a tough one to do. Did the Commission require high school

diplomas for that accomplishment?

**December 21, 2001**, Study H-851, Memorandum 2002-9, "Nonjudicial Dispute Resolution Under CID Law: Procedural Fairness in Association Rulemaking and Decisionmaking (DRAFT of Tentative RECOMMENDATIONS)."

**April 12, 2002**, Study H-851, Memorandum 2002-24, "Nonjudicial Dispute Resolution Under CID Law: Procedural Fairness in Association Rulemaking and Decisionmaking (DRAFT of Tentative RECOMMENDATIONS)."

"[T]he Commission reviewed a staff draft tentative recommendation proposing the CREATION of STATUTORY PROCEDURES TO GOVERN ASSOCIATION rulemaking and association review of proposed alterations of separate interest property. . .".

**Comment:** It must be a very cumbersome task for the Commission to review its own staff recommendations

**Then the ultimate mother of inefficiency lands:**

**May 2002**, #H-850, 851, "California Law Revision Commission Tentative Recommendation, Organization of Davis-Stirling Common Interest Development Act; Procedural Fairness in Association Rulemaking and Decisionmaking."

**Comment:** Enclosed please see page 9 of that same document. Look familiar to anyone? It appears that the Commission has been down this same road before.

**November 18, 2002**, Study H-851, Memorandum 2002-60, "Nonjudicial Dispute Resolution Under CID Law: Procedural Fairness in Association Rulemaking and Decisionmaking (DRAFT of Tentative RECOMMENDATIONS)."

**Comment:** Enclosed please see page 15 of that same document. Look familiar to anyone?

**November 27, 2002**, Study H-851, Memorandum 2002-55, "Nonjudicial Dispute Resolution Under CID Law: Procedural Fairness in Association Rulemaking and Decisionmaking (DRAFT of Tentative RECOMMENDATIONS)."

**Comment:** Enclosed please see page 16 of that same document. Look familiar to anyone?

**May 5, 2003**, Study H-851, Memorandum 2003-18, "Alternative Dispute Resolution Under CID Law (Comments on Tentative RECOMMENDATION)."

**Comment:** Wasn't that where the California Law Revision Commission proposed an "Information Center?" What a total waste of time and money spent on this frivolous useless, project of yours.

**June 2, 2003,** Study H-851, Memorandum 2003-23, "Procedural Fairness in CID Rulemaking and Decisionmaking: Issues on AB 512 (Bates)."

**Comment:** How is it the California Law Revision Commission can get "involved" in something like this! Your mandate is supposed to be "LIMITED."

**July 24, 2003,** Study H-851, Memorandum 2003-31, "Alternative Dispute Resolution Under CID Law (Comments on Tentative RECOMMENDATION)."

**October 31, 2003,** Study H-852, Memorandum 2003-37, "Common Interest Development Law: Uniform Common Interest Ownership Act."

**Comment:** While homeowners have been accusing the California Law Revision Commission of underhanded dealings that favor the industry, this particular Memorandum hit home.

**November 7, 2003,** Study H-851, Memorandum 2003-40, "Common Interest Development Law: CID Information Center."

**Comment:** The California Law Revision Commission recommended this BAD LAW that all consumers would have to live with.

**March 30, 2004,** Study H-853, Memorandum 2004-20, "State Oversight of Common Interest Developments (Discussion of Issues)."

"The Commission has decided to investigate the possibility of establishing a state agency to oversee common interest developments and assist in the resolution of CID disputes."

**April 8, 2004,** Study H-851, Memorandum 2004-23, "Common Interest Development Law: AB 1836 (Harman); AB 2376 (Bates)."

**Comment:** Here we go again. Homeowners are pawns on the playing board of the California Law Revision Commission.

**June 2, 2004,** Study H-851, Second Supplement to Memorandum 2004-27, "2004 Legislative Program: Common Interest Development Law."

**Comment:** The California Law Revision Commission is fooling no one. Knowing no such

specialty exists at the California State Bar, YOU keep referring to "Common Interest Development LAW," for and bogus "restructuring" to accomplish what industry attorneys want from you--that is, create a specialty in "common interest developments " so that association attorneys can then **flog that specialty to death and charge more**. In that way, you would diminish the pool of available GOOD lawyers, prevent other lawyers that would otherwise assist homeowners, and cause the specialist lawyers to BUMP UP THEIR FEES. It appears that the California Law Revision Commission is nothing more than a FULL EMPLOYMENT ACT FOR LAWYERS. The Commission appears to be assisting the industry to create a specialty where none need exist.

**August 9, 2004**, Study H-853, Memorandum 2004-39, "State Assistance to Common Interest Developments (Staff Draft)."

"The Commission has directed the staff to prepare a draft proposal for creation of a common interest development oversight agency."

**Comment:** Here, the California Law Revision Commission continues in its finest form to create a bureaucratic nightmare for everyone but itself. The Commission has failed to successfully implement ANY of the items it undertook prior to this date. Yet, it now directs its staff to perform more frivolous gymnastics for no other reason than to substantiate its grant money. I say this, because to date, you have not in any meaningful manner helped my profession and you have absolutely screwed up the laws for people like me that are forced to try to live under them while not being able to adequately protect my assets **because of you**.

**September 6, 2004**, Study H-853, Second Supplement to Memorandum 2004-39, "State Assistance to Common Interest Developments (Staff Draft)."

"Ms. Vanitzian believes that . . . (2) [a]ny state oversight of common interest developments should be within the Department of Corporations. Note that this suggestion is based in part on Ms. Vanitzian's mistaken belief that the Commission is proposing that all homeowners associations be required to incorporate."

**Comment:** While the California Law Revision Commission may not have come right out and influenced the California Legislature to do what Ms. Vanitzian prophetically saw some time ago, the Commission's influence and back door to legislation has all but accomplished exactly what she feared would happen -- through the use of "words." No doubt what the Commission would likely call it, "technical changes."

**November 18, 2004**, Study H-851, First Supplement to Memorandum 2004-47, "2004 Legislative Program: Technical Follow-Up."

**Comment:** One need only take a look at the fiasco and mish-mash that the California Law Revision Commission calls "technical follow-up" to understand the trouble owners are in, will be in, and is yet to come.

**March 2, 2005,** Study H-853, Memorandum 2005-10, "State Assistance to Common Interest Developments (Staff Draft Recommendations)."

**Comment:** Here, the California Law Revision Commission is so bored and uninformed they have to pull information from Las Vegas, Nevada (of all places) and Florida (a worse hell than California, if that is even possible). The Commission is looking outside this State for answers! That's as bad as a politician campaigning outside of his District when he's running for a local office.

**March 7, 2005,** Study H-850, Memorandum 2005-3, "Common Interest Development Law: Catalog of Issues."

"When the Commission first began its study of common interest development law [there is no such thing], it decided to put a PRIORITY on IMPROVING nonjudicial approaches to resolving CID disputes.." (citations are omitted)

**Comment:** Interesting that the California Law Revision Commission has an ego so large, it would even take credit for something as bad as that.

"The purpose of this memorandum is to provide a basis for deciding which CID issues to study next."

**Comment:** Running out of topics to substantiate taking grant money? The Commission's statement is further proof that it creates work for itself unnecessarily. If the Commission has nothing left to study, why don't they just drop it! Save the taxpayers some money and angst. Furthermore, "why isn't it up to those who are most affected by [poor] decisions made by the likes of those at the California Law Revision Commission are making for us?"

**May 6, 2005,** Study H-855, Memorandum 2005-18, "Statutory Clarification and Simplification of CID Law (Discussion of Issues)."

ad nauseam, "Common interest developments are governed by a complex body of law."

**Comment:** What the California Law Revision Commission fails to alert the public is that the law is complex because the Commission and California Legislators prefer it that way. In other words, its the same old California Law Revision Commission blah, blah,

blah.

"CID law must be understood and applied by directors . . .".

**Comment:** That statement is simultaneously profound and idiotic. No thanks to the California Law Revision Commission who at that point in 2005, had been wanking for over FIVE YEARS, with nothing to show for it.

**September 19, 2005,** Study H-855, Memorandum 2005-32, "Statutory Clarification and Simplification of CID Law: Member Rights."

"In this study, the Commission is working on the reorganization and simplification of common interest development law."

**Comment:** Still apparently lost and looking for the road, the California Law Revision Commission just doesn't seem to get it right, but can't help itself in taking the State's grant money.

**February 8, 2006,** Study H-855, Memorandum 2006-4, "Statutory Clarification and Simplification of CID Law: Association Governance."

"In this study, the Commission is working on the reorganization and simplification of common interest development law."

**Comment:** The California Law Revision Commission still fails to pick a lane and still offers NO meaningful avenue for titleholders to pursue to protect their individual assets left at the mercy of unscrupulous boards of directors and their advisors. Here, the Commission **just doesn't get it.**

**January 31, 2006,** Study H-853, Memorandum 2006-12, "Common Interest Development Ombudsperson Pilot Project: Legislative Update."

"The Commission will need to decide whether to ratify those changes."

**Comment:** Really? Why so? Why is it that the California Law Revision Commission has the AUTHORITY to RATIFY ANYTHING? This Commission is acting outside its statutory scope, and owners are paying a dear price for that.

**May 25, 2006,** Study H-855, Memorandum 2006-25, "Statutory Clarification and Simplification of CID Law: Association Governance and Dispute Resolution."

"In this study, the Commission is working to **reorganize and simplify** common interest development statutory law. The intention is to make CID

law easier to understand and use by improving its presentation and resolving ambiguities and conflicts."

**Comment:** Why don't you tell readers the truth. The Commission has failed at all other attempts to infiltrate our laws with industry propaganda, so you now want to try it again while you are still on the government's payroll. Frankly, I am sick and tired of paying your salaries. Your worthless "projects" are, and have been, disastrous for deed-restricted property owners. **How many times can you simplify "simplification?"** What you are really doing has nothing to do with "simplification" but it has everything to do with "complication."

In my opinion, your intent now, is to disorient those owners and real estate professionals who must perform their own due diligence in assisting themselves and their clients, by, using your words "making CID law easier to understand by improving its presentation and resolving ambiguities and conflicts." **Look at the preposterousness of that statement,** seriously, how does one LEGALLY make a LAW easier to understand by improving its presentation? To do so, you must CHANGE THE LAW -- which, I dare say, is NOT THE COMMISSION'S MANDATE TO DO. THAT, Mr. Hebert, is why the public thinks the Commission is disingenuous and deceitful. Mr. Hebert, do us all a favor -- keep your EASY "improvements" to yourself and let the owners be the judge of "presentation" -- we've seen what the Commission has done to resolve "ambiguities and conflicts," which I might add THEY CREATED, and we are not impressed by any means. We do not need you to keep wanking away at reorganization, a kindergartner could do that and they could do it **better**. We want you to **leave it alone**. If you didn't get the message, we're sick of the Commission and its self-indulgence at our expense.

**August 8, 2006,** Study H-855, Memorandum 2006-33, "Statutory Clarification and Simplification of CID Law: Discussion of Issues."

"In this study, the Commission is working to reorganize and simplify common interest development statutory law. The intention is to make CID law easier to understand and use by improving its presentation and resolving ambiguities and conflicts. Most of the improvements in the proposed law will be technical. Some noncontroversial substantive improvements will also be included."

**Comments:** To be sure, the California Law Revision Commission has already screwed up the Code of Civil Procedure, the Evidence Codes, Mediation code sections, Probate Codes, and a host of others. You probably don't know, so you don't care. But, you should know, the choice of words "screwed up" were not from me, but from my legal friends who are stuck trying to work around the damage that the Commission is responsible for causing. The Commission needs to be stopped and they need to be stopped.

right now. Not tomorrow. Not next week. Not in a month. But now! Please understand this, we are in no way interested in your so-called "noncontroversial substantive improvements" because we have come to learn that's just a bunch of hot air industry rhetoric for "we couldn't get this stuff in through the normal channels so we're sneaking it in here."

**Would it not be easier to merely not sell the property in a common interest development, but to instead ask for buyers to merely hand over their bank accounts and then cut their losses by walking away but to be sure to leave their money behind.** In effect, that is what happens when one purchases a deed-restricted property, except they cannot merely walk away because of a myriad of exaggerated and unsubstantiated hostage fees; and sabotage by boards and management companies. Might it be more truthful to warn buyers that they will be tortured in ways unimaginable and by a variety of sources as long as they continue to own in a common interest development. Maybe you can add that to your proposed "noncontroversial substantive improvements." What exactly is the **legal definition** of "noncontroversial substantive improvements" and WHY do YOU need to DO THAT? You see Mr. Hebert, your report is beginning to smell worse than a dead fish.

**August 21, 2006**, Legis Prog., Memorandum 2006-13, "2006 Legislative Program: Status of Bills."

**Comment:** This particular publication should have nothing to do with the California Law Revision Commission and the CLRC should have nothing to do with those bills. It is the job of the Legislature to make public those items, not the CLRC.

**January 16, 2007**, Study H-855, Memorandum 2007-4, "Statutory Clarification and Simplification of CID Law: Member Elections."

"In this study, the Commission is working to reorganize and simplify common interest development statutory law. The intention is to make CID law easier to understand and use by improving its presentation and resolving ambiguities and conflicts."

**Comment:** Just who the hell does the California Law Revision Commission think it is? No one with a brain could possibly take these words together in the same sentence seriously: "intention is to make CID law easier to understand and use by improving its presentation and resolving ambiguities and conflicts." Mr. Hebert, if you could hear what my clients are saying about the Commission, let alone the California Legislature, you might seriously want to rethink using those words in the same sentence. The Commission's dumbing-down of the laws affecting how I live in my home, that have already been watered down to the extent that as an owner I cannot use ONE of them EFFECTIVELY (and believe me I have TRIED) is almost unconscionable. Why? Because

the Commission continues to screw this up for us even today. With all due respect Mr. Hebert, I am no longer interested in what your Commission's "intent" is. The Commission has proven its colours several times over, and it is unimpressive what it has managed to destroy. I feel comfortable saying, the public has very little faith in the California Law Revision Commission.

**January 19, 2007**, Study J-506, Memorandum 2007-2, "Civil Discovery Improvements: Subpoenaed Consumer Records."

**Comment:** I refer the public to this particular Memorandum for a reason. I do not want the public, or new deed-restricted owners to think that the laws the California Law Revision Commission influences with regard to common interest developments are an "island." Laws like the one under the referenced Memorandum have a devastating effect on deed-restricted property owners, but the Commission just doesn't care. One of the reasons you don't care, is because you FAIL to perform adequate research, not unlike California's Senators and Assemblypersons. I have watched researches track down a law, so poorly written, only to find its genesis was the California Law Revision Commission. The Commission is all over the map, all over the road, and they are road hogs, mowing down anyone in their way. It is evident through its actions, that the Commission does not care who they destroy in the interim and they do not care what it costs the public.

**April 18, 2007**, Study H-855, Fourth Supplement to Memorandum 2007-4, "Statutory Clarification and Simplification of CID Law: Member Elections."

**Comment:** It is so abundantly clear that the California Law Revision Commission has failed miserably in whatever it is that you are supposed to be doing. The Exhibits in this Memorandum, are damning to you. Further, your waffling in not answering and in not being held accountable, inasmuch as palming off the responsibility for such bad laws onto those who "were responsible for authoring them" is unacceptable.

**June 1, 2007**, Study H-855, Memorandum 2007-24, "Statutory Clarification and Simplification of CID Law (Staff Draft Tentative Recommendations)."

**Comment:** The California Law Revision Commission has managed to worsen an already bad situation. I don't think I've seen anything as blatantly incompetent as this in a long time. Let me see if I understand your intent, the Commission wants to simply the laws for themselves? Is that it? Or do you want to simply the laws to make it easier to sue and destroy homeowners? Which is it **really?**

**June 21, 2007**, Study H-855, Second Supplement to Memorandum 2007-24, "Statutory Clarification and Simplification of CID Law (Preliminary Part)."

"The attachment to this memorandum is a staff draft of the **narrative** preliminary part for the proposed reorganization of the Davis-Stirling Common Interest Development Act."

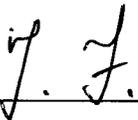
**Comment:** History bears out, that the Commission's projects are nothing but busy work -- is that the best you could do? Go back in the statutes and read the trite language put forth by the California Law Revision Commission in an attempt to substantiate its "busy work." Look at how many repeals it was responsible for. Look at how many laws had to be rewritten because of poor recommendations, most made for no other reason than to placate special interests and industry. The Commission's reorganization is ridiculous. It disenfranchises every titleholder in the State who has spent a lifetime coming to understand the laws as they exist now.

To date, every law that the California Law Revision Commission has been involved with, has done NOTHING to assist residential deed-restricted owners in any meaningful way.

NOT ONE California Code Section has been without its flaws, loopholes, and crossovers. NOT ONE Code Section has benefited the titleholder whose assets are at risk. NOT ONE Code Section has been self-explanatory to the extent a judge would be able to understand the damn thing. (and don't tell me they understand it, I've been there. Done that. They don't have a bloody clue) BUT, almost every Code Section provides attorney fees for the association; diverts owners into side shows of arbitration, mediation, requests for resolution, meet and confer nonsense--all prejudice the OWNER. All, regardless of what the Commission wants to convince itself of, are costly to titleholders in ways the Commission will never understand. The word "homeowner" is barely used in any of the Code Sections, instead, the Commission neutralizes all titleholders by diminishing not only their miniscule rights but their abilities to be able to protect themselves, their families, and their assets--while at the same time building in protections for errant boards, their co-conspirators, and advisors.

Mr. Hebert, you and that so-called Commission of yours, have not been helpful to homeowners. You have a lot to answer for, and frankly, you and the rest of the "Commission" should truly be ashamed at the utter waste of taxpayer funds expended to all but demolish, demoralize, and handicap deed-restricted homeowners.

Thank you for your time.

  
\_\_\_\_\_

enclosures

Ravi Kapoor  
15000, Downey Ave, #220  
Paramount, CA 90723  
(562)-630-2444

Law Revision Commission  
RECEIVED

JUL 25 2007

July 21, 2007  
Honorable Mr. Brian Herbert  
Re TR -H855  
California Law revision Commission,  
4000 Middlefield Rd room D-1  
Palo Alto, CA 94303  
Respected Mr Brian Herbert ,

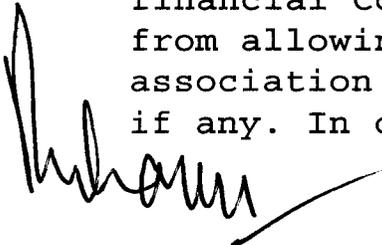
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Re TR H855

As an affected Homeowner, I am writing this note in my personal capacity in response to H-855 and would like to congratulate CLRC for working tin the improvement of CID laws. However I strongly feel that in my opinion with due respect is not in the best interest of Homeowners, The Concerned People. Unless the subject is once again reviewed as mentioned.

Moreover the existing laws have not been able to address basic issues viz elections, reserves, assessments regular and special, liens etc to name few and no meaningful mandated penalty for associations for non-compliance for one reason or other. The call of the time is COMPLAINEE AND ENFORCEMENT HAVE THE STATUES for which humble request is made to Honorable lawmakers to have corrective necessary steps in the interest of the Concerned People.

Recommendations to the California legislature on a myriad of common interest development-related legislation, as I feel to include MEANINGFUL and EASILY ENFORCEABLE penalties against recalcitrant boards; fines and criminal liability statutes over agents, third party vendors, management companies and their personnel; titleholder protections against association, boards of directors, attorneys and agents of the association, and their use of owner personal information and identifying factors; financial Code statutes to prohibit any association from allowing or waiving the commingling of association bank accounts and assets of Homeowner if any. In case such cases occur, these may be



dealt severely by the State to avoid any reoccurrences in the interest of the Concerned People.

In my opinion this the call of time and as respected Honorable lawmaker, it shall be highly appreciated that the matter if deem fit may please be reviewed in that direction also.

Sir as you shall agree that every one is responsible for their actions. It is felt that it is the time when the debate can be started with the vested interests in favor and against for necessary actions for any wrongdoings by the concerned if any.

I do not know if I may say if Respected Mr. Brian Herbert may look into reputed website [www.ahrc.com](http://www.ahrc.com) as I feel and may see for your good self the manner CID affairs are going thru and has ample room for clarifications and improvement.

The subject is so complex that it is very hard to justify in few words.

In the absence of no cost-effective way for the affected owner to enforce a penalty against the concerned that acts unlawfully if any with the protection against liability insurance shield. And in view of so many complexities and restrictions in CID living, the very purpose of such living has been lost. For the growth of state and economy, CID living plays an important role as it has great impact on the State infrastructure and cannot be ignored as I feel.

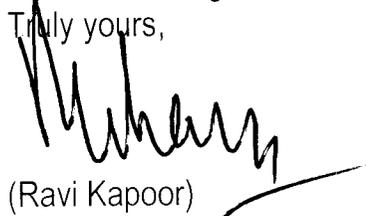
Honorable Mr. Herbert may also consider that existing practices place automatic contingency on the purchase and sales directly or indirectly with extra financial burden in present real estate market and may have impact on living for one reason or other. I also feel it also has impact on the growth and economy of the state.

Under the circumstances, it is strongly felt that if deem fit corrective steps may be taken at the earliest to ratify the existing laws for COMPLIANCE AND ENFORCEMENT of such laws with mandated penalties if needed along with state regulating agency such as FCC/FTC/Attorney General office with extra powers etc to be read in context In my opinion with due respect the subject may be sympathetically reviewed and as a token of gesture may kindly be put forth to the Honorable review committees if deem fit.

I shall be very happy to have a few lines as a token in favor or against if deem fit.

With kindest regards,

Truly yours,

  
(Ravi Kapoor)

**EMAIL FROM JEFFREY BARNETT  
(JULY 23, 2007)**

Dear Mr. Hebert and Staff:

Thank you for the opportunity of reviewing the Staff Draft.

I have practiced community association law for 33 years. Although I am affiliated with several industry organizations, I present the following comments solely on my own behalf.

I am aware that this Draft is the result of a tremendous amount of time and effort. The need for statutory reform is apparent, and I applaud your efforts and practical approach to the task.

In the category of proposed changes which I particularly approve, I include the change to the sealed ballot voting procedure and the new in-person voting procedure (p. 13). The removal of the request for cumulative voting is also very welcome (p. 14). I further applaud the generalized approach to requests for financial reports (p. 21), the limitation on IDR after a due process hearing (p. 22), and simplification of the reserve funding plan (p. 24).

I also offer some questions and comments on a few other sections of the Draft.

The requirement that the notice of meeting include the agenda is problematic. Who is to create the agenda? If the Board, how is this done consistent with the Open Meeting Act. I am aware that this issue is already under consideration in the current session of the Legislature.

The board meeting location rule (p. 8) is overly restrictive in my opinion. I suggest changing "as close to the development as practicable" to "reasonably close to the development as selected by the board in its good faith discretion". This would avoid potential challenges to board action.

Similarly, the membership meeting formula (p. 11) creates potential difficulties. A meeting room may be available within five miles of the subdivision, but only if a room rental charge is paid. Another room may be available for free seven miles away. A critical membership vote, such

as a special assessment, could potentially be challenged in court based on the association's selection of the further venue. More generally, the clause "as close as is practicable" is a potential flashpoint for litigation. Again, I suggest instead the phrase "reasonably close to the development as selected by the board in its good faith discretion"

I was puzzled by the suggested addition of "any other document that governs the operation of the common interest development" to the inspection right of members (p. 16). What is intended to be included that is not already in the definition of "governing documents"?

Thank you in advance for consideration of this input. If it would be helpful to the Staff, I would be pleased to expand on any of these points.

Very truly,

Jeffrey A. Barnett, Esq.  
Jeffrey A. Barnett, APC  
101 Metro Drive, Suite 250  
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for 650-494-1827

Law Revision Commission  
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AUG 1 2007

File: \_\_\_\_\_

July 30, 2007

Mr. Brian Hebert  
California Law Revision Commission  
3200 5th Avenue  
Sacramento, CA 95817

4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Re: TR-H855 and the rewrite by CLRC of the Davis-Stirling Act

Dear Mr. Hebert:

I OPPOSE TR-H855 and I want the California Law Revision Commission to STOP and DROP its study of California Common Interest Developments.

I own a unit in a homeowner association of about 150 units. I've witnessed the happenings as both board director and owner as to the things that go on in common interest developments.

I CAN tell the public and the CLRC this: **I will NEVER buy a residential deed-restricted property in a common interest development again and I will do everything in my power to prevent others from making the same mistake.** I believe that the California Law Revision Commission along with the California Legislature, have created groups of industries, and owners, who because of nothing more than a contract with the association or a purchase of property in a residential deed-restricted common interest development have the mandate to become power-starved, self-serving zealots who kowtow to greedy lawyers and inept management companies.

In my opinion, the California Law Revision Commission has contributed to this unmitigated disaster by unduly interfering with the "property owner's" U.S. and California constitutional rights. The CLRC has accomplished this, piecemeal, and systematically, throughout the years because, I believe, they are beholden to the interests of their buddies in the Legislature and the industry.

Here, again, the CLRC seeks to simplify a monster that they created and/or assisted in creating, that is, a monster that is out of control and serves no other purpose than to prejudice all owners who have paid MONEY for PROPERTY. The CLRC has done nothing but COMPLICATE this type of living environment. Irrespective of your haughty goals to provide so-called "fairness" and all this other nonsense that you have a way of making sound good in print but impossible to implement in real life, the living and owning environment is absurdly UNEQUAL and UNFAIR. Rather than provide consumers a CHOICE in housing--that is-- housing that is not subject to deed-restrictions, and not subject to a board of directors, and not subject to a homeowners association, the CLRC has decided to TAKE AWAY OUR CHOICES. The laws that you helped promote DO NOT HELP OWNERS. They help BUSINESSES including the association itself.

"Structure" and simplification are both meaningless. Owners are not interested in either of those pipe dreams. We are interested in TEETH in the existing laws -- but there is none for OWNERS. One has only to grasp the vacuous, even harmful laws the legislators keep trying to foist upon us to realize what a messy state of affairs they have created. You cannot fix this. So stop trying. Stop wasting taxpayer dollars on your frivolous projects. I CHOOSE NO ON TR-H855 & REWRITE!!

Sincerely,



Irene Hoffman  
204 N El Camino Real #E132  
Encinitas, CA 92024

Ravi Kapoor  
15000, Downey Ave, #220  
Paramount, CA 90723  
(562)-630-2444

Law Revision Commission  
RECEIVED

JUL 31 2007

July 28, 2007

Honorable Mr. Brian Herbert  
Re TR -H855

California Law revision Commission,  
4000 Middlefield Rd room D-1  
Palo Alto, CA 94303

File: \_\_\_\_\_

Respected Mr. Brian Herbert,

Re TR H855

As an affected Homeowner, I am writing this note in my personal capacity in response to H-855 and would like to congratulate CLRC for working in the improvement of CID laws and all out efforts are being made to Davis-Sterling act. However I strongly feel that in my opinion with due respect is not in the best interest of Homeowners, The Concerned People based upon the proposed final recommendations due for hearing on 09/21/2007 unless the subject is once again reviewed as mentioned.

However it is strongly felt that the under noted comments are submitted for your sympathetic review and active consideration. Sir you shall agree that you are doing a Herculean task for making CID laws more transparent as part of fiduciary duty to all concerned directly and indirectly involved in such living.

Moreover the existing laws have not been able to address basic issues viz elections, reserves, assessments regular and special, liens etc to name few and no meaningful mandated penalty for associations for non-compliance for one reason or other. The call of the time is COMPLAINEE AND ENFORCEMENT HAVE THE STATUES for which humble request is made to Honorable lawmakers to have corrective necessary steps in the interest of the Concerned People and PROTECT OUR HOMES AND EQUITY THAT VESTED INTERESTS HAVE MADE NON-PROFIT CORP TO ONLY FOR PROFIT ENTITIES WITHOUT HAVING ANY VESTED PERSONAL INTEREST AS I FEEL>

Sir you may also agree that such opportunity shall not come time and again to re-do once again .It lies with CLRC to make it a success and otherwise. That is why your Help is highly solicited.

Proposed Recommendations to the California legislature on a myriad of common interest development-related legislation, as I feel to include MEANINGFUL and EASILY ENFORCEABLE penalties against recalcitrant boards; fines and criminal liability statutes over agents, third party vendors, management companies and their personnel; titleholder protections against association, boards of directors, attorneys and agents of the association, and their use of owner personal information and identifying factors; financial Code statutes to prohibit any association from allowing or waiving the commingling of association bank accounts and assets of Homeowner if any. In case such cases occur, these may be dealt severely by the State to avoid any reoccurrences in the interest of the Concerned People.

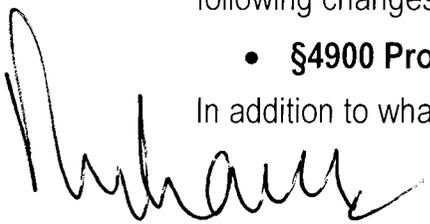
It is strongly felt that as a caution to all concerned in case such cases arise to incorporate if deem fit that in case fraud, theft or embezzlement on part of the concerned, Attorney - General, District Attorney /FBI/IRS-FTB shall not hesitate in filing criminal actions if needed in the interest of communities.

In the absence of no cost-effective way for the affected owner to enforce a penalty against the concerned that acts unlawfully if any with the protection against liability insurance shield. And in view of so many complexities and restrictions in CID living, the very purpose of such living has been lost. For the growth of state and economy, CID living plays an important role as it has great impact on the State infrastructure and cannot be ignored as I feel.

Honorable Mr. Herbert may also consider that existing practices place automatic contingency on the purchase and sales directly or indirectly with extra financial burden in present real estate market and may have impact on living for one reason or other. I also feel it also has impact on the growth and economy of the state. As an affected homeowner and to the best of my ability it is proposed to incorporate following changes to the recommendations if deem fit

- **§4900 Prospective managing agent**

In addition to what has been stated



To provide schedule of rates for copying of documents/mailling cost per first class or hand-delivery viz purchase orders of vendors, minutes of meeting, resolutions copy for foreclosure/lien signed copies and not computer print –out copies. No retrieving charges/storage charges shall be applicable with the ANNUAL REPORT PACKAGE.

- **§4805 ANNUAL FINANCIAL STATEMENT**

In addition to what has been mentioned to incorporate all spending towards reserve fund viz cost of replaced modification /date of installation of equipment, name and address of vendor with total cost and customer service reference for future reference.

May also mention if any Director is interested directly or indirectly in such vendor

- **§4810 MEMBER HAND BOOK**

In addition to what has been stated it may be made mandatory for BOD to submit annual report duly signed for what has been done, what future jobs to be undertaken as form for budgeted expenses and how the finances shall be met with any other suggestions if any. Forming part of annual package.

- **§4905 TRUST FUND**

*In addition to what has been stated* to incorporate if funds have used for temporary transfer of fund and for what purpose and how this have replenished. Break-up details as reserve added, interest accrued with other relevant details as necessary as part of annual package.

- **§RESEVE FUND**

In addition to what has been mentioned, reserve study must incorporate details of equipment history date of installation, cost actual at the time of installation and expected future cost with relevant details, which are considered necessary.

This information is very necessary from IRS/FTB viewpoint towards establishing life expectancies and life of equipment. This shall also help in finding out early failure rate if any and future hidden unexpected costs.

- **§ ASSESSMENT**

Present law for 20 % increase regular assessment and 5% increase without approval may be amended to once in THREE-YEAR TIME. In case additional assessment is needed may be need to be approved by the members accordingly.

However under no circumstances increase is affected without justification and comments from Board of Directors per resolution duly signed per good practices and to be used for the purpose it has been assessed.



In my opinion it is being done as a blanket provision of the existing laws.

- **§ ELECTION: PROXY FORM**

In addition to what has been stated,

It is strongly felt that specimen prototype proxy form as per good practice may be documented per corporation code to be followed by all concerned to improve clarity and substance viz proxy vote, no vote and only for quorum suitably drafted AS A PART OF SIMPLIFICATION AND CLARITY.

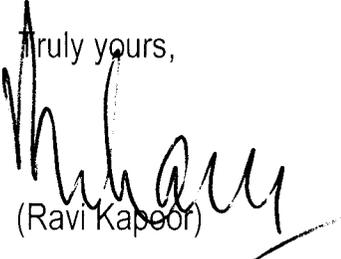
Honorable Mr. Herbert may also consider that existing practices place automatic contingency on the purchase and sales directly or indirectly with extra financial burden in present real estate market and may have impact on living for one reason or other. I also feel it also has impact on the growth and economy of the state. Under the circumstances, it is strongly felt that if deem fit corrective steps may be taken at the earliest to ratify the existing laws for COMPLIANCE AND ENFORCEMENT of such laws with mandated penalties if needed along with state regulating agency such as FCC/FTC/Attorney General office with extra powers etc to be read in context.

As stated in the recommendations that the proposed law would authorize a civil action to enforce any provisions of the amended law WITH THE REQUEST TO REVIEW INCREASE OF PENALTY FROM \$500.00 TO \$1000.00 WHEREVER APPLICABLE. In my opinion with due respect the subject may be sympathetically reviewed and as a token of gesture may kindly be put forth to the Honorable review committees if deem fit.

Needless to mention that the issues are so complex that it is very difficult to refer in few lines. However I am sure efforts shall certainly MAKE THE DIFFERENCE.

I shall be very happy to have a few lines as a token in favor or against if deem fit.  
With kindest regards,

Truly yours,

  
(Ravi Kapoor)

Law Revision Commission  
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AUG 3 8 2007

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8/3/07

Mr. Brian Herbert  
California Law Revision Commission  
3200 5th Ave.  
Sacramento, Ca.

Dear Mr. Herbert,

I oppose the California Law Revision Commission's efforts to further TR -855 or any such project related thereto. I also want the Governor to disband the CLRC--and remove common interest developments from under your ridiculous "study". You are costing us all.

The Davis Stirling act was butchered enough by its' most recent and ongoing amendments. it doesn't need a wholesale repeal or rewrite. It doesn't need the California Law Revision Commissions further interference to make another feast for attorneys who "specialize" in HOA affairs. No matter how many times the CLRC tries to convince us (The owners of PROPERTY) that is not what they are trying to do, we won't and don't believe you. The attorney interference and fees problems are only one of the problems.

I am the President of a homeowner friendly Board of Directors for one HOA which used the new election rules to the benefit of our members, and am also a member of a master association which used the latest amendments exempting associations with Delegate voting districts from secret ballot requirements as an exemption from all the new statutory election rules published in the Davis Stirling Act, election rules which created at least a small opportunity for dissident homeowners to get their message out. What I have described is nothing compared to what really happened and the effect it had on our common interest development homeowners as a whole. What disturbs me about the California Law Revision Commission is that they are arrogant and out of control.

I read some time ago an incredible letter that was part of an exhibit filed with the California Law Revision Committee by Donie Vanitzian who writes a column for the Los Angeles Times (which it appears the CLRC does not pay enough attention to) That letter blasted the unfairness of some of the statutes the CLRC has been pushing and it eviscerated the election code (Civil Code section 1363.03 and related sections.) The best answer the

California Law Revision Commission could come up with after she nailed you ,was,"the commission is referring these questions back to the Author" ,you know that the so called author is a complicated situation ,Mr Herbert,because there is no one author,is there.? These ridiculous bills that are costing homeowners like me and those in my Association millions of dollars a year needlessly because of people like you.

The CLRC screws up the recommendations and sends it over to the Senate and Senators like Battin who take contributions from industry outsiders who profess to know what I need to run my HOA.

Not only has the California Law Revision Commisssion hijacked my rights to my property and how my Association is run it has helped the Senate and the Asembly to not care about what owners say.They don't publish our letters of opposition when we send them in and don't amend the statutes to fix the problems they create.

The result of your repealing sections of the statutes confuses the public and obliterates the entire code section from where the statutes originated.

I believe the CLRC is doing this because it is beholden to industries that have hijacked propert owner's rights and has industry representatives on its Board who are pawns to the larger conglomerate who owns our legislature.

I would like to see you this project TR-855 and leave the rewrites to activists who are familiar with the realities of member abuse by renegade boards and their "expert" attorneys.

Finally,by this letter and under the Freedom of Information Act and the California Public Records Act,I am hereby requesting a separate accounting of the exact dollar amount this particular project is costing the public.especially how much the California Law Revision Commmission has spent on postage and paper alone only on TR 855



Harold Walter  
19463 Eagle Ridge Lane  
Northridge, Ca. 91326

**Jerome Simonoff**  
4314 Marina City Drive #816 CTS  
Marina Del Rey, CA 90292  
310-827-4901  
[jerry@chax.com](mailto:jerry@chax.com)

August 6, 2007

California Law Revision Commission  
4000 Middlefield Road  
Room D-1  
Palo Alto, CA 94303-4739  
[commission@clrc.ca.gov](mailto:commission@clrc.ca.gov)

Dear Sirs:

Re #H-855 Statutory Clarification and Simplification of CID Law –  
Tentative Recommendation – June 2007

I want to thank the commission for its important work in bringing its considerable talents to bear in refining, regrouping, simplifying, and clarifying the existing Davis-Stirling Act. I am in total agreement with the stated goals of this commission. However when an act as complicated and as long as this one, one that has had many refinements, additions, and changes made to it over the course of many years, is in effect rewritten, there are many chances to inadvertently change the meaning and thereby weaken the protections offered by it in its original version thereby effectuating unwanted and unintended substantive changes.

There presently are Common Interest Developments (CIDs) that include use of common areas that are physically dependant and inextricably entwined with common areas shared by other persons, corporations or other organizations. These other organizations may be apartment house landlords, individual land owners, or other incorporated or unincorporated organizations. Such areas can be common driveways, parking structures, recreational facilities, security equipment, lobbies, meeting rooms, etc. In many cases these shared common areas are governed, regulated, maintained, and financed by an umbrella organization which may include representatives from the sharing entities. Usually one or more of the CIDs belonging to the umbrella governing structure has some representation but may or may not have effective control over management, finances, or budgeting of this umbrella organization. Unfortunately even though the members of the underlying CIDs would have rights such as “open meetings” and inspection of records of the **underlying** CID to which the members directly belong, it has been held by some umbrella organizations that these rights do not extend for the underlying CID members to the records and meetings of the **umbrella organization**. This has led to situations where in effect the umbrella organization takes a position that it can keep its actions hidden from the members while having the right to assess or levy charges on those same members, thus excluding these members from informed participation in the decisions effecting their property and funds. It is obvious that the legislative intent in section 1363 (i) was to remove this inequity and provide the necessary transparency to insure fair representation and protection of the CID member’s interests in such umbrella

organizations. Common Industry usage has established the vernacular term “Master Association” to represent such an umbrella structure of governance.

It is easy to see that the legislative intent in including 1363 (i) when one sees that 1363 (i) states: “Whenever two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, members of each participating association shall be (1) entitled to attend all meetings of the joint association other than executive sessions, (2) given reasonable opportunity for participation in those meetings, and (3) entitled to the same access to the joint association’s records as they are to the participating association’s records.”

The proposed (Proposed Disposition of former Law on page 261 is section 4560) 4560 states: “(a) This article applies to a board meeting or a meeting of a committee that exercises a power of the board. (b) If two or more associations have consolidated any of their functions under a joint neighborhood or other joint organization, the meetings of the joint organization are governed by this article”. Further, the Comment states that “Subdivision (b) continues part of former Section 1363(i) without substantive change”. Reading the original and proposed sections shows two areas of very substantive change.

The first is the change of the wording to “two or more associations to have consolidated any of their functions under a joint neighborhood or other joint organization”. A major problem is that under the proposed section 4080 the words “similar organization” were removed. The previous wording can and has been interpreted that one of the two associations required for this provision could and should be the umbrella organization of a Master Association and the second association would a primary CID association. The previous wording gave further substance to this interpretation the inclusion of the words “similar organization”. While this definition may not have been unequivocally decided by case law the change of wording does not eliminate nor clarify the applicability. In fact the removal of the words “similar organization” makes it even more likely to result in litigation to establish non ambiguous results.

I therefore suggest the following changes.

- A. Insert an additional definition as #4158 “Master Association”
  - a. 4158. "Master condominium association" means any entity that is not covered under the definition of an "association" (defined in 4080) but that has been granted or assigned by such an association control or decision making authority over real property or facilities of a condominium association, and that receives moneys funded by mandatory dues or assessments paid by condominium unit owners, whether or not the master condominium association has a governing body that includes representatives of the condominium association. This term does not include an entity that is granted management or maintenance responsibility under a mere service contract with a term of not more than three years. (2) "Master Association Member" means any of the associations or entities comprising the master condominium association as

designated by the master condominium association documents. (3)  
"Master Association Affected Owner" means a member (defined in 4160)  
who has use rights in the common property or facilities administered by  
the master condominium association or is subject to providing the master  
association moneys funded by mandatory dues or assessments. (4)  
"Master condominium association documents" means any declaration of  
covenants, contracts, agreements or other writings describing the functions  
of the Master Association.

- B. Because the new rewritten code would segregate the different functions along more logical lines the following changes to the Chapters Articles and Sections should be changed as follows.
- a) Section 4560 (b) should be changed to:  
If an association is a Master Association member the meetings of the Master Association are governed by this article (article 2 Board Meeting).
  
  - b) Because of the complete removal of 1363 (i) (3) Add  
Section 4748. Record inspection of master association  
If an association is a Master Association member, the rights to inspect records of the Master Association by a master association affected owners are governed by this article (article 5 Inspection of records).so that the a master association affected owner has the same standing with the master association as they have as a member of the member association.
  
  - c) For there to be a right to inspect records it is assumed that there is a need to maintain proper records thus add:  
Section 4778  
If an association is a Master Association the maintenance of records of the Master Association are governed by this Article (Article 6 Record Keeping).
  
  - d) To keep members informed add  
Section 4803 Annual Reports  
If an association is a Master Association the reports of the Master Association are governed by this Chapter (Article 7 Annual reports).  
Distribution of reports under this section to a master association affected owner shall be the same as a member
  
  - e) Again for there to be a right to inspect records it is assumed that there is a need to maintain proper records thus add:  
Section 5503  
If an association is a Master Association the records of the Master Association are governed by this Chapter (Chapter 5 Finances)).

- f) Obviously if there is common area shared by more than one entity comprising a master association there is need for the addition of:

Section 5704 Maintenance of master association common area  
If an association is a Master Association the maintenance of areas common to the master association members are governed by this Chapter (Chapter 6 Property Maintenance and Use).

I believe that these changes will go a long way to making the newly worded code changes less likely to introduce substantive changes to the meaning and intent of the act while at the same time clearing up some ambiguity that would clearly force protracted litigation.

Respectfully submitted,

Jerome Simonoff

**Jerome Simonoff**  
4314 Marina City Drive #816 CTS  
Marina Del Rey, CA 90292  
310-827-4901  
[jerry@chax.com](mailto:jerry@chax.com)

August 16, 2007

California Law Revision Commission  
4000 Middlefield Road  
Room D-1  
Palo Alto, CA 94303-4739  
[commission@clrc.ca.gov](mailto:commission@clrc.ca.gov)

Dear Sirs:

Re #H-855 Statutory Clarification and Simplification of CID Law –  
Tentative Recommendation – June 2007

I want to thank the commission for its important work in bringing its considerable talents to bear in refining, regrouping, simplifying, and clarifying the existing Davis-Stirling Act. However when an act as complicated and as long as this one, one that has had many refinements, additions, and changes made to it over the course of many years, is in effect rewritten, there are many chances to inadvertently change the meaning and thereby weaken the protections offered by it in its original version thereby effectuating **unwanted and unintended substantive changes**.

Examination of the proposed new section 4700 shows a tremendous weakening of the existing law as stated in 1365.2. No mention is made of “Enhanced association records” as referred to in 1365.2 (2). This was referenced in the comments but no recognition was made to the fact that many of these records would no longer be subject to inspection. Many of the types of records covered under the existing law were removed without comment. The use of the singular “record” instead of the plural “records” as is used in many places in the existing law 1365.2 further restricts the laws effectiveness. This could be interpreted to mean that each and every record would have to be requested by separately identifying each one rather than as a group (e.g. all invoices for acme maintenance for July 2007).

It would be much better and less likely to result in substantive change to substitute the same wording as is now in 1365.2 (1) (A) through the end of 1365.2 for all of 4700 after 4700 (4) while only changing the cross reference code number designations and adding the words “Final and” prior to “Interim” in 1365.2(C)

Section 4780 (c) States that the record retention “section does not apply to a record that is discarded or destroyed before January 1, 2010”. This gives an unintended license to destroy all records prior to that date. Better wording would be: “This section does not apply to a record that is discarded or destroyed before January 1, 2010, if it was not required to be retained by the preexisting laws or regulations.”

J. Simonoff  
CLRC H855  
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I believe that these changes will go a long way to making the newly worded code changes less likely to introduce substantive changes to the meaning and intent of the act while at the same time clearing up some ambiguity that would clearly force protracted litigation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Simonoff", written in a cursive style.

Jerome Simonoff

**EMAIL FROM ROSS R. SNOW  
(AUGUST 24, 2007)**

From: "Ross R. Snow" <ross.snow@sbcglobal.net>  
Date: August 24, 2007 8:58:36 PM PDT  
To: commission@clrc.ca.gov  
Subject: Comments on CID Law Revisions

Dear Commissioners:

I will briefly state my experience. I have been a director on the board of my 72 unit condo association for more than 10 years, the last 4.5 of which I have served as treasurer.

In general this revision is a welcome attempt to place the body of law for CID's in one place. Thank you for your efforts on what appears overall as an excellent piece of work. I have read it through at least three times. I would like to comment on a few provisions in areas where I have some experience.

Section 4090: Conduct of business only at legal meetings. Generally now our volunteer board meets every three months as we all have busy lives. If a matter comes up in between those meetings that demands attention, we hold a vote by email which must be unanimous. We then ratify any action taken at our next meeting, thus giving any members the opportunity to comment, albeit after the fact. Let me give an example that will fully illustrate my point why the present language is not only onerous but could be rather costly.

Our association has had a lot of dry rot repair work done over the past three years and more is contemplated. Our contractor looks at the problem and submits a bid and it is voted on at a meeting. But dry rot is a problem that cannot be fully assessed simply by looking at the surface. Only as you begin work can you fully discover the extent of the problem. So change orders are to be expected. Your present provisions call for a 4 day notice plus an additional five days for mail delivery. Costs to the association, and subsequently to homeowners, would increase if the contractor has to cease work waiting for a meeting to okay the change order, not to mention the difficulty of finding a good contractor who might put up with these kind of delays. On our last job there were 8 change orders. More flexibility is needed. And since the matter can be reasonably expected, although maybe not the cost, the emergency meeting proviso may not apply.

Section 4540(a): The board decides to hold an executive session even though the member requests an open session. Two thoughts. Sometimes these sessions

can get pretty vocal. People become angry and say things they may not fully intend if they thought about it, both members and directors. Executive session lessens exposure of this behavior and any legal consequences that could follow. Legal costs are expensive, and it is the board's job to limit costs that will ultimately be borne by the members.

Secondly, the board may be in position to know facts that would be discussed that the member requesting the open session may not be aware of, and, if the member were aware of those facts, he or she might choose differently.

Section 4545: Doesn't this section conflict with the open meeting provision? Or is it meant to be the "out" from the problem I mentioned in the Section 4090 discussion above?

Section 4650(c): Meetings open to the public. No, there is no overriding interest to the general public because we are almost always dealing with private property matters. The public's general interest is provided for by the very existence of the Davis-Stirling Act. Here's an example of a problem it would generate for our association. We have no meeting room so we must obtain space outside the development. In the past we have obtained a room gratis from the private high school across the street. But they require for security reasons a list of people who will attend the meeting. We give them our membership list. If the public were allowed to attend, the high school may deny us the room because we would not be in control of who would attend or they might charge us rent or costs for additional security. Other rooms within a reasonable distance which are available for pre-authorized community use are likely to present the same problem.

Section 4660: Proxy signatures by means other than manually made. Absolutely not. This provision opens up the whole proxy voting system to fraud. How can the election committee be assured that a typewritten, telegraphic or some other form of copied signature is valid? A member finds a tossed ballot notice in the trash because another member does not plan to attend or vote, signs the proxy on the typewriter or printer with another member's name, and votes twice.

Section 4780: I don't understand the point of keeping tax returns and tax-related records permanently. Why would we ever need our tax records from 1986? Ten years at the most, please.

Section 5000: Creation of fines by operating rules when not stated in the declaration, articles or bylaws. While I think it would be better if there were, the process of amendment is a quite complex and difficult one. There are already adequate protections for homeowners. Firstly, fines would be a new operating rule requiring notice and member comment at a meeting. Secondly, if adopted, a

small 5% of members, which for us is 4 members, could call a vote to overturn any fine rule. More than 50% of CID's in California have fewer than 50 members, that's only 2 or 3 members to call a vote.

Section 5650: No foreclosure if assessment owed is for less than one year and less than \$1800. This provision gives some members a nice little loophole which at least three of our members are now utilizing. They run their delinquent assessments up to between \$1500 and \$1800, then pay just enough to keep it there. Because payments made are credited against the oldest outstanding assessment first, they are always under one year and \$1800.

They can never be foreclosed upon. Of course, there is small claims court, but that is an iffy situation for board members unfamiliar with the process and there is also the additional time that must be taken out of a work day to appear in court. This loophole should be corrected. Maybe some language exempting from this foreclosure rule for a member who is continuously delinquent for a given period of time, say 15 or 18 months.

Thank you for your attention and consideration

Ross R Snow  
1864 Ellis Street, Unit B  
San Francisco, CA 94115  
415-921-0592

**Law Revision Commission  
RECEIVED**

**SEP -4 2007**

Bill R. Stelter  
2031 Barclay Court  
Santa Ana, California 92701

**File:\_\_\_\_\_**

Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, California 94303-1827

August 30, 2007

Reference: CID Clarification And Simplification

Gentlemen:

I am a homeowner in a self managed CID and serve as the secretary of that board. Over the past two years I have been having trouble getting the board to comply with California Civil Code Section 1363.05, CID Open Meeting Act.

They are particularly violating 1363.05 (f) by having secret unannounced executive meetings to conduct association business and to plot action against homeowners who do not meet their standards.

I have provided them with copies of the laws and advised them that they must comply or face being sued by the homeowners. All they say to me is that they do not care that they will run the association their way regardless of the laws since no one can fine them arrest them or do anything to them for violating the civil codes.

In reading the changes that your organization has recommended and those that have been passed I understand that a homeowner may sue their association board for not complying with the laws. However they can only recover their legal fees and then the board goes back to its old ways and subjects the homeowners to more harassment etc.

What I would like to suggest is that you put some BITE or TEETH into the Civil Codes so that there is a heavy monetary fine for anyone violating the codes and possible jail time if they refuse to change their ways and are found guilty a second time. Perhaps you might want to recommend that a particular agency be allowed to investigate and prosecute anyone violating these laws.

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What homeowners really need is a state or local government agency that they can turn to for help in forcing their association's board to comply with the laws and stop the harassment of them by boards since the court process takes over one year to complete and is very costly for the average homeowner these days.

If your organization could look into this and help put some sting into these laws all homeowners would be very appreciative and most problems with CID boards would eventually dissolve when they hear of the large fines and possible jail time for violating the codes and laws.

If you would like more input just email me at [bstelter@juno.com](mailto:bstelter@juno.com).

Thank you,  
  
Bill R. Stelter

**Jerome Simonoff**  
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[jerry@chax.com](mailto:jerry@chax.com)

September 5, 2007

California Law Revision Commission  
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Dear Sirs:

Re #H-855 Statutory Clarification and Simplification of CID Law --  
Tentative Recommendation -- June 2007

I again want to thank the commission for its important work in bringing its considerable talents to bear in refining, regrouping, simplifying, and clarifying the existing Davis-Stirling Act. When an act such as this, one which has had many refinements, additions, and changes made to it over the course of many years, is in effect rewritten, there is an opportunity to improve on a section dealing with elections. This section recently rewritten and amended has caused much unintended confusion and difficulty for Condo Owners and also CID Associations.

The current section 1363.03 and the proposed section 4665 allow for governing documents to permit "nomination from the floor" however, the requirement for ballots by mail and the requirement(section 1363.03 (f) & 4640 (d) ) that a ballot that "is received by the inspector of elections, it shall be irrevocable" means that nominations from the floor are in fact meaningless. There is no reason for not allowing a procedure to be in place so that a ballot may be recalled upon proper certification by the individual entitled to cast the ballot, prior to the actual time and date of voting and the opening of the sealed envelope.

Further this provision gives lopsided advantage to the incumbent board which can send out the ballots prior to the time when opposition candidates can mount an opposing election campaign. Since the ballots would have already been mailed out most people would simply have returned the ballots before having had an opportunity to hear objections. These ballots would then be irrevocable so the damage would have been done.

Respectfully submitted,



Jerome Simonoff

*Kazuko K. Artus, Ph.D., J.D.*  
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7 September 2007

Comments on the Tentative Recommendation for  
Statutory Clarification and Simplification of CID Law

Congratulations on your publishing the Tentative Recommendation! I very much appreciate the Commission's efforts to cast common interest development legislation in "a more user-friendly form" because I, being a member of a California condominium association and at present also a member of its board, am a frequent user of the Davis-Stirling Act and the Nonprofit Mutual Benefit Corporations Law.

Many "users" would be average persons with no training in law, let alone California CID law, as the third paragraph on page 1 appears to recognize. I generally welcome legislative initiatives to improve supporting services for CIDs, such as the Common Interest Development Bureau proposed by AB 567 and the Board Member Training proposed by SB 948. CID associations, even where the financial constraints do not prevent it, should not normally have to engage outside attorneys or managing companies, whose understanding of client associations tends to be fragmentary and superficial and whom volunteer directors are not well-equipped to supervise.

The proposed member handbook (§ 4810) may prove helpful once implemented, but many associations would have difficulties in creating their handbooks. I suggest that the Legislature mandate a State agency to publish templates for the handbook that are written in plain English and refer to related statutes and to update the templates as and when the applicable law is updated. Similarly, I urge having a State agency publish templates for the declaration, bylaws and operating rules as done for the articles of incorporation.

Enumerated below are my comments on specific elements of the Tentative Recommendation.

**Note 87**, p. 14. The intended reference appears to be to § 4675(d) and not to § 4640(f), which does not exist.

**Sec. 4000** (Short title). The short title should contain a word or words to distinguish Part 5 from the present Davis-Stirling Act, e.g., "the Restated Davis-Stirling Common Interest Development Act" or "the Davis-Stirling Common Interest Development Act of 2007." It is confusing and hence user-unfriendly to refer to the new legislation by the same short title as the one that it replaces. Please remember that very few of the members and directors of the associations regulated by CID law would be following this legislative reform.

**Sec. 4010** (Continuation of prior law). The last clause is user-unfriendly. The fact that some other codes include similar provisions does not make it user-friendly. If left as currently drafted, it would require the users to compare a new provision with its predecessor(s) and determine whether "a contrary intent" appears; a user would have to take the risk that the court may disagree with the user's determination as to the "contrary intent" and as a consequence may invalidate the action taken on the basis of the user's determination. Any provision that is

intended to be a new enactment should expressly say so, e.g., “This subdivision supersedes the provision of XYZ.”

**Note to sec. 4015** (Application of part). Subdiv. (b) should be retained, even if redundant, with a reference to § 4100. Many users would find it reassuring to see subdiv. (b), while such a short statement, even if unnecessary, would entail almost no cost.

**Sec. 4020** (Nonresidential development). A typo in subdiv. (a)(1). I don’t believe that the drafters intended it to refer to § 4025, which includes § 4025 (a), which in turn provides that generally “an association that is incorporated is governed by [ §§ 4000-6215 ] and by the Corporations Code.” § 1373, which § 4020 is apparently designed to continue, contains nothing that would generally exempt nonresidential CIDs from the provisions of §§ 4000-6215 and the Corporations Code.

**Sec. 4050** (Time and proof of delivery). I disagree with the policy represented by this section. The delivering party should generally bear the risk of a delivery failure and the burden of proof of delivery since that party controls the method and timing of the delivery. The purported recipient’s claim of non-delivery should be the *prima facie* evidence of non-delivery. The “time of deposit into the mail” (§ 4050 (b)) is meaningless with respect to an item sent by first-class mail. Subdiv. (d) should be deleted. Where a timely delivery is important, the delivering party should either use personal delivery and obtain the recipient’s receipt, or certified, registered or express mail, for which the United States Postal Service issues a receipt.

**Sec. 4055** (Delivery failure). This is reasonable. Members who fail to give their contact addresses to the association should take responsibility for the delivery failure. However, an allowance needs to be made for the possibility that the association may make errors in transcribing the addresses given by the members.

**Sec. 4065** (Approved by majority of all members). The Commission should consider whether the “total voting power of the association” (lines 26-27) and the “voting power in each class” (line 29) should include the voting power of members whose voting rights are properly suspended at the time the votes are counted. I favor excluding such members’ potential voting power since a member with suspended voting power has no right to participate in the association’s decision.

**Sec. 4070** (Approved by majority of quorum of members). A parenthetical reference to § 4580 should be inserted after the words “a quorum of the members” in line 36.

**Ch. 1, art. 2** (Definitions). The terms “articles of incorporation” and “bylaws” should be defined in this article.

**Sec. 4090** (“Board meeting”). I welcome the substitution of “within the authority of the board” for “scheduled to be heard by the board.” But, in light of § 4510, which allows less than a majority of directors to constitute a quorum, I suggest that “a majority of the directors” in line 22 be changed to “directors constituting a quorum.” The words “and place” in line 23 should be deleted to conform to § 4535.

**Note to sec. 4090.** The transparency of board decision-making is an important factor in fostering members' confidence in the board. Board business through informal contacts need not be prohibited but the board should be mandated, in ch. 3, art. 2, to disclose to members matters considered through informal contacts among directors. The validity of a board decision made through informal contacts should be conditioned on: (1) the informal contacts in writing including emails; (2) a general notice of the availability of such writings for members' inspection in the association's office (or at a place convenient to members if the association has no office), and (3) the adoption of a board resolution to ratify the decision at the first open board meeting after the decision.

**Sec. 4100** ("Common interest development") **(a)**. Please clarify "all or part of the common area" in lines 25 and 26. If a separate interest is coupled with an undivided interest in only part of the common area (§ 4100 (a)(1)) or membership in an association that owns only part of the common area (§ 4100 (a)(2)), while common area is the entire common interest development except the separate interests therein (§ 4095 (a)), what is the status of that part of the common area the interest in which is not coupled with a separate interest in the case of § 4100 (a)(1) and which is not owned by the association in the case of § 4100 (a)(2)? Under what circumstances would such "part" of the common area exist?

**Note (2) to sec. 4125** ("Condominium project"). Subdiv. (e) should be restated if its purpose is ascertained, and should be deleted otherwise.

**Sec. 4135** ("Declaration"). Please clarify. What is intended for a declaration of which an amendment is recorded after 1 January 1986? Where the pre-amendment declaration does not meet the requirements of § 6025, would the amendment have to cure the deficiency, or is an association allowed to keep the deficiency in the post-amendment declaration?

**Sec. 4145** ("Exclusive use common area") **(a)**. The words "by the declaration" in line 9 appear to be inconsistent with § 4640 (a)(4), which specifies the grant of exclusive use of common area to be a matter over which a member election may be held, and with § 5900, which allows the board to grant exclusive use of common area, subject generally to members' approval but on its own in cases enumerated in § 5900 (b). Those words appear in the corresponding place in § 1351 (i), but I do not see any reason to retain them in the new legislation.

**Sec. 4150** ("Governing documents"). Why does this definition leave out condominium plans, final maps, and parcel maps, which ch. 8 (Governing documents) covers, and why does it include bylaws, which ch. 8 does not cover? Notwithstanding the warning given by § 4005, the use of the exactly same term with different contents is confusing and hence user-unfriendly.

**Sec. 4160** ("Member"). I welcome the addition of the definition of "member" and the recommendation to refer to the person concerned uniformly as a "member." But, the proposed definition raises the question of who an "owner" is. "Member" should be defined (1) to include a person who is not a record owner because he or she or it has transferred the title to the separate interest to another as a security for the performance of an obligation or to a trust for which he or she or it serves as a trustee and (2) to exclude the person to whom the title has been transferred in such manners. It is the non-record owner in (1) who actually uses the transferred separate interest, pays assessments, and has real general relationships with the association, and not the record-owner in (2).

“Member” should be defined also to permit (but not to require) the governing documents to exclude the association from membership even where the association owns one or more separate interests (e.g., for use as the association’s office or as its employee’s residence).

**Sec. 4163** (“Member election”). The phrase “that requires the approval of the members” in the first sentence should be revised to “which requires or on which the board seeks the approval of the members,” so as to include in member elections the matters which the board, without being required, voluntarily submits to member approvals for policy reasons, e.g., to give members the sense of ownership in a resulting operating rule.

**Sec. 4405** (Association powers) **(a)(1)**. Very user-unfriendly. At a minimum the “powers granted in this part” should be enumerated, as done in Corp. Code § 7140, with references to relevant statutes.

**Sec. 4410** (Standing). Does the term “individual owners of the common interest development” in lines 4-5 mean something different from “individual members”? If so, how? If not, it should be replaced by “individual members” to conform to the drafting policy announced in lines 26-27 on p. 6.

**Sec. 4415** (Comparative fault) **(a)**. Please clarify. Are the words “the association or its managing agent” in lines 19-20 intended to compel the association to absorb, in relation to the opposite party, the entirety of the damages proportionally attributed to the fault of its managing agent? If so, I would object. Whether the association should absorb damages attributed to its agent should be decided based on the fact of the case.

**Sec. 4420** (No limitation of rights). The details given in the Note should be incorporated into the text, so that the users would know what the “the rights of members provided in this chapter” are: “the rights of members relating to board and member meetings, elections, director conduct and managing agents provided in this chapter.” The users should not have to spend time to look for the rights at issue, which the drafters know.

The issue of whether to expand the application of § 4420 to encompass the entire part 5 should be decided later since the rights to be provided in ch. 2 (Member Bill of Rights) are not yet known.

**Secs. 4505** (Convening or adjourning meeting) **(a)** & **4520** (Notice of board meeting) **(c)**. Provisions regarding who may call non-emergency or emergency board meeting should be stated in one section (presumably in § 4505) rather than in two separate sections (§ 4505 (a) and § 4520 (c)) as proposed. I fail to see the rationale for differentiating the individuals who may call non-emergency meetings and emergency meetings. Why should the board chair, the vice president and the secretary acting alone be authorized to call non-emergency meetings but not emergency meetings? I would authorize any director and any officer to call an emergency board meeting since in an emergency situation a director or an officer may be unable to find another to join her or him to call a board meeting.

I would transfer the first 3.25 lines of § 4520 (c) (“The president of the association, . . . that require immediate attention and possible action by the board”), preferably modified, to § 4505 and keep only the second sentence of § 4520 (c) in § 4520 (c).

**Sec. 4505 (b).** As drafted at present, this would make it very easy for a faction of directors to arbitrarily change the board meeting schedule. What is the rationale for permitting “a majority of directors present” to adjourn the meeting before the consideration of all matters on the agenda when a quorum is present? I would subject such adjournment to some restrictions, e.g., the board in session for two hours or more after the call to order, a meeting out of order for more than 30 minutes, the absence of non-director members.

**Sec. 4520 (a) & (b).** I support the recommendation to inform members of the agenda before a board meeting. But the requirement to post a notice including the agenda at least four days before the meeting would create a practical problem. I have observed that many subject matters for a board meeting are identified in the last minutes, sometimes 30 minutes before the scheduled meeting. The association could meet the legal requirement by including “other businesses” in the agenda prepared four days before the meeting, but such agenda would tend not to be very meaningful. I would keep the 4-day advance notice requirement but permit associations to post the agenda much later.

I would add a requirement, probably to § 4525, that the association distribute to members who are present at a board meeting the agenda and other documents prepared for consideration at the meeting.

**Sec. 4520 (c).** The circumstances under which an emergency board meeting may be called should be defined more restrictively and precisely. One possibility would be to introduce a language similar to that used to set forth the condition for an emergency rule change in the present § 1357.130 (d), e.g.: “An emergency board meeting may be called only if at least one director determines that an immediate attention and possible action by the board is required to address an imminent threat to the health or safety of one or more members or residents at the CID or the association’s employees or the public or an imminent risk of substantial economic loss to the association.”

**Sec. 4540 (Executive session).** The basic policy should be that all board meetings must be open to all members. The board should be required to announce before adjourning to executive session the matters it will consider in the executive session. Subdiv. (a) should make it clear that the board, while allowed to consider litigation and contract formation with third parties in executive session, is not prohibited from considering them in open session. It should narrowly define what constitutes “litigation” and what “matters relating to the formation of contract with third parties” in this context. As to pending litigation, the board should be required to disclose to the members in a general notice the subject matter, the opposite party and the court.

Present § 1363.05 (c), which requires matters discussed in executive session to be generally noted in the minutes of the open meeting that immediately follows the executive session, should be continued in this section in its entirety, except that I would simplify “the open meeting that immediately follows the executive session” to read “the first open meeting after the executive session.” § 4550 (b) is an unsatisfactory successor to § 1363.05 (c) because it fails to inform members what minutes they should look at to know what the board considered in executive session held on a particular date.

**Note to sec. 4540 (a).** The subject of member discipline and assessment dispute proceedings should be given the discretion to decide whether the proceedings will be conducted in open session. A subject would prefer open session if he or she or it believes that the board is making an unreasonable proposition or is acting in bad faith, so as to expose the board. The board should be mandated to make a report in open meeting on the proceedings on contract with third parties upon execution of the contract and on proceedings on litigation upon conclusion of the litigation, so that such matters considered in executive session would be recorded in a minutes of at least one board meeting.

**Sec. 4545 (Action without meeting) (a).** To be consistent with the spirit of § 4525, the board should be required to file a written report of its action taken without meeting, in addition to the directors' written consent, with the minutes of a board meeting. The minutes with which such report and the written consent shall be filed should be the minutes of the first open board meeting after the action.

This subdivision should be expanded to enumerate the types of action the board is allowed to take and those the board is required to take without a meeting. The proposed text is user-unfriendly. The directors should not have to investigate what actions they are permitted or required to take without a meeting.

**Sec. 4550 (Minutes).**

**Subdiv. (a)** I prefer § 1363.05 (d) to this proposed subdivision because § 1363.05 (d) is more precise and hence easier to understand. The word "prepare" in line 22 is unclear, and this subdivision would be impractical if it mandates the minutes to be approved by the board within 30 days after the meeting since the board does not necessarily meet within 30 days after the preceding meeting.

**Subdiv. (b)** I prefer § 1363.05 (c) to this proposed subdivision for the reason stated in my comment on § 4540.

**Sec. 4555 (Civil action to enforce article).** The civil penalty under subdivision (b) and the reimbursement of cost to members under subdivision (c) would not be very efficient since they have to be funded ultimately from assessments, i.e., by members in general including those who bring action against the association and since they would not financially affect the members of the misbehaving board any more than members in general. An administrative remedy should also be devised that would provide incentives for directors to respect members' rights but would not so intimidate members as to discourage them from volunteering to serve on the board.

**Sec. 4560 (Application of article).** This section should be either merged with § 4500 or placed immediately after § 4500 for efficiency. A user should be enabled to know the coverage of the article before reading individual substantive provisions.

**Sec. 4575 (General rules for conduct of meeting) (a).** Why should an association be required to "hold a regular member meeting in any year in which a director is to be elected, in order to conduct the election," "notwithstanding the governing documents"? If § 4640 requires a director election or removal to be conducted by secret ballot, which it seems to, there is no reason to link such election and a member meeting. While § 4650 (c) requires election inspectors to open and count ballots at an open member meeting or board meeting, it does not call for a regular member

meeting. It would generally be a good practice to hold a member meeting when votes on the election of directors are counted (so that members will receive the election inspector(s)'s oral report as soon as the results are determined), but I see no need for legislating such a mandate, let alone overriding the governing documents.

**Sec. 4580 (Quorum) (a).** Reference should be made to the 2d sentence of § 4640 (e).

Please clarify. Would a quorum be present under this subdivision at a hypothetical member meeting of an association having 300 memberships and no quorum provision in the governing document which is called to count the votes cast in the election of directors (I have a problem with this, as noted in my comments on § 4650 (c)) and to consider whether to transfer a surplus income of the operating account to the reserve account, if the election inspectors have received 250 ballots pertaining to the director election, 25 memberships are present in person, and no proxy was received? It seems to me that no quorum is present at the meeting (because the 250 ballots represent members present at the director election and not at the meeting held to count the votes on the director election and to act on the proposed transfer of surplus) and therefore that neither the vote counting nor the election on the transfer of surplus may be conducted at that meeting.

**Note to sec. 4580.** Association should be left free to set forth the quorum for member meetings in the document of their choice. Some associations would prefer to define the quorum in a relatively durable document such as the declaration and the articles while some others would prefer do so in a document that the board is authorized to amend from time to time.

**Sec. 4585 (Member action) (c).** What would happen if a quorum is absent and a majority of members present vote not to adjourn the meeting? Instead of leaving the members present to decide on adjournment, this subdivision should mandate an adjournment for a specified period, e.g., not less than five days nor more than 30 days, and establish a lower quorum requirement for the reconvened meeting, e.g., 25% of the total voting power, where the governing documents have no such provision.

**Sec. 4605 (Meeting adjournment) (c).** Please clarify whether the 45-day limit applies to the period from the date of an adjourned meeting or from the date on which the meeting was initially called and specified in the original meeting notice.

**Sec. 4610 (Waiver of requirements) (c).** The absence of the matter from the meeting notice should be the *prima facie* evidence of the invalidity of the action. This subdivision should end with "not valid" in line 41. It is unreasonable to condition the invalidity of action on a member raising objection at the meeting because a member who, in reliance on the notice, stayed away from the meeting would forfeit the opportunity to invalidate the action.

**Sec. 4615 (Court-ordered meeting) (e).** Is it intended that, if a meeting or a written ballot is ordered by the court, association's action may be taken by one member (if only one member participated)? I prefer that this subdivision urge the court to set an appropriate quorum requirement depending on the case, so as to ensure that the action taken at the court-ordered meeting or by the court-ordered ballot will have support of members representing a certain meaningful percentage of the association's total voting power.

**Sec. 4620** (Court-ordered modification of meeting requirements).

Provisions of § 1356 (a), (b) and (c) should be continued in this section to ensure that members or the association opposing the proposed action will have an opportunity to be heard by the court and the court will have an opportunity to review all relevant materials.

**Subdiv. (a).** Reference to “this part” in line 3 is user-unfriendly. It should be changed to “Chapter 3, Article 3 or 4.”

**Subdiv. (b).** Reference to “this part” in line 9 should be replaced by a more specific reference. The word “votes” in line 11 should be changed to “the total voting power.”

**Ch. 3, art. 4** (Member election). A provision should be added to establish the rules for extending the voting period beyond the terminal date initially specified in the election notice.

**Sec. 4635** (Selection of election inspector)

**Subdiv. (c).** The persons to be excluded for being “related” should be defined. Any person who holds ownership interest in any separate interest in the CID that is also owned by another person who is identified in paras. (1) and (2) should be excluded as well as a person who is related by adoption, blood, business or domestic partnership or marriage to a person identified in paras. (1) and (2). In the case of an election of directors, the association’s employees, agents and contractors should also be excluded, notwithstanding the provision of the governing documents, since such persons tend to have interest in who will be on the incoming board. Further, each inspector should be required to sign, upon acceptance of her or his appointment, a statement that he or she is not so related to any director or any candidate for the board as to be disqualified.

**Subdiv. (e).** The 1st sentence is too general. It should be supplemented with the requirement that during the period from her or his appointment until the election results are reported to the board an election inspector should be required to act in accordance with the provisions of the governing documents referred to in § 4630 (a), to make best effort to resolve any issue that may arise by consultations among the inspectors if there are three inspectors or on her or his own if there is only one inspector, without seeking any advice from the board, any director or officer or the management, and, should an inspector need to communicate with the board, any director or officer or the management, to conduct such communication in writing and to file a copy with the association’s office to be made available for members’ inspection.

**Sec. 4640** (Secret ballots).

Please clarify whether or to what extent this section is intended to supersede Corp. Code § 7513. If the substance of the provision of Corp. Code § 7513 (b) is to remain applicable to CID elections, that provision should be restated in this section in a more precise language to clarify (1) whether “the time period specified” means the time period initially specified in the election notice or a time period adjusted by subsequent extension(s), and (2) whether the validity of an approval by written ballot is contingent on the number of affirmative votes received within the time period initially specified in the election notice equaling or exceeding the number required for an approval.

**Subdiv. (a).** The bulk of the first sentence of § 1363,03 (b) (“Notwithstanding any other law or provision of the governing documents, ... shall be held by secret ballot”) must be retained if no substantive change to that section is intended. The proposed language is user-unfriendly for its

failure to expressly state that election by secret ballot is mandatory in member elections on the enumerated matters irrespective of other law and of governing documents. Further, a statement should be added, even though redundant, that an election on the enumerated matters is valid only if conducted by secret ballot.

To make this subdivision user-friendly, the subjects for which secret ballot is required should be worded more precisely, to let the readers know that the board that voluntarily decides to seek member approval of other matters may choose other methods:

(1) (“Assessment approval”). This should be an increase in the regular assessment and imposition of special assessment which are subject to approval by members under § 5580 (b).

(3) (“Amendment of the governing document”). Should be revised to read, “Amendment of declaration, articles of incorporation, and, where member approval is required, bylaws.” The term “governing document” is defined to mean “the declaration, bylaws, articles of incorporation or association, and operating rules” (§ 4150). Since an “operating rule” is defined to be “a regulation adopted by the board” (§ 4165), the board may amend it subject to the provisions of ch. 8, art. 5, without seeking member approval. Adoption, amendment or repeal of bylaws is presumably governed by Corp. Code § 7150, which allows bylaws to be amended by the board with some exceptions or by approval of members, and therefore, an amendment of bylaws would not necessarily require member approval.

(4) (“The grant of exclusive use of common area”). Should be revised to read, “The grant of exclusive use of any portion of common area that is subject to member approval under § 5900.”

**Subdiv. (b).** “At least 30 days before” would be more user-friendly and shorter than “not less than 30 days prior to.” The 2d sentence of subdiv. (b)(1) should include the language of the last sentence of Corp. Code § 7511 (a) regarding a notice of meeting at which directors are to be elected, e.g.: “In the election of one or more directors, the ballot shall identify all members who are nominated at the time the ballots are dispatched to members.” The 3d sentence should require a ballot to provide an opportunity to abstain as well, to encourage members to vote even if they are indifferent to the proposal, so as to help secure a quorum.

**Subdiv. (c).** Subdiv. (c)(2) should be “Seal the inside envelope and insert it, unsigned, into the outside envelope.” Subdiv. (c)(4) should be reworded to provide for the possibility of the delivery of ballot by electronic transmission, e.g., by email and/or facsimile communication, conditioned on the association making arrangements to safeguard the confidentiality of ballots so transmitted. Please remember that many associations are desperate to have as many eligible members as possible participate in elections and cannot afford to rebuff those who are in distant places.

**Subdiv (e),** 2d sentence. This sentence, added to § 1363.03 (b) in 2006, has not eliminated the problem created by the mandate to conduct certain elections by secret ballot; it has created a new practical problem for associations with governing documents containing a quorum requirement. An association cannot determine whether a quorum is present until the envelopes supposedly containing ballots have been opened; no one-to-one correspondence can be assumed between an outside envelope and a ballot because a member may forget to enclose the ballot and deliver only the envelope(s) to the inspector or cram multiple ballots into one outside envelope.

One possible solution would be to authorize associations to presume, until all envelopes are opened, that each outside envelope received by the inspector(s) contains a ballot, provisionally

determine the presence or absence of a quorum based on the number of outside envelopes, make a provisional determination of the presence of a quorum, proceed to ballot counting, and make a final quorum count upon receiving the inspector(s)'s report of the number of ballots cast but before the inspector(s) counts votes cast for individual candidates or votes cast for and against the proposal.

Another possibility might be to change the words "a ballot" in line 18 to "an outside envelope." Under this approach, a provision should be added that an outside envelope that is found to contain no ballot be deemed to represent abstention.

The words "by mail" in line 19 should be deleted; all ballots received by the inspectors should be treated as a member present for the purpose of quorum count regardless of how the ballot was delivered to the inspectors.

**Sec. 4645** (Alternative in-person voting procedure). In-person voting should be treated as a way to deliver secret ballot to election inspector(s) under § 4640 rather than an alternative to election by secret ballot. I would merge this section into § 4640.

**Sec. 4650** (Counting ballots).

**Subdiv. (b).** Not user-friendly. The language of Corp. Code § 7517, particularly of its subdiv. (c), is not congruent with art. 4. The last sentence referring to Corp. Code § 7517 should be deleted and a new subdivision to replace it should be introduced.

**Subdiv. (c).** What is the rationale for requiring a board meeting or a member meeting for counting ballots? The inspector(s) should of course count and tabulate votes in an open meeting held under an arrangement to enable members to observe the proceeding, including a reasonable advance notice of the meeting. But the inspector(s) should be the principal actor at the meeting, and the board should have no role except to receive the inspector(s)'s report at the end of the meeting. It would be appropriate to require the presence of a certain minimum number of members at the meeting, but no quorum requirement should be applied since the meeting should involve no action by members or the board.

In the case of a multiple-issue election, the inspector(s) should be required to count and tabulate votes on separate issues separately, so that no observer will know how a member who voted on one issue in one way voted on another issue. The simplest possibility would be to require that all votes on one issue be counted and tabulated before votes on another issue may be counted.

**Sec. 4670** (Campaign related information).

**Subdiv. (b).** The word "solely" should be inserted between "is" and "responsible" in line 33. As drafted at present, the association is protected by the last sentence but it is not clear whether its board, directors, officers, employees and agents are.

**Subdiv. (d) (3).** The replacement of the word "of" in "within 30 days of an election" of § 1363.04 (b) (2) by "before" is a significant drafting improvement in terms of clarity. But, the meaning of "an election" at the end is unclear. It should be specified to be "the end of the voting period."

**Sec. 4675** (Voting rights).

**Subdiv. (b).** This sentence, or at least the first clause, should be included in § 4160, with a reference to this subdivision.

**Subdiv. (d).** The words “cumulative voting shall be used by the association” in lines 30-31 are imprecise; should be revised to read, “cumulative voting is authorized and votes cast cumulatively are valid.”

**Sec. 4680** (Action by unanimous written consent). What is the rationale for this provision? This seems to be a less practical variant of member action without meeting by ballots. The latter would offer a better chance of success since it is subject to no unanimity requirement.

**Sec. 4685** (Judicial enforcement) (a) and (f). As user-unfriendly as § 4620 (a).

**Sec. 4700** (Scope of inspection right).

**Subdiv. (a).** The opening sentence is user-unfriendly. The provisions specifying the exceptions should be enumerated.

**Subdiv. (a)(2).** A reference to § 4715 should be included. Please clarify the intended relationship between this subdivision and Corp. Code § 8330 (a)(2), which requires the disclosure of a member list showing members’ names, addresses and voting rights pertaining to director elections, subject to Corp. Code § 8330 (c).

**Subdiv. (a)(8).** It should be expressly stated that contracts for maintenance, management, or legal services are not privileged, as done in § 1365.2 (d) (1) (E) (iv), and therefore that the association must disclose such contracts.

**Subdiv. (b)(2).** The term “evidentiary privilege” should be defined more precisely with reference to appropriate statutes. The 2d sentence should be deleted because it is too partial and imprecise.

**Sec. 4715** (Optional redaction from membership list) (a). What is the relationship between this section and Corp. Code § 8330 (c)? Is this subdivision intended to supersede Corp. Code § 8330 (c)?

The association’s duty to comply with members’ request for redaction must be stated; this subdivision is meaningless without it.

**Sec. 4950** (Director training course). The words “To the extent existing funds are available” should be deleted. This section should mandate the Department of Consumer Affairs and/or the Department of Real Estate to offer the education program, to be funded by a subscription fee.

**Sec. 4955** (Attorney general). The word “may” in lines 25 and 31 should be changed to “shall.” This section should authorize the office of the Attorney General to receive an administrative fee not to exceed USD 100 with each letter of complaint, so as to discourage frivolous complaints, and charge an administrative fee not to exceed USD 1,000 to the association for its failure to answer within 30 days.

**Secs. 5550** (Inspection of major components), **5555** (Reserve funding study), **5560** (Reserve funding plan). Each of these sections should provide a mechanism to enforce the mandate.

**Sec. 5555** (Reserve funding study) **(b)**. The term “remaining useful life” should be defined.

**Sec. 5575** (Levy of assessment). The terms “regular assessment” and “special assessment” should be defined either in this section or in ch. 1, art. 2. This section should specify for what outlays an association may levy the regular assessment and for what it may levy the special assessment. Subdivision (b) and § 5580 (a) are meaningless without such statements.

**Sec. 5580** (Assessment increase).

**Subdiv. (b)**. Lines 8-9 should be reworded because the phrase “votes cast at a meeting” is inconsistent with § 4640 (a) (1), which mandates elections on assessment approval to be conducted by secret ballot.

**Subdiv. (b)(2)**. The Commission should reconsider the maximum annual rate of increase in the regular assessment that is allowed without member approval. At a rate of 20% a year, the annual amount of the regular assessment would more than double in four years, which is unreasonable in a period of price stability. The ceiling on an annual increase without member approval should be defined in relation to the rate of increase in a California consumer price index published by a specified federal or state agency.

This section should also regulate an association’s borrowing and sale of association property in the same way as it regulates the imposition of special assessment. The text currently drafted allows an association which fails to secure member approval of special assessments exceeding 5% of the budgeted gross expenses to resort to debt financing and/or sale of its property to raise the amount of funds it sought to raise via special assessment, with the likely result of either imposing a heavier financial burden on members than would be the case with the special assessments (a larger regular assessment for interest payments) or curtailed service to members (on account of the reduction in the association’s physical capital). Members should be empowered to decide the choice among a large special assessment, borrowing, liquidation of association property and forgoing the outlays that might be financed by the three alternative means.

**Sec. 5600** (Payment [of assessment]).

**Subdiv. (a)**. This should be reworded to clarify the purpose if the purpose is ascertained, and should be deleted otherwise.

**Subdiv. (b)**. The proposed expression represents an improvement over its hard-to-notice counterpart in § 1367.1 (b). The receipt requirement of subdiv. (b) is very important. An association should also be required to issue its receipt at the earliest possible moment after receiving a medium of payment (e.g., a check), and a monetary penalty payable to the member should be imposed on the association which fails to comply (e.g., 10% of the amount paid by the member).

**Sec. 5670** (Statement of collection procedure). The language of the required statements in the notice should be adjusted in light of the new statutory language. In particular, the first sentence of the paragraph captioned “Payment” should be replaced by the clearer language of § 5600 (b).

**Sec. 5680** (Limitation of director and officer liability) **(a)**. Paras. (2) and (3) make no sense. If the purpose of para. (2) is to leave the possibility to hold liable an officer or director who may be in a position to influence the act of the association significantly, the limit should be expressed in terms of a percentage of the separate interests on account of which the officer or director is entitled to vote; one who owns five separate interests could control the association's policy if the CID has only six separate interests but would have no significant influence if the CID has 1,000 separate interests. What is the rationale of para. (3)? Why should the fact that a CID is primarily (e.g., over 95%) but not exclusively residential make the officers and directors potentially liable in excess of the insurance coverage?

The Commission should reconsider whether the minimum insurance coverage in para. (6) should be expressed as a fixed amount as currently drafted. Under this approach, the Legislature would have to amend the minimum coverage from time to time by legislative action to preserve its real value. A clause permitting automatic adjustments based on a price index published by a specified federal or state agency would prevent the erosion in the real value of the minimum coverage.

**Sec. 5685** (Limitation of member liability) **(b)**. Here again, the Commission should consider automatic adjustments of the minimum coverage in subdiv. (b) (2) (A) & (B) based on a price index.

**Sec. 5700** (Maintenance responsibility generally). The allocation of the responsibility for repair, replacement and maintenance of exclusive use common area should be left for individual associations to specify in their governing documents because the Legislature would be unable to take all possible situations into consideration. The language currently drafted would compel, unless the declaration provides otherwise, members to repair, replace and maintain the frames and exterior surfaces of windows of separate interests in high-rise buildings, which is not economical and also not recommendable from a public safety viewpoint.

**Note to sec. 5700**. I see no problem with the difference in the language. The State has more interest in the condition of common area, which is for use by a community, than of separate interests, which are in most cases private residences.

**Sec. 5735** (Pets). This section should require associations to prohibit and to cause to have removed from CIDs an animal which has injured a human being.

**Sec. 5760** (Improvements to separate interest).

This section should encompass improvements to exclusive use common area that "is generally inaccessible and not of general use to the membership at large of the association," i.e., the portion of common area described in § 5900 (b)(7) the exclusive use of which has been granted. Such exclusive use common area should be treated in the same way as separate interests in this context since it is *de facto* no different than separate interests.

Subdiv. (d)(4). Associations should be required to agree with the member a deadline for granting or denying its approval, to explain its denial of proposed projects, and to be consistent in granting or denying its approval of similar improvements.

**Sec. 5775** (Architectural review and decisionmaking) **(a)**. It is not clear whether the words “to the common area” in line 12 are intended to mean that a member may make a physical change to the common area in general or meant to be “to the exclusive common area.”

**Sec. 5825** (Disclosure to prospective purchaser) **(a)**. The words “including any operating rules, and including a copy of the association’s articles of incorporation . . .” are partial and redundant. They should be replaced either by a complete list of the document stated in § 4150 or “(Section 4150)” immediately following “the governing documents of the common interest development” in line 13.

**Sec. 5900** (Grant of exclusive use).

**Subdiv. (a)**. Please clarify. Is the phrase “Unless the governing documents provide otherwise” intended to allow associations to grant exclusive use without seeking vote of members if a governing document authorizes the board to grant exclusive use at its discretion? If the intention is to require membership approval but to allow governing documents to provide for approval by a lower (but positive) or higher percentage of separate interests, the membership approval requirement should be expressly stated.

**Subdiv. (b)**. The installation of communication wiring designed to serve a single separate interest located outside the boundaries of the separate interest (§ 4145 (c)) should also be enumerated here. A requirement that such installation be approved by members by secret ballot each time would impose an unreasonable administrative burden on associations.

**Para. (7)**. Is the qualification “to transfer the burden of management and maintenance” necessary? As a practical matter, an obligation to “manage and maintain the portion of common area that is generally inaccessible and not of general use to the membership at large” would invariably be burdensome to the association. I would reword the description to “A grant of exclusive use of the portion of common area that is generally inaccessible and not of general use to the membership at large to the owner(s) of the separate interest(s) only to which that portion of common area is accessible.”

**Sec. 5910** (Lien for work performed in condominium project).

**Subdiv. (b)**. The term “emergency repair” should be defined specifically for the purpose of this subsection, and should not be left to an *ad hoc* interpretation of any party. This subsection should exempt the defined emergency repairs from the express consent requirement rather than introducing a fiction (deemed presence of an express consent which is not given).

**Subdiv. (c)**. Here again, the subdivision should exempt such labor or service from the express consent requirement rather than introducing a fiction.

**Ch. 8** (Governing documents).

This chapter should include an article pertaining to bylaws, even if it were to consist of reference to certain provisions of Corp. Code.

**Sec. 6005** (Document authority). This is a welcome, user-friendly addition.

**Sec. 6045** (Approval of amendment [of declaration]). This section should require the board to deliver individual notice to members of a proposed amendment of the declaration for members’

comments sufficiently before the date scheduled for board consideration of the amendment, as does § 1357.130 with respect to certain rule changes, to hold a hearing on the proposed amendment, and further to consider members' comments in an open board meeting before finalizing the proposal. Members should have opportunities to call the board's attention to what they consider to be defects in the draft amendment and suggest improvements before they have to vote on the proposed amendment. A review in a draft stage of the proposed amendment by a large number of individuals with diverse expertise would help reduce bad provisions, and the removal or modifications of provisions opposed by members would improve the chances of the final proposal being approved. In spite of the benefits of member review, I believe that it is necessary to legally require the review, to the extent of making the validity of the amendment contingent on member review of its draft and board consideration of members' comments, in order to counter directors' tendency to prefer acting to listening.

Member review of drafts should be required also for the amendments of the articles of incorporation/association and of the bylaws.

The possibility of amendment by court order should be noted in § 6045, with reference to § 4620, as done in § 1355 (a), to reassure the readers that the possibility remains open.

**Sec. 6050** (Approval of amendment to delete obsolete construction or marketing provision). Please clarify whether member approval of such deletion (lines 12-13) has to be sought in secret ballot. I would exempt such amendment from the secret ballot requirement.

**Ch. 3.** Rules for amending the articles of incorporation should be included, by reference to relevant sections of Corp. Code, if preferred.

**Sec. 6110** (Application of rulemaking procedures) **(a)**. §§ 6115 and 6120 should be made applicable also to schedules of fees, in addition to schedules of monetary penalties, so as to prevent associations from introducing new monetary penalties without going through the member comment procedure by denominating the charges as "fees."

**Sec. 6115** (Approval of rule change by board)

**Subdiv. (b)**. The requirement of § 1357.130 (b) that the board consider association members' comments before deciding a rule change should be continued and should be supplemented by a requirement that the board consider member comments in an open board meeting. The notice requirement of § 6115 (a) would be almost meaningless absent a requirement to consider members' comments. The required notice should be individual; if general notice, the association should be required to deliver to members the copies of the notice and the text of the proposed rule change upon request and with no cost to the requesting members.

**Subdiv. (c)**. The requirement of § 1357.130 to deliver notice of the rule change to every association member after the rule change should be continued. I further recommend providing that in non-emergency situations the rule changes enumerated in § 6110 (a) go into effect 30 days after the dispatch of the notice of the rule change. Such a notice requirement would impose no significant administrative or financial burden on the association.

**Sec. 6125** (Applicability of article to changes commenced before and after January 1, 2004). The words "this article" in § 6125 (a) and (b) should be changed to "Sections 6110, 6115 and

6120.” § 6100 should apply to all operating rules regardless of the dates of the rule changes resulting in the respective rules. An operating rule should be invalid if it is not in writing or is outside the authority of the board or is inconsistent with governing law, declaration, articles or bylaws, or fails to meet the requirements of § 6100 (d) or is unreasonable.

September 6, 2007

Law Revision Commission  
RECEIVED

SEP 19 2007

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, Ca. 94303 – 4739

File: \_\_\_\_\_

Attention: Common Interest Development STAFF

Dear Gentlement and Ladies,

The Comission doesn't need clarification or simplification  
of the current written document.

You need ENFORCEMENT!!!

This is my answer to your request for suggestion in perhaps  
rewriting the C.I.D.'s.

Thank you for this opportunity to offer my thoughts.

Sincerely yours,



Kay Margason  
510 Avd. Sevilla, Unit 'C'  
Laguna Woods, Ca. 92637

km

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THE DAVIS STIRLING COMMON INTEREST DEVELOPMENT ACT  
ANALYSIS - NOTES - QUESTIONS - CONCERNS  
by Beth A. Grimm, Attorney (web:www.californiacondoguru.com)

COMMENTS ARE DIRECTED TO:

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739  
650-494-1335  
<commission@clrc.ca.gov>

September 9, 2007

Dear Commission Members and Brian Hebert:

I have had an opportunity to review the proposed changes to the Davis Stirling Common Interest Development Act found at Civil Code 1371 to 1378, to be recodified. I want to say that it is a magnanimous effort. I believe it goes a long ways toward simplifying the Act. The work done to wrap pertinent Corporations Codes together with it, tie Code Sections that are interrelated by definition instead of solely by numeric reference, and explain things is very good. I offer what I believe to be constructive comments based on my education, experience and expertise in this field, which is extensive. I have studied and written about many subjects in CIDs, from a legal and practical standpoint, much of which is about resolving legal quandaries and practical problems that arise from the difficulty in understanding legal requirements. Because of an informational subject and running blog that invites questions to be answered, and because of having a law practice that offers services to both HOAs and the homeowners in them, I feel I have a balanced a perspective. A major proposal such as this is sure to be attacked by those who are on the left or the right (take your pick which group is which). Some will believe it too biased toward associations, and some towards homeowners. In my experience I have seen professionals with tunnel vision and little understanding as to how their advice {sometimes allegedly} given for the "common good" adversely affects each individual homeowner, and I have seen "consumer-driven" legislation (meaning the excuse used by the legislator pushing it to gain favor in the press) hurt the individual homeowners and make a target out of the volunteer board members who attempt to serve their associations in good faith. I have seen Boards that clam up/close up/ and put on the blinders to the detriment of their communities, and Boards that have been forced to resign or deal face to face with overbearing, controlling and sometimes criminal behavior by members of the association. Boards have to deal with all

kinds of threats to the communities, often without the resources to do so. Members have to put up with conduct from people who are supposed to be “running the ranch” with the community interests in mind, but rule rather than serve the singular interests of those who were willing to serve only to further personal interests, or those who were hoist on their own petard, or drunk with power.

But most of the time, I believe the volunteer board members are trying to do the right thing and the owners are trying to do the right thing. The problem is the dearth of education and guidance that is available, for free. This new Act may help with that. Proposals for education and oversight may help with that as well. Hopefully, it will not all come at a cost that is too high. What needs to be kept in mind with this and any future proposals is “the balance”, and recognition that there is a difference between conduct that is based in good faith, both from a leadership perspective and an owner perspective, and that volunteer leaders suffer from onerous punishing legislation lacking due process, the same as owners suffer from onerous punishing legislation lacking due process. The more that one group is hit with scrutiny, the more balance there has to be. This will become exceedingly important in development of Chapter 2 – if you are going to do a Members Bill of Rights.

Here are my comments on the proposed legislation. Please understand that this is a first pass through and the law requires considerable digestion. Please do not anticipate that all of this is my last or final word on the subject. Sometimes hearing from others triggers new thoughts and concerns, and sometimes comments on comments open eyes up a bit wider. And sometimes, first glance at language fails to trigger the appropriate warnings of how the way the law is written will actually work (or not) upon practice and application. I hope you will listen with open ears. I plan to.

**Excerpts from MEMORANDUM H-855 appear below copied from the actual document and my analysis, comments appear below each excerpt.**

Please note that my comments on the opening paragraphs of the law will be duplicative, in some instances, with follow-through by proposed modifications to the laws themselves. I did not cross reference everything in the interest of saving time, and decided that mentioning some things twice was not necessarily a bad thing.

2 A common interest development (“CID”) is a housing<sup>1</sup> development  
3 characterized by (1) separate ownership of dwelling space (or a right of exclusive  
4 occupancy) coupled with an undivided interest in common property, (2)  
5 covenants, conditions, and restrictions that limit use of both the common area and  
6 separate ownership interests, and (3) management of common property and  
7 enforcement of restrictions by a community association. CIDs include  
8 condominiums, community apartment projects, housing cooperatives, and planned  
9 unit developments.<sup>2</sup>

Excerpts and Comments From Beth A. Grimm, CID Attorney

9/9/2007

Page 2

EX 91

pp. 1

In the event revisions are to be made of the above, I suggest adding the words , or a separately-owned Lot with an interest in common,” after the sentence following (1) [as the description does not adequately describe planned developments] and using the word “regulate” rather than “limit” ... “use of both the common property ...”

As to the use of the word Planned **Unit** Development - I believe that you will find the more apropos reference in development of such properties is “Planned Development”. So for the sake of consistency with other bodies regulating these types of developments, use of the word “Planned Development” seems less confusing overall.

In order to determine what law applies to a particular issue, a CID homeowner must read both sources of law together and attempt to resolve any inconsistencies between the two.

(pp. 2, ll 5-6)

In truth, Boards must read both sources of the law AND the association governing documents together and attempt to resolve any inconsistencies between the three.

27 (6) Various minor substantive improvements would be made.

pp 2 ll. 27

Below the above section (6), there should be a section (7) and a section (8) added stating:

(7) In all sections, this body of law controls over any provisions in the governing documents, unless the Section or Article makes it clear that the association governing documents control.

(8) There are many governing documents in existence that relate to the Davis Stirling Common Interest Development Acts previously found at Civil Code Section 3071 to 3178. All references in those documents shall now be changed by subject matter relation to the new Act found at Civil Code Sections 4000-6215.

**[NOTE TO CLRC DRAFTERS: There should be a chart prepared making the comparisons, perhaps as part of the law, so that board members can find the new references by subject matter and cross-reference of statute numbers.]**

9 **“Governing Documents” Defined**

10 Existing law defines the “governing documents” of an association as follows:<sup>29</sup>

11 “Governing documents” means the declaration and any other documents, such  
12 as bylaws, operating rules of the association, articles of incorporation, or articles  
13 of association, which govern the operation of the common interest development or  
14 association.

15 The open-ended reference to “any other documents ... which govern the  
16 operation of the common interest development” is potentially problematic. It could  
17 cause problems in some provisions that use the term “governing documents.”<sup>30</sup>

18 In the interest of certainty, the proposed law would omit the open-ended element  
19 of the general definition of “governing documents.”<sup>31</sup> Instead, the term would  
20 mean the four named (and statutorily regulated) types of governing documents: the  
21 declaration, articles, bylaws, and operating rules.

(pp. 6)

The problem in removing the words “and any other documents” is that then the definition leaves out things like “Resolutions” and “Policies” (examples: Collection Policy/Fines Policy) commonly adopted by Boards that govern the operation of the Association and that affect the Owners. Perhaps a compromise such as “any other documents approved by the Board or Members that regulate operations, conduct, and management, such as ...”

15 **Redaction**

16 The Davis-Stirling Act provides some protection against identity theft, fraud,  
17 and invasion of privacy by listing certain types of information that an association  
18 may redact before allowing inspection of a record.<sup>118</sup>

19 It is not clear why redaction is optional. An association should never disclose  
20 such things as a member’s social security number or checking account number to  
21 another member.

22 The proposed law would make redaction mandatory.<sup>119</sup>

(pp. 17)

The most difficult thing about the new law relating to inspection of records is that the rights of members are so far reaching that redaction is even necessary. This is one area where a board member cannot be expected to take on the liability for proper redaction. Unless an attorney, a paralegal, or someone specially trained (and with insurance coverage as backup) does the redaction, there is every probability that something will get through that should not. So this is a perfect example of where the delicate “balancing act” comes in to play. Is it fair to force associations to disclose every check to the owners when that requires obliterating all bank numbers and any other individual identifying information on it? If someone wants to see 3 years of checks for a large association, redaction is a very large expense. Even if an owner wants to see the last 3 years of checks for a small association, that “self-managed” board has to decide whether to seek legal help to make sure redaction is done properly, or (the individual board members doing the work will have to) bear the risk. Where is the balance in

thinking about the ramifications? A \$200 limit on redaction costs will, in very few instances, cover the Association's costs. One Member can force his or her neighbors to pay for extensive records research, and what are sometimes not-so-fondly referred to as costly "fishing expeditions."

21 **Notice of Availability**

22 Existing law recognizes that there may be members who are not interested in  
23 receiving every report. For example, a summary of the pro forma operating budget  
24 may be distributed rather than the budget itself.<sup>134</sup> The summary must include  
25 instructions on how to request a copy of the complete budget. A member who  
26 requests the budget will be provided with a copy at no cost.

27 Similarly, the Corporations Code provides for distribution of notice of the  
28 availability of a nonprofit mutual benefit corporation's annual report, rather than  
1 the report itself.<sup>135</sup> Again, instructions are to be provided on how to obtain a  
2 complete copy of the report at no cost.

3 The proposed law would generalize that approach so that it applies to all of the  
4 annual reports.<sup>136</sup> For each type of report, the association would only be required  
5 to deliver notice of availability. However, any member who requests the full report  
6 would receive it free of charge. An association would also be free to distribute the  
7 complete report, rather than a notice of its availability, if that is the preferred  
8 approach.

pp. 20-21

Finally, recognition that members do not need to receive full budget and financial information if they are not interested in reading or keeping it. Perhaps this will save some trees, and serious postage costs. It may be, however, that those postage costs will be outweighed by administrative costs, unless of course, the vendors and associations develop products that can be delivered via attachments to emails. **Now, there's a concept that should be provided in the law – delivery of the financials via email.**

17 The proposed law would make clear that a matter resolved through the member  
18 discipline procedure could not be reopened under the internal dispute resolution  
19 procedure.<sup>144</sup> That would be unnecessarily duplicative.

pp. 22

Finally (again)... recognition that duplicative meetings waste everyone's time and energy. Excellent!

20 **Hierarchy of Document Authority**

21 The proposed law establishes a formal hierarchy of authority between the  
22 different types of governing documents.<sup>161</sup> The articles would be bound by the  
23 declaration. The bylaws would be bound by both the articles and the declaration.  
24 An operating rule would be subordinate to all of the other document types. The  
25 express statement of those rules should help to avoid any uncertainty about the  
26 relationship between different types of documents.

pp. 25

This is definitely a good addition. However, some governing documents may be differently stated, so it would seem pertinent to clarify, “Notwithstanding any provision in the governing documents, ...” (I see after review that these terms are used in the law itself. – More on this below.)

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**BETH A. GRIMM**

**SUGGESTED MODIFICATIONS TO THE LAW AS PROPOSED**

17 § 4010. Continuation of prior law

18 4010. A provision of this part, insofar as it is substantially the same as a  
19 previously existing provision relating to the same subject matter, shall be  
20 considered as a restatement and continuation thereof and not as a new enactment,  
21 and a reference in a statute to the provision of this part shall be deemed to include  
22 a reference to the previously existing provision unless a contrary intent appears.

PP. 33

There are words that need to be added here to recognize the governing documents that will retain reference to the old body of law. PROPOSED CHANGE: Add the words “or in any existing governing documents” between “... statute” and “to the provision of ...”

I also might suggest adding a section 4010.1 that would state:

“This part of the Civil Code contains provisions that control in instances where the governing documents of the association are in conflict or contradiction with it except in any instance where the section or provision states: “Notwithstanding anything that appears in the governing documents, ...” or “This section supersedes anything in the governing documents of the association.”

This would greatly increase the understanding of which controls, the law or the governing documents, that board commonly face.

36 § 4015. Application of part

37 4015. (a) This part applies to a common interest development.

38 (b) Nothing in this part may be construed to apply to a development that does  
39 not include common area.

pp34.

Suggest adding: “Common Area” may be defined in various ways that include property and/or mutual easements and/or lien rights. See Section 4095.” I realize you are trying to avoid this; however, for those attempting to determine if their association qualifies under Davis Stirling, this might be the end of the inquiry without taking the further step of reviewing the definition of common area. That

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**EX 95**

was a concern for existing law, that to get to the understanding that common area can mean different things took review of 3 statutes. A rather common assumption is that “common area” means property. Few understand that property rights may be a determining factor.

24 § 4025. Application of Corporations Code

25 4025. (a) Except as otherwise provided, an association that is incorporated is  
26 governed by this part and by the Corporations Code.

27 (b) The following provisions of the Corporations Code do not apply to an  
28 association, unless a provision of this part expressly provides otherwise:

29 (1) Section 7211.

30 (2) Chapter 5 (commencing with Section 7510) of Part 3 of Division 2.

31 (3) Sections 7610, 7611, 7612, 7614, and 7616.

32 (4) Chapter 13 (commencing with Section 8310) of Part 3 of Division 2.

33 (c) An association that is not incorporated is governed by this part and by any  
34 provision of the Corporations Code that is applicable pursuant to this part.

35 (d) If a provision of this part conflicts with a provision of the Corporations  
36 Code, the provision of this part prevails to the extent of the inconsistency.

pp35.

I like this very much except that it is strictly in reference to the NonProfit Mutual Benefit Corporations Code, which is part of the Corporations Code. The excluded sections include those portions of the Corp Code that are found in the “NonProfit Mutual Benefit” part of the Code, but not the charitable and public benefit 50C3 Corporations. So I think that should be made clear as some CIDs were incorporated as other forms than the Non-Profit Mutual Benefits. So: PROPOSED MODIFICATION: Use the words for (a): “Except as otherwise provided, most associations that are incorporated are NonProfit Mutual Benefit Corporations that are governed by this part and the NonProfit Mutual Benefit Corporations Code commencing at Corporation Code Section 7110.” It would seem (b) is okay then - but it could also be amended.

11 § 4035. “Delivered to the board”

12 4035. If a provision of this part requires that a document be “delivered to the  
13 board” the document shall be delivered by first-class mail, postage prepaid, to the  
14 person designated in the member handbook (Section 4810) to receive documents  
15 on behalf of the association. If no person has been designated to receive  
16 documents, the document shall be delivered to the president of the association.

pp. 36

Since the Secretary is the recordkeeper of the Association, that is the board member that would normally be designated to receive association communications directed to the Board, so I believe it should be used instead of president. I also believe that if the Association has management, that should be an option, as all communications need to go through management or else the manager does not have a complete set of records. So, I would propose adding

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EX 96

the words. “to the person or management or business office address designated in the member handbook ... [rest as is] ... the secretary of the association.”

§ 4040. “Individual notice”

4040. (a) If a provision of this part requires “individual notice,” the notice shall be delivered to the person to be notified by one of the following methods:

pp. 36

Suggest adding “Individual notice” or “Director” or “Individual board member” as it would clarify that notices to individual board members is different than notice the the Board.

§ 4045. “General notice”

4045. If a provision of this part requires “general notice,” the notice shall be provided to all members by one or more of the following methods:

(e) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

pp. 37

I suggest adding either to (e), or in a section by itself, reference to a web page or webcasting. “If an association has a web page or web casting capability for distributing documents on association business to its members, posting on the web page or via webcast would be considered adequate for general notice for individuals that have consented to receipt of notices via email.

(c) If a document is delivered by electronic mail, facsimile, or other electronic means, delivery is complete at the time of transmission.

pp37.

I suggest adding to the end of the sentence the words: “transmission or posting (for general notices).”

4 § 4055. Delivery failure

5 4055. (a) If a notice to a member is returned by the United States Postal Service  
6 marked to indicate that the United States Postal Service is unable to deliver the  
7 notice to the member at the given address, the association shall address any future  
8 notices to that member to the address of a separate interest owned by the member.

9 (b) If electronic delivery of a notice to a member fails, the association shall not  
10 deliver any future notice to that member electronically, unless the member  
11 provides a new address or the association determines that a technical problem with  
12 the given address has been corrected.

pp38.

Since you will want to have the same “backup” snail-mail provision for both failures of distribution, I suggest that you either duplicate the last portion of (a) in (b) or set it out as one proposal – that if the notice is returned (for the postal

mailed notice) or delivery failure occurs (for electronic or faxed), “the association shall thereafter address any future notices to the ..... unless or until new and accurate delivery information is provided.”

§ 4070. **Approved by majority of quorum of members**

4070. If a provision of this part requires that an action be approved by a majority of a quorum of the members, the action shall be approved or ratified by an affirmative vote of members representing more than 50 percent of the votes cast in an election at which a quorum is achieved, or if the governing documents of an association divide the members into two or more classes for the purposes of voting, by an affirmative vote of members representing more than 50 percent of

pp38.

The provisions in 4060-4070 are extremely helpful. The only problem is that 4070 needs to be clarified since questions come up about quorum all the time – this might do: “... more than 50 percent of the votes cast in an election at which a quorum is achieved.” For these purposes, a “quorum” is that which is stated in Section 4580. Note that there are other quorum requirements identified in other statutes for the purposes of membership approval.”

§ 4090. **“Board meeting”**

4090. “Board meeting” means a congregation of a majority of the directors at the same time and place to hear, discuss, or deliberate upon any item that is within the authority of the board.

pp. 39

This is an excellent clarifying change, I believe. However, I would suggest using the describer as “item **of association business** that is within the authority of the board.

- 1 [Any] use of direct communication, personal intermediaries, or technological devices that is
- 2 employed by a majority of the members of the state body to develop a collective concurrence
- 3 as to action to be taken on an item by the members of the state body is prohibited.

p.40

The above appears in the comments but I think it should appear in the actual law in some form, because Boards and Managers do not get it, and it leaves the decisions of boards open to complaints and challenges. I would propose adding the above words to 4090 in a second paragraph with clarifying statements that say:

“Use of direct communication ... is prohibited, except in the instance where there is an emergency or some item of business that requires board action with immediacy and an emergency meeting cannot be convened. The prohibition does not mean that board members or managers are prohibited from using telephones and technological devices for communications. However, no

messages should transpire electronically that will not become a part of the association records, whether subject to executive privilege or not. And these forms of communications may be used in such emergency situations where unanimous written consent of the board members is sought.” There should be a section like for members in Section 4680 as an exception to the meeting, for emergency situations, (providing for action by written consent).

7       space time. The Commission invites comment on this issue.  
8       The Commission also invites comment on whether the policies served by open meeting  
9       requirements would be better served if the existing procedure for the conduct of board business  
10       without a meeting (on the unanimous written consent of the directors) were modified or  
11       eliminated. See Corp. Code § 7211(b).

P39

For limited situations, the option of written unanimous consent needs to be preserved. There are situations where fast action is needed – and the manager nor any board member has or feels they have the authority to make a decision. The Corp Code has always provided for certain actions that may be taken by written unanimous consent and this is one of the subjects by which it makes sense to communicate in such a situation.

10       (e) An individual condominium within a condominium project may include, in  
11       addition, a separate interest in other portions of the real property.

pp 42

Rather than muddy up the definition of separate interest, since it is a real property term, I wonder if the words “addition, **exclusive use, restricted use, or an exclusive easement** in other portions of ...”

7       § 4145. “Exclusive use common area”  
8       4145. (a) “Exclusive use common area” means a part of the common area  
9       designated by the declaration to be used exclusively by one or more, but fewer  
10       than all, of the members. The right of exclusive use is appurtenant to the separate  
11       interests of those members.

pp43

27       § 4150. “Governing documents”  
28       4150. “Governing documents” means the declaration, bylaws, articles of  
29       incorporation or association, and operating rules.

I believe cutting out the words“ any other documents” could be a problem and propose keeping it in with an identifier: “any other documents approved by the Board or Members that regulate operations, conduct, and management, such as ...”

1 § 4155. “Managing agent”

2 4155. (a) “Managing agent” means a person who, for compensation or in  
3 expectation of compensation, exercises control over the assets of a common  
4 interest development.

5 (b) “Managing agent” does not include either of the following:

6 (1) A full-time employee of the association.

7 (2) A regulated financial institution operating within the normal course of its  
8 regulated business practice.

9 **Comment.** Section 4155 generalizes former Section 1363.1(b).

10 See also Sections 4080 (“association”), 4100 (“common interest development”), 4170  
11 (“person”).

pp. 44

This falls short of exclusions for bookkeepers, accountants, attorneys, and collection agents, none of which are managing agents but may have some control over assets if they engage in collection of them.

1 § 4420. No limitation of rights

2 4420. Except as expressly provided by statute, the rights of members provided in  
3 this chapter may not be limited by contract or by the governing documents.

pp50

The problem with this section which came from the Corporations Code is that it is not clear, in this context, that it is limited to what the Board may commit, and not any individual owner. It should be amended to say: “Except ... [as stated] ... may not be limited by contract approved by the Board.” Going on to state that the governing documents may not limit rights is going too far. An example: the HOA membership approves a rental limitation or a requirement for a security deposit for rentals. That is not in the Davis Stirling Act but it would limit owners rights, and is perfectly legal under the premise upheld in many cases that purchasers buy in with the understanding that the governing documents may change, by the approval of the majority of owners.

21 (b) A majority of the directors present at a meeting, whether or not a quorum is  
22 present, may adjourn the meeting to another time and place.

pp. 50

Need to add: “, so long as each board member is given proper notice of the time and place, by personal notice at the board meeting or by other notice, properly delivered under Section 4520.

37 § 4515. Board action

38 4515. (a) Except as otherwise provided by law, an action approved by a majority  
39 of directors present at a meeting at which a quorum is present is the action of the  
1 board. The governing documents may not provide a lower threshold for approval  
2 of a board action.

pp 51

There needs to be some provision somewhere that allows less than a quorum of board members or a sole remaining board member to appoint other board members in the case of a mass resignation or exodus of board members. The Corporations Code does provide for this.

19 (c) The president of the association, or two directors other than the president,  
20 may call an emergency board meeting if there are circumstances that could not  
21 have been reasonably foreseen, that require immediate attention and possible  
22 action by the board, so that it would be impracticable to give notice pursuant to  
23 this section. Advance notice of an emergency board meeting is not required.

pp. 51

Last sentence is not clear – it should say “Calling of a meeting requires notice to every board member by any means available to reach them. Notice to members of an emergency board meeting is not required.”

Will withhold comment on Agenda requirement as legislation is currently proposed and waiting to be signed by the Governor. I have no problem with posting agendas or having one available at a meeting, except when it hinders a board from conducting business on any issue that arises after the agenda is printed.

23 (b) Any member may speak at a board meeting, except for any part of the  
24 meeting held in executive session. The board may set a reasonable time limit for  
25 member testimony at a board meeting.

pp. 52

I like this simplification. However, it should be made clear that in addition to setting a reasonable time limit, that the Board may set aside a specific time or portion of the meeting for the member comment period. Members who feel that they can speak on any issue that comes up on the agenda, at any particular time, can easily disrupt the meeting.

42 § 4535. Teleconference

43 4535. (a) If all of the following conditions are satisfied, a director who is not  
44 physically present at the noticed location of a board meeting may participate in the  
45 meeting by teleconference:

pp. 53

It's modern day – this section should be clarified to include virtual meeting rooms and web chat rooms that are private and require a password (for privacy issues).

25 (b) The board shall adjourn to executive session to consider member discipline  
26 or an assessment dispute, if requested to do so by the member who is the subject  
27 of the matter to be considered.

pp 53.

(a) covers this. The whole (b) should be removed. Leaving in the part that says “if requested by the member ...” Is quite ludicrous because members do not know it is up to them to request executive session to hear their matters, and it conflicts with (a) anyway.

20 § 4550. Minutes

21 4550. (a) Within 30 days after a board meeting, including a meeting held in  
22 executive session, the board shall prepare minutes of the board meeting.

23 (b) The minutes for any part of a board meeting held in executive session shall  
24 include only a general description of the matter considered in executive session.

25 (c) A member may request a copy of the minutes under Article 3 (commencing  
26 with Section 4700). Notwithstanding Section 4705, a request for a copy of meeting  
27 minutes is not required to include a statement of the purpose for the request.

28 (d) The member handbook (Section 4810) shall inform the members of their  
29 right to obtain copies of board meeting minutes and shall describe the procedure  
30 for obtaining a copy of the minutes.

pp. 54

This section needs work. The Board should not be limited in what it includes in executive session. And the members simply should not be given access to executive session minutes. There are many, many reasons for this.

35 § 4575. General rules for conduct of meeting

36 4575. (a) An association shall hold a regular member meeting to transact  
37 business that requires action by the members, with the frequency stated in the  
38 governing documents. Notwithstanding the governing documents, an association  
39 shall hold a regular member meeting in any year in which a director is to be  
40 elected, in order to conduct the election and to transact any other business that  
41 requires action by the members.

pp 53.

The last sentence in this section confounds the idea that an election for directors has to be conducted by distribution by written, double envelope ballots mailed or given to an inspector, with a required 30 day period between the time the ballots are distributed and counted.

31 § 4585. Member action

32 4585. (a) Unless this part or the governing documents require a greater number  
33 of votes, an action approved by a majority of a quorum of the members (Section  
34 4070) is the action of the members.

pp 54

This section ignores the value of the Corporations Code Section that in smaller associations (50 members or less), “approval of the members is by a majority and in the larger ones (more than 50 members), approval of the members would be constituted by approval of a majority of a quorum. When you are talking about a 21 unit condo, for example, a 1/3 quorum would be 7 members and a majority of a quorum would then be 4 members that could approve a member action. This does not seem logical.

40 (c) If a quorum has not been established at a member meeting, the meeting may  
41 be adjourned by affirmative votes equaling at least a majority of the votes cast, but  
42 no other business may be transacted.

pp. 56.

If there is no quorum there are no “votes cast” – so again, this is not logical.

5 4590. (a) If all of the following conditions are satisfied, a member who is not  
6 physically present at the noticed location of a member meeting may participate in  
7 the meeting by teleconference:

8 (1) Each member participating in the meeting can communicate with all other  
9 members concurrently.

pp. 57

If a member cannot attend a meeting and the HOA meets in a high school gym or library, there are not usually capabilities for a speaker telephone participation where everyone can hear the caller, and they can hear him or her. If you have many members that prefer to not attend physically, but want to be involved, this could become cumbersome and impractical, and even impossible in many situations.

26 § 4595. Notice of regular meeting

27 4595. (a) The board shall deliver individual notice (Section 4040) of a regular  
28 meeting to each member who, on the date of the notice, is entitled to vote at the  
29 meeting. The notice shall be delivered at least 10 days, but not more than 90 days,  
30 before the date of the meeting.

31 (b) The notice of a regular meeting shall include the date, time, and place of the  
32 meeting. If the board makes arrangements for participation in the meeting by  
33 teleconference, the notice shall include instructions on how to participate by  
34 teleconference.

35 (c) The notice of a regular meeting shall state the matters that the board, at the  
36 time of the notice, intends to present for action by the members. The members  
37 may act on a matter that is not described in the notice, except in the following  
38 circumstances:

39 (1) If the bylaws of the association provide for a quorum of one-third or less of  
40 the voting power and less than one-third of the voting power is present, the  
41 members shall not act on any matter that was not described in the notice.

Etc. ....

pp 55.

This is not consistent with the new election laws. It needs work to make it so. The same applies to 4600, 4605, 4610, and 4615. These sections suggest that action can be taken at meetings but most common HOA actions are subject to the secret double envelope ballot distribution and these sections need to be reconciled with that concept. And 4615 should provide that either any member or members OR the Attorney General may apply for court orders related to meetings and/or elections.

21 § 4635. Selection of election inspector

22 4635. (a) An election shall be overseen by one or three election inspectors,  
23 selected by the association for that purpose.

24 (b) An election inspector shall be an independent third party, and may include a  
25 person with experience administering elections or with special evidence of  
26 integrity, such as a volunteer poll worker with the county registrar of voters, a  
27 licensee of the California Board of Accountancy, or a notary public. Except as  
28 provided in subdivision (c), a member of the association may serve as election  
29 inspector.

30 (c) The following persons may not be selected as an election inspector:

31 (1) A director.

32 (2) A candidate for the office that is the subject of the election.

33 (3) A person who is related to a person identified in paragraphs (1) or (2).

34 (4) Unless the governing documents expressly provide otherwise, an employee  
35 or contractor of the association.

pp. 62

This is a major change from current law and should be revised to comport with current California law which allows HOAs to use paid vendors of the Association if it is stated in the election rules. If the Board circulates and adopts a provision allowing the association manager or attorney or other vendor to act as inspector of election, that should be sufficient. As written in this new law, every association in this state would have to amend their governing documents (which requires a ballot and inspectors of election) to allow the association manager or other association vendor to act as the inspector. Although I am not always in favor of having the manager act as inspector, and I do not generally agree to act as inspector for associations I represent, I believe it is critical to allow this. Many associations would be better off using its own than reaching out to higher cost vendors or people without any special knowledge or understanding of HOA governing documents. As to the comments about “a person of higher integrity”, I image there will be all sorts of comments. That is rather an unnecessary slap on the intelligence and professionalism of many, many people. The language should be stricken simply because of its false implication that others not in the professions or positions mentioned are of less integrity.

30 § 4640. Secret ballots

31 4640. (a) This section governs a member election on any of the following  
32 matters:

33 (1) Assessment approval.

34 (2) Director election or removal.

35 (3) Amendment of the governing documents.

36 (4) The grant of exclusive use of common area.

37 (b) The association shall deliver the following voting materials to every member  
38 who is entitled to vote, by first-class mail or personal delivery, not less than 30  
39 days prior to the deadline for voting:

pp 63.

I suggest adding to (b) after “personal delivery” or any other means that is approved in the future as a secure voting method under public election laws.” (To keep up with technology and the future.) And there should be reference to Section 4680 as an exception to the secret ballot. (Providing for action by written consent.)

9 (2) Seal the inside envelope and insert it into

10 (3) Seal and sign the outside envelope.

pp 64.

This requirement is causing a lot of problems with elections. People simply do not want their signatures out for the world to see, or, they forget to sign the ballot. This disenfranchises members, especially if the processes are not explained well. Perhaps you could consider adding something like this, so it would appear in election rules. “A ballot may not be tabulated if there is no identifying signature, unless the association has adopted some other control method of identification, such as a 4<sup>th</sup> envelope. An inspector may notify members of unsigned ballots and provide them the opportunity to come to the inspector’s place of business and sign the envelope so that the ballot may be counted.”

15 (e) Unless the governing documents provide otherwise, a member election  
16 conducted pursuant to this section can be conducted entirely by mail, with the  
17 exception of the meeting required by Section 4650. For the purposes of  
18 determining the existence of a quorum, a ballot received by the election inspector  
19 by mail shall be treated in the same way as a vote cast by a member present at a  
20 meeting.

pp.62

Allowing an election to be completed entirely by mail seems to be a good thing. However, the meeting issue and what happens if documents allow nominations from the floor complicate things – in order to remove all complications, the section (e) could say:

“Any election may be completed entirely by mail notwithstanding any other provisions in the governing documents. However, if the governing documents call for nominations from the floor of the annual meeting for director positions, the

board shall at the least distribute to owners a communication, at least 30 days prior to sending the ballot to members the ballots, that explains that members may self nominate and provides a reasonable deadline, of at least 20 days, to submit their name and any statement candidates are allowed to submit.”

This should eliminate any argument that the annual meeting is the only opportunity for some to nominate candidates.

This is a bit of a twist from earlier comments I sent based on **MEMORANDUM 2007-4. In that letter, I stated, with regard to discussions about acclamation, the following:**

**“Acclamation:** I am very pleased that the Committee is looking at a recommendation to add provision for declaring elections by acclamation when Associations are faced with the situation when there are not more candidates than open board positions. This is a critical addition! Otherwise, boards have to do it anyway eventually, in many cases, after the ballot is sent out, but it will save them from sending out an expensive ballot when there is “no contest.” That helps minimize waste. Thought needs to be given though to a reasonable cutoff before acclamation can be declared. **Solution: If association documents allow for nominations from the floor, nominations should not close before that date.** Some attorneys and some boards are closing nominations well before the meeting, ignoring rights in the documents to allow for nominations from the floor. I believe there is some confusion about the outside date for submitting candidate statements, or getting one’s name on the ballot, and the “closing date” for nominations. If the bylaws allow for nominations from the floor, I believe the law should clarify that that would be the appropriate date and time (after nominations from the floor at the annual meeting) for closing nominations, for consideration of the declaration of election by acclamation.”

Since I think it more important to clarify the law and make it clear that Associations may conduct the election entirely by mail, it makes sense to make the annual meeting the appropriate time to count ballots. Thus, nominations should come earlier in the process to give everyone equal opportunity to get their name on the ballot, and the distribution of a communication that notifies members of their right to self-nominate within a particular stated time makes sense as the vehicle to get things in the right order. Still, it leaves those associations that have to literally drag owners out of the audience at the annual meeting into service the opportunity to allow for nominations from the floor.

**These are the remainder of the comments I sent in related to the Elections provisions, and I commend the committee for making many of these changes:**

**“Election Inspectors:** I strongly agree with the recommendation that the law be made clear that members can serve as the elections inspectors. While I believe it to be clear in its present state, I have many people inquire as to whether it is allowed. I also believe with the recommendation that associations continue to be allowed to use their vendors or

managers, if the rules allow for it. I know that owners tend to distrust the association managers in some cases, but in many, the manager can do these functions with their eyes closed, without any personal “flavor”. In my work writing association rules and making suggestions to boards, I caution whether use of the manager is wise if there is any “perception”, right or wrong, of bias. I also recommend using members for the elections that are uncontested, and if there are “sides”, that a member be chosen from each “side” along with one neutral member. Strangely enough, these people can usually be identified readily. I always recommend using a paid vendor who does inspector work and has experience sufficient to feel comfortable for elections that are contentious. I always suggest that the Board consider what it knows about an upcoming election and decide which works best in any given situation. My point is: the Boards need choices, for many reasons. They need to be able to tap the most practical, cost efficient, and time efficient resources depending on the situation. **Solution: The recommendations made for the Committee are appropriate. The Boards should be allowed to use anyone who is "independent" as defined, of board or candidate affiliations, and identifying that members may be used is important if there have been misconceptions about what "independent" means.**

**Type of Elections covered.** The Committee has been asked to include all elections in the process using the double envelope procedures. Wisely, acknowledgement has been given to the fact that motions raised at meetings such as adjourning a meeting, or even acclamation under Robert’s Rules (if and when applicable) should not require stopping to commence the voting again and having to allow a 30 day grace period. **Solution: It makes sense, and reflects the way I have been writing election rules, is to simply, in addition to requiring the double envelope system for the elections identified, allow the Boards to use the double envelope system for any other elections it chooses.** Of course, the subjects set forth in the law require it but making the other elections discretionary makes more sense than trying to identify all of the possible types of member elections that might arise and putting some in the basket and leaving others out.

**Door to Door Collection of Ballots:** Comments were provided to the Committee suggesting that door to door collection of ballots should be prohibited. In essence, collection of ballots is no different than collection of proxies, and if an owner wants to waive secrecy and allow the person who is given the ballot the opportunity to see it (such as turning over an unsealed envelope), that should be up to the owner. If the practice of going door to door to seek votes (which could include collecting ballots) is banned, what does that mean about going door to door to campaign? In many associations, there is simply no other way to get the owners to participate in an important election than to go door to door. I do not think there should be any ban on allowing members to bring in the ballots for their neighbors, if their neighbors want to send them in that way. In fact, say there are to be nominations from the floor and the ballot was sent out 30 days before the meeting – if owners mail their ballots in before the meeting, they cannot get it back to change their vote if their favorite neighbor decides to nominate himself or herself at the meeting. An owner may want to trust their neighbor to fill out the ballot – how is that any different than giving a proxy? I know that the public elections have prohibitions about collecting ballots, but the public elections do not have quorum requirements to meet to be

valid. **Solution: Be careful about banning a practice that might be very important to achieving quorum.** You have recognized that there are situations where an owner should be able to send their ballot in with a neighbor (in the case of a disability).

**Information To Be Provided On The Outside Of The Envelope To The Inspector:**

There have been comments offered that the outer envelope should have the "separate interest" information on it. Some say only one lot or unit needs to be designated if a member owns more than one. Others say all separate interest of an owner owns should be listed. If one separate interest is noted and there are more than two attributed to one owner, then how would the inspectors know that the ballot should be "checked in" for two properties? And, I have not yet seen this problem noted, but it occurs: If the return **mailing** address for the owner is not listed on the envelope, and the ballot is not delivered as addressed to the Inspector (lack of a stamp or post office error or inadequate address), it may not make its way back to the owner. If there is a tenant in the unit and the envelope is addressed to the Inspector, and it comes back to the tenant, the owner will not every know it was not received, unless the tenant tells them. If the separate interest is vacant, the owner would not know the ballot was returned. The outer envelope presents another problem. I have received inquiries and information that some owners refuse to send something through the mail or provide an envelope to strangers that has their signature on it. So they do not sign. I spoke with one inspector that was at an election for a 1300 unit association and 150 of the returned envelopes were not signed. I realize that the legislator writing the elections law for associations was trying to utilize as a model the public elections law, but there are some things that present real problems – again, because of the quorum issue. **Solution: Allow associations to use control numbers on the outer envelopes, and labels with mailing addresses. The control numbers would tell the inspectors what property or properties were covered by the return ballot.**

**Cumulative Voting:** It is true that Civil Code 1363.03 does not integrate well with Corporations Code 7513. However, the recommendations proposed I believe allow boards to choose whether cumulative voting will be used, or not, in any given election, and I do not believe that is helpful. A board could conceivably utilize this power to control an election. If you write in that it will be used only when an owner announces they want it before the ballot is sent out, that creates a rather ludicrous practical situation. No owner is likely to have a clue about this, unless the Board makes it clear in the pre-balloting materials. **Solution: The better option, it seems to me, is to simply say that if cumulative voting is allowed in the bylaws, it must be explained in the ballot procedures and allowed for everyone.** The problem in trying to acknowledge the requirements of Corporations Code 7513 and work through them is that, with this new ballot procedure per Civil Code Section 1363.03, if some owners vote without it and others, because of the announcement at the annual meeting get to use it, is creates an inequity in the vote. It needs to be announced ahead of the time when owners are getting information about the voting process.

**In Person Voting At Meetings/Smaller Association Issues:** I commend the recommendation to provide for in person voting at meetings, and the recognition that more than half of the associations in the state are too small for the double envelope voting

requirements to be practical or cost efficient. However, I see some issues that need to be addressed. If an association opts to use the procedure for voting at a meeting, using a ballot box, what does this mean? That everyone needs to come to the meeting or send a proxy and vote there, without the mail in option? This brings these associations back to needing to provide proxies. The use of the words “proxy voting” should be eliminated and reference should be made to “use of proxies” instead, as there is no longer any option for “proxy voting”. The law as written specifically provides for a tear off page for the voting measures so as to protect privacy and this tear off page should be given to the proxy holder; however if the inspectors are put to the task of assuring that the proxy holder voted as the proxy giver wished, the inspector will have to ask for this “tear off” page and then, voila! That would be bringing back *proxy voting*. **Solution: Why not just exclude the associations that are 25 units or less from the elections balloting provisions? You could add language that says if the governing documents require secret balloting, the Board shall adopt procedures that assure a secret ballot.** Explaining a specific process puts the 2-25 unit associations back into the category of complicating elections when the members of many smaller associations simply either participate or they don't. Because of apathy, one suggestion I have made is to send around a 5 year calendar with blanks in it and tell the owners they must step up and fill in a term they will serve. The smaller associations do not tend to have the problems of contested elections; the more prevalent problem is finding volunteers willing to do the work. Carving these associations out of the complicated rules allows a small association to do voice votes, use member inspectors if they wish, have a locked ballot box, or use proxy voting. They can avoid the expense of and complication of the other provisions. “ **[END OF PRIOR LETTER]**”

23 § 4650. Counting ballots

24 4650. (a) A ballot cast pursuant to this article shall be counted pursuant to this  
25 section.

26 (b) Prior to opening and counting a ballot, the election inspector shall verify the  
27 identity, eligibility to vote, voting power, and voting class of the member who cast  
28 the ballot. A decision to accept or reject a ballot is governed by Section 7517 of  
29 the Corporations Code.

30 (c) The election inspector shall open and count all of the ballots cast, at a board  
31 meeting or member meeting that is open to the public. Any member may observe  
32 the counting of ballots, but shall not be permitted to observe any information that  
33 would reveal the identity of a member casting a ballot.

pp 63

It is ***impossible in most instances*** for inspectors to “verify identify”. The HOAs do not set up polls with volunteers to check driver’s licenses etc. That would be impractical, costly and unnecessary. Thus, use of those particular words bother me. It would make more sense to use the words “**log in the ballot noting the member name and address**, eligibility to vote .... [etc.] Otherwise, the legislature is putting a huge burden on poll workers or women from the league of voters etc., who have had more experience with the personal check in method. If there is suspicion of foul play or ballot box stuffing or something like this, the better method of dealing with it is to add to the statute on counting ballots this:

“If the inspector for any reason suspects that any ballot packages were not those of the member whose name appeared on the outer envelope, he or she or they shall report any inconsistencies to the Board immediately at which time a determination shall be made by the Board as to whether the counting shall continue. If the suspicion(s) involve fewer than 10% of the total number of memberships eligible to vote, then the counting shall go forward and a determination shall be made as to whether the ballots in question could have an effect on the outcome. If they could, the Board shall make a determination as to whether to call the election and do it all over, or not.”

And, the language leaving the meeting “open to the public” should be modified to say instead “open to all members.”

- 27 (b) A proxy is not itself a ballot and cannot be cast or counted as a ballot.
- 28 (c) The governing documents may permit and regulate the use of proxies.
- 29 (d) Nothing in this section requires that an association prepare or distribute
- 30 proxies.
- 31 (e) If a proxy includes instructions on how the proxyholder is to cast the vote of
- 32 the member who gave the proxy, the instruction shall be stated on a separate page
- 33 of the proxy that can be detached and given to the proxyholder to retain.
- 34 (f) A proxy may be used in casting a secret ballot.
- 35 (g) A proxy is revocable until a ballot cast pursuant to the proxy is received by
- 36 the election inspector.
- 37 (h) A proxy is governed by Section 7514 and subdivisions (a) through (f),
- 38 inclusive, of Section 7613, of the Corporations Code.
- 39 (i) If a proxy is given for a vote on a matter other than the election or removal of
- 40 a director, the proxy shall state the nature of the matter to be voted on. A proxy
- 41 that does not comply with this subdivision is invalid.

pp 64

Sections (b), (f), and (i) are at odds. If (e) were extended to say: “In order to vote, the proxyholder must obtain a ballot package from the association.” And if (f) and (i) were eliminated, members and proxyholders would know how to properly use a proxy.

5 § 4665. Nomination of candidate for board

6 4665. (a) The governing documents of an association shall include a reasonable  
7 procedure for the nomination of candidates in the election of a director.

8 (b) The governing documents shall not prohibit self-nomination.

9 (c) If the election is conducted at a member meeting, the governing documents  
10 may permit nomination from the floor.

11 (d) The governing documents may permit write-in candidates.

12 (e) The governing documents shall provide a reasonable period for the  
13 submission of nominations.

14 (f) The governing documents may authorize the board to declare that all  
15 qualified nominees are elected without further action, if after the close of  
16 nominations, the number of qualified nominees is equal to or less than the number  
17 of directors to be elected.

pp 67

I suggest starting this statute out as “The governing documents of an association”

And then having the subsections (a) through (f) without repeating “the governing documents” 6 times. And I APPLAUD THE SECTION (F)!! See my comments on acclamation above.

7 § 4680. Action by unanimous written consent

8 4680. Any action required or permitted to be taken by the members may be  
9 taken without a meeting, if all members individually or collectively consent in  
10 writing to the action. The written consent shall be filed with the minutes of the  
11 proceedings of the members. The action by written consent shall have the same  
12 force and effect as the unanimous vote of the members. Action under this section  
13 is not governed by Sections 4625 through 4675, inclusive.

pp 69.

I am not sure whether this is intended to supersede voting by secret written ballot. I believe it should be. In any association where the members are all willing to sign a consent form should be able to forego voting under Section 4600.

34 (6) An invoice, receipt, cancelled check, credit card statement, statement for  
35 services rendered, or reimbursement request.

pp 68.

This minutia leads to the problems identified in the introductory materials related to redaction. It just does not make sense to put such a burden on associations and such an entitlement on individual members, unless the member can show some proof of a reason to suspect impropriety. Perhaps a better way to deal with this minutia question is to require an owner to seek an order of the court, including small claims, to get this level of detail, which imposes a burden on the association. Someone needs to balance these interests rather than setting up a flawed system.

4 (13) Written correspondence of the association, other than correspondence that  
5 relates to personnel matters, member discipline, an assessment dispute or a request  
6 for a payment plan for overdue assessments.

Pg 70

This is really not a good idea. What about letters to and from owners complaining about neighbors, letters about current address or location of a member, letters requesting personal information in case of emergency, and letters of complaint that may trigger retaliation if revealed. The association may receive communications of this nature that do not lead to any of the above, yet since they are received, must be retained in files. There are too many subjects that could be covered in written correspondence that would disclose personal information that other owners are not entitled to or lead to retaliatory conduct or be used for some improper purpose. This section (13) should be replaced with:

“Written correspondence relating to the member who is requesting information, limited to correspondence to and from said member.”

***I think it better yet that the entitlement of owners be limited to FINANCIAL records and information and official business*** (limited to minutes and resolutions, etc.) of the HOA. Opening the door to other association records is way “out there” and can trigger additional unnecessary expense and battles. I believe that an owner can subpoena records related to any matter in any court proceeding, ***including small claims actions***, that pertain to their particular dispute.

39 § 4705. Inspection procedure

40 4705. (a) A member may deliver to the board (Section 4035) a written request to  
41 inspect an association record. The request shall identify the record to be inspected  
42 and shall state a purpose for the inspection that is reasonably related to the  
43 member’s interest as a member. The request may designate an agent to inspect the  
44 record on the member’s behalf.

P70

This should say (a) “A member who desires to examine, inspect and/or copy any association record ***must*** deliver to the board ...” It should not be written in a discretionary nature where one could dispute that a writing is necessary. This is important guidance for associations without sophisticated management or professional help to establish the importance of doing things properly and keeping good records.

5 (4) For the membership list, within five business days.  
6 (c) If the association has a business office in the common interest development,  
7 the requested record shall be made available for inspection in that office. If the  
8 association does not have a business office in the common interest development,  
9 the record shall be made available for inspection at a location agreed to by the  
10 association and the member who submitted the request.

P 73

5 days is too short of a time. The current requirement is 10 days. Section (c) is a great improvement over current law.

4 (c) If the member requests, the association shall provide a written statement  
5 explaining the legal justification for any redaction made.

p 74

Why should the board have to justify redacting someone's name from the membership list or provide a written statement explaining the legal justification for removing account or id numbers? I would suggest removing this.

13 § 4715. **Optional redaction from membership list**

14 4715. (a) A member may elect, in writing, to have the member's name and  
15 address redacted from the membership list.

16 (b) A member who requests the membership list may also request that the  
17 association deliver material to any member whose information is redacted from  
18 the membership list. The association shall deliver the material to those members  
19 by individual delivery (Section 4040), within 10 business days after delivery of the  
20 request.

P 74

If a member opts out of having their name published or provided to other owners, it should be their privilege to not have to receive those owners' communications. Forcing materials from other owners onto all of the membership is not fair.

17 § 4745. **Limited liability**

18 4745. An association, or an officer, director, employee, agent, or volunteer of an  
19 association, is not liable for damages that result from a failure to withhold or  
20 redact information pursuant to this article, unless the failure to withhold or redact  
21 the information was intentional, willful, or negligent.

P 77

It would seem fair to add to this that none of those identified people **are liable for damages for failure to redact any information either**. While at first glance it reads like this may be covered, it is not. If a board member or officer attempts redaction of information, and misses something, since the requirement of distribution of these documents is driven by law, the person ought to be protected by law from liability. I am not asking for protection for those who would commonly

carry malpractice or E and O insurance as a business expense, just the volunteers who are trying to do what the law instructs them to do.

16 § 4780. Record retention periods

17 4780. (a) Unless a longer period is required by law or by the governing  
18 documents, an association shall retain a record listed in Section 4775 for at least  
19 four years after its date of execution or, in the case of a document that expires or  
20 becomes superseded, four years after the document has expired or been  
21 superseded.

pp 79

The records retention proposed laws are helpful, I believe. However, they confuse some things. For example, ballots, and matters related to elections are required to be held for one year within the election statutes. So this clause should end with: “ , except that where a retention time period is listed within any other section in this Act, that retention period shall apply.”

4 § 4785. Director inspection

5 4785. A director shall have the absolute right at any reasonable time to inspect  
6 all association books, records, and documents of every kind and to inspect the  
7 common area.

80

This needs to be fixed as there are instances where members get on the board and start distributing confidential association information without regard to their fiduciary duty not to do so. It should be extended with the words “,except where the Board has determined that confidential privileged association materials are at risk, in which case the Director may be denied access to those records by Board action of a majority of Directors who are not suspected of misuse of confidential privileged records.”

7 (b) If the association receives more than seventy-five thousand dollars (\$75,000)  
8 in a fiscal year, the annual financial statement shall be reviewed by a licensee of  
9 the California Board of Accountancy using generally accepted accounting  
10 principles.

P81

This should be rewritten to conform to current law which requires that a Review be prepared by a licensee ... etc. A review is a recognized accounting method of reporting and may not be construed in the same way as a “review” by a CPA of an association prepared document. ( c) needs an adjustment as well.

1 § 4820. Notice of availability

2 4820. (a) When a report is prepared pursuant to Section 4800, 4805, 4810, or  
3 4815, the board shall deliver individual notice (Section 4040) to all members of  
4 the availability of the report.

5 (b) Commencing January 1, 2009, the notice required by this section shall be  
6 given when the association adopts a reserve funding plan pursuant to Section  
7 5560.

8 (c) The notice of availability shall include a general description of the content of  
9 the report and instructions on how to request, at no cost, a complete copy of the  
10 report.

11 (d) A board may deliver, by individual notice (Section 4040) to all members, a  
12 complete copy of a report instead of the notice of availability of the report.

P 83

I applaud this method of handling the member notice, financials and reports. However, rather than having the notice in (a) delivered when the board adopts a funding plan, why not have it sent out annually, with the budget or financial report? That would make more sense.

1 § 5005. Disciplinary hearing

2 5005. (a) The board shall only impose discipline at a meeting of the board at  
3 which the accused member shall have an opportunity to be heard.

P89

This needs to be revised to use the word "consider" instead of impose. A board should be able to impose repeat fines for repeat violations of the same or a similar nature, or daily fines, etc., if set forth in the governing documents and addressed at the meeting where disciplinary action is considered.

14 (c) Within 15 days after hearing a disciplinary matter, the board shall deliver a  
15 written decision to the accused member, by individual notice (Section 4040). If the  
16 board imposes a penalty, the written decision shall state the provision of the  
17 governing documents violated and the penalty for the violation.

P89

For purposes of avoiding the necessity (or perception of necessity) of multiple hearings or meetings for the same or similar violations, this should be added: "or violations, including any indication that future fines may be imposed for the same or similar violations."

30 § 5015. Responsibility for guest, invitee, or tenant

31 5015. For the purposes of this article, a member is responsible for a violation of  
32 the governing documents by the member's guest, invitee, or tenant.

P89

Should add: for the violation by "the member's family members, and any guest, ... etc. ... or tenant."

1 § 5020. Removing vehicle from common interest development  
2 5020. The authority of an association to cause the removal of a vehicle from a  
3 common interest development is governed by Section 22658.2 of the Vehicle  
4 Code.  
P90

Section 22658.2 of the Vehicle Code is repealed. The correct reference as of 1-1-2007 is 22658.

18 (c) This article does not apply to a decision to discipline a member that is made  
19 pursuant to Section 5005.  
P90

“Handled” would be a better word than “made”, I think.

37 (c) If an association does not provide a fair, reasonable, and expeditious  
38 procedure for resolving a dispute within the scope of this article, the procedure  
39 provided in Section 5065 applies and satisfies the requirement of subdivision (a).  
P90

I think you mean to refer to 5060 and 5065 and “section” instead of “article”, but am not sure what is intended exactly. I rather think 5060 and 5065 should be combined.

10 (d) If the procedure is invoked by the association, the member may elect not to  
11 participate in the procedure. If the member participates but the dispute is resolved  
12 other than by agreement of the member, the member shall have a right of appeal to  
13 the association’s board of directors.

pp 91.

Should say: “... If the member participates ... etc., ... to the association’s board of directors, unless all directors currently serving were present at the procedure.” It makes no sense to allow for appeal to the Board if the entire board was present.

8 (b) The board shall maintain current income and expense records for each  
9 account, on an accrual basis.  
pp96

This section was hotly contested last year and clean up language was needed to avoid serious problems with systems that provide interim statements that do not exactly fit the “accrual method” description. The language accepted, after this debate, was “The records described in this subparagraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.”

I see no good reason to revive that debate.

7 § 5550. Inspection of major components

8 5550. At least once every three years, the board shall conduct a reasonably  
9 competent and diligent visual inspection of the accessible areas of the major  
10 components that the association is obligated to maintain.

P98

This section should be tied to the study performed per 5555 so it should continue, "...to be arranged with the reserve study to be performed under section 5555.

As for the reserve sections, I expect you will receive a lot of comment on these. I will be talking with reserve study preparers, accountants and others to refine my level of knowledge as to what is pertinent, practical and worth recommending and reserve some comment for later, after others have weighed in. For now, here are some points that I think pertinent to note:

References to "the desired amount" constitute new lingo. Boards are receiving studies with recommendations of various amounts, and reserve study preparers have adopted such terms as "threshold funding", "full funding", "full funding within 5 years", etc. It is important to define these terms, I think, and stick to terms that are not ambiguous. "Desired funding" could be interpreted to be desired by the Board, desired by the members, or desired by the reserve study preparer. Using terms that define the level – such as threshold, full, minimal or things like that make more sense.

§ 5600. Payment

5600. (a) The association shall provide a mailing address for the overnight payment of an assessment. The address shall be included in the member handbook (Section 4810).

(b) On the request of a member, the association shall provide that member with a receipt for a payment made to the association. The receipt shall indicate the date and amount of the payment and the person who received the payment for the association.

(c) A payment made for a delinquent assessment shall first be applied to the assessment owed. Only after the assessment owed is paid in full shall the payment be applied to collection costs, a late fee, or interest.

P103

I think that maybe these sections should go with the section on delinquent assessments. It is my belief that they are intended for owners that have a tendency toward delinquency, and thus need specialized options. For the most part, encouraging owners to seek receipts or utilize overnight mail to send payments in at the last possible moment do not help the finances of the association. These equate to additional cost factors that are absolutely irrelevant

and unnecessary to situations involving owners being encouraged to pay their assessments on time.

31 § 5620. **Payment plan**

32 5620. (a) A member that owes a delinquent assessment may deliver a written  
33 request (Section 4035) to meet with the board to discuss a payment plan for the  
34 debt. If the association has adopted standards for payment plans, the association  
35 shall provide a copy of the standards to the member.

36 (b) The association shall meet with the member and consider the request within  
37 45 days after receipt of the request, either at a regularly scheduled board meeting  
38 or at a specially scheduled meeting between the member and a committee  
39 appointed by the board for that purpose. The board shall deliver individual notice  
40 (Section 4040) to the member stating the date, time, and location of the meeting at  
41 which the request will be considered.

pp 107

There should be an exclusion of the IDR (internal dispute resolution) meeting option to discuss an assessment issue if this is invoked.

7 § 5700. **Maintenance responsibility generally**

8 5700. Unless the declaration provides otherwise, the responsibility for repair,  
9 replacement, and maintenance is as follows:

10 (a) The association is responsible for the repair, replacement, and maintenance  
11 of the common area, other than exclusive use common area.

12 (b) The owner of a separate interest is responsible for the maintenance of the  
13 separate interest and any exclusive use common area appurtenant to the separate  
14 interest.

15 **Comment.** Section 5700 continues former Section 1364(a) without substantive change.

16 See also Sections 4080 (“association”), 4095 (“common area”), 4135 (“declaration”), 4145  
17 (“exclusive use common area”), 4185 (“separate interest”).

18 **Note.** The duty imposed on an individual owner is to maintain the separate interest and any  
19 appurtenant exclusive use common area. By contrast, the association is required to *repair*,  
20 *replace*, and maintain the common area (not including exclusive use common area). Does that  
21 difference in phrasing create two different standards of responsibility? Is there an ambiguity here  
22 that is causing problems?

P118

Regarding the note – there is an ambiguity here but I am not sure how to resolve this. First, the distinction between condos and PDs needs to be preserved, because what is above relates to condos. However, a deck is a good example of how the above can misinform. If a deck is part of the structure, even though it is exclusively used by an owner, the owner is generally responsible for cleaning the deck, refraining from causing damage, sometimes for the deck flooring or coating for protection, but not usually responsible for the structural aspects – the same goes for the chimneys. Thus, it would make sense to add some language relating

to exceptions to deal with these situations. Consider: “In a condominium, unless the declaration otherwise provides, with regard to exclusive use common area, the owner is responsible for keeping the area clean and free of debris; however, the association that is responsible for exterior maintenance and structural aspects of the buildings is likewise also responsible for maintenance, repair and replacement of the structural aspects of the exclusive use common area.”

19 **Comment.** Section 5725 is new. It provides a non-exclusive list of provisions outside of this  
20 part that limit the authority of an association to regulate separate interest property use.

21 See also Sections 4080 (“association”), 4160 (“member”), 4185 (“separate interest”).

22 **Note.** The Commission requests comment on whether there are any other provisions that  
23 should be added to the nonexclusive list of cross-references provided in Section 5725.

P120

It would make sense to move the item related to vehicle removal to this section. See above.

8 **Note.** Proposed Section 5730 preserves two existing distinctions between the treatment of  
9 the U.S. flag and any other noncommercial display: (1) an association may not limit the display of  
10 a U.S. flag that is more than 15 square feet in size, and (2) a person who prevails in challenging a  
11 restriction on the display of the U.S. flag is entitled to attorney’s fees. The Commission invites  
12 comment on whether those distinctions should be preserved (and if not, whether the special rules  
13 should be eliminated or generalized).

P121

Good to preserve these items, in my opinion.

14 **§ 5745. Television antenna or satellite dish**

15 5745. (a) Except as otherwise provided in this section, a provision of the  
16 governing documents is void to the extent that it would prohibit or restrict the use  
17 or installation of an antenna.

4 **Comment.** Section 5745 restates former Section 1376 without substantive change.

5 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest  
6 development”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

7 **Notes.** (1) Proposed Section 5745 would significantly revise existing Section 1376, to  
8 improve its clarity. The Commission requests comment on whether any of the revisions would  
9 make a substantive change in the law.

P122

I do not see the value of saying anything in this section other than F.C.C. Rule 207 and its amendments and any successor rule controls satellite dish and antenna installations.

Otherwise, there remains the argument and quandary over whether and what parts of this statute have any meaning in light of the expansiveness of FCC Rule 207.

1 ~~§~~ **Note.** Existing Section 1360 is limited by its terms to a separate interest that is contained  
2 within the boundaries of a building (as in a condominium). Proposed Section 5760 would  
3 generalize the substance of Section 1360, so that it applies to any separate interest. That would  
4 arguably broaden owner rights to modify a unit to accommodate a disability, although other  
5 provisions of existing law may already establish those rights (see, e.g., Gov't Code § 12927). The  
6 Commission invites comment on whether the broadened application of proposed Section 5760  
7 would cause any problems.

P 122

The expansion of this section is not offensive to me; however, I do see that some control needs to be exhibited over any major reconstruction project (such as an elevator to a second floor in a building that was not originally constructed for an elevator. Thus, I suggest that something to this effect be added in the following passage: "The association **may suggest alternatives to the owner's plans and specifications for modifications to accomplish the end desired by the member**; however, the association may not deny the owner a reasonable accommodation that does not unduly burden other members of the association."

33 (4) The owner shall submit plans and specifications for a proposed modification  
34 to the association for review to determine whether the proposed modification  
35 complies with this section. The association shall not deny approval of the  
36 proposed modification without good cause.

26 ~~§~~ **Note.** Proposed Section 5910 provides rules for liens in a condominium project. The  
27 Commission invites comment on whether similar rules should be added for other types of CIDs,  
28 and if so what those rules should be.

P132

It seems to me that there would be no harm in including PDs in this section. However, the liens are not as likely to be placed on any property of others in a PD because the ownership of the area being modified or constructed would be in the name of the owner of the Lot.

11 § 5935. Planned unit development

12 5935. In a planned development, any conveyance, judicial sale, or other  
13 voluntary or involuntary transfer of the separate interest includes the undivided  
14 interest in the common area. Any conveyance, judicial sale, or other voluntary or  
15 involuntary transfer of the owner's entire estate also includes the owner's  
16 membership interest in the association.

17 **Comment.** Section 5935 continues former Section 1358(c) without substantive change, except  
18 that language suggesting that a planned unit development may not include common area is not  
19 continued. All common interest developments included common area. See Section 4100  
20 ("common interest development" defined).

21 See also Sections 4080 ("association"), 4095 ("common area"), 4100 ("common interest  
22 development"), 4175 ("planned development"), 4185 ("separate interest").

P133

The use of the word “Unit” in “Planned Development” is not needed and confuses things I think. It would make sense to delete it.

32 **Notes.** (1) Existing Section 1355.5 provides an optional procedure for deletion of obsolete  
33 developer provisions from any type of governing document, including the articles of  
34 incorporation and bylaws. However, it doesn't appear that this section serves a useful purpose  
35 when applied to the articles or bylaws. The existing procedure for amendment of those documents  
36 is as expeditious or more expeditious than the procedure provided in Section 1355.5. See Corp.  
37 Code §§ 7151 (amendment of bylaws), 7810-7820 (amendment of articles).

38 (2) Existing Section 1355.5 limits the optional procedure to deletion of provisions that  
39 “[provide] for access by the developer over or across the common area for the purposes of (a)  
40 completion of construction of the development, and (b) the erection, construction, or maintenance  
41 of structures or other facilities designed to facilitate the completion of construction or marketing  
42 of separate interests. Does the use of “and” imply that the provision must satisfy both of the  
43 enumerated criteria? Should “and” be changed to “or”?

44 (3) Is it necessary to continue the requirement that the board approve an amendment under this  
45 section? It seems unlikely that a board would ever oppose such an amendment if it were approved  
46 by the members.

P138

The original suggestion/proposal for this option of removal of declarant provisions was intended to allow the board to make the changes without owner approval, to remove provisions that were out of date and no longer meaningful. However, the statute, since it requires owner approval, does not, in my opinion, serve a useful purpose, especially in light of the existing 1356 allowing for court petition to approve amendments that receive majority (but not the supermajority of some documents) owner approval. It makes much more sense for an association to restate and amend with useful provisions when undertaking such a project, and including the changes to remove the declarant provisions.

17 **Note.** The use of the term “restrictive covenant” in existing Section 1352.5 would seem to  
18 limit its scope to a discriminatory provision in the recorded declaration (see Civ. Code § 1468(d)  
19 (covenant must be recorded to bind successive owners)). That is contrary to the express terms of  
20 the section, which provide that it applies to a “declaration or other governing documents.” Would  
21 it be appropriate to replace the term “restrictive covenant” with the broader term “rule or  
22 restriction”?

P144

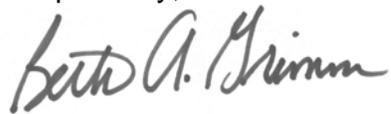
Yes, is my answer to your question – change the language to “rule, covenant, or restriction”

This concludes my comments on proposed revisions to the Davis Stirling Common Interest Development Act. As stated above, I do reserve the right to offer additional comments, as interaction with colleagues and networking with homeowners, managers, board members and others discloses a further need to address this proposed body of law.

Again, thank you for all of the hard work that went into the complete restatement of this important body of law and all the efforts to organize, simplify and put the law into Plain English.

Feel free to contact me with any questions, comments or concerns about this information.

Respectfully,

A handwritten signature in cursive script that reads "Beth A. Grimm".

BETH A. GRIMM  
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**Ralph G. Cahn**  
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Law Revision Commission  
RECEIVED

SEP 19 2007

September 10, 2007

File: \_\_\_\_\_

California Law Revision Commission  
4000 Middlefield Rd., Room D-1  
Palo Alto, CA 94303-4739

Commissioners,

I am the Treasurer and a Director of the Palo Alto Greenhouse Homeowners Association (as well as an occupant owner). I am not an attorney. Thank you for the opportunity to provide my thoughts and opinions, which are mine alone. I have read the Tentative Recommendation for revision of the CID law and offer the following comments and suggestions:

**Section 4090.** Volunteer Directors are hard to find and have limited time. The open meeting requirements should be modified as needed so that Directors can discuss individually or collectively in any manor, the pros and cons of an issue; this in an effort to reduce the time spent at the regular monthly meeting hearing and debating various proposals. Such discussion should not lead however, to decisions being made outside of an open public meeting. **Section 4545** affirms this point.

**Section 4145.** Note that under Comment, "...5760 (maintenance of communication wiring)" should show section 5710, not 5760.

**Section 4520.** General notice of a meetings time and place should be required together with the agenda, regardless of it being spelled out in the governing documents. It improves communication and is no burden.

**Section 4525.** Any member should be able to speak at the non-executive portion of a board meeting, but the section should allow the board to set a time period for member comments, not require them to be heard throughout the meeting.

**Section 4540.** The board should not have the right to force "closed session" on a member who wants his issue discussed openly. However, the board should be able to limit participation (see 4525 comments).

**Section 4555.** I agree that the Code of Civil Procedure Section 1038 wording, with the example as listed, is appropriate for this section and 4685(e), 4735(g). It is more clear and somewhat less subjective.

**Section 4650.** I see no reason why a board or member meeting for opening and counting of ballots should be open to the general public.

**Section 4710.** Redaction, as described, should be mandatory. Omitting it could be to intentionally and improperly reveal information.

**Section 4735.2(f).** “Without justification” is much more preferable – it is quite specific.

**Section 4745.** Redaction would often be the responsibility of a Management Company. Mandatory redaction makes it less likely that there would be a mistake (negligence). It does not thereby create a liability if there is negligence. The limitation provision should not be changed.

**Section 4775.9(a).** “A record that relates to the design....” is too vague. Records “of” or “about” the design are important.

**Section 4780.(a).** Why should a record document that is expired or superseded be kept longer than one that is still in effect?

Plans and blueprints should be retained for the life of the project.

**Section 4800.(b)(2).** This should be an itemized summary of the reserve funding study, not the study itself (which may be more than 50 pages).

**Section 4810.** “Member handbook”. This name implies complete information including any “Rules and Regulations.” Better to call it “information packet” or something else.

**Section 4900.** The time frame (90 days) is not realistic. Perhaps it could be changed so that the required information would be provided at or before the time a formal contract/bid was presented to the Association for consideration; a 45 day period before entering into agreement time might then suffice.

**Section 4905.** There should be no commingling of funds.

Section 5000. There should be authority for a general fine provision (for example: a blanket minimum \$100.00 fine for violation of governing documents including Association published operating rules and regulations). It’s not possible to list every rule, potential violation type and appropriate fine. There’s adequate provision for review, appeal, etc. Practically, associations can not get away with unreasonable fines. In any case, fines based on violations of operating rules must be allowed; the other governing documents cannot possibly list every rule, violation of which should permit fines.

**Section 5005.** Disciplinary hearing is not practical or appropriate in all cases. Example: we have required all homeowners to make their garages, crawl space, unit decks available (by appointment) for termite inspections. In 7 cases, owners/residents have failed repeatedly to comply. We have advised each by letter that they will be charged a \$100.00 fine for failure to comply with this 3d attempt (in addition to shared extra cost of this visit by the contractor). This has been communicated thoroughly by Newsletter and individual letter. The fine is automatically added to the monthly assessment of any owner who fails to make and keep an appointment for access. They have a right to protest but it’s not practical to have individual “disciplinary hearings” before imposing the fine.

**Section 5015.** It’s good to add the tenant to the list.

**Section 5500.** It’s important to have separate operating and reserve accounts and records.

**Section 5555(f).** It's important to explain the exclusion of components with lives of over 30 years (if they aren't included in the study as some should be). An analysis of actual reserve expenses reveals that a substantial amount of reserve monies are spent on repair or replacement of unlisted components. Examples may be curbs and sidewalks, sewer lines, plumbing and other items which deteriorate due to normal shifting or settling. Items which are not included because useful life is over 30 years should be revealed so that owners and potential owners can properly understand the potential liabilities.

**Section 5580.** It's obvious that 20% means 20% higher than the previous (existing) years amount. The re-wording is better.

Section 5620(c). Interest should continue accrue although it can be waived by board action.

I hope this submission is helpful.

Sincerely yours,

A handwritten signature in black ink that reads "Ralph G. Cahn". The signature is written in a cursive style with a long, sweeping tail on the letter "h".

Ralph G. Cahn



DANIEL E. ANGIUS†  
PAUL P. TERRY, JR.†  
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DOMINIC PORRINO  
TED LINDSTROM

September 10, 2007

California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Re: Tentative Recommendation, June 2007  
Statutory Clarification and Simplification of CID Law

Ladies and Gentlemen:

As I mentioned in a prior communication with the Commission, I am an attorney with more than twenty-five years experience in common interest development (CID) law. I know that the Tentative Recommendation of June 2007 regarding the reorganization of the Davis-Stirling Common Interest Development Law represents a lengthy and thoughtful effort to simply this body of law which, in my opinion is currently far more ambiguous and internally inconsistent than it needs to be. While I don't agree with the necessity or approach of some of the provisions of the current law, my main concern is to be able to properly advise our clients as to how they can comply with the law. I believe the proposed re-write will prove very helpful in that regard. Following are some additional comments as to specific provisions of the proposed new law.

Section 4090, Definition of Board Meeting. The note to this section asks for comment on whether there should be some restriction on the ability of Board members to communicate with each other outside of formal Board meetings concerning matters before the Board. Such communication is almost a universal practice of associations and should not be restricted. Most association boards I have dealt with tend to operate by consensus rather than by a strict "up or down" vote on each issue presented. This approach often requires more discussion and debate than can reasonably take place in a monthly board meeting. Association boards, unlike most state and local governing bodies, usually do not have full-time paid staff who gather the background information and provide suggested alternative approaches. The association manager will perform such duties to a limited extent, but board members themselves often must explore alternatives and analyze economic impacts of alternative decisions. Of course, no formal vote or board resolution should be taken or adopted except in a formal meeting of the board.

I also believe that actions based on unanimous written consent of the directors without a meeting should be preserved. There may be rare instances where the need for board action is so urgent that there is not time to call even an emergency session of the board (or the board members may not be physically available for such a meeting).

\_\_\_\_\_

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Las Vegas  
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A T T O R N E Y S

Re: Tentative Recommendation, June 2007

September 10, 2007

Page 2

Section 4100, Definition of Common Interest Development. I would like the Commission to consider including the provisions of Section 6000 as part of the definition of a CID, or at least including a reference to that section. As I understand it, Section 6000 sets forth additional criteria (a recorded declaration and/or map) which must be met before a development will be considered a Common Interest Development and subject to the Davis-Stirling Act. All such criteria should be stated in one provision.

Section 4640, Secret ballots. The first sentence of the Note for this section states that the section would apply "to all matters in which a member election is required by law". However, Section 4640(a) states that it only applies to four specific types of elections. I believe this Note was intended to be used with an earlier version of Section 4640 which did mandate that all association elections be conducted pursuant to this section. As I stated in previous correspondence to the Commission, I believe it would be beneficial to have a single procedure for conducting association elections on any matter. If Section 4645 is to be used as an alternate election procure, I think it would be helpful to mention this section in Section 4640(a), something like: "This section governs a member election on any of the following matters where the alternative election procedure of Section 4645 is not used." Section 4645(b) states: "If the members of the association are divided into classes for purposes of voting, the ballot shall be marked to indicate the voting class of the member." Such a provision does not appear in Section 4640, and it should. It solves the problem which currently exists as to how to make sure that each member is permitted to cast the number of votes to which he or she is entitled.

Section 4645, Alternative in-person voting procedure. This section is somewhat confusing. Although it is intended to be an alternative procedure to Section 4640, it does not cover all of the procedural and substantive issues covered in Section 4640. For instance there is no provision similar to Section 4640(b)(1) relating to the contents of ballots to be used under this section. There is also no requirement as in Section 4640((b)(4)for written instructions as to how to cast the ballot and, if appropriate, how to use cumulative voting (perhaps this is not necessary since the inspector of elections or an assistant will presumably be present to provide instructions and help). The last sentence of Section 4645(c) may conflict with Current Section 1363.03(d)(3), which provides that the proxyholder shall cast a members vote. However, it is an improvement on the current election law, which provides no safeguards whatsoever against a proxyholder who casts a member's votes contrary to the instructions on the proxy. Finally, it appears that the reference to Section 4645 in subpart (f) is a typo. Perhaps this subsection need only state that the ballot shall be counted pursuant to Section 4650.



Re: Tentative Recommendation, June 2007

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Page 3

While I can see the benefit of Section 4645, especially for smaller associations, I think it adds another level of complexity to an already complex statutory scheme. Less confusion would be generated if Section 4640 were designated as the only acceptable procedure for association elections, at least for the four types of elections identified in that section. Many associations have already taken steps to adopt rules and/or amend their governing documents to incorporate the procedures of Civil Code Section 1363.03 and to eliminate the distribution, collection and tabulation of ballots for election of directors at annual meetings (although some associations still require the mailed ballots for directors to be counted at the annual meeting).

Section 4650(c), Counting ballots. I think the phrase "board meeting or member meeting that is open to the public" should be changed to "board meeting or member meeting that is open to all members". A homeowners association is, after all, a private organization, and there is no need to permit nonmembers to attend any general meeting of the organization, whether a board meeting or member meeting. I would also suggest that the last sentence of this section be changed to read as follows: "Any member may observe the counting of ballots, but shall not be permitted to observe any information that would reveal the identity of a member casting a ballot *or to harass the inspector or obstruct the vote counting process.*" I am aware of a few (rare) instances where members with political agendas have voiced objections and/or demanded explanations for each action by the inspector of elections during the vote tabulation process. Such actions are not conducive to a speedy and objective tabulation of the results of an election. Procedures are available for members to contest the results of an election or the method of tabulating the votes after the results are determined. See Sections 4655 and 4685.

Section 4685, Judicial enforcement. Section 4685(d) provides for an award of "attorney's fees and court costs" to an association member who prevails under the statute, while Section 4685(e) provides for "reasonable costs and expenses, including reasonable attorney's fees" to an association under certain circumstances. Is there any reason why the phrasing of these two subsections should be different in this regard? Also, the note to this section asked for comments on whether any part of Corporations Code Section 7616 should be imported into proposed Section 4685. Corporations Code Section 7616(c) does provide for an expedited hearing process which would be beneficial, since rapid adjudication of any disputes under this section is necessary to minimize any disruption in the operations of the association.

Section 4745, Limited liability. This section (as well as Civil Code Section 1365.2(d)(3) from which it is derived) is meaningless as it is currently written. Every failure to redact



ATTORNEYS

Re: Tentative Recommendation, June 2007

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protected information from requested documents will be either intentional, willful or negligent. The exceptions overwhelm the rule. Protection from liability should be provided for any failure to redact which is not intentional or willful. If this change is not made, the entire section should be eliminated, since it serves no purpose.

Section 5020, removal of vehicles from common interest development. The reference to Vehicle Code Section 22658.2 should be changed to Vehicle Code Section 22658. The referenced code section has been repealed and Vehicle Code Section 22658 amended to include provisions relating to towing of vehicles from common interest developments. Also, I assume that this Section is intended to provide the authority for an association to tow unauthorized vehicles (so long as the statutory requirements are met) whether or not such authority is expressly provided in the association's governing documents. This is a good idea and should not be controversial. It might be helpful to make it clear that this is the case, maybe something like: "Unless the governing documents expressly prohibit towing of unauthorized or improperly parked vehicles from the development, the authority of an association . . . ."

Section 5580(b), Assessment increase. The first sentence of this subsection refers to the "approval of an affirmative majority of the votes cast *at a meeting* . . . [Emphasis added.]" However, current Section 1363.03(b) mandates that such an election take place by the mailed ballot procedure set out in Section 1363.03 and current Section 1366(b) refers to "a meeting or election of the association"; proposed new Sections 4640 and 4645, as I read them, at least make the mailed ballot procedure optional. This proposed subsection should be modified to either identify an election by mailed ballot as an acceptable alternative for any required election for assessments, or if 4645 is not adopted as part of the proposed law, to mandate the use of the procedure set forth in Section 4640 for such elections.

Section 5640, Lien for damage or fine. Proposed section 5640(b) restates existing section 1367.1(e) in stating that a fine imposed by an association for violation of the governing documents "shall not become a lien against the member's separate interest *that is enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.* [Emphasis added.]" The referenced Civil Code sections relate to nonjudicial foreclosure. To me, this qualifying language indicates that a lien for such fines may be recorded, but shall be foreclosed upon only through judicial foreclosure as with any other security interests without a power of sale. However, statements in at least two leading treatises seem to state that section 1367.1 imposes an absolute prohibition against recording any lien for fines. See C. Sproul and K. Rosenberry, Advising California Common Interest Communities § 5.12, at 289 (Cal. Cont. Ed. Bar 2007); J. Hanna and D. Van Atta, Hanna & Vanna on



ATTORNEYS

Re: Tentative Recommendation, June 2007

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Page 5

Common Interest Developments (2007) §19.64, p. 1253-1254. The reference to the statutes governing nonjudicial foreclosure seems to be a clear reflection of the legislature's intent that only nonjudicial foreclosure is precluded by the statute. I would like to see an additional sentence added to this section to make this clear. Something like: "This section does not prohibit the recording of a lien for fines which may be foreclosed only by judicial foreclosure, if such a lien is authorized in the governing documents." This would not change existing law (in my opinion) and should clear up any confusion due to varying interpretation of this language.

Thank you for considering the above comments. I look forward to the commission's final version of these proposed statutes.

Very truly yours,

ANGIUS & TERRY LLP

Michael Hardy

September 10, 2007

Law Revision Commission  
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State of California  
California Law Revision Commission  
Palo Alto Ca. Rm D-1 94300-4739

SEP 19 2007

Ref. Common Interest Developments and  
Suggested improvements per your directive.

File: \_\_\_\_\_

I reside in a CID, (Laguna Woods Village), formerly Leisure World and would propose first that, as others have advised, we need enforcement of the present Davis Sterling Act far more than proposed improvements to the present language. I refer to actions taken by our boards of directors and our management company due to their misuse of the provisions of the Act by interpreting them to their own interests: Paragraph (b) of 1363.05 of Davis Sterling Act, with reference to meetings of the Board of Directors provides that closed (executive) meetings may be held under certain conditions: ( 1). Litigation, (2). Matters relating to the formation of contracts with third parties, (3). member discipline, (4). personnel matters..—

Golden Rain Foundation, (GRF) the Mutual Board of Directors responsible for the common areas of Laguna Woods Village have relied upon this language to hold closed meetings that Residents feel do not comply with the intent of the "Open Meeting Act" For example the following events were enacted in GRF closed meetings:

In 1997 GRF disbanded their Operations Review Committee after two months of operation. This Committee was the only constituted group for oversight of Management operations since the beginning of Leisure World in 1964. The only reason given was "personnel." (closed meeting)

In July 2007 in closed session with housing mutuals, GRF voted to change the name of Leisure World to Laguna Woods Village after promising the residents that this would be submitted for a vote by all residents.. No reason was given for this to be a closed meeting.

In August 2007, in a scheduled open meeting of GRF an agenda item , a resolution was proposed to adopt a management proposal regarding the controversial use of credit cards by nine managers of PCM. A director moved that the item be referred to a closed meeting, citing "contracts" and "Personnel" neither being a valid reason for a closed meeting. The Directors went along with the referral. The matter was concluded in the closed meeting with the disapproval of residents.

Residents realize that they cannot stop the negligent use of all Executive meetings but it would be a great step forward if the language could be clarified so that there would be no doubt about the proper use of "Executive meetings. The following clarifications are offered for your consideration:

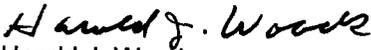
Under "Litigation," change to: " Litigation; Matters which are in the process of court proceedings."

Under " Matters relating to the formation of contracts with third parties," Change to: "Matters relating to the formation of contracts with third parties, ie Contractors or Business Firms."

Under " Personnel Matters/" Change to "Matters pertaining to employees of Board of Directors and/or the Management Company."

Again, we feel that the most important solution would be to provide enforcement to the present language but these suggested changes would be of great help in the encouragement of "open meetings". The changes are by all means subject to your better use of my wording but the changes themselves are needed.

Thank you for your seeking input from your constituents.

  
Harold J. Woods  
2244 Via Puerta, Unit "N"  
Laguna Woods Village, Ca. 92637

**September 11, 2007**

Law Revision Commission  
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SEP 19 2007

**CA. Law Review Commission  
4000 Middlefield RD, Room D-1  
Palo Alto, Ca. 94303-4739**

File: \_\_\_\_\_

**RE: Statutory Clarification and Simplification of CID LAW**

**California Laws for CID's and Corporation Codes DO NOT need to be simplified or clarified, they need to be ENFORCED.**

**Case in point is the Davis-Stirling Act # 1359 - Restrictions on PARTITION of COMMON AREA. This is a very understandable Law; however Leisure World Laguna Woods Golden Rain Foundation Board, Professional Community Management and Hart, King and Coldren SOLD Leisure World's common area land against the Davis-Stirling Act #1359 and Leisure World's CC&R's, Article VI.**

**Hundreds of homeowners under Discovery filed complaints and requests to the CA. Attorney General, Orange County District Attorney and the Federal Housing Administration (HUD) to step up and enforce the laws pertaining to Common Interest Developments (CIDs).**

**Enforcement of existing laws for CID's is a big problem, as it seems no agency responsible to enforce the law, has the Manpower or Money to do so.**

**It is Ridiculous to Simplify and Clarify Laws the no one enforces.**

**Sincerely,**

*Clara C. Eley*  
*Nori Eley*





## MEMORANDUM

Law Revision Commission  
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SEP 19 2007

September 14, 2007

To: California Law Revision Commission

File: \_\_\_\_\_

From: Trudy Morrison, CCAM

Re: Tentative Recommendation – CID Law

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I sincerely regret I simply wasn't able to devote more time to this process. I come from a relatively unique position of being an owner in a planned development for 21 years, spent approximately 12 years total on my HOA Board and the last five years have been a portfolio manager.

Consequently, I have a multi-faceted perspective. I hope you will find it of some benefit.

A handwritten signature in cursive script, reading "Trudy Morrison", is positioned below the typed text. The signature is written in black ink and is centered horizontally.

EX 134

Eugene Burger Management Corporation

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6600 Hunter Rohnert Park, CA 94928 415.461.8660 707.584.5123 Fax 707.584.5124

- §4090 – Homeowners Board meetings aren't held secretly in smoke-filled back rooms. They're often held around a kitchen table. As it is, neighbors who happen to be on the Board at the same time are afraid to talk with one another because they may be breaking the law. And Board members are volunteers who serve on the Board in addition to having real jobs and lives. Anything done to make Board service more onerous is a mistake.
- §4150 – Do operating rules include policies and resolutions? What about the required Architectural Procedures? These aren't rules, but are required to be distributed annually.
- §4520 – (1) **Requiring an agenda be distributed with the meeting notice would be a major change. Right now many associations who meet at the same place and time provide a general announcement at the beginning of each year (and in the disclosure package) that Board meetings are the last Tuesday of each month, 6:30 p.m. at the clubhouse. A separate mailing or posting is required only in the event of a change. Requiring an agenda with the notice would be a financial burden to virtually every association.**
- ☞ **In most associations members don't care, only one or two will attend a meeting (if that) and then usually leave as soon as the Homeowners' Forum is concluded. Require agendas be made available upon request. Frequently the most pressing decision is whether or not to replace the pool furniture.**
- §4530 – What's "practicable"? This may make sense if an Association has a clubhouse, but most (my experience says more than 80%) don't. Most kitchens and living rooms don't have seating for 10 people. What are they supposed to do? Stand in the carport? As it is, it's difficult even to find meeting space available to rent in many towns – and most associations can't afford rental fees any way.
- §4580 – In the 15 months since the law changed, the votes have been more secret, but that's the sole benefit. On the other side is elections taking multiple mailings to reach a quorum, not addressing other required votes such as the IRS resolution (Internal Revenue Code §528). Ideally, the County Model would be **required**, i.e., people who don't care would not longer have to be begged to voted. Those who vote decide the outcome of an election, whether it's 10% or 90% of those eligible to vote.
- If necessary to require a specified number of votes, make it universal. One association tried to clean up it's rules this year and finally gave up because a quorum (51%) was never reached, even after three mailings! Therefore, use the one-third, but don't let that be overridden by the bylaws.
- §4595 – I'm not sure what this one is saying, but it appears to be referring to the annual member meeting. Given the change in the voting, though, directors are no longer elected at the meeting, making (d) irrelevant. Instead, that's when nominations are closed.

- §4615 – Quorum requirements at any meetings other than those of the Board is tying the hands of the Association. Most people just don't care. Again, the County Model is the ideal – whomever participates makes the decisions. It doesn't make sense to require people to cast ballots or attend meetings when they have no interest in what's going on.
- §4630 – Please leave election rules as operating rules.
- §4635 – It would make sense to make kinship apply to all potential election inspectors.
- §4640 – The election not mentioned is Internal Revenue Code §528. Since it's almost always unanimous, rather than going to the expense of the secret ballot, it should simply be voted on by those attending the member meeting.
- §4650 – Many association meetings are held in private homes. They absolutely should not be open to the general public. Most governing documents allow only members to attend meetings of any kind unless a non-member has Board approval. In some instances this is given to tenants or lawyers representing owners.
- §4660 – With the requirements for irrevocable secret ballots, proxies should simply be eliminated – again using the County Model.
- §4670(b) – Last sentence should be included.
- §4675 – The *Tentative Recommendations*, page 14, say §4640(f) would make cumulative voting mandatory, but there is no (f). In any event, my recommendation would be that cumulative voting be automatically suspended when the developer no longer has more than one vote. It's only purpose is to protect the minority. Once the developer is gone, it's one unit/lot, one vote.
- §4700 – Notes 2 – No purpose. The only place would be in the minutes.  
Notes 4 – Yes, add the provision limiting inspections.
- §4705 – My recommendation is to change (a) to read “a member must . . .” This will minimize frivolous requests that grind up time.  
Approximately 100 HOAs are managed out of this office. Only one has an on-site business office and this seems to be typical. As a result, much of §4705 isn't applicable. It would make more sense to specify the association's management office, if there is one. That's where the files are kept.  
Note 2 – “Format that prevents the records from being altered” should absolutely be kept. Of course there isn't any guarantee in these days of scanners, but it should at least be made difficult for someone to change association records.
- §4710 – Redaction should absolutely be mandatory.
- §4720 – The fees are too low to minimize frivolous requests, nor do they come close to covering association costs.
- §4745 – This is good as it is.

- §4810 – Many associations currently have a “member handbook.” Using name will cause no end of confusion. May I suggest “Member Rights Guide” or something similar? The contents are fine – the name is the problem.
- §4900 – The 90-day period should be adjusted to simply say the disclosure should be made part of the agreement/contract between the management company and the association, then updated as changes occur.
- §4905 – No commingling should be allowed. (h) should be deleted. In addition, managing agents should be required to deposit association funds within 72 hours of receipt.
- §4950 – The idea is good but the vehicle is wrong. The training should be provided by CAI or ECHO, not the DRE.
- §5000 – The Board should have the unilateral authority to impose fines, provided the hearing procedures are followed. It’s important to remember the distinction between **imposing** fines and **collecting** fines. If a member refuses to pay a fine, the only recourse the association has is to go to small claims court. As a result, a fine which may sound onerous in fact isn’t if the association isn’t willing to go to court to collect it.
- §5005 – Note – This note seems to be confusing a fine with a reimbursement assessment. A reimbursement for damage is not disciplinary.
- §5015 – Absolutely yes. This is a good change.
- §5555(c) – This has gotten so complex, it defeats the purpose – plus it adds to association costs because now reserve study updates are required annually. To be meaningful, it should be two lines:
- If the reserves were fully funded today, the account should contain \$XXXXXX or \$XXXXXX per unit. The association anticipates spending \$XXXXXX from the reserve account in 20\_\_, or \$XXXX per unit.*
- Regarding the Note, it would make more sense to just make all major components part of the reserve study, regardless of their useful life span. This would be useful in ensuring things that will eventually need maintenance aren’t overlooked.
- §5580 – What remains unclear is whether the 20% applies to the total prior year assessment or the individual assessments. This can be an important distinction when an association’s assessments are variable.
- §5700 – *Repair and replace* should absolutely be used in (b) as well as (a).
- §5705 – Some planned developments are attached (townhouses), some aren’t. Shared walls makes this important.
- §5735(b) – So no gerbils, hamsters, guinea pigs, etc.? It would probably be safer to say “domesticated animals sold in pet shops.”
- §5745 – Note 2 – Very good.
- Note 3 – Can delete.
- Note 4 – Can delete.

Note 5 – As quickly as things are changing, size limitations are better than specific devices, although 24” would be better than 36”.

§5810 – If a member is operating a meth lab, making bombs or using a welding torch to make sculptures, this might be useful., but probably won’t be invoked too often otherwise.

§5910 – Not sure I understand this one, but I suspect again attached PDs should be included.

§6025 – The “or” in (e) makes this okay.

§6040 – Most definitely there must be a means for amending. In fact, law should supersede the CC&Rs when the required vote is in excess of 75%.

§6100 – Who defines “reasonable”?

§6150 – Yes, use “rule or restriction” instead.

STANLEY L. FELDSTEIN

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Laguna Woods CA 92637-2004  
Telephone: 949-707-6984 **Law Revision Commission**  
slfeldstein@gmail.com **RECEIVED**

September 15, 2007

SEP 18 2007

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto CA 94303-4739

File: \_\_\_\_\_

Sirs:

Congratulations on the excellent revision of the CID Law. I believe the new version will aid all CID's to avoid numerous internal disputes which arise from differing interpretations of the requirements of the Davis-Stirling Act. I am a candidate for the board of directors of the Third Laguna Hills Mutual in the Laguna Woods Village in Orange County. Until the new revision becomes effective, it will still give us insight as to the proper interpretation of applicable sections of the existing law.

There are two comments which I wish to make.

1. Section 4540(a) gives the same bases for executive (closed) sessions as the present law; litigation, matters relating to the formation of contracts with third parties, member discipline, and personnel matters. The second and fourth bases mentioned have caused much dissension in this community, where almost every open meeting is followed by a closed meeting without any statement of the reason therefore.

(a). It would appear that the negotiation of a contract by the association with its managing agent is not the formation of a contract with a third party. Nevertheless, much of the negotiation takes place in closed session. For example, it was discovered some months ago that executives of our managing agent, Professional Community Management, had utilized credit cards issued for emergency use to pay for numerous parties celebrating birthdays, holidays, service awards, and others, for thousands of dollars. As a result of the community reaction, the President of the Golden Rain Foundation, Trustee of our common elements, proposed that guidelines be adopted with respect to use of the credit cards. The guidelines were drafted by the managing agent, and elicited widespread criticism for vague language and inclusion of elements considered inappropriate by numerous members. The President then said the guidelines would be reviewed within two weeks to consider the comments of the members. Instead of returning to an open meeting, a closed meeting was held and guidelines almost identical to the original proposal were adopted without further input from the members. I suggest that some language be included in this section to establish clearly that it is the negotiation of a contract with a third party (other than an element of the association or its agent) that is required in order to justify a closed session, and that once the contract is executed, it becomes available to members or directors or both.

(b). The phrase "personnel matters" should be defined in some manner to limit the subjects which may be considered included therein. For example, disciplinary actions against employees, discussion of labor relations, or of reductions in force, probably are all "personnel matters." However, if the managing agent, without authorization employs a public relations agent, or authorizes payment of educational or training expenses of employees, or assigns and reassigns personnel from one department to another, or from one association to another, is a closed executive session justified to discuss the matter? The frequent use of these closed meetings, and the threats to directors of censure or other action, prevents the membership from obtaining information necessary to judge the performance of their elected representatives. I believe that the phrase "personnel matters" should be refined for the benefit of all.

2. Experience shows that some members are addicted to holding directorships. We have one director who has just completed two three-year terms, and is now running for a third. Due to

our organizational structure, directors of the Trustee, Golden Rain Foundation, are elected by the directors of the three mutual associations, and often have previously served on the board of one of the mutuals. It is almost a game of musical chairs. If term limitations are appropriate in the field of public government, why are they not in the field of community government? Are not the same considerations applicable, and even more so when in this more private setting there is less fiscalization of directors' actions? It is my recommendation that the proposal include reasonable limitations, or at least provide for inclusion of such limitations in the governing documents.

Thank you for your attention.

Truly yours,

  
Stanley L. Feldstein

**EMAIL FROM MEL STANDART**  
**(SEPTEMBER 18, 2007)**

First, let me state I am not an attorney so my comments may not fit the form and format you are used to receiving.

As a director in a Common Interest Development, I have encountered an interesting situation. In reviewing Corporations Code 8334, it struck me that there was no easy remedy at law if a director were denied materials s/he sought from the management of the Corporation. It appears to me that a director denied materials or one who sensed "foot-dragging" in supplying such materials would have to file suit in Superior Court to obtain that which was rightfully his or hers. Therefore, I would suggest that a revised Davis-Stirling Act including applicable portions of the Corporations Code, should include provision for the enforcement of director rights at a more modest cost and include specific penalties for the failure of a Corporation to fulfill its responsibilities under what is now §8334 of the Corporations Code.

If my comments need clarification, please feel free to email me any questions.

Mel Standart

5 High Bluff  
Lagnua Niguel, CA 92677  
September 18, 2007

Law Revision Commission  
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SEP 19 2007

Mr. Brian Hebert  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alt, CA 94303-4739

File: \_\_\_\_\_

Dear Mr. Hebert:

As a director of the San Marin Association, a past president and member of the Vista Mar Homeowners' Association and a past member of the Villa Mira Homeowners' Association (all of Laguna Niguel), in addition to having about 20 cumulative years of volunteer board experience, I have a very keen interest in seeing changes made to the existing CID law. (All attachments are either public documents obtainable by members of the San Marin Association under current law, or were part of the public record of Superior Court of California, Small Claims Case number 30-2007-00004192-SC-SC-HLH.) Here are my comments regarding some of the proposed sections:

**4090. Board Meeting**

This section should reflect the current state law (and I assume the Brown Act). Public business needs to be conducted in public. Because homeowner associations are, in effect, "mini governments," all of an association's business that doesn't fall under the category of "executive session" needs to be done in public. Although some might see this as problematic for volunteer directors, don't forget that those volunteers either know or should know what they're getting themselves into and as fiduciaries for the association, they have a deeper burden put upon them to follow the rules. One needs only to read the first attachment (Attachment 1, pages 1-7) to see how a president of an association, fellow board members and a management company can go down the wrong path because the president just didn't know what the rules were.

**4150. Governing Documents**

This clearly identifies what "governing documents" exactly means. It should not cause any problems—in fact, it should clear up any ambiguity that might exist on the part of directors or members what exactly is meant by "governing documents."

**4520. Notice of board meeting**

(a) Agendas should be sent out with the notice of the meeting. If the meeting is fixed, then agendas should be sent out separately (this addresses the "Note 1.") Obviously, if you are going to have a meeting you need to have some idea of what is going to be

discussed. This will give members of the association an idea of what is happening in their community and will help them in deciding if they want to attend the meeting.

(c) Any emergency meeting that is called should also require that the board of directors explain why the circumstances were not reasonably foreseen (i.e. “because of the recent earthquake, fire, flood,” et cetera). Although this adds another requirement to boards, it will keep boards that “play semantics” or that are less than open to more accountability.

#### 4540. Executive Session

(a) This section deals with executive session and allows “the board may adjourn to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, an assessment dispute or personnel matters.” Members should have the ability to waive the right to have discipline or an assessment dispute to be heard in executive session, because they may want to have the board’s action documented and have whatever members of the association present to witness the board’s action. Leave it up to the homeowner—they may want the matter to be dealt with privately in executive session—or they may want the matter to be a matter of public record vis a vis the minutes of the meeting witnessed by uninterested individuals.

#### 4555. Civil action to enforce article

Note: Use the language drawn from the Code of Civil Procedure Section 1038.

Homeowners are, for the most part, not lawyers, but they can read and for the most part, interpret the civil and corporation codes. If a homeowner plaintiff files in good faith and with reasonable cause, either in superior court or small claims court, believing that they have interpreted the statute correctly, they should not be penalized. Don’t forget that the individual homeowner may decide to take action in small claims court (for an association not providing documents to them) and the court may rule against the homeowner because the court found that the homeowner did not specifically ask for the requested documents once they were at the property management’s office despite the fact of giving the property manager a written list of requested documents.

#### 4575. General rules for conduct of meeting

(a) Keep the language from the existing law (7510 [a]) “and to transact any other proper business which may be brought before the meeting.” Obviously, if an association is attempting to “control” the conduct of a meeting, the language from the existing law allows members to bring items up for discussion and vote by the members exclusive of what the board may want. This protects members’ rights to be able to have wide latitude in the conduct of the business of their association per their particular governing documents.

#### 4600. Special meetings of members

(c) In addition to reimbursing the member should the association not act within the required time frame, there should be a requirement for the association to provide, free of charge, address labels for the member to send out the notice of the meeting. This will prevent a member from having to “guess” where to send the notices and, because the association has the most current mailing list, allow the maximum number of members of the association to be notified.

4615. Court-ordered meeting

Note (2): allow the court to make this section (e) a possible “appropriate order” that it can issue in granting relief.

4630. Election provisions in governing documents

(b) Require that a qualification to serve in an elected position is self-verification by the candidate that he or she has read the governing documents and understands them. Right now, any person can run for the board (within the requirements of board membership) without ever having read or being cognizant of the requirements of the governing documents. In my current association, there is a requirement to hold an annual meeting even though the only business that is to be conducted is to approve the minutes from the last annual meeting (where there was an election). It appears that the management company and the former secretary were either unaware of this requirement or were going to just ignore it, because there wasn’t “any business” (i.e. an election) to be conducted. Individuals who run for and get elected need to have a good background in the governing documents (and also CID law), making them self-certify that they have read the governing documents will provide for a better “governance product.”

4635. Selection of election inspector

Note: Kinship of any kind (blood or marriage) under subdivision (c)(3) should be sufficient to disqualify a person under the subdivision. We need to have free and fair elections, where even the hint of impropriety or the suspicion of impropriety negates a person from being an inspector. Require that the inspector certify that they have no kinship with those who are running or those who are on the board. As one who saw an inspector of elections attempt to conduct an election contrary to the new law (Civil Code 1363.03), (Attachment 2, pages 8-22) I don’t think having too much regulation is a problem when it comes to elections.

4650. Counting ballots

Note: Meetings should be open to the public when ballots are being counted. Free and fair elections have nothing to hide.

4670. Campaign related information

(b) Leave the last sentence of this part of the code. It provides indemnification for an association for any campaign information that is provided.

4675. Voting Rights

(d) Get rid of cumulative voting. We don’t allow it in municipal, county, state or national elections, why have it in homeowners associations?

4685. Judicial enforcement

Note (2): Use the language drawn from the Code of Civil Procedure Section 1038. Homeowners are, for the most part, not lawyers, but they can read and for the most part, interpret the civil and corporation codes. If a homeowner plaintiff files in good faith and

with reasonable cause, either in superior court or small claims court, believing that they have interpreted the statute correctly, they should not be penalized.

#### 4700. Scope of inspection right

(b)(2) Anything an association does may relate to litigation that an association is or may become involved in, including disputes over contracts that they have signed that are non-performing so litigation will be pursued. The fact that a board may hold a meeting that is supposed to be announced and is not could lead to litigation—an argument for not allowing anyone to see the minutes from the meeting.

Notes (2) In my current association, we get written proposals from the landscaper that is then voted on (outside of the landscaper's contractual requirements). If there are accurate minutes kept of the meeting, then the approval should be in the minutes, but sometimes these are tabled until more information is forthcoming and voted upon utilizing Action Without A Meeting. Minutes of meetings are only as good as the person taking them and the board that approves them. Attachment 3, pages 23-30 shows that at least one association may have produced minutes that may very well be considered fraudulent.

Notes (3) Continue with the “enhanced association records,” as it quite clearly explains exactly what associations must produce for inspection. I have been attempting to get a copy of a check that was written from an account that had insufficient funds in it to cover the check and have to date, been unsuccessful (Attachment 4, pages 31-33).

#### 4705. Inspection procedure

The requirement to “state a purpose for the inspection” is unnecessary. As a member, I pay the bills of the association; I should be able to see anything and everything except that which falls under “executive session.”

Notes. (1) Associations should be required to provide a detailed explanation of the documents that are available to a member so they can decide what documents, specifically, they want to see. If an association does not have a business office in the development, then the association should be required to provide and mail, at no charge, copies of the records.

Notes. (2) Allow associations to send records electronically. This will eliminate the cost of copying to the member and will allow faster delivery of the requested documents.

#### 4735. Action to enforce

Notes (2) Use the language from Code of Civil Procedure Section 1038.

#### 4785. Director inspection

Directors should have the ability to have specifically identified association records provided to them, either copied and mailed or sent to them via electronic means if they are specifically identified. I have attempted to see certain specific documents and have asked them to be sent to me but without successes (Attachment 5, pages 34-35). If an association does not have a business office in the development, then associations should be required to provide requested documents to a director either through copying and mailing or through electronic transmittal, with no cost to the director.

4955. Attorney general

(a) Change the word “may” to “shall” in the following:

“...Article 7 (commencing with Section 4800,) the Attorney General ~~may~~ shall, in the name of the people . . .”

(b) Change the word “may” to “shall” in the following:

“...no answer within 30 days, the Attorney General ~~may~~ shall institute, maintain, or intervene . . .”

Other than the courts, which are an expense to those who file, there is no “big stick” in enforcing the rules. As the commission stated on page 1 of the Simplification of CID Law document, there are over 41,000 CIDs in California. Out of the five that I have experience with, the CID that I am currently a member of (and a board member of) I would give a grade of “F” for its blatant failure to follow and comply with their own bylaws and current CID law. All it takes is a majority of board members who want to “do their own thing,” and an association is basically “stuck” until those board member’s terms expire. I’ve seen meetings held where there is no quorum, so no meeting can be held yet minutes are produced and later approved as if an actual meeting had been held (Attachment 3, pages 23-24, page 26), which could constitute fraud (Attachment 3, pages 29-30); admission by the president to conducting secret meetings (Attachment 1, page 3), failure to produce minutes of meetings. I could go on and on—a majority of bad board members, coupled with a bad management company that is in bed with the board members leads to a bad association. Simply increasing the fee in proposed Section 4960 from \$30/association to \$100 would increase the availability of funds for the Attorney General to take action against an association by \$2,870,000, to \$4,100,000. Increase the fee to \$200/association, and that would provide \$8,200,000 for the Attorney General to follow up and enforce CID law against the most agregise associations. The majority of the 41,000 CIDs in California would have nothing to fear, the worst of the worst be finally be held accountable by the state—the very entity that should be the enforcer of the laws—not the lowly homeowner/member of an association who does not have the financial where with all to hire an attorney, go to court and then perhaps be on the hook for not only his attorney fees but the association’s as well. Don’t forget that the association has the ability to “tax,” in order, as they might say in a communication to the membership, “to defend the association from what we as a board consider a minor misunderstanding that has been blown out of proportion.”

5000. Authority to impose disciplinary fine

Note: The power to impose fines should come only from the declaration, articles and bylaws. Otherwise the board can make its own rules. Having seen my own association attempt to change the voting rules and procedures to comply with the new section of Civil Code 1363.03 without sending out the proposed change to the membership, as required, I’m left with the conclusion that other boards, because of a certain amount of frustration with a member who isn’t following the rules (thus the disciplinary fine) may take the situation into their own hands and act unilaterally. Require the ability to impose fines to be in the declaration, articles or bylaws, which is a higher standard.

#### 5005. Disciplinary hearing

Note: There should be some sort of hearing required before a charge can be assessed against a member. What about due process and the ability to see the evidence and question the accuser? Otherwise boards could act as a “Star Chamber Court” with no remedy for the members other than to go to Superior Court to be heard.

#### 5060. Minimum requirements of association procedure

What is discussed should be memorialized in a memo for the record, signed by both parties, even if a resolution is not forthcoming. This will allow a third party to know what was offered by both sides in an attempt to come to an agreement and resolution to a problem. Having been involved in an Internal Dispute Resolution with my current association, to say that the result was unsatisfactory would be an understatement. The supposed board member that we met with was not board member because he was appointed at a meeting where no quorum existed (see Attachment 3, pages 23-24), so he had no authority to act. Following an attempt to conduct a secret meeting to deal with the problem (see Attachment 1, page 1) an anonymous group of board members then decided, outside of a meeting and with no minutes, to move forward with Alternative Dispute Resolution (see Attachment 6, page 36).

#### 5500. Accounting

(c) Remove “in litigation” in the sentence “...by the association as a compensatory damage award or settlement ~~in litigation~~ involving a construction or design defect . . .” My association recently received a \$100,000 out of court settlement with the builder (utilizing Civil Code 1375). This settlement was then placed into the Operating Fund of the association (See Attachment 7, pages 37-38).

#### 5555. Reserve funding study

Note: Once the useful life of a component that had a life span of greater than 30 years now falls below that 30-year mark, it should be reported. Keeping track of these items in the reserve study would make sure that they aren’t overlooked. Take V-ditches as an example. If the life expectancy of a V-ditch is 40 years, it wouldn’t need to be accounted for, but after 10 or 11 years, it would need to be accounted for. Appendix B of the California Department of Real Estate Reserve Study Guidelines for Homeowner Association Budgets identify “drainage systems” as a component that is often overlooked in reserve budgeting. My own current association doesn’t have a line item for the V-ditches within the association.

#### 5580. Assessment increase

Note: I believe that the ability to increase by 20% is based on the previous year’s assessment. In the example given of an \$80/month assessment, the new assessment could not be more than \$96 ( $80 \times 1.2$ ) without member approval. It does not mean a new assessment of \$100/month is 20% of the previous year’s assessment of \$80 (that would be an increase of 25%,  $\$100 - \$80 = \$20 / \$80 = 25\%$ ).

5620. Payment plan

Note: The rule should also apply to interest on the amount owed while a payment plan is in effect. The idea is to get the association the money that it is owed. Adding interest to the amount just makes it that much harder for a member who has fallen on hard times to pay up. Communities are not well served by the potential of a default sale of a home.

5635. Lien release

Note: The board authorized liens, so they would make the determination that it was recorded in error. There needs to be some protection for the homeowner, because boards may act detrimentally toward a member who they consider to be a “deadbeat.”

5775. Architectural review and decision-making

(5) If the board is the same as the Architectural Committee, a member of an association should be able to appeal to a non-partisan, non-biased committee of other homeowners. I have seen architectural requests denied even though the request was in keeping with the overall architectural integrity of the association (many homeowners have the exact same type of wall and Plexiglas combination that was denied).

Mr. Hebert, I’m glad to have had the opportunity to offer input and suggestions into this process. Obviously, with 41,000 CIDs throughout the state, some associations work better than others. The overriding problem that I see, is that the establishment of what is, in effect, a “mini-government” with no real oversight other than the ability of residents to take an association to court is a failure on the part of the state of California to “police” corporations that they have allowed to come into existence.

Many residents just let it go, because the odds are heavily weighted in the association’s favor. Associations can levy a “tax” to fight litigation, they can send out information through newsletters about that litigation that may not present all of the facts, and each board member can spread rumors and allegations to undercut a homeowner who decides to “fight city hall.” I’ve seen this in my own association, and that’s why I ran for the board. For the past three years, I’ve seen a board that allegedly has not complied with:

Civil Code Section 1363.05 Common Interest Development Open Meeting Act  
Corporate Code 7210 Board of Directors: Exercise of Powers  
Corporate Code 7211 Meetings  
Corporate Code 7231 Performance of Duties; Degree of Care;  
Corporate Code 8215 (b) False Material Statements  
Corporate Code 8320 Books and Records

Some of the attachments clearly show, I believe, that I live in an association that I would define as “dysfunctional,” and that acts outside the best interests of its membership and the existing Civil and Corporation Code.

Good government must prevail. One need only go to some of the web sites or read letters to this very commission to come to the conclusion that there are some “bad actors” in the

CID “family.” Without action by the Attorney General (hence the increased annual fee per proposed Section 4955), there will continue to be “rogue CIDs” that operate outside of the law and with an agenda that is counter to good governance. Any volunteer director, who hasn’t, at a minimum, read the bylaws, should be removed for a breach of fiduciary responsibility.

All of the comments in this letter are my own and may or may not reflect opinions of the San Marin Association Board of Directors or the San Marin Association.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter K. Wilke". The signature is fluid and cursive, with a large initial "P" and "W".

Peter K. Wilke  
Member at Large  
San Marin Association

Enclosures

**EMAIL FROM KENOLI OLEARI**  
**(SEPTEMBER 20, 2007)**

I just today got notice of the work you are doing to recommend revisions to laws referring to common interest housing. I live in a limited equity coop and we have always been aware of how much of the law we have to follow is not particularly relevant to our situation. We are a 9 unit cooperative, registered as a CA State limited equity coop public benefit corporation with a 501(c)(3) IRS designation.

We are organized in a kind of single room occupancy model with shared kitchen, bathrooms much common space and yard. We pay for utilities, food and other shared resources as a group.

We are part of a community land trust, which means that the property we are on is owned by a community land trust. The community land trust governing board includes residents, community members and others and we own the improvements. We operate under a ground lease with the land trust that restricts resale value, resident income levels and other things to conform to standards that promote long term affordability and community integrity.

We are also involved in developing other such properties. There are a number of laws that affect us that we would like to comment on. My sense is that word of your work has not gotten around to any of the other houses I know of that are similar to ours. I don't know what kind of outreach you have done, but I think we include an important constituency that you might consider reaching out to. We are certainly not a group that maintains an office in Sacramento to monitor legislation or lobby legislators. We have ideas and can comment, however.

Here are several quick issues we have come across. I don't even know exactly where they are contained in legislation, but they do affect us.

1) Our kind of housing usually involves low income residents. We don't have paid staff or resources to hire bookkeepers, accounts, attorneys, lobbyists and the like. We manage the property ourselves as volunteers. Laws requiring various kinds of reporting need to take this into account if they are to be equitable. They often seem to assume that infinite staff and professional resources are available to meet reporting and other needs.

2) When we create a coop of the type I live in, we are forced to go through a Department of Real Estate review that is really designed for large developers actually subdividing land. The costs and time it takes to deal with the DRE can be crippling. We flat out have not done certain projects because we couldn't afford

the DRE process. Our projects are not developments that generate profits that can pay for this kind of thing. DRE staff often uses the process to impose personal opinions about how they think things should be, and the mapping and documentation requirements can be crippling. There is written into LEC law, a provision that exempts LECs from this process if they have a certain level of public funding. In this case, with the permission of the DRE, another agency can be lead agency. It is important that this provision remain and I urge that you consider looking at ways to further exempt project like ours from DRE review, including those that do not get public funding as public funding is largely drying up. We are not subdivisions in the sense that the DRE seems set up to review.

I'm sure there are many more things I would like to comment on, but since Friday is the deadline and I don't have the kind of life where I can drop everything and research your material, it is going to be hard to make other comments.

Please include these comments in any public record and add me to any mailing lists on this issue.

--Kenoli Oleari

Kenoli Oleari  
Berkeley, California  
510-601-8217



Association Stationary  
Sun City Roseville Community Association, Inc.<sup>®</sup>

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September 17, 2007

Law Revision Commission  
RECEIVED

SEP 19 2007

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

File: H-855

Re: Statutory Clarification and Simplification of CID Law

Honorable Members of the Commission:

We are pleased to forward the attached comments regarding your work to revise certain aspects of the Davis-Stirling Common Interest Development Act.

In addition, we think it is important to introduce our association to your Commission. Sun City Roseville Community Association is a community that falls under the umbrella of the Davis-Stirling Act. Our community is comprised of 3110 homes with 5263 members. The association is self-managed and has been since our transition in 1999 from the Del Webb Corporation who developed the community. The association is comprised of approximately 1200 acres which includes individual residences, nature preserves, landscaped common areas, two golf courses, a large club building, fitness center, activity and meeting rooms and two restaurants. The annual budget of our association exceeds \$10 million. We have over 200 employees and eleven resident advisory committees that allow input from all of our members in the governance of our community.

The attached comments are an attempt to provide input that will better accommodate the daily operational issues of an association of our size and still be acceptable to smaller associations. In a piece of legislation such as the Davis-Stirling Act that covers all common interest developments regardless of size, certain provisions are cumbersome to implement. Therefore, the attached comments serve to either point out certain proposed revisions that are helpful to our organization which we support, or our comments that raise additional concerns on revisions that we feel need additional analysis and possible reconsideration. Although all the revisions in the attached summary are important, the following issues are of particular concern.

The attempt to standardize and reconcile the overlap between The Davis-Stirling Act and the Corporation Code providing for secret ballot in the Davis-Stirling Act (4640) and written ballot in the Corporation Code (Corp Code 7513) is a concern to us. Having two different procedures, depending on the issue is unnecessarily confusing. We recommend that all ballot voting be done by secret ballot to preserve simplicity, conformity, and anonymity.

A related concern is that there is no provision that generally allows for mailed secret ballots in lieu of voting at a meeting. As stated in the attached comments, a provision

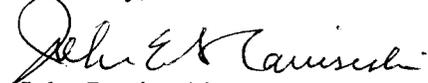
## Association Stationary

similar to the general provision in Corporation Code 7513 should be included in the new law.<sup>1</sup> Another concern relates to member rights during an election campaign, as explained in our comments on 4670. The provisions may be workable in smaller associations, but can create enormous problems for larger associations.

In addition, our Board of Directors meets each month in open session to take action on issues facing the community. The eleven resident standing or special purpose committees also meet in monthly open meetings. Between the monthly Board meetings, the Board meets in closed session to plan, set goals and priorities and provides direction for our Executive Director. We feel that additional clarification is needed as to which matters must be discussed in open sessions by the Board, as opposed to closed Board planning sessions and Board executive sessions. Please note our comments on 4090 – Board Meeting.

Sun City Roseville Community Association would like to congratulate the Commission on the work that has been accomplished in restating the provisions of the Davis-Stirling Act. We see your work as providing vast improvements in the Act and we support your efforts thus far. We will appreciate your consideration of the few items that we have identified.

Sincerely,



John Raniseski  
President, Board of Directors



Jim Viele  
Chairman, Governmental Affairs Committee

Cc: Davis K. Milton  
California Association of Realtors

Karen Conlon  
California Association of Community Managers

Nick Cammarota  
California Building Industry Association

Kerry Mazzoni  
ECHO

Skip Daum  
Community Association Institute

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<sup>1</sup> See comments under Chapter 3, Article 3 and 6120

## **Association Stationary**

Shirley Allan  
Palm Desert Community Association

Jackie Lamb  
Sun City Lincoln Hills Community Association

Members of the Governmental Affairs Committee  
Sun City Roseville Community Association

## SUN CITY ROSEVILLE COMMUNITY ASSOCIATION

### Comments on the California Law Revision Commission's Tentative Recommendation of June 2007

#### 1. PRELIMINARY PROVISIONS

##### Article 1. General Provisions

###### 4045 General Notice

Would electronic means used in 4040(a)(3) include Website notice? If not, shouldn't it be allowed for General Notices, if agreed to by the member?

###### 4050 Time and Proof of Delivery

(b) These provisions could cause a hardship by delaying the implementation of the various responses/actions that are the subject of an individual or general notice. In the case of a mailed general notice, application would be have to be delayed for 20 more days if even one notice was mailed overseas. (For instance, a challenge to a rule change). In terms of most individual notices requiring action or a response, the time requirements for notice and response are already in place and adequate. In addition, the proposed extensions would likely create unnecessary confusion. In cases of hardship, the Board can always allow exception to the rules.

##### Article 2. Definitions

###### 4090 Board meeting

The word "hear" is not clear. Would this word limit the ability of the majority of directors to gather privately to establish a meeting agenda (without discussing the agenda items themselves) or to gather at a "retreat" with the purpose of setting goals for the coming year? Could "hear" be deleted? Without that term, would these gatherings then be legal? Our large, 3110 member, association deals with multiple issues at each month's board meeting for which agenda-planning is necessary. If the new wording does not allow for these gatherings, could they be added to the executive session exception?

Your Note re email communications: We believe that adding a provision similar to the Government Code Section 11122.5(b) relative to prohibiting the use of email by a majority of the board to develop a collective concurrence would provide reasonable guidance to directors without inhibiting planning efforts.

###### 4160 Member

The definition of Member is not as clear as it could be. Suggest it should be linked to 4170 "Person" by rewording to:  
"Member" means *any Person who is* an owner of a separate interest in a common interest development.

#### 3. ASSOCIATION GOVERNANCE

##### Article 2. Board Meetings

###### 4520 Notice of board meeting

(c) *Advance* notice of an emergency board meeting is not required.  
Does this mean that no notice needs to be given, even if possible at some time before the meeting?

Your Note #2: Notice should be given for all meetings so that the agenda is disclosed in advance, except for emergency meetings and executive sessions.

4540 Executive session

The purpose of the executive session involving members who are subject to discipline or assessment disputes is to protect the privacy of the member. That should be retained. However, if the member wishes the session to be open, then it should be allowed.

4555 Civil action to enforce article

Your Note: Yes, the Association should be protected again frivolous complaints by members.

**Article 3. Member Meetings**

Corporation Code 7513 authorizes a written ballot vote in lieu of member action at a meeting. It appears that this applies generally, and it is not among the non-applicable provisions listed in 4025. However, we could not find any provision in the proposal that specifically allows a ballot vote in lieu of action at member meetings *in general*, even though Civil Code 1357.140(e) incorporates this provision under member reversal of rule change, as does the proposed 6120.

Our Association of 3110 voting members makes it impractical and unfair to allow voting on substantive issues or elections at a meeting. In fact, our Bylaws specifically prohibit such voting at meetings. Furthermore, we do not allow proxies, because they can be subject to manipulation and the time it would take to verify and count them at a meeting would be prohibitive. Instead, our Bylaws require a secret ballot vote (4640) by members on all issues on which they have the right to vote. Therefore, a member petition requires the board to call for a secret ballot vote. Otherwise, members may still petition for a meeting, but only advisory votes may be taken there.

For clarity, we believe strongly that allowing a secret ballot vote to substitute for a member meeting, such as in Corp Code 7513, should be incorporated into the proposed Article 3, with reference to Article 4. (Also see comments under 4615/4620, 4640, 6120)

4575 General rules

The second sentence appears to *require* that director elections are to be conducted at a regular member meeting. This appears to be in conflict with the secret ballot procedure in Article 4 and 4640(a)(2).

4615 & 4620 Court-ordered actions, *also* 6120(d) Reversal of rule

Each of the sections contains references to a "written ballot". This implies that Corp Code 7513 procedures apply. Yet 4640 is required for a member election (4625). Instead of having two procedures invoked in Davis-Sterling, shouldn't the reference be to a "secret ballot" so that the procedures of Section 4640 would cover all ballot elections, as you assert in your 4640 Note? The distinction is important, mainly because 7517 requires a written ballot be signed by the voter, whereas 4640 has procedures which preserve anonymity. Many association members would not vote if it were required that they signed their ballot.

**Article 4. Member election**

4630 Election provisions

Your Note: We support allowing election rules to be promulgated in any of the governing documents. In fact, part of the rules governed by existing law appears in our Bylaws.

4635 Selection of election inspector

Your Note: For consistency, the kinship rule should apply to all classes of disqualified persons. As defined does "related to" include "cohabitant" (significant others)?

#### 4640 Secret ballots

The list of 4 items in paragraph (a) does not cover all issues that may be subject to a member vote, in spite of your Note at the end of the section. Suggest that (5) be added that specifically allows a member election on any issue on which the member has the right to vote by law or the governing documents. This would also cover Section 6120 where a ballot is authorized. (See comments under 4615, above)

#### 4650 Counting of ballots

Your Note: The "in public" part allows non-member residents to attend the counting which is desirable. If anyone in the general public wishes to attend, we do not see any harm in it.

#### 4655 Ballot custody

The current law refers to Corp Code 7527 which states that action must be brought within nine months. The new section 4685 referenced appears to say one year. This would mean that the time for custody by the inspector would last for a year (not nine months) until transferred to the association. And the time the association needs to retain the ballots is for the same year. Shouldn't 4685(c) be changed to nine months?

#### 4670 Campaign related information

Paragraph (b) does not define the period for which this provision is in effect, as stated it appears to be unlimited. Because the minimum balloting period is 30 days, it is logical to define the balloting period as a "campaign period". The following provision could be added for clarity and ease of administration:

*For the purposes of this section, "campaign period" shall begin the day after the ballots are mailed and end the day of counting of the ballots.*

Then, the follow wording could be added to (b),

*During the campaign period, an association may provide.....*

Paragraph (c) appears to continue a problem that our Association has with existing law. We have multiple meeting spaces, but they are virtually fully reserved weeks and months in advance. Many of the reservations are for paid use. A literal interpretation of the provision can provide administrative and financial hardship on the Association. In addition with 9 candidates, if all cannot be accommodated, it would not be fair to those who could not reserve space. It seems that equal access should be the objective, not unlimited access.

One solution is to require the Association to conduct meetings featuring all candidates or informational meetings about issues to be voted upon, with all such meetings allowing all members to express their point of view. A suggested wording could be:

(c) If an association has common area meeting space, *it shall sponsor, at no cost, events that provide campaign related information. The association shall provide general notice for such events and shall provide equal access to each candidate and advocate for or against a proposal in the pending election.*

Paragraph (e) in this provision does not clearly except the voting materials that the board sends out with the ballot from being interpreted as "campaign related information".

Without that exception the association could be obligated to mail out any information that any member submits from time to time. Perhaps use of the word "applies" would make it clearer:

(e) Nothing in this section *applies to* the use of association funds.....

### Article 5. Inspection of Records

#### 4700 Scope of inspection right

(a)(2) To require email addresses be included with a membership list would create an administrative nightmare. Members are changing their addresses constantly and the association is not necessarily informed, so the information is unlikely to be useful.

Your Note #1. If the existing language did not allow final reports to be reviewed, then the new language is preferable.

Your Note #2. Generally, our association does not provide a written document of board approval of contracts. The fact is included in the minutes. 4700(a)(9) is not needed.

Your Note #4. Retain the limit as stated in 4700 (b)(1)

#### 4705 Inspection procedure

The provision requires inspection by a member to occur in the business office or another agreed-to location. To protect the records, the member must be monitored by an employee during the period of inspection. If multiple records are involved, as is often the case in our Association, this can be a costly exercise. Furthermore, the member usually wants copies of most of the records and (c) gives the member the right to make the copies. Members should not be given complete authority to access the copying machines the office may have or to take the documents to be copied.

An alternative should be offered that allows the association to make and personally deliver copies of the requested records, and if requested, in electronic form.

Re Your Note #2, the limitation that requires an electronic format that prevents alteration of the record should be retained. Conversion of records to an unalterable .pdf format is easily done, so it is not clear why it "could significantly interfere with beneficial use of the electron transmission".

#### 4715 Optional redaction from membership list

(b) It is not clear what this means or why it is needed or desirable. Sometimes members "opt-out" from the membership list to avoid getting "material". Isn't this provision new? It doesn't appear to be included in 1365.2(a)(1)(I)(iii).

#### 4720 Fees

Paragraph (b) is a welcome improvement that clarifies the right of the association to charge a fee for retrieving records. However, the dollar limitations are unrealistic in most cases. Not only are there cases where over 20 hours are expended, but minimum wage employees are not capable of retrieving or redacting the requested records. Is there any reason why the fee cannot be "direct and actual cost"?

#### 4730 Denial of Request

Paragraph (b)(2) is a welcome improvement that allows offering an alternative proposal.

#### 4735 Action to Enforce

Your Note #2. We agree the proposed example for frivolous cases should be used.

#### 4745 Limited Liability

Your Note: We believe that simple negligence should be eliminated as a basis for personal liability, because it is too subjective. Even a frivolous accusation would be hard to defend against, compared to the other two criteria.

### Article 6. Record Keeping

#### 4780 Record retention periods

(b)(4) The IRS does not require tax returns and related records be retained permanently. Suggest that it be omitted as it is covered in (a).

### Article 7. Annual Reports

#### 4800 Annual budget report

#### 4805 Annual financial statement

#### 4815 Community service organization report

#### 4825 Financial statement

**EX 158**

We found it confusing to have this financial information requirement under Chapter 3. Governance, instead of Chapter 5. Finances. These provisions refer to reports &

information that are described in the later chapter, which requires the reader to flip back and forth between the two. Reference to 4820 and 4830 can be made in the later chapter.

#### 4810 Member handbook

The Member Handbook concept is most welcome for the savings to the association time and expense.

Paragraphs (a)(5) and (6) cover only part of the obligations and rights of members. To be complete, the policies and practices for enforcing violations (5005), including the fine schedule (5000), should continue to be included in the handbook. Otherwise, information on this issue would only be easily available whenever changes are made.

Note the typo in (c): it should say handbook instead of financial statement.

One general comment. If you must specify the font size in this Article 7, you should include the font type. For instance, font size 12 for the popular font Arial is much larger than Times New Roman 12.

## 4. DISPUTE RESOLUTION AND ENFORCEMENT

### Article 1. Disciplinary Action

#### 5000 Authority to impose disciplinary fine

Your Comment #1: As stated in 4810, above, we believe it is important to include the policies for enforcing violations, including the fine schedule, in the handbook.

#### 5005 Disciplinary hearing

Your Note: A disciplinary hearing should be held before imposing any charge related to any violation, including damage to the common area, because there may be mitigating circumstances.

### Article 2. Internal Dispute Resolution

#### 5050 Application of article

(c) Section 5005 does not preclude a board from using a committee of the board to perform the disciplinary hearing. One reason for using this approach would be that the member could then appeal to the full board for reconsideration or ask for IDR. Would paragraph 5050(c) limit this approach, or can one infer that it only applies to decisions of the full board?

### Article 3. Alternative Dispute Resolution

#### 5080 ADR prerequisite to enforcement action

Your Comment re (d). You are saying that (d) is obsolete and not continued, yet it still appears in this section. If it is to be retained it would be clearer if, in addition to "Except as otherwise provided by law", specific reference is made to Section 5625 which allows application of ADR to an assessment dispute.

## 5. FINANCES

### Article 1. Accounting

Generally, the restatement of the Reserves requirement is a welcome improvement.

#### 5560 Reserve funding plan

In our association, the information required by (c) is available in our reserve study summary, so the use of the form is redundant. Please include a paragraph in this section similar to the second sentence in 5555(d).

**Article 2. Assessments**

5580 Assessment increase

Your Note: Your wording is correct, our documents contain similar wording as proposed in (b)(2)

**Article 3. Payment and Collection of Assessment**

5600 Payment

Your Note: Yes, it means the office where payments sent by an overnight delivery service can be received.

**8. GOVERNING DOCUMENTS**

**Article 3. Articles of Incorporation**

6060 Content of articles

(a)(4) Please restore ", if any" to this provision.

**Article 5. Operating Rules**

6120 Reversal of rule change by members

Paragraph (d) uses the term written ballot, instead of secret ballot (Section 4640). Although the term written ballot is used in 1357.140, it would be highly preferable to apply the provisions of Section 4640, secret ballot, in order to preserve confidentiality. See comments above under Section 4615, above.

**EMAIL FROM MARJORIE MURRAY,  
CALIFORNIA ALLIANCE FOR RETIRED AMERICANS  
(SEPTEMBER 21, 2007)**

Brian Hebert, Executive Secretary  
California Law Revision Commission  
via email

RE: CLRC Recommendations re CID Elections

Dear Brian:

This email will confirm the testimony that the California Alliance for Retired Americans (CARA) presented earlier this year to the Commission concerning CID elections. I have also discussed these concerns with you in subsequent telephone conversations.

CARA's major concern is that the CLRC recommendations disturb the agreements arrived at over the course of three years worth of negotiations by all the stakeholders in association elections. The negotiating sessions were presided over by the office of Senator Jim Battin. CARA would oppose any recommendations that weaken these agreements.

Of special concern is disturbing the agreement that election operating rules shall govern elections. SB61/SB1560 requires that election operating rules are to be developed under one of the most critical pieces of legislation sponsored by the CLRC itself, i.e. Fairness in Association Rulemaking, authored by Assemblymember Patricia Bates [R-Laguna Niguel.]

Operating Rules, as the CLRC has made clear, are to be developed jointly by association members and the CID board. The purpose of having members and boards develop the operating rules together is to prevent -- or at least minimize -- post-election disputes. Dispute prevention itself has been another CLRC priority.

Subsequent to the signing of the new elections law by the Governor,, Senator Battin's office has made clear -- in letters and in public statements -- that it is not necessary to amend an association's CC&Rs or by-laws in order to accommodate SB 61/SB1560. In fact, the reverse is true: operating rules are to be developed within the framework of an association's existing bylaws and CC&Rs.

Among its several purposes, operating rules resolve questions and issues which may not be addressed in the HOA's governing documents, e.g. who retains physical custody of the the ballots? Where are the ballots to be preserved? How does a member obtain a duplicate ballot? Who has custody of the voter registration lists?

The point that CARA wants to stress to the Commission is that negotiations over the new elections law were carried out over a period of three years by the stakeholders. They were long and difficult, as Senator Battin's office will attest. CARA would strongly oppose any recommendations that disturb our agreements over proxies, selection of the Inspector of Elections, quorums, nominations from the floor, secret ballots and all the other elements of Senator Battin's election legislation.

CID elections has been a major concern of Senator Jim Battin [R-La Quinta] for a number of years, because he has so many CIDs in his district. His office has been bombarded with complaints about the running of elections: failure to distribute ballots to members, failure to provide secret ballots, the tossing of ballots, and, in general, the control of the entire electoral process by the incumbents -- something we wouldn't tolerate in public elections.

As CARA understands it, the stated purpose of the CLRC's most recent CID project is to clarify and simplify CID law -- not to change it.

Therefore, CARA urges the Commission to let Senator Battin's election law be implemented -- as it now stands.

Sincerely,

Marjorie Murray, Vice President  
California Alliance for Retired Americans (CARA)  
1305 Franklin St., Suite 201  
Oakland, California 94612  
510.272.9826  
info@calhomelaw.org

cc: Senator Jim Battin, ATTN: Mark Reeder  
ATTN: Ken Devore

**EMAIL FROM CAROLE HOCHSTATTER & NORMA WALKER  
(SEPTEMBER 20, 2007)**

Submitted by e-mail

September 21, 2007  
Bakersfield, Calif.

Mr. Brian Hebert  
California Law Revision Commission  
3200 5th Ave.  
Sacramento, California 95817

Dear Mr. Hebert:

It is always a pleasure to comment in person, or by letter to the commission, because it is a civil and welcoming body. Thank you for your attention once again.

Re: CLRC: Comments on proposed CID law

Living in a homeowners association /common interest development, (The Vineyards Community Association, hereafter VCA), is a challenge most members do embrace, but that concept is not followed through in the responsibilities of voting, or participating in the governing of the association.

Norma and Carole are ambivalent with the process of Clarification and Simplification; will this process benefit vendors or homeowners. It is our hope this Clarification and Simplification will lead to an improvement of the lifestyle of an individual in a homeowners association because there are very, very few mechanisms for individual homeowners cost effective-enforcement.

We tried before our election in 2006 to share with our board of directors California Civil Code 1363.03. The Board of Directors did employ an attorney to write our election rules; however, the board of directors did not follow these rules. We also tried Internal Dispute Resolution, met with two board of directors, who would not comprise even though one director in Internal Dispute Resolution admitted that he had not read the rules when he voted to adopt them.

In March of this year Norma and Carole brought an action against our association in Small Claims Court using 1363.09 to enforce law, documents, and our adopted

election procedures. The Small Claims Court Advisor and a homeowner association attorney we consulted advised us that only a monetary issue would be heard in Small Claims court. The Small Claims Court Judge did not fine the Vineyards Community Association for the eight (8) most egregious statutory violations stemming from our 2006 Vineyards Community Association election.

We pay assessments and taxes for a bureaucracy that does not have an enforcement agent to protect an individual homeowner from violations of statutory rights. Your Clarification and Simplification document suggests the Attorney General MAY INTERVENE. Our experience with the Attorney General's office has in the last years been to advise one to hire their own lawyer. For the past 18 years Grandmas Norma and Carole have been spending our own money, attending a majority of our own board of directors meetings, attending homeowner association related meetings statewide, lobbying legislators for the benefit of ALL homeowners in California.

Carole and Norma had a tremendous learning curve with regard to Small Claims Court actions, California Civil Codes 1363.03, 1363.09, 1357.100, AB 2618, and web site building. We hope you will take the time to read our web page that documents our Small Claims Court Case # S-1500-cs-172239 Amended. Our url: [www.bakersfieldhoacidadvocates.com](http://www.bakersfieldhoacidadvocates.com)

We wish to comment further on specified sections of the Statutory Simplification and Clarification of Common Interest Development Law.

Article 2 Definitions:

Nominate: Add nominate; our experience finds that our nominating committee recommends the incumbents only; while self-nominees are not nominated.

Chapter 2

Homeowner's Bill of Rights: Who is going to write it and what will be the enforcement mechanisms?

4605. Meeting adjournment

When a quorum is not reached at the annual members meeting where one item is the election of Directors, are the properly noticed mailed ballots valid at the reconvened members meeting or is a new election mandated by law?

4640. Secret ballots

4640(c) we agree that cumulative voting should be mandatory.

4665. Nomination of candidate for board

4665 (b) Language should read **shall** allow self-nomination.

4685. Judicial enforcement

4685 (c) If an action is brought within one year in Small Claims for a fine and the defendant is not fined, is the election presumed to be invalid.

4810 Member handbook

Good idea, but who will enforce?

4830. Judicial enforcement

Small claim is quicker and cheaper for a homeowner. Why not a fine, and Small Claims jurisdiction?

4905. Trust fund account

Homeowner associations are required to have officers. Why would want a managing agent rather than an association officer signing for association accounts?

5130. Enforcement of this part

What actions in Superior Court? Small Claims? Declaratory Relief? Injunctive Relief?

5875. Transfer fee

How will *Berryman v Merit Property Management, Inc.*, *Brown v Professional Community Management, Inc.*, affect this section?

(Exhibit 1) [www.bakersfieldhoacidavocates.com](http://www.bakersfieldhoacidavocates.com)

(Exhibit 2) Our letter of January 23, 2007 to the CLRC

(Exhibit 3) Small claims Court Violations filing

(Exhibit 2) Our letter of January 23, 2007 to the CLRC

January 23, 2007

Sent via e-mail

To: California Law Review Commission

C/O Brian Hebert

Norma and I appreciate the hard work this commission has done on the subject of CIDs for these several years. However, as users of CID legislation it is just beginning to be **possible** for homeowners in associations to have **any** voice in the governance of an association without suing. This cumbersome process benefits only the **vendors**.

As it appears we, Norma and I, will not be able to attend the January 25, CLRC meeting, we are sending our concerns and comments.

Having recently completed our election of The Vineyards Community Association in Bakersfield, we are aware of the pitfalls and problems that can and have occurred.

Our association experienced these infractions: **not** securing the approval of election rules, **not** accepting nominations of all members in good standing who submitted their name at the correct time, sending out names of incumbents running for the Board without including those who self nominated, **not** establishing in the Election Rules procedures to name the Inspector of Elections, **not** informing the Inspector of Elections to answer all challenges to the election, **not** insuring that the Election Rules allow Cumulative Voting to be possible, refusal to follow either "Association Governing Documents" or Election Rules with regard to the Quorum, and we were **not** given 30 days to comment on the election rule changes. After trying to resolve these issues through IDR, our management representative with the board members silence stated Norma and I could sue.

As to the "Clarification and Simplification of . . . Member Elections," most of the language seems "controversial." When Senator Battin first introduced Election reform legislation, he called CID elections "wrought with fraud and abuse." The language in much of this section rather than simplify instead is vague and less specific. As we so often hear, boards of directors are volunteers; boards and homeowners who are users of this civil code truly need "Clarification and Simplification".

The use of ***the term governing documents line 31 and 32 of in 4630 (f)*** **does** not make it simpler to understand that the Election Rules are an Operating Rule. In Article 5, line 28 and 29 specifics language is used. One is left to wonder why this difference. The term ***governing documents*** is too general for volunteer boards. In the 16 plus years Norma and I have lived in a California homeowner association, we have attended our board meetings, researched the internet often for this subject, purchased and read many books, and articles on the this subject, visited senators, assemblymen offices, and this Commission at our own expense to educate ourselves to protect the value of our homes.

1363.03 speak unequivocally to the allowance of cumulative voting. The clean up section (n) *the event of a conflict between this section and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this section shall prevail. An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.* **Does not this section prevail over the conflicting Corp Code? Does the mail in ballot conflict with Corp Code?**

Speaking of simplification and clarification what is the simply answer for the timeline of 30 a day comment (Civil Code section 1357.130) period for election rules prior to July 1, 2006 and after July 1, 2006? Lawyers on the internet cannot agree. This shows us that s/c is very necessary for user and vendors.

**4660** negates 1363.03 (a) (3) because Senator Battin defined reasonable as “not reasonable if it disallows any member of the association from nominating him or herself for election to the board of directors.” The Corp code does not speak to nominations in associations less than 500. In California that speaks to a huge number of associations. In 1363.03 (n) 4660 (b) the words (***not prohibited***) should be removed.

Thank you for your attention and valuable work.

Sincerely,

Norma Walker

Bakersfield, California

(Exhibit 3) Small claims Court Violations filing  
**CIVIL CODE section 1363.03 et seq.**

	<b>VIOLATION</b>	<b>DATE OF VIOLATION</b>	<b>STATUTE OR RULE VIOLATED</b>
1	The Vineyards Communication Association (" THE VCA") failed to amend their adopted 2006 Election Rules to reflect the technical cleanup of SB 61 in SB15690 which was signed by Governor Schwarzenegger on September 18, 2006. SB 1560 applies retroactively to July 1,2006, with changes to clarify SB 61.	September 18 2006	1363.03 (a) 1357.100 et seq.
2	The VCA BOD or their authorized representatives destroyed original ballots, and ballot envelopes from the October 31, 2006, Annual Members Meeting.	Unknown	1363.03 (h ) ( i ) ( j ) The VCA Election Rule 13
3	The VCA Board of Directors ("BOD") through its Nominating Committee failed to accept the nomination of two members in good standing.	September 2006	1363.03 (a) (3) The VCA Election Rule 1
4	The VCA denied two self-nominating candidates equal access to the association controlled media (newsletter). The VCA Self Nomination Form (newsletter) included the nomination of incumbent's names only.	September 2006	1363.03 (a) (1) 1363.04 The VCA Election Rule 2
5	The VCA also failed to adopt a rule for a self-nomination process.	August 2006	1363.03 (a) (3)
6	The Inspector of Elections failed to answer all challenges to the Election Rules.	October 2006	1363.03 (c) (3) (D) The VCA Rule 7 (5)
7	The VCA failed to follow the adopted procedures with regard to the Quorum.	October 31, 2006	1363.03 (b) The VCA Election Rule 6 , 7 (3) , 8, 5
8	The VCA denied Cumulative Voting in their Election Rules by making cumulative voting unattainable by confusing the Annual Members Meeting with a Board of Director's Monthly Meeting.	June 25, 2006	1363.03 (b) The VCA Election Rule 10 California Corp Code 7615

WALNUT HOUSE COOPERATIVE  
1740 Walnut St.  
Berkeley, CA 94709

September 21, 2007

Law Revision Commission  
RECEIVED

SEP 24 2007

Mr. Brian Hebert, Executive Director  
California Law Review Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

File: \_\_\_\_\_

Re: CID Study H-855

Dear Mr. Hebert:

I am the President of the Walnut House Cooperative and am writing about the Common Interest Development Study. We appreciate the Commission's work on this issue. The cooperative owns a twenty-two unit apartment building in north Berkeley with about 25 residents. The cooperative is "limited-equity" and is self-managed. Limited-equity coops are established under state law to allow people of limited means access to secure housing. Should the Commission's recommendations become enacted into law, it will affect us, as well as many other stock cooperatives. We have asked one of our members--Bob Sheppard--to represent us and we hope that his feedback has been helpful.

We hope that you will continue becoming familiar with this form of homeownership so that your work will support communities like ours around the state. There are many positive aspects to your work that we appreciate, as well as some others that we would prefer you change. Some such provisions ((appear to make no sense)) would be very problematic when applied to a stock cooperative while others may appear harmless on the surface but may have serious consequences on the ability of an association to act in a healthy and functional way. Provisions that may work fine for large CIDs with substantial resources can be very onerous for small organizations such as ours that are self-managed and do not have staffs to address these requirements. We are particularly concerned about some of the provisions making elections much more time-consuming and resource- intensive. Mr. Sheppard has communicated many of these concerns to you and will continue to do so on our behalf.

Stock cooperatives have had a long history both in California and many other populous areas. They predate condominiums by decades. When properly managed, their legal structures and business systems have withstood the test of time. We believe that the limited-equity form is the preferred model for providing long-term, affordable homeownership. We request that you do everything you can to avoid creating

unnecessary burdens for organizations such as ours.

Thank you for your consideration. If you have any questions, please feel free to contact either Mr. Sheppard or myself.

Very truly yours,

A handwritten signature in black ink, appearing to read "Traci Prendergast". The signature is written in a cursive, flowing style.

Traci Prendergast, President  
Walnut House Cooperative



# Memo

www.car.org

C.A.R. Comments re CLRC September 21, 2007

**Executive Office:**  
525 South Virgil Ave.  
Los Angeles, CA 90020  
213.739.8200

**Legislative Office:**  
980 Ninth St., Ste. 1430  
Sacramento, CA 95814  
916.492.5200

Proposed Recodification of  
Davis-Stirling CID Law

**To:** California Law Revision Commission (CLRC)  
**From:** David K. Milton, Legislative Advocate (State Bar #62157)  
**Re:** **California Association of REALTORS® (C.A.R.) Comments on the CLRC “Tentative Recommendation for the Statutory Clarification and Simplification of Common Interest Development (CID) Law”**

## I. Summary of CAR Comments

**A. Over-all Review of Tentative CLRC Recommendations-** C.A.R. believes the CLRC has generally succeeded in attaining its stated goal of replacing the current Davis-Stirling Common Interest Development Act...”with a new statute that continues the substance of existing law in a more user-friendly form.” With one exception, noted below, C.A.R. believes the stated goals have been met:

*The restatement of excessively long and complex code sections in simpler and shorter sections, unfortunately, continues a poor legislative drafting practice that ignores a key principle of statutory construction: Have a basic premise for each code section and elaborate on that premise with subdivisions when necessary. Instead, the unacceptable current Davis-Stirling approach of making each section a series of subdivisions, with no identifiable basic premise, is continued. C.A.R. recommends “Better Statutory Construction (BSC)”, as noted below.*

### **B. C.A.R. Recommended Revisions to the CLRC Tentative Recommendation of the CID Law Clarification and Simplification**

In the course of a comprehensive section-by section review, C.A.R. has encountered a number of technical revisions/corrections that we recommend to the CLRC. These recommendations fall roughly into three categories:

- (1) Correction of incorrect cross-references between sections or within the source citations
- (2) Restructuring of a number of code sections lifted “verbatim” from the current Davis-Stirling Act that do not follow the basic tenet of statutory construction, as described above. In many instances, the code sections have no base coverage delineated and simply list a series of subdivisions that are often minimally related. Recommended changes that fall into this category are noted in the section-by-section breakdown as “Better Statutory Construction” (BSC).

(3) Response to **Note** queries.

Section II of this memo delineates C.A.R.'s recommended technical changes and **Note** responses, section-by-section, with the change recommended and the reason(s) therefore.

**II. C.A.R. Recommended Revisions to CLRC Tentative Recommendation of Statutory Clarification and Simplification of CID Law**

(Note: Corrected, revised, re-drafted or re-arranged language is shown in *italics*; recommended deletions shown by ~~strike-out~~)

<u>Code Section</u>	<u>Reason for Recommendation</u>	<u>Recommended Change in Section</u>
FN 101	Cites to Sec. "4025(a) (3)" – no such section	Cite to Sec. 4025 (b) (3)
FN 113	Cites to Sec. "4025 (a) (4)"- no such section	Cite to Sec. 4025 (b) (4)
4015	Response to " <b>Note</b> " query	<p><b>Subdivision (b) should be eliminated as it could cause confusion with Section 4100. Section 4015 should be re-drafted, to read:</b></p> <p>4015-<del>(a)</del>This part applies to a common interest development.</p> <p><del>(b) Nothing in this part may be construed to apply to a development that does not include common area.</del></p>
4020	BSC	<p><b>Subdivisions (a) and (b) should be consolidated into a single paragraph as Section 4020, to read:</b></p> <p>4020-<del>(a)</del> <i>The Legislature finds that the following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by a recorded declaration of covenants, conditions, and restrictions that is recorded in the official records of each county. in which the common interest development is located</i></p> <p><del>(b) The Legislature finds that the provisions listed in subdivision (a) are</del> <i>These provisions are appropriate to protect purchasers in residential common interest developments, but may not be necessary to protect purchasers in commercial or industrial developments. Those provisions could result in unnecessary burdens and costs for nonresidential developments:</i></p> <p><del>(1)</del> <i>(a) Section 4025.</i></p> <p><del>(2)</del> <i>(b) Section 4620....</i></p> <p><del>(10)</del> <i>(k) Section 5775</i></p> <p><del>(11)</del> <i>(l) Article 5 (commencing with Section 6100) of Chapter 8.</i></p>
4025	BSC	<p><b>Subdivision (b) should be (a), (c) should be (b), and (d) should be (c). Section 4025 should be re-drafted, to read:</b></p>

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		<p>4025.<del>(a)</del> Except as otherwise provided, an association that is incorporated is governed by this part and the Corporations Code.</p> <p><del>(b)</del> <del>(a)</del> The following provisions of the Corporations Code do not apply to an association, unless a provision of this part expressly provides otherwise:</p> <ul style="list-style-type: none"><li>(1) Section 7211.</li><li>(2) Chapter 5....</li><li>(3) Sections 7610, 7611....</li><li>(4) Chapter 13....</li></ul> <p><del>(e)</del> <del>(b)</del> An association that is not incorporated....</p> <p><del>(d)</del> <del>(c)</del> If a provision of this part conflicts....</p>
4025	<b>Comment</b> for this section is incorrect.	Correct source references in "comment".
4040	BSC	<p><b>Section 4040 should be re-drafted to read:</b></p> <p>4040.<del>(a)</del> If a provision of this part requires "individual notice", <i>the provisions of this section shall govern such notices.</i></p> <p><del>(a)</del> <del>the</del> The notice shall be delivered to the person to be notified by one of the following methods:</p> <ul style="list-style-type: none"><li>(1) Personal delivery.</li><li>(2) First-class mail, postage prepaid, addressed....</li><li>(b) A member may request....</li><li>(c) For the purposes of this section, a provision of....</li></ul>
4040	" <b>Note</b> " has incorrect reference to Sec. 4040 (b).	<b>Should read:</b> ... <i>"the provision has been recast in Section 4040(c)...."</i>
4050	BSC	<p><b>Subdivision "(b)" should be "(a)", "(b)" should be "(c)", etc. Section 4050 should be re-drafted to read:</b></p> <p>4050.<del>(a)</del> This section governs the delivery of a document pursuant to this part.</p> <p><del>(b)</del> <del>(a)</del> If a document is delivered by mail....</p> <ul style="list-style-type: none"><li>(1) If the place of mailing and the address....</li><li>(2) If either the place of mailing or the address of delivery is outside the State of California....</li><li>(3) If either the place of mailing or the address of delivery is outside the United States....</li></ul> <p><del>(e)</del> <del>(b)</del> If a document is delivered by electronic mail....</p> <p><del>(d)</del> <del>(c)</del> An affidavit of delivery of a notice....</p>
4055	BSC	<p><b>Section 4055 should be re-drafted to read:</b></p> <p>4055. <i>An associations' failure or inability to deliver a notice or notices to a member or members shall be governed by the provisions of this section.</i></p> <ul style="list-style-type: none"><li>(a) If a notice to a member is returned by the United States Postal Service marked to indicate....</li><li>(b) If the electronic delivery of a notice to a member fails....</li></ul>
4090	Re <b>Note</b> query	Section 4090, requiring that a board meeting be a "congregation of a majority of the directors at the same time and place" should be modified to reflect the exception

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		provided by Section 4535 that permits teleconference participation by directors. <b>Section 4090 should be re-drafted. to read:</b> 4090. <i>Except as permitted by Section 4535, "Board-board meeting" means a congregation of a majority of directors....</i>
4095	BSC	Subdivision "(b)" should be "(a)" and "(c)" should be "(b)"; Section 4095 should be re-drafted to read: 4095. "Common area" means the entire common interest development except the separate interests therein. (a) The estate in the common area may be a fee, a life.... (b) In a planned development, common area may....
4100	BSC	<b>Subdivision "(b) should be "(a)" and "(c)" should be "b". Section 4100 should be re-drafted to read:</b> 4100. <del>(a)</del> "Common interest development" means a real property development in which a separate interest is coupled with either <i>an undivided interest in all or part of the common area, or membership in an association that owns all or part of the common area.</i> (a) In a development where there is no common area other than that established by mutual or reciprocal easement.... (b) "Common interest development" includes all of the following types of developments: (1) A community apartment project (2) A condominium project (3) A planned development (4) A stock cooperative
4107	A definition of "Community association" should be added.	<b>The definition should read:</b> 4107. <i>"Community association" means an association, incorporated or unincorporated, that is created for the purpose of governing a common interest development as authorized by Section 4400.</i>
4125	BSC	<b>Subdivision (b) should be (a), (c) should be (b), etc. Section 4125 should read:</b> 4125. <del>(a)</del> "Condominium project" means a real property development in which separate ownership of a specified part of the development is coupled with an undivided interest in all or part of the common area. (a) <i>The undivided</i> interest in the common area.... (b) <i>The boundaries</i> of the undivided interest.... (c) <i>The boundaries</i> of a separate interest shall be.... <del>(e) An individual condominium within a....</del>
4125	Re <b>Notes (1)</b> query	<b>No, The clarification drafting of Section 4125 does not impart a substantive revision to Section 1351(f).</b>
	Re <b>Notes (2)</b> query	<b>Yes, as noted by the re-draft of Section 4125, above, subdivision (e) should be eliminated.</b> It is unnecessary and duplicative to the content of subdivisions (b) and (c)(as re-drafted).

- 4145 BSC **Subdivision (b) should be (a) and (c) should be (b). Section 4145 should be re-drafted to read:**  
4145.~~(a)~~ "Exclusive use common area" means a part of the common area designated by the declaration....  
(a) Unless the declaration otherwise provides....  
(b) Notwithstanding the provisions of the declaration....
- 4150 Re **Note** query **The change proposed in the definition of "governing documents" by this section is a very positive revision.** It helps to diminish the possibility of inconsistent interpretations as to what qualifies as a governing document.
- 4155 BSC **Section 4155 should be re-drafted as follows:**  
4155.~~(a)~~ "Managing agent" means a person who, for compensation or in expectation of compensation, exercises control over the assets of a common interest development. *This term does not include either of the following:*  
(1)~~(a)~~ A full-time employee of the association; or  
(2)~~(b)~~ A regulated financial institution operating within the normal course of its regulated business practice.
- 4190 BSC **Subdivision (b) should be (a), (c) should be (b) and (d) should be (c). Section 4190 should read:**  
4190.~~(a)~~ "Stock cooperative" means a real property development in which a right of exclusive occupancy....  
(a) An owner's interest in the corporation, whether....  
(b) It is not necessary that all shareholders of the....  
(c) A "stock cooperative" includes a limited equity....
- 4405 BSC **Section 4405 should be re-drafted to read:**  
4405.~~(a) Whether incorporated or unincorporated an An~~ Association may exercise powers *as provided by this section.*  
(a) (1)-The powers granted in this part.  
(b) (2)-Unless the governing documents provide....  
(c) ~~(b) Notwithstanding subdivision (a), an An~~ unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.
- 4415 BSC **Subdivision (b) should be (a), (c) should be (b), (d) should be (c), etc. Section 4415 should read:**  
4415.~~(a)~~ In an action maintained by an association pursuant to subdivision (b), (c), or (d) of Section 4410....  
(a) The comparative fault of an association....  
(b) It is the intent of the Legislature in enacting this ~~subdivision~~ *section* to require that comparative....  
(c) In an action involving damages described in....  
(d) This section applies to actions commenced....  
(e) Nothing in this section affects a person's liability....
- 4415 Incorrect terminology **In subdivision (c) of Section 4415 (which should be**

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		<b>changed to subdivision (b)), “subdivision” should be changed to “section” (See above.).</b>
4420	Re <b>Note</b> query	<b>Yes; proposed Section 4420 should be expanded to encompass the entire Davis-Stirling Act.</b> There are rights extended to CID members in other provisions of the Act besides those provided for in Chapter 3. <b>Section 4420 should be re-drafted, to read:</b> 4420. Except as expressly provided by statute, the rights of members provided in this <del>chapter act</del> may not be limited by contract or by governing documents.
4520	BSC	<b>Section 4520 should be re-drafted to read:</b> <del>4520.(a) Unless the time and place of a meeting is fixed by the governing documents, the</del> <i>The</i> association shall provide general notice (Section 4045) of a board meeting, and shall provide individual notice (Section 4040) of the board meeting to directors and any association member who has requested notice of meetings. (a) The notice shall state the time and place of the board meeting and shall include an agenda for the <del>board</del> meeting. (b) Unless the governing documents provide for a longer period of notice.... (c) The president of the association, or two directors.... (d) If a meeting is adjourned to another time and place.... (e) Notice of a meeting need not be given to.... (1) Provides a written waiver of notice.... (2) Provides a written consent to holding the meeting.... (3) Attends the meeting without protesting the lack....
4520	Re <b>Note</b> queries	<b>(1) Yes; the newly required inclusion of an agenda with a meeting advance notice is a very positive addition to the notice requirement.</b> <b>(2) Yes; the exemption to providing notice if the governing documents so provide should be eliminated.</b> Such a provision nullifies the agenda access service to members. (See above.)
4525	BSC (Eliminate redundancy.)	<b>Section 4525 should be re-drafted to read:</b> <del>4525.(a) Any member may attend and speak at a board meeting, except for any part of the meeting held in executive session.</del> <del>(b) Any member may speak at a board meeting, except for any part of the meeting held in executive session.</del> The board may set a reasonable time limit for member testimony at a board meeting.
4535	BSC	<b>Section 4535 should be re-drafted as follows:</b> <del>4535.(a) If all of the following conditions are satisfied, a</del> <i>A</i> director who is not physically present at the noticed location of a board meeting may participate in

*the meeting by teleconference as provided by this section.  
(a) The following conditions must exist in order for a  
director to participate in a board meeting by  
teleconference:*

(1) Each director participating in the meeting can  
communicate with....

(2) Each director participating in the meeting is  
provided the means of participating....

(3) At least one director is physically present....

(4) A member attending the meeting at the location  
stated in the notice can hear and be heard....

(5) Any vote taken at the meeting....

(b) For the purpose of establishing a quorum....

(c) For the purposes of this section, "teleconference" ....

4540 BSC

**Subdivision (b) should be (a), (c) should be (b) and (d)  
should be (c). Section 4540 should read:**

4540-~~(a)~~ The board may adjourn to executive session to  
consider litigation, matters relating to the formation of  
contracts with third parties, member discipline, an  
assessment dispute, *member request for a payment  
plan*, or personnel matters.

(a) The board shall adjourn to executive session to  
consider member discipline or an assessment....

(b) The board shall adjourn to executive session to  
consider a request for a payment plan....

(c) Notwithstanding Section 4525, if the board  
meets in executive session to consider....

4540 Re **Note** query

**Should current law regarding conducting certain  
proceedings in closed session be continued? Yes!**

Since a general description of the actions taken in a  
closed session is required to be attached to the minutes  
of the board meeting, this is sufficient member access to  
the content of such proceedings. Protecting rights of  
privacy, confidentiality, and/or personal information render  
current parameters appropriate.

4545 BSC

**Section 4545 should be re-drafted as follows:**

4545-~~(a)~~ An action required or permitted to be taken by the  
board may be taken without a meeting, if all directors  
individually or collectively consent in writing to that action.

(a) The written consent shall be filed with the minutes of  
the proceedings of the board.

(b) For the purposes of this section "all directors" ....

4550 BSC

**Subdivision (b) should be (a), (c) should be (b) and (d)  
should be (c). Section 4550 should read:**

4550-~~(a)~~ Within 30 days after a board meeting, including a  
meeting held in executive session, the board shall prepare  
minutes of the board meeting.

(a) The minutes for any part of a board meeting....

(b) A member may request a copy of the minutes....

(c) The member handbook (Section 4810) shall....

- 4555            BSC                            **Subdivision (b) should be (a) and (c) should be (b).  
Section 4555 should read:**  
4555.~~(a)~~ A member may bring a civil action for declaratory or equitable relief for a violation of this article by the member's association, including injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues.  
*(a) The court may impose a civil penalty....*  
*(b) A member who prevails in a civil action to enforce a requirement of this article is entitled to reasonable attorney's fees and court costs. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. The court may award reasonable costs and expenses, including reasonable attorney's fees, to the association if it finds that the action was not brought in good faith and with reasonable cause.*
- 4555            Re **Note** query                    **Yes; the language brought over from Section 1363.09 is too broad. The language from CCP Section 1038 should be substituted.**  
*(See above.)*
- 4575            BSC                            **Subdivision (b) should be (a), (c) should be (b), etc.  
Section 4574 should be re-drafted to read:**  
4575.~~(a)~~ An association shall hold a regular member meeting to transact business that requires action....  
~~(b)~~ *(a) An association may hold a special member meeting pursuant to Section 4600.*  
~~(c)~~ *(b) A member meeting shall be held within the common interest development unless the board determines....*  
~~(d)~~ *(c) A member meeting shall be conducted....*
- 4580            Re **Note** query                    **Yes; It would make good governance sense to broaden the authority for establishing a quorum requirement to include authorization by the declaration or articles, as well as bylaws.**
- 4585            BSC                            **Subdivision (b) should be (a), and (c) should be (b).  
Section 4585 should be re-drafted to read:**  
4585.~~(a)~~ Unless this part or the governing documents require a greater number of votes....  
~~(b)~~ *(a) A meeting at which a quorum is initially present....*  
~~(c)~~ *(b) If a quorum has not been established at a member meeting, the meeting may be adjourned....*
- 4590            BSC                            **Section 4590 should be re-drafted as follows:**  
4590.~~(a)~~ ~~If all of the following conditions are satisfied, a~~  
A member who is not physically present at the noticed location of a member meeting may participate in the meeting by teleconference.  
*(a) All of the following conditions must be met for a member to participate in a member meeting by*

*teleconference:*

- (1) Each member participating in the meeting can....
- (2) Each member participating in the meeting is....
- (3) At least one member is physically present....
- (4) The vote of any member who is not present....
- (b) For the purposes of establishing....
- (c) For the purposes of this section, "teleconference"....

4595 BSC

**Subdivision (b) should be (a), (c) should be (b) and (d) should be (c). Section 4595 should be re-drafted to read:**

- Section 4595.~~(a)~~ The board shall deliver individual notice 4040) of a regular meeting to each member who, on the date of the notice, is entitled to vote at the meeting. The notice shall be delivered at least 10 days, but not more than 90 days, before the date of the meeting.
- (a) The notice of a regular meeting shall include the date, time, and place....
  - (b) The notice of a regular meeting shall state the matters that the board....
    - (1) If the bylaws of the association....
    - (2) The members shall not act on any matter....
  - (c) The notice of any meeting at which a director....

4600 BSC;

**Section 4600 should be re-drafted as follows:**

- 4600.~~(a)~~The following persons may call a A special meeting of the members *may be called* at any time, for any lawful purpose, *by the board, the chairman of the board, or the president*, by adoption of a board resolution or by the delivery of a written request to the board (Section 4035) that states the business to be transacted at the special meeting.
- (a) Additionally, the following persons may call for a special meeting:*
- ~~(1)The board.~~
  - ~~(2)The president of the association or chair of the board.~~
  - ~~(3)(1) Any person authorized to do so by the governing documents.~~
  - ~~(4)(2) Members representing five percent or more of the voting power of the association.~~
  - (b) Within 20 days after a special meeting is called....
    - (1) The date and time of the special meeting....
    - (2) The location of....
    - (3) If arrangements are made for participation....
    - (4) The general nature of the business....
  - (c) If the board does not send the required notice....

4605 BSC

**Section 4605 should be re-drafted to read:**

- 4605.~~(a)~~Unless the governing documents provide otherwise, a member meeting may be adjourned to another time and place without giving written notice of the reconvened meeting. ~~if both of~~
- (a) To adjourn a member meeting to another place and time, the following conditions are-must be satisfied:*

		<p>(1) The time, date, and place of the reconvened.... (2) The record date for notice and voting.... (b) The members may transact any business.... (c) No meeting may be adjourned for....</p>
4610	BSC	<p><b>Subdivision (b) should be (a), and (c) should be (b). Section 4610 should be re-drafted to read:</b> 4610.<del>(a)</del> Notwithstanding the requirements of this article, a court may find that a notice is valid if it was given in a fair and reasonable manner. <del>(b)</del> (a) A failure to comply with the requirements ...one or more of the following conditions: (1) The member is present at the meeting.... (2) The member gave a proxy to a person.... (3) The member provides a waiver of notice.... <del>(e)</del> (b) Notwithstanding subdivision <del>(b)</del> (a), if a matter is required to be described in the meeting notice....</p>
4615	BSC	<p><b>Subdivision (b) should be (a), (c) should be (b), etc. Section 4615 should be re-drafted to read:</b> 4615.<del>(a)</del> If an association is required to hold a member meeting or conduct a written ballot and does not do so, a member or the Attorney General may apply to the superior court for a summary order compelling the association to hold the member meeting or conduct the written ballot. (a) The time for submitting an application.... (1) If s date is designated.... (2) If a date is not designated.... (3) If a special meeting has been called.... (b) A copy of the application shall be served on the.... (c) The court may issue any appropriate order, including an order that sets the time and place of a meeting and the record date for determination of members entitled to vote, <del>requires-requiring</del> that notice of the meeting be delivered, or <del>specifies-specifying</del> the form or content of the notice. (d) If a regular member meeting or a written ballot is held pursuant to a court order issued under this section, a court may order that a quorum is not required for that meeting or written ballot, notwithstanding any contrary provision of this part or the governing documents.</p>
4615	Correction	<p><b>In subdivision (d) (recommended to be changed to subdivision(c), above), “requires” should be “requiring” and “specifies” should be “specifying”.</b></p>
4615	Re Note query	<p><b>The alternative to subdivision (e) [subdivision (d) in the C.A.R. recommendations] recommended in the Note is a more judicious approach to waiver of the quorum requirement. Such a waiver should not be a “blanket waiver”; it should be available to the courts only on a case-by-case basis. (See above.)</b></p>

- 4620 BSC **Subdivision (b) should be (a), (c) should be (b), etc. Section 4620 should read:**  
4620-~~(a)~~ A director, officer, or member may petition the superior court for an order modifying any requirement of this part or the governing documents that governs the conduct of a member meeting or a written ballot.  
(a) If the court determines that it would be impractical....  
(b) An order issued pursuant to this section....  
(c) To the extent practical, an order issued....  
(1) An amendment of the governing....  
(2) Dissolution, merger, sale of assets....  
(3) A reasonable amendment of the....  
(d) In a proceeding under this section, the court....  
(e) Member approval of a matter that is obtained....
- 4635 BSC **Subdivision (b) should be (a), (c) should be (b), etc. Section 4635 should be re-drafted as follows:**  
4635-~~(a)~~ An election shall be overseen by one or three election inspectors, selected by the association for that purpose *pursuant to the provisions of this section*.  
(a) An election inspector shall be an independent....  
(b) The following persons may not be selected....  
(1) A director.  
(2) A candidate for the office....  
(3) A person who is related....  
(4) Unless the governing documents....  
(c) An election inspector shall, consistent with the....  
(1) Determine which members are entitled....  
(2) Determine the authenticity, validity....  
(3) Receive ballots.  
(4) Hear and decide all challenges....  
(5) Count and tabulate....  
(6) Determine when the polls....  
(7) Determine the results of....  
(8) Perform any other task....  
(d) An election inspector shall act impartially....  
(e) An election inspector may appoint and oversee....
- 4635 Re **Note** query **Yes; kinship “across the board” should be a disqualifier as an inspector, including any such relationship with an employee, to assure total objectivity as well as the perception thereof by members.**
- 4640 BSC **Section 4640 should be re-drafted for clarity purposes to read as follows:**  
4640. *This section delineates the process for member elections that must be conducted by secret ballot.*  
(a) *A secret ballot member election shall be conducted of for any of the following matters:*  
(1) Assessment approval.  
(2) Director election....  
(3) Amendment of the governing....  
(4) The grant of exclusive....

- (b) The association shall deliver the following voting....  
(1) A ballot that does not identify....  
(2) An inside envelope that does not identify....  
(3) An outside envelope that is marked....  
(4) Instructions on how to cast....  
(c) A member shall cast a ballot....  
(1) Mark the ballot to indicate....  
(2) Seal the inside envelope....  
(3) Seal and sign....  
(4) Mail or hand-deliver the outside envelope....  
(d) Once delivered, a secret ballot....  
(e) Unless the governing documents provide otherwise....
- 4645            BSC            **Subdivision (b) should be (a), (c) should be (b), etc. Section 4645 should read as follows:**  
4645.~~(a)~~ Notwithstanding Section 4640, an association may opt to use the procedure provided in this section for a ballot that is cast in person. This section does not apply to a mailed ballot.  
(a) The election inspector shall determine the identity....  
(b) If the association allows proxy voting, a member....  
(c) The association shall provide a voting booth....  
(d) The member shall place the marked ballot....  
(e) The ballot shall be counted pursuant to subdivision ~~(e)~~ (b) and ~~(d)~~-(c) of Section 4645 and is governed by Section 4650.
- 4655            BSC            **Subdivision (b) should be (a), (c) should be (b), etc. Section 4655 should be re-drafted, to read:**  
4655.~~(a)~~ A ballot cast pursuant to this article....  
(a) Once the ballots are opened and counted....  
(b) The ballots shall be transferred to the association....  
(c) On the written request of a member....  
(d) After the transfer of election materials to....
- 4650            BSC            **Subdivision (b) should be (a), (c) should be (b), and (d) should be (c). Section 4650 should be re-drafted to read:**  
4650.~~(a)~~ A ballot cast pursuant to this article shall be counted pursuant to *as provided by* this section.  
(a) Prior to opening and counting a ballot....  
(b) The election inspector shall open and count all....  
(c) The election inspector shall certify the results....
- 4660            BSC            **Subdivision (b) should be (a), (c) should be (b), etc. Section 4660 should read:**  
4660.~~(a)~~ For the purposes of this article, "proxy" means a written authorization signed by a member or the member's agent that gives another member the power to vote....  
(a) A proxy is not itself a ballot and cannot be cast....  
(b) The governing documents may permit and regulate....  
(c) Nothing in this section requires that an association....  
(d) If a proxy includes instructions on how the....  
(e) A proxy may be used in casting a secret ballot.

- (f) A proxy is revocable until a ballot cast pursuant to....
- (g) A proxy is governed by Section 7514....
- (h) If a proxy is given for a vote on a matter....

4665 BSC

**Subdivision (b) should be (a), (c) should be (b), etc.**

**Section 4665 should read:**

4665-~~(a)~~ The governing documents of an association shall include a reasonable procedure for the nomination of candidates in the election of a director.

- (a) The governing documents shall not prohibit....
- (b) If the election is conducted at a member meeting....
- (c) The governing documents may permit....
- (d) The governing documents shall provide....
- (e) The governing documents may authorize the board....

4670 BSC

**Subdivision (b) should be (a), (c) should be (b), etc.**

**Section 4670 should read:**

4670-~~(a)~~ An association may not use its funds to provide campaign-related information, except as otherwise provided in this section.

- (a) An association may provide campaign-related....
- (b) If an association has common area meeting space....
- (c) For the purposes of this section, "campaign-related information" includes, but is not limited to, the following information:
  - (1) A statement advocating the election or defeat....
  - (2) A statement advocating the passage or defeat....
  - (3) Information that includes the photograph....
- (d) Nothing in this section limits the use of....

4670 Re **Note** query

**Section 4640 should be amended to further track Section 7525 as to indemnification of the association by any person who submits campaign information.**

association

This is justified by the privilege extended by the to the candidate in publishing campaign materials.

4675 BSC

**Subdivision (b) should be (a), (c) should be (b), etc.**

**Section 4675 should read:**

4675-~~(a)~~ Unless the governing documents provide otherwise, a member who is entitled to vote may cast....

- (a) If a separate interest is owned by more than one....
- (b) The governing documents may provide, or the board....
- (c) Notwithstanding Section 7615 of the Corporations....

4675 Re **Note** query

**New subdivision (d), proposed herein by C.A. R. to be "(c)" represents a positive change to the cumulative voting procedure.** This change will foster less ambiguity and uncertainty for members when voting.

4685 BSC

**Subdivision (b) should be (a), (c) should be (b), etc.**

**Section 4685 should then read:**

4685-~~(a)~~ A member of an association may bring....

- (a) If the court finds a violation, it may grant any....
- (b) An action under this section shall be brought within....

- (c) A member who prevails in an action under this....  
(d) If the court finds that an action brought under this....  
(e) An action under this section that alleges a violation....
- 4685            Re **Note** query            **As noted in response to the query in the Section 4555 Notes, the suggested language from CCP Section 1038 is a very positive revision and should be Included.**
- 4700            BSC            **Subdivision (c) should be stricken and re-inserted as the focal premise of Section 4700. The section should read:**  
*4700. Inspection of records under this article, as permitted by this section, may be made in person or by an agent or attorney and the right of inspection includes the right to copy and make extracts.*  
(a) Except as otherwise provided in this article, a member may inspect the following association records:  
    (1) The governing documents and any other....  
    (2) The membership list, including member names....  
    (3) The agenda and minutes of a member meeting....  
    (4) A report prepared pursuant to Article 7....  
    (5) A balance sheet, income and expense statement....  
    (6) An invoice, receipt, cancelled check, credit card....  
    (7) A statement of deposits to and withdrawals from....  
    (8) An executed contract.  
    ~~(9) Written board approval of a vendor or contractor....~~  
    ~~(10)~~-(9) A state or federal tax return.  
    ~~(11)~~-(10) A record of the compensation provided....  
    ~~(12)~~-(11) Information required by the member to ....  
    ~~(13)~~-(12) Written correspondence of the association....  
(b) Notwithstanding subdivision (a), a member may not....  
    ~~(1) A record that was prepared three or more fiscal....~~  
    ~~(2)~~-(1) A record that is protected from disclosure....  
    ~~(3)~~-(2) The agenda or minutes of a board or ....  
    ~~(4)~~-(3) A record of a disciplinary action, collection ....  
    ~~(5)~~-(4) An interior architectural plan of a separate....  
    ~~(6)~~-(5) A plan showing any security features of....  
    ~~(7)~~ (6) A record of a good or service provided...  
(c) ~~Inspection under this article may be made in person or by an agent or attorney and the right of inspection includes the right to copy and make extracts.~~
- 4700            Re **Notes** queries            **(1) The omitted limitation on financial documents Subject to inspection is very positive.** The old limitation In Section 1365.2(a)(1) (C) should remain omitted.  
  
**(2) Subdivision (a) (9) should be eliminated; it is redundant to the overriding minutes content requirements.** (See above.)  
  
**(4) Subdivision (b)(1) should be eliminated;** Section 4780 should control as to records retention periods. (See above.)

4705	BSC	<p><b>Subdivision (b) should be (a), (c) should be (b) and (d) should be (c). Section 4705 should read:</b> 4705.<del>(a)</del> A member may deliver to the board (Section 4035) a written request to inspect an association.... (a) Except as provided in Sections 4710, 4715 and 4725, the association shall make the requested record.... (1) For a record prepared in the current fiscal year.... (2) For a record prepared in a prior fiscal year.... (3) For a record that has not yet been prepared.... (4) For the membership list.... (b) If the association has a business office in the.... (c) At the member's request, a copy of a specifically....</p>
4710	BSC	<p><b>Section 4710 and subdivision (a) should be re-drafted to read:</b> 4710.<del>(a)</del> <del>Before making a record available for inspection, the association shall redact all of the following information from the record:</del> <i>Availability of records and membership lists are subject to the provisions of this section.</i> (a) <i>The following information shall be redacted before any record is made available for inspection:</i> (1) Any financial account number. (2) Any password.... (3) Any social security number.... (4) Any driver's license number. (5) Any other information, if it is.... (b) Before providing a membership list, the association.... (c) If the member requests, the association shall....</p>
4710	Re <b>Note</b> query	<p><b>A CID director should NOT have discretion as to redaction of personal information; it should be mandatory, as provided by proposed Section 4710.</b></p>
4715	BSC	<p><b>Section 4715 should be re-drafted to read:</b> 4715.<del>(a)</del> A member may elect, in writing, to have the member's name and address redacted from the membership list. (a) A member who requests the membership list may also request that the association deliver material to any member whose information has been redacted from the membership list. (b) The association shall deliver material to those members by individual delivery (Section 4040), within 10 business days after delivery of the request.</p>
4720	BSC	<p><b>Subdivision (b) should be (a) and the last sentence of current subdivision (b) should become (b). Section 4720 should then read:</b> 4720.<del>(a)</del> The association may charge a fee to recover the direct and actual cost to copy or deliver a record. The association shall inform the member of the fee amount, and the member shall agree to pay the fee, before a copy is made or a record delivered.</p>

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		<p>(a) The association may charge a fee of up to ten dollars (\$10) per hour, not to exceed two hundred (\$200) per written request, for the time actually and reasonably spent to retrieve and redact a record.</p> <p>(b) The association shall inform the member of the estimated fee amount, and the member shall agree to pay the fee, before the record is retrieved and redacted.</p>
4725	BSC	<p><b>Subdivision (a) should become the primary substance of Section 4725 and the second sentence of current subdivision (a) should become (a). Section 4725 should then read:</b></p> <p>4725-<del>(a)</del> A member may only inspect and use an association record for a purpose that is reasonably related to the requesting member's interest as a member.</p> <p>(a) A member may not inspect or use an association record for a commercial purpose.</p> <p>(b) The association may deny a record inspection....</p>
4730	BSC	<p><b>Section 4730 should be re-drafted, to read:</b></p> <p>4730-<del>(a)</del> An association that denies a request for records under this article shall provide the requesting member....</p> <p>(a) The notice of denial shall include all of the following information:</p> <ol style="list-style-type: none"><li>(1) An explanation of the basis for the denial decision.</li><li>(2) An offer to attempt to resolve the matter...pursuant to Article 2 (commencing with Section 5050) of Chapter 4.</li></ol> <p>(b) The offer <i>made pursuant to subdivision (a)</i> may include an alternate proposal for achieving the member's purpose.</p>
4735	BSC	<p><b>Subdivision (b) should be (a), (c) should be (b), (d) should be (c), etc. Section 4735 should then read:</b></p> <p>4735-<del>(a)</del> If an association has not complied with a document inspection request within the time....</p> <p>(a) If the court determines that there is no legal basis....</p> <p>(b) If the court determines that disclosure is not required....</p> <p>(c) The court may grant any other relief appropriate to the circumstances, including the following relief:</p> <ol style="list-style-type: none"><li>(1) If the association acted unreasonably in denying....</li><li>(2) The tolling of any deadline affected by association....</li><li>(3) The postponement of a scheduled board meeting....</li><li>(4) The appointment of an investigator or ....</li><li>(5) An order requiring that the association....</li></ol> <p>(d) The association bears the burden of proving....</p> <p>(e) If the court finds that the association acted....</p> <p>(f) If the court finds that an action brought under ....</p> <p>(g) Nothing in this section limits the right....</p>
4735	Re <b>Note #2</b> query	<p><b>Just as with Sections 4555 and 4685, the language regarding actions not brought in good faith should track the approach taken in CCP Section 1038.</b></p>
4745	Re <b>Note</b> query	<p><b>Yes; broader protection should be given to individuals by eliminating simple negligence as a basis for</b></p>

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		<p><b>personal liability.</b> Association directors are <b>volunteers</b>; they should NOT be held liable for simple negligence causing a failure to withhold or redact information pursuant to this article.</p>
4750	BSC	<p><b>Section 4750 should be re-drafted to read:</b> 4750-<del>(a)</del> For the purposes of this article, a community.... (a) This article does not apply to a common interest development in which separate interests are being offered for sale by a subdivider...comprise a majority of the members of the board of directors of the association. (b) Notwithstanding the <del>foregoing provisions of subdivision (a)</del>, this article applies to a common.... (c) If two or more associations have consolidated....</p>
4750	Re <b>Comment</b> content	<p><b>The source for subdivision (b) of Section 4750 is former Section 1365.2(m), <u>not</u> 1365.2(n).</b></p>
4750	Re <b>Note</b> query	<p><b>The exemption in subdivision (b) should NOT be continued.</b> Member interest in proper management of a CID is not reduced by the fact that it is still in control of a developer.</p>
4775	BSC	<p><b>Section 4775 should be re-drafted to read:</b> 4775. <i>An association shall maintain records as specified by this section.</i> (a) An association shall maintain.... (1) The original governing documents.... (2) The membership list, including.... (3) The notice, agenda, and minutes.... (4) A written waiver, consent, or approval.... (5) A report prepared pursuant to Article 7.... (6) Books and records of account. (7) A tax return or other tax-related record. (8) A deed or other record that relates to title.... (9) A record that relates to the design.... (10) A record that relates to a proposed modification.... (11) A record that relates to litigation.... (12) An employment or payroll record.... (13) An insurance policy or record relating to.... (14) A contract to which the association is a party. (15) A loan document. (16) A ballot, proxy, or other record... (17) A reserve funding study. (18) A record that relates to enforcement.... (b) The association may keep a record in paper form....</p>
4780	BSC	<p><b>Subdivision (b) should be (a) and (c) should be (b). Subdivision (a) should be slightly revised and be made the primary substance of Section 4780 to read as follows:</b> 4780-<del>(a)</del> <i>Except as provided in subdivision (a), or <del>Unless</del> unless a longer period is required by law or by the....</i> (a) The association shall retain the following records</p>

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		permanently: (1) The original governing documents.... (2) The minutes of a member meeting.... <del>(4)</del> (3) A tax return or other tax-related record. <del>(5)</del> (4) A deed or other record that relates.... <del>(6)</del> (5) A record that relates to the design.... (b) This section does not apply to a record....
4780	Correction	<b>In the current subdivision (b), recommended by C.A.R. to become subdivision (a), there is no subparagraph “(3)”, it skips from “(2)” to “(4)”. (See above.)</b>
4800	BSC	<b>Section 4800 and subdivision (a) should be re-written, subdivision (c) should become (b), and (d) should become (c). Section 4800 should read as follows:</b> 4800- <del>(a)</del> <i>The board shall prepare an annual budget report 30 to 90 days before the end of the fiscal year.</i> (a)The annual budget report shall include all of the following information: (1)The estimated revenue and expenses.... (2)The reserve funding study.... (3) A summary of the association’s property.... (b) The board shall promptly deliver a copy of.... (c) The type used in the annual budget report shall....
4805	BSC	<b>Subdivision (b) should become (a), (c) should become b), etc., and current subdivision (a) should be re-arranged to become the primary substance of Section 4805 to read:</b> 4805- <del>(a)</del> <i>The the board of an association that receives ten thousand dollars (\$10,000) or more in gross revenues or receipts during the fiscal year shall prepare an annual financial statement within 120 days after the end of the fiscal year.</i> (a) If the association receives more than seventy-five thousand dollars (\$75,000) in a fiscal year, the annual.... (b) The annual financial statement shall include all of the following information: (1) A balance sheet as of the end of the fiscal year.... (2) If the financial statement is reviewed.... (3) If the financial statement is not reviewed.... (4) If the association is incorporated.... (c) The board shall promptly deliver.... (d) The type used in the annual financial statement....
4810	BSC	<b>Subdivision (a) should be revised so Section 4810 reads as follows:</b> 4810- <del>(a)</del> <i>The board shall prepare a member handbook within 120 days after the end of the fiscal year.</i> (a) <i>The member handbook shall</i> contain all of the following information: (1) A statement explaining.... (2) The name and address of the person.... (3) Notice of a member’s right to receive....

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		(4) The statement required.... (5) A statement describing the association's.... (6) A summary of alternative dispute resolution.... (7) A summary of any requirements for.... (8) The location, if any, designated for posting.... (b) The board shall promptly deliver a copy.... (c) The type used in the <del>annual financial statement</del> <i>member handbook</i> shall be at least 12 points in size.
4810	Correction	<b>Current subdivision (c) refers to “annual financial statement”. It should refer to “member handbook” instead. (See above.)</b>
4815	BSC	<b>Subdivision (a) of Section 4815 should be revised to better state the focus of the section as follows:</b> <del>4815.(a) Unless the governing documents impose more stringent standards</del> a community service organization that receives 10 percent or more of its funding from an association or its members shall prepare and distribute <i>an annual report</i> to the association <del>an annual report</del> . <i>(a) Unless the governing documents impose more stringent standards, an-the annual report that includes shall include</i> all of the following information: (1) A financial statement (2) A detailed statement of administrative costs.... (3) If the report is not consistent with the requirements.... (4) If a community service organization is responsible.... (b) An association may rely upon information received....
4820	BSC  individual	<b>Subdivision (b) should be (a), (c) should be (b), and (d) should be (c). Subdivision (a) should become the primary content of Section 4820 to read:</b> <del>4820.(a) When a report is prepared pursuant to Section 4800,4805, 4810, or 4815, the board shall deliver</del>  notice (Section 4040) to all members of the availability of the report. (a) Commencing January 1, 2009, the notice required.... (b) The notice of availability shall include a general.... (c) A board may deliver, by individual notice....
4830	BSC	<b>Section 4830 should be re-drafted to read:</b> <del>4830.(a) Any member may bring an action in superior court to enforce the requirements of this article.</del> (a) The court may, for good cause shown, extend the time for compliance with the requirements of this article. (b) In any action or proceeding under this section....
4855	Re Note query	<b>The reference to Section 310 of the Corporations Code is better than applying the “interested director” provisions of the Nonprofit Mutual Benefit Corporation Law (Sections 7233-7234).</b> There are substantial case law interpretations attached to Section 310. Not so for 7233-7234.

4900	BSC	<p><b>Section 4900 and subdivision (a) should be re-drafted as follows:</b></p> <p>4900-<del>(a)</del> A prospective managing agent of a common interest development shall provide a written disclosure to the board, pursuant to the provisions of this section, before entering into a management agreement.</p> <p>(a) The disclosure shall be provided as soon as is practicable after entering into negotiations, but in no event more than 90 days before entering into an agreement.</p> <p>(b) The disclosure required under this section shall contain all of the following information:</p> <p>(1) The name and address of each owner or general....</p> <p>(2) For each person named in paragraph (1), a list....</p>
4905	BSC	<p><b>Subdivision (b) should become (a), (b) should become (c), (d) should become (c), etc., and Section 4905 should read:</b></p> <p>4905-<del>(a)</del> A managing agent who receives funds belonging to an association, other than for deposit into an escrow account or account under the control of the association, shall deposit the funds into a trust fund account.</p> <p>(a) The trust fund account shall be maintained....</p> <p>(b) On the written request of the board....</p> <p>(c) The managing agent shall inform....</p> <p>(d) Funds in a trust fund account may only be....</p> <p>(e) The managing agent shall maintain a separate....</p> <p>(f) The managing agent shall not commingle....</p> <p>(g) A managing agent who commingled the funds of two or associations on or before February 26, 1990, may continue to do so if all of the following requirements are met:</p> <p>(1) - (4)....</p> <p>(h)The prevailing party in an action to enforce....</p> <p>(i) As used in this section, "financial institution" has....</p>
4905	Re <b>Note</b> query #1	<p><b>The revisions to Section 1363.2 by Section 4905 are positive;</b> they consolidate a cumbersome section into a more readable, concise version thereof.</p>
	Re <b>Note</b> query #2	<p><b>Commingling of funds invites abuse. Subdivision (h) should be eliminated.</b> The authority to commingle funds provided by subdivision (h) [recommended to be (g) above] should be phased out over a specified period of time.</p>
4955	BSC and a Correction	<p><b>The first subdivision (b) should be (a), and the second (b) (this is a "typo" that these proposed changes will correct) should stay (b). Section 4955 should read:</b></p> <p>4955-<del>(a)</del> Upon receiving a complaint from a member, director, or officer that an association has violated the provisions of Article 3 (commencing with Section 4575), Article 4, (commencing with Section 4625)....</p> <p>(a) If the answer to the notice of the complaint is not....</p>

		(b) If the violation involves assets held in charitable trust....
4960	BSC	<p><b>Subdivision (a) and Section 4960 should be re-drafted and re-organized to read:</b></p> <p>4960. <del>(a) Each To assist with the identification of common interest developments, each association shall submit the information required by this section to the Secretary of State on a form and for a fee, not to exceed thirty dollars (\$30), that the Secretary of State shall prescribe.</del></p> <p><del>(a) The the following information concerning the association and the development it manages shall be provided to the Secretary of State:</del></p> <ul style="list-style-type: none"><li><del>(1) A statement that the association is formed....</del></li><li><del>(2) The name of the association.</del></li><li><del>(3) The street address of the association's onsite....</del></li><li><del>(4) The name, address, and either the daytime telephone number or e-mail address of the president....</del></li><li><del>(5) The name, street address, and daytime telephone number of the association's managing agent....</del></li><li><del>(6) The county, and if in an incorporated area, the city....</del></li><li><del>(7) If the development is in an unincorporated area....</del></li><li><del>(8) The nine-digit ZIP Code, front street, and nearest....</del></li><li><del>(9) The type of common interest development....</del></li><li><del>(10) The number of separate interests in....</del></li></ul> <p><del>(b) The association shall submit the information....</del></p> <ul style="list-style-type: none"><li><del>(1) By incorporated associations, within 90 days after....</del></li><li><del>(2) By unincorporated associations, in July of 2003, and in that the same month biennially thereafter. Upon changing its status to that of a corporation, the association shall comply with the filing deadlines in paragraph (1).</del></li></ul> <p><del>(c) The association shall notify the Secretary of State....</del></p> <p><del>(d) On and after January 1, 2006 (see below) the The penalty for an incorporated association's noncompliance....</del></p> <p><del>(e) The Secretary of State shall make the information....</del></p>
4960	Correction of (b)(2)	<p><b>The reference to "July of 2003" is no longer needed. This subdivision should be re-drafted.</b> (See above.)</p>
4960	Correction of (d)	<p><b>The reference to "On and after January 1, 2006" should be deleted; it is no longer relevant or necessary.</b>(See above)</p>
5000	Re <b>Note</b> query	<p><b>The authority to impose fines on members, if not in the declaration, articles of incorporation, or bylaws, should only be granted by a board resolution that is approved by a majority of the members.</b> It is too significant to be authorized by simply adopting an</p>
operating		rule.
5005	BSC	<p><b>Subdivision (b) should be (a) and (c) should be (b). Section 5005 should be re-drafted to read:</b></p> <p>5005. <del>(a) The board shall only impose discipline at a</del></p>

		meeting of the board at which the accused member shall have an opportunity to be heard. (a) At least 10 days before meeting to hear.... (1) The provision of the governing documents.... (2) The penalty that may be imposed.... (3) The time, date, and location.... (4) A statement that the accused member.... (b) Within 15 days after hearing a disciplinary....
5050	BSC	<b>Subdivision (b) should become (a) and (c) should become (b). Section 5050 should be re-drafted to read:</b> 5050. <del>(a)</del> This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this part, under the Nonprofit Mutual
Benefit		Corporation Law (Part 3, commencing with Section 7110 of Division 2 of Title 1 of the Corporations Code), or under the governing documents. (a) This article supplements, and does not replace.... (b) This article does not apply to a decision....
5055	BSC	<b>Subdivision (b) should become (a) and (c) should be (b). Section 5055 should be re-drafted to read:</b> 5055. <del>(a)</del> An association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article. (a) In developing a procedure pursuant to this article.... (b) If an association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article, the procedure provided in Section 5056 applies and satisfies the requirements of <del>subdivision (a)</del> <i>this section</i> .
5055	Correction of subdivision (c)	<b>The reference to “subdivision (a)” in this subdivision (recommended to become subdivision (b)) should be deleted and replaced by “this section”. (See above.)</b>
5065	BSC	<b>Subdivision (b) should become (a) and (c) should become (b), etc. Section 5065 should be re-drafted to read:</b> 5065. <del>(a)</del> This section applies in an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article. (a) Either party to a dispute within the scope.... (1) Thee party may request the other party.... (2) A member of an association may refuse.... (3) The association’s board of directors shall.... (4) The parties shall meet promptly at.... (5) A resolution of the dispute agreed to.... (b) An agreement reached under this section binds.... (1) The agreement is not in conflict.... (2) The agreement is either consistent with....

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		(c) A member of the association may not be charged....
5080	BSC	<p><b>Subdivision (b) should be (a), (c) should be (b) and (d) should be (c). Section 5080 should be re-drafted to read:</b></p> <p>5080.<del>(a)</del> An association or an owner or a member of a common interest development may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.</p> <p>(a) This section applies only to an enforcement....</p> <p>(b) This section does not apply to a small claims action.</p> <p>(c) Except as otherwise provided by law, this section....</p>
5085	BSC	<p><b>Section 5085 and subdivision (a) should be re-drafted to read:</b></p> <p>5085.<del>(a)</del> Any party to a dispute may initiate the process required by section 5080 by serving on all other parties to the dispute a request for resolution.</p> <p>(a) The request for resolution shall include all of the following:</p> <ul style="list-style-type: none"><li>(1) A brief description of the dispute....</li><li>(2) A request for alternative dispute resolution.</li><li>(3) A notice that the party receiving the request....</li><li>(4) If the party on whom the request is served....</li></ul> <p>(b) Service of the request for resolution shall be by....</p> <p>(c) A party on whom a request for resolution is served....</p>
5090	BSC	<p><b>Subdivision (b) should be (a), (c) should be (b) and (d) should be (c). Section 5090 should be re-drafted, to read:</b></p> <p>5090.<del>(a)</del> A party on whom a request for resolution is served may agree to participate in alternative dispute resolution by delivering a written acceptance to the party that served the request for resolution. The written acceptance shall be delivered as an individual notice (Section 4040).</p> <p>(a) The parties shall complete the alternative dispute....</p> <p>(b) Chapter 2 (commencing with Section 1115) of....</p> <p>(c) The costs of alternative dispute resolution....</p>
5100	BSC	<p><b>Section 5100 and subdivision (a) should be re-drafted as follows:</b></p> <p>5100. At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate <i>as provided by this section</i>.</p> <p>(a) <i>The certificate shall state</i> that one or more of the following conditions is satisfied:</p> <ul style="list-style-type: none"><li>(1) Alternative dispute resolution has been completed....</li><li>(2) One of the other parties to the dispute did not....</li><li>(3) Preliminary or temporary injunctive relief ....</li></ul> <p>(b) Failure to file a certificate pursuant to <del>subdivision (a)</del> <i>this section</i> is grounds for a demurrer or a motion....</p>

5105	BSC	<p><b>Section 5105 and subdivision (a) should be re-drafted to read:</b> 5105-<del>(a)</del> After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to alternative dispute resolution. <del>(a)</del> Upon referral to alternative dispute resolution, the referred enforcement action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code. (b) The costs of alternative dispute resolution....</p>
5125	BSC	<p><b>Subdivision (b) should be (a) and (c) should be (b). Section 5125 should be redrafted to read:</b> 5125-<del>(a)</del> The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both. (a) A governing document other than a declaration may.... (b) In an action to enforce the governing documents....</p>
5130	re Note query	<p><b>The express provision for judicial enforcement of any provision of the Davis-Stirling Act is <u>very positive</u>.</b> It removes any ambiguity regarding such a remedy.</p>
5500	BSC	<p><b>Subdivision (b) should be (a), (c) should be (b), etc., and subdivision (a) should be re-drafted to become the primary statement of section 5500, to read:</b> 5500-<del>(a)</del> The board shall maintain separate operating and reserve accounts. (a) The board shall maintain current income.... (b) If the reserve account includes funds received.... (c) On at least a quarterly basis, the board shall....</p>
5510	BSC	<p><b>Section 5510 and subdivision (a) should be re-drafted to read:</b> 5510. Funds on deposit in the reserve account may only be used for the following purposes <i>specified by this section</i>. (a) <i>Permitted uses of reserve funds are:</i> (1) The maintenance, repair, or replacement.... (2) Litigation that relates to the maintenance, repair.... (3) A temporary transfer of funds to the operating.... (b) The withdrawal of funds from the reserve account....</p>
5510	Comment correction	<p><b>The reference to the source of subdivision (a) of Section 5510 as Section 1365(c)(1) is incorrect.</b> There is no (c)(1) in Section 1365. <u>The reference should be to Section 1365.5(c)(1).</u></p>
5515	BSC	<p><b>Subdivision (b) should be (a), (c) should be (b), etc. Subdivision (a) should become the primary statement</b></p>

**of Section 5515 and read:**

5515-~~(a)~~ The board may authorize, at a board meeting, a temporary transfer of funds from the reserve account to the operating account in order to address a short term cash flow requirement or other expense.

(a) Notice of the meeting at which the transfer....

(1) A statement that the board will consider....

(2) The reason for the proposed transfer.

(3) Options for repayment of the transferred amount.

(4) Whether a special assessment may....

(b) If the board authorizes the transfer, the minutes....

(c) Funds transferred under this section shall be....

(d) The board shall exercise prudent fiscal management....

5520

BSC

**Subdivision (a) should become the primary statement of Section 5520. The last sentence of subdivision (a) should become subdivision (a), and Section 5520 should be re-organized and re-drafted to read:**

5520-~~(a)~~ If funds in the reserve account are expended or transferred for the purpose of litigation, the board shall provide general notice to the members (Section 4045) of the expenditure or transfer.

(a) The notice *required by this section* shall inform the members of their rights under subdivision (b)

(b) The board shall make an accounting, at least....

5555

BSC

**Subdivision (b) should be (a), and (c) should be (b). Subdivision (a) should become the primary statement of Section 5555 to read:**

5555-~~(a)~~ At least once every three years, the board shall prepare a reserve funding study. The board shall review the study annually and make any necessary adjustments to the study.

(a) The study shall describe each major component....

(1) An identifying description of the component.

(2) The total useful life of the component, in years.

(3) The estimated repair and replacement cost....

(4) The average annual repair and replacement cost....

(5) The number of years the component has been....

(6) The described balance for the component....

(b) The study shall include a summary page in the following form, with the indicated attachments:

**Summary of Reserve Funding Study**

(1) through (10)....

(c) The summary prepared pursuant to subdivision ~~(e)~~-(b) shall be included with the notice of availability....

(d) The summary prepared pursuant to subdivision ~~(e)~~-(b) shall not be admissible in evidence to show improper....

(e) A component with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the summary prepared pursuant to subdivision

~~(e)~~ (b).

5555  
(e)

Re **Note** queries

**Subdivision (f) [recommended by C.A.R. to be**

**Should NOT be deleted.** For purposes of an accurate description of reserves status that will assist members' understanding and comprehension thereof, a true disclosure of the over-all state of affairs in a readily understandable and standardized format is necessary.

5560

BSC

**Subdivision (b) should be (a), (c) should be (b), (d) should be (c), etc. Subdivision (a) should become the primary statement of Section 5560 to read:**

5560.~~(a)~~ At least once every three years, the board shall prepare a reserve funding plan that describes how the association will contribute sufficient funds to the reserve account to meet the association's obligation to repair and replace the major components included in the most recent reserve funding study.

(a) The plan may provide for an increase....

(b) If the plan proposes an increase in the general assessment, it shall describe the proposed increase in the following form:

....

(c) If the plan proposes an increase in one or more special special assessments, it shall describe the proposed increase in the following form:

....

(d) If the separate interests in the development....

(e) The plan shall be considered by the board....

(f) Board approval of the plan does not constitute....

(g) The plan may not assume a rate of return on cash....

5575

BSC

**Section 5575 should be re-drafted to read:**

5575. *Assessments imposed on members by associations shall comply with the provisions of this article.*

(a) An association shall levy regular and special....

(b) An association shall not levy an assessment or fee....

5580

BSC

**Subdivision (b) should be (a), (c) should be (b), and (d) should be (c). Subdivision (a) should become the primary statement for Section 5580 to read:**

5580.~~(a)~~ Subject to the limitations of Section 5575 and subdivision ~~(b)~~ (a), the board may increase the regular assessment by any amount that is required to fulfill its obligations and may impose a special assessment of any amount that is required to fulfill its obligations. This *section* supersedes any contrary provision of the governing documents.

(a) In the following circumstances, an assessment....

(1) The association has not complied with....

(2) The total increase in the regular assessment....

- (3) The total for all special assessments imposed....  
(b) Subdivision ~~(b)~~ (a) does not apply to an assessment....  
(1) An extraordinary expense required by an order....  
(2) An extraordinary expense necessary to repair or replace any part of the development that the association is obligated to maintain, where a threat to personal safety....  
(3) An extraordinary expense necessary to repair or replace any part of the development that the association is obligated to maintain that could not have been reasonably foreseen by the board....  
(c) The association shall provide the members with....
- 5580 Re **Note** query **The proposed clarification in Section 5580 of the ambiguity contained in current Section 1366(b) is very positive.** The new language is more clear and concise.
- 5585 BSC **Subdivision (a) should be re-drafted to become the primary statement of Section 5585. The last sentence of subdivisions (a) should become the new subdivision (a) and read:**  
5585.~~(a)~~ A regular assessment imposed or collected to perform an obligation of an association under the governing documents or this title is exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance.  
(a) In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this ~~subdivision~~ section.  
(b) This section does not apply to a consensual pledge....
- 5600 BSC **Section 5600 should be re-drafted to read:**  
5600. *Payment of assessments by members, and collection of assessments by associations, shall adhere to the guidelines provided by this section.*  
(a) the association shall provide a mailing address....  
(b) On the request of a member, the association shall....  
(c) A payment made for a delinquent assessment....
- 5605 BSC **Subdivision (b) should be (a), (c) should be (b), and (d) should be (c). Section 5605 should be re-drafted to read:**  
5605. ~~(a)~~ An assessment becomes delinquent 15 days after it is due, unless the declaration provides a longer time period, in which case the longer time period applies.  
(a) If an assessment is delinquent, the association may....  
(1) The unpaid amount of the assessment.  
(2) The reasonable cost incurred in collecting....  
(3) A late charge not exceeding 10 percent of....  
(4) Interest on the delinquent assessment....  
(b) An association is exempt from interest-rate....  
(c) The amount described in subdivision ~~(b)~~-(a) becomes a debt of the member at the time the assessment or other

sum is levied.

5610 BSC **Subdivision (b) should be (a), (c) should be (b), and (c) should be (b). Section 5610 should be re-drafted to read:**  
5610. ~~(a)~~ Except as otherwise provided in this section, an association may not voluntarily assign or pledge to a third party the association's right to collect a payment or assessment, or to enforce or foreclose a lien.  
(a) An association may assign or pledge....  
(b) Nothing in this section affects the right or ability....

5615 BSC **Subdivision (b) should become (a), and (c) should become (b). Section 5615 should be re-drafted to read:**  
5615. ~~(a)~~ At least 30 days before recording a lien on the separate interest of the owner of record to collect a debt that is past due under this article, the association shall deliver to the owner of record, by certified mail, a written notice of delinquency.  
(a) The notice of delinquency shall include....  
(1) An itemized statement of the charges owed....  
(2) ) A general description of the collection....  
(b ) The notice of delinquency shall include the following statement, in 14 point type:

### IMPORTANT NOTICE

\*\*\*\*

5620 BSC **Subdivision (b) should be (a), (c) should be (b) and (d) should be (c). Section 5620 should be re-drafted to read:**  
5620. ~~(a)~~ A member that owes a delinquent assessment....  
(a) The association shall meet with the member....  
(b) A payment plan may incorporate an assessment....  
(c) A payment plan does not effect an association's....

5620 Re **Note** query **Whether or not interest is charged on the amount of assessment owed and subject to a payment plan should be left to the association's operating rules.** This should be a policy discussed at a board meeting and approved in a public session thereof.

5630. BSC **Subdivision (b) should be(a), (c) should be (b), (d) should be (c), etc. Section 5630 should be re-drafted to read:** 5630. ~~(a)~~ An association that has complied with....  
(a) The recorded notice of delinquent assessment shall state the following information:  
(1) The amount owed, including an itemized statement....  
(2) A legal description of the separate interest....  
(3) The name of the record owner of the separate....  
(b) A lien may not be enforced by non-judicial foreclosure unless the recorded notice....

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		<p>(c) The recorded notice of delinquent assessment.... (d) A copy of the recorded notice of delinquent.... (e) Unless the governing documents provide otherwise.... (f) The decision to record a lien for a delinquent.... (g) Nothing in this article or in subdivision (a) of Section.... (h) An association that fails to comply with Section 5615....</p>
5635	BSC	<p><b>Subdivision (b) should be (a), and (c) should be (b). Section 5635 should be re-drafted to read:</b> 5635. <del>(a)</del> Within 21 days after the payment.... (a) Within 21 days after a determination by the party who recorded the notice of delinquent assessment that a notice of delinquent assessment was recorded in error, the <del>association</del> party who recorded the lien shall record a lien release or notice of rescission in the county.... (b) If a notice of delinquent assessment is recorded....</p>
5635	Re <b>Note</b> query	<p><b>As recommended above, the responsibility for confirming that the lien was recorded in error, and taking the action to release the lien, should fall upon the party who created it.</b></p>
5640	BSC	<p><b>Subdivision (b) should become (a), and the last sentence of subdivision (b) should be slightly modified and become (b). Section 5640 should be revised to read:</b> 5640. <del>(a)</del> Unless the governing documents provide otherwise, a monetary charge imposed by the association as a means of reimbursing the association for costs.... (a) A fine imposed by the association for a violation of the governing documents, however described, shall not become a lien against the member's separate interest that is enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c. <del>(b) This subdivision</del> Subdivision (a) does not apply to a penalty for late payment of a regular or special assessment.</p>
5645	BSC	<p><b>Subdivision (b) should become (a), and the final sentence of subdivision (b) should become (b). Section 5645 should then be re-drafted to read:</b> 5645. <del>(a)</del> Except as otherwise provided in this article, 30 days after recording a notice of delinquent assessment, an association may enforce the resulting lien in any.... (a) If the amount of the lien is within the jurisdictional limit of the small claims division of the superior court...of the Code of Civil Procedure. (b) The amount recovered in an action in the small claims division, which may not exceed the jurisdictional limit of the small claims division, is the sum of the following: (1) The amount owed as of the date of filing.... (2) In the discretion of the court, an additional amount....</p>
5650	BSC	<p><b>Subdivision (b) should become (a), (c) should become</b></p>

		<p><b>(b). Section 5650 should be re-drafted to read:</b> 5650. <del>(a)</del> An association may not foreclose on a lien, judicially or nonjudicially, if the debt is less than 12 months overdue and the amount owed, excluding any.... <del>(a) Subdivision (a)</del> <i>This section does not apply to a....</i> (b) This section applies to a lien recorded on or after....</p>
5650	Re <b>Note</b> query	<p><b>The limitations on foreclosure taken from Section 1367.4 <u>should</u> apply to a lien governed by Section 1367.1</b> It will help promote consistency as to lien provisions.</p>
5655	BSC	<p><b>Section 5655 should be re-drafted to read:</b> 5655. <i>Foreclosure to enforce a lien imposed pursuant to the provisions of this article shall meet the requirements of this section.</i> (a) Before commencing foreclosure to enforce a lien....     (1) The decision to foreclose shall be made....     (2) The association shall offer to participate in either....     (3) The association shall serve notice of its decision.... (b) Any sale by a trustee shall be conducted....     (1) The notice of default recorded pursuant to....     (2) The decision of the board to foreclose on.... (c) If the association records a notice of default.... (d) If the owner of the separate interest does not occupy.... (e) For the purposes of this section, the owner's legal....</p>
5665	BSC	<p><b>Subdivision (a) should be re-drafted and Section 5665 thereby revised to read:</b> 5665. <del>(a)</del> In order to facilitate the collection of a regular assessment, transfer fee, or similar charge, the board is authorized to record a statement or amended statement identifying relevant information for the association. <del>This statement</del> (a) <i>The statement governed by this section may include any or all of the following information:</i>     (1) The name of the association as shown....     (2) The name and address of the managing agent....     (3) A daytime telephone number of the person....     (4) A list of separate interests subject to assessment....     (5) The recording information identifying....     (6) If an amended statement is being recorded.... (b) The county recorder is authorized to charge a fee....</p>
5680	BSC and a correction	<p><b>Subdivision (a) should be re-drafted, and the numbering of two paragraph (4's) corrected, to read:</b> 5680. <del>(a)</del> <del>An</del> Pursuant to the provisions of this section, an association officer or director is not personally liable for a tortuous act or omission of the officer or director, in excess of the amount on insurance coverage specified in paragraph <del>(6)</del>(7), below. (a) <del>if all</del> All of the following requirements <del>are</del> must be met in order for the exemption provided by this section to apply:</p>

- (1) The officer or director is a volunteer.
- (2) The officer or director is a tenant of a separate....
- (3) The association is exclusively residential.
- (4) The act or omission was performed within....
- ~~(4)-(5)~~ (5) The act or omission was performed in good faith.
- ~~(5)-(6)~~ (6) The act or omission was not willful, wanton....
- ~~(6)-(7)~~ (7) The association maintained and had in effect....
- (b) For the purposes of this section, "volunteer"....
- (c) Nothing in this section limits the liability....
- (d) For the purposes of this section, an officer's....

5685 BSC

**Subdivision (b) should be (a), the last sentence of subdivision (b) should be re-drafted to become subdivision(b). Section 5685 should be re-drafted to read:**

5685. ~~(a)~~ It is the intent of the Legislature to offer civil liability protection to owners of separate interests in a common interest development that has common....  
(a) Pursuant to the provisions of this section, a cause of action in tort against a member arising solely by reason of an ownership interest as a tenant in common in the common area shall be brought only against the association and not against individual members.  
(b) ~~In order for the provisions of this section to apply,~~ both of the following insurance requirements ~~are~~ must be met:  
(1) The association maintained and has in effect....  
(2) The coverage described in paragraph (1)....  
(A) At least two million dollars (\$2,000,000)....  
(B) At least three million dollars (\$3,000,000)....

5690 BSC

**Section 5690 should be re-drafted to read:**

5690. *The requirements of this section must be met when there is a change to any association insurance policy.*  
(a) If an insurance policy described in the annual budget....  
(b) If the association receives notice of nonrenewal....

5705 Re Note query

**Section 5705 is redundant in light of the provisions of Section 5700 and should be re-drafted to read:**

5705. ~~(a)~~ Unless the declaration provides otherwise, the responsibility for repair, replacement, and maintenance occasioned by the presence of wood-destroying pests or organisms ~~is as follows:~~ shall be governed by the provisions of Section 5700.  
~~(1) In a community apartment project, condominium....~~  
~~(2) In a planned development, the owner of a separate....~~  
(b) The association may cause the temporary, summary....  
(c) The association shall give individual notice....  
(d) For purposes of this section, "occupant" means....  
(e) The costs of temporary relocation of an occupant....

5730 BSC

**Subdivision (b) should be (a), (c) should be (b), etc. Section 5730 should be re-drafted to read:**

5730. ~~(a)~~ Except as otherwise provided in this section, the

- governing documents of an association may not prohibit....  
(a) Notwithstanding Section 434.4 of the Government Code, an association may prohibit the display....  
(1) The display endangers public health or safety....  
(2) The display violates a local, state, or federal....  
(3) The display includes the painting of architectural....  
(4) The display is not a flag and is more than....  
(b) An association may prohibit the display of a flag....  
(c) In an action under this section to challenge....
- 5730 Re **Note** query **The size distinction between the United States Flag and other flags should be maintained, as to ability of an association to control.** The guidance is both helpful and appropriately respectful.
- 5735 BSC **Subdivision (b) should be (a), (c) should be (b), etc. Section 5735 should be re-drafted to read:**  
5735. ~~(a)~~No governing documents shall prohibit the owner of a separate interest within a common interest development from keeping at least one pet....  
(a) For purposes of this section, "pet" means....  
(b) If the association implements a rule or regulation....  
(c) For the purposes of this section, "governing documents" shall include, but are not limited to....  
(d) This section shall become operative on January 1, 2001, and shall only apply to governing documents....
- 5740 BSC **Section 5740 should be re-drafted to read:**  
5740. *Associations shall comply with the provisions of this section when adopting rules, governing documents, or any other requirements affecting the installation or repair of a roof.*  
(a) An association may not require that a homeowner....  
(b) The governing documents of a common interest....
- 5745 BSC **Subdivision (b) should be (a), (c) should be (b), etc. Subdivisions (b)(5) and (b)(4) and subdivisions (b)(6) and (b)(7) should be subsumed, as noted below. Section 5745 should be re-drafted to read:**  
5745. ~~(a)~~Except as otherwise provided in this section, a provision of the governing documents is void to the extent that it would prohibit or restrict the use or installation of an antenna.  
(a) The following restrictions on the use or installation of an are not void pursuant to this section:  
(1) A restriction or prohibition that is consistent....  
(2) A requirement that the antenna not be visible....  
(3) A restriction that does not significantly increase....  
(4) A requirement that the association approve the installation of *an antenna* before installation takes place.  
~~(5) A requirement that an association approve the installation of an antenna on the separate interest of a member other than the member seeking to install the antenna.~~

- ~~(6) A provision for the maintenance, repair, or replacement of roofs or other building components.~~  
~~(7) (5) A requirement that the installer indemnify or reimburse the association or a member for the replacement of roofs or other building components, or other for loss or damage, caused by the installation, repair, maintenance, or use of the antenna.~~  
(b) Whenever approval is required for the installation....  
(c) In any action to enforce compliance with this section....  
(d) For the purposes of this section, "antenna" means....
- 5745            Re **Note** queries            **(1) & (2)-** The clarification provided by Section 5745 as a whole, and the specific simplification proposed by subdivision (a), are **very positive** revisions to current law and do NOT cause substantive changes.  
**(3) & (4)-** Subdivision (b)(5) DEFINITELY is subsumed by subdivision(b)(4) and can be DELETED without substantive change. (See above.) The same conclusion applies to subdivision(b)(6) being subsumed within subdivision(b)(7). (See above.)  
**(5)-** The right to install an antenna SHOULD BE more generalized, in order to be compatible with 47 C.F.R. Sec. 1.4000.
5750.            BSC            **Subdivision (b) should be (a), (c) should be (b), and (d) should be (c). Section 5750 should be re-drafted to read:**  
5750. ~~(a)~~-A provision of the governing documents that arbitrarily or unreasonably restricts a member's ability to market the member's interest in a common interest development is void.  
(a) An association shall not charge a fee in connection....  
(b) An association shall not require that a member....  
(c) For the purposes of this section "market" and....
- 5760            BSC            **Subdivision (b) should be (a), (c) should be (b), and (d) should be (c). The reference to subdivision (c) in subdivision (d) should be changed to (b). Section 5760 should be re-drafted to read:**  
5760. ~~(a)~~-Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable law.  
(a) Subject to the governing documents and applicable law, the owner of a separate interest may make any improvement or alteration within the boundaries....  
(b) Subject to the governing documents and applicable law, the owner of a separate interest may modify the separate interest , at the owner's expense, to facilitate....  
(c) A modification made pursuant to subdivision ~~(e)~~ (b) is subject to the following conditions:  
(1) The modification shall be consistent with applicable building code requirements.  
(2) The modification shall be consistent with the intent....  
(3) A modification of the common area shall not....

(4) The owner shall submit plans and specifications....

5760 Re **Note** query

**The generalization of Section 1360 by proposed Section 5760, so that it applies to ALL separate interests, is a very positive revision to current law.** Consistency of such definitions between all types of CIDs is crucial.

5775 BSC

**Section 5775 should be re-drafted to read:**  
5775. ~~(a)~~ This section applies if an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area.  
(a) In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:  
(1) The association shall provide a fair, reasonable....  
(2) A decision on a proposed change shall be made....  
(3) Notwithstanding a contrary provision....  
(4) A decision on a proposed change shall be....  
(5) If a proposed change is disapproved, the applicant....  
(b) Nothing in this section authorizes a physical change....  
(c) An association shall annually provide its members....

5830 BSC

**Subdivision (b) should be (a), (c) should be (b), and (d) should be (c). Section 5830 should be re-drafted to read:**  
5830. ~~(a)~~ A member may request, in writing, that the association provide the member with the documents described in Section 5825.  
(a) Within 10 days after the request is delivered....  
(b) If the requested documents are maintained....  
(c) The association may charge a reasonable fee....

5850 Re **Note** query

**This provision, essentially restating Section 1368(g), does NOT appear particularly helpful or necessary. If retained, however, it should be revised as shown below to refer to this "article", not this "section":**  
5850. For the purposes of this ~~section~~ *article*, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

5900 BSC

**Subdivision (b) should be (a), (c) should be (b), and Section 5900 should be re-drafted to read:**  
5900. ~~(a)~~ Unless the governing documents provide otherwise, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board of directors may grant exclusive use of any portion of the common area to a member.  
(a) ~~Subdivision (a)~~ This section does not apply to the following actions:  
(1) A reconveyance of all or any portion....

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		<ul style="list-style-type: none"><li>(2) A grant of exclusive use that is in substantial....</li><li>(3) A grant of exclusive use to eliminate or correct engineering errors....</li><li>(4) A grant of exclusive use to eliminate or correct encroachments due to errors....</li><li>(5) A grant of exclusive use to permit changes....</li><li>(6) A grant of exclusive use to fulfill the requirement....</li><li>(7) A grant of exclusive use to transfer the burden....</li><li>(8) A grant in connection with an expressly zoned....</li><li>(b) Any measure placed before the members....</li></ul>
5900	Re <b>Note</b> Query	<p><b>(1) Since this section requires an affirmative vote of 67% of the members to grant an exclusive common area usage, the change of Section 1363.07 does NOT appear problematic.</b></p> <p><b>(2) There are NO circumstances when the grant of exclusive use as provided by this section should be exercised by an entity other than the board and members.</b></p>
5905	BSC	<p><b>Subdivision (a) should become the primary statement for Section 5905, and the second sentence therein should become subdivision (a). (See response to “Note Query” below.) Section 5905 should be re-drafted to read:</b></p> <p>5905. <del>(a)</del> Except as provided in this section, the common area in a condominium project shall remain undivided, and there shall be no judicial partition of the common area.</p> <p>(a) Nothing in this section shall be deemed to prohibit partition of a cotenancy of a separate interest in a condominium.</p> <p>(b) The owner of a separate interest in a condominium....</p> <ul style="list-style-type: none"><li>(1) More than three years before the filing....</li><li>(2) Three-fourths or more of the project is destroyed....</li><li>(3) The project has been in existence more than 50....</li><li>(4) The conditions for such a sale, set forth....</li></ul>
5905	Re <b>Note</b> query	<p><b>The change to Section 1359(a) proposed by Section 5905 should NOT cause a problem, as it provides more clarity where it is needed.</b> The section should be re-drafted, as shown above, to emphasize the distinction.</p>
5910	BSC ( <u>Unless re-drafted as suggested below in response to <b>Note</b> query.</u> )	<p><b>Subdivision (b) should be (a), (c) should be (b) and (d) should be (c). Section 5910 should be re-drafted to read:</b></p> <p>5910. <del>(a)</del> In a condominium project, no labor performed....</p> <ul style="list-style-type: none"><li>(a) Express consent shall be deemed to have been....</li><li>(b) Labor performed or services or materials furnished....</li><li>(c) An owner may remove the owner’s condominium....</li></ul>
5910	Re <b>Note</b> query	<p><b>There does not appear to be any reason to not include other forms of CID ownership in this lien rules statute. C.A.R. recommends that Section 5910 be re-drafted to</b></p>

**read:**

5910. ~~(a)~~ In a *common interest development condominium project*, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the *common interest development condominium project* or the owner's agent or contractor shall be the basis for filing of a lien against the property of any other owner in the *common interest development condominium project* unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services.

(a) Express consent shall be deemed to be given by the owner of any *common interest development unit condominium* in the case of emergency repairs to the *common interest development unit condominium*.

(b) Labor performed or services or materials furnished for the common area, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each *common interest development unit condominium* owner.

(c) An owner may remove the owner's *common interest development unit condominium* from a lien against two or more *common interest development units condominiums* or any part thereof by payment to the lien holder of the fraction of the total sum secured by the lien that is attributable to the owner's *common interest development unit condominium*.

6005 BSC

**Section 6005 should be re-drafted to read:**

6005. *The provisions of this section shall control priority relationships between common interest development governing documents.*

(a) The articles of incorporation may not include....

(b) The bylaws may not include a provision that is....

(c) The operating rules may not include a provision....

6025 Re **Note** query

**Substitution of the defined termed "declarant" is positive.** It carries out the non-substantive, simplification goal of this CLRC project.

6030 BSC

**Subdivision (b) should be (a), (c) should be (b) and Section 6030 should be re-drafted to read:**

6030 ~~(a)~~ If a common interest development is located....

(a) For the purposes of this section....

(b) A statement in a declaration acknowledging....

6035 BSC

**Section 6035 should be re-drafted to read:**

6035. ~~(a)~~ ~~If a~~ A common interest development is within the jurisdiction of the San Francisco Bay Conservation and Development Commission, as described in Section 66610 of the Government Code, *shall comply with the provisions of this section.*

(a) *If the location of a common interest development subjects it to the provisions of this section, and its*

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		declaration is recorded on or after January 1, 2006, the declaration shall contain the following notice:
		“NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION”....
		(b) A statement in a declaration acknowledging that....
6040	BSC	<b>Subdivision (b) should be (a), (c) should be (b), etc. Section 6040 should be re-drafted to read:</b> 6040. <del>(a)</del> Unless a declaration expressly provides otherwise, any provision of the declaration can be amended. <i>Notwithstanding a provision prohibiting amendments to the declaration, a majority of the members of an association can approve, by written ballot, amendments to the declaration.</i> (a) If a provision of a declaration can be amended.... (b) The Legislature finds that there are common interest developments that have been created with deed.... (c) A declaration may be amended to extend....
6040	Re Note query	<b>(1) The proposed restatement of Section 1355(b) is a positive simplification</b> of that subdivision. It is <u>not</u> substantive change.  <b>(2) <u>There absolutely should be a procedure for amendment to the declaration by a majority of the members of an association, notwithstanding a prohibition of such action in the declaration.</u></b> (See above for suggested language.)
6045	BSC	<b>Section 6045 should be re-drafted to read:</b> 6045. <i>An amendment of the declaration may be approved by <del>that</del> the procedure contained in the governing documents, # if the governing documents provide a procedure for approval of an amendment of the declaration.</i> (a) If the governing documents do not provide.... (b) The board shall provide individual notice (Section....
6050	BSC	<b>Section 6050 should be re-drafted to read:</b> 6050. <i>Notwithstanding Section 6045, the deletion of a provision of the declaration may be approved by the board <del>(Section 6040) and</del> by a majority of a quorum of the members (Section 4070) if all of the following conditions are met:</i> (a) The provision to be deleted is unequivocally.... (b). The provision to be deleted authorizes access by the developer over or across the common area for the <i>following purposes of:</i> (1) <del>completion</del> <i>Completion</i> of construction of the development , <del>and-or</del> (2) the erection, construction, or maintenance of structures or other facilities designed to facilitate the completion of

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		construction or marketing of separate interests. (c) The construction or marketing activities governed....
6050	Re <b>Note</b> query	<p><b>(2) As recommended above; YES, the conjunction in subdivision (b) should be changed to “or” from “and”.</b> In its current version, taken from Section 1355.5, it continues an inconsistency between sub-part (1) and (2), that was in sub-parts (a) and (b) of Section 1355.5. If you have (1), sub-part (2) becomes redundant in its current Format.</p> <p><b>(3) No, it is not necessary to continue the requirement that the board approve an amendment under this section.</b> Approval by a majority of the members is certainly sufficient. (See above.)</p>
6075	Correction to <b>Comment</b>	<p><b>The 2<sup>nd</sup> sentence of this Comment contains an incorrect source reference.</b> The last paragraph of former Section 1351(e) is placed in “<b>Section 6080</b>”, <u>not</u> “5060”.</p>
6110	BSC	<p><b>Section 6110 should be re-drafted to read:</b> 6110. <i>The provisions of this section govern applicability of Sections 6115 and 6120 to common interest development issues and procedures.</i></p> <p>(a) Sections 6115 and 6120 only apply to an operating rule that relates to one or more of the following subjects:</p> <ul style="list-style-type: none"><li>(1) Use of the common area....</li><li>(2) Use of a separate interest....</li><li>(3) Member discipline, including any schedule of....</li><li>(4) Any standards for delinquent assessment payment....</li><li>(5) Any procedures adopted by the association....</li><li>(6) Any procedures for reviewing and approving or....</li><li>(7) Any procedure for the conduct of an election.</li></ul> <p>(b) Sections 6115 and 6120 do not apply to the following actions by the board:</p> <ul style="list-style-type: none"><li>(1) A decision regarding maintenance of the common....</li><li>(2) A decision on a specific matter that is not intended....</li><li>(3) A decision setting the amount of a regular or....</li><li>(4) A rule change that is required by law, if the board....</li><li>(5) Issuance of a document that merely repeats....</li></ul>
6115	BSC	<p><b>Section 6115 should be re-drafted to read:</b> 6115. <del>(a)</del> The board shall provide general notice (Section 4045) of a proposed rule change at least 30 calendar days before making the rule change.</p> <p>(a) The notice shall include the text of the proposed rule change and a description of the purpose and effect of the proposed rule change.</p> <p>(b) Notice is not required under this <del>subdivision</del> <i>section</i> if the board determines that an immediate rule change is necessary to address an immediate threat to public health or safety or imminent risk of substantial economic loss to the association.</p> <p>(c) A proposed rule change may be approved....</p>

		<p>(d) As soon as possible after approving a rule change, but not more than 15 calendar days after approving the rule change, the board shall provide general notice (Section 4045) of the rule change. If the rule change was an emergency rule change made under subdivision <del>(d)</del>-(e)....</p> <p>(e) If the board determines that an immediate rule....</p>
6120	BSC	<p><b>Subdivision (b) should be (a), (c) should be (b), (d) should be (c), etc. Section 6120 should be re-drafted to read:</b></p> <p>6120. <del>(a)</del>-Members of an association owning five percent or more of the separate interests may call a special member meeting to reverse a rule change that was approved by the board.</p> <p>(a) A special member meeting may be called....</p> <p>(b) For the purposes of Article 3 (commencing with....</p> <p>(c) A decision to reverse a rule change....</p> <p>(d) Unless otherwise provided in the declaration....</p> <p>(e) A meeting called under this section is governed....</p> <p>(f) A rule change reversed under this section....</p> <p>(g) As soon as possible after the close of voting....</p> <p>(h) This section does not apply to an emergency....</p>
6125	BSC	<p><b>Subdivision (b) should be (a) and (c) should be (b). Section 6125 should be re-drafted to read:</b></p> <p>6125. <del>(a)</del>-This article applies to a rule change commenced on or after January 1, 2004.</p> <p>(a) Nothing in this article affects the validity of a rule....</p> <p>(b) For the purposes of this section, a rule change....</p>
6150	BSC	<p><b>Subdivision (b) should be (a), (c) should be (b), and (d) should be (c). Section 6150 should be re-drafted to read:</b></p> <p>6150. <del>(a)</del>-No governing document shall include a <del>restrictive covenant-rule or restriction</del> in violation of Section 12955 of the Government Code.</p> <p>(a)Notwithstanding any other provision of law or provision of the governing documents, the board shall amend the governing documents to delete the unlawful <del>restrictive covenant-rule or restriction</del> and to restate the governing document without the deleted <del>restrictive covenant-rule or restriction</del>. No other person is required to approve the amendment.</p> <p>(b) If the declaration is amended under this section....</p> <p>(c) The Department of Fair Employment and Housing....</p>
6150	Re <b>Comment</b> correction	<p><b>Given the re-draft of Section 6150, the reference to “subdivision (c)” should be to “subdivision (b)”.</b></p>
	Re <b>Note</b> query	<p><b>Yes, it is preferable, and more accurate, to replace the term “restrictive covenant” with the term “rule or “restriction” in Section 6150. (See above.)</b></p>
6175 & 6180	BSC	<p><b>Sections 6175 and 6180 should be combined into one</b></p>

**section, for both logical and simplification reasons,  
and re-drafted to read:**

6175-(a) Any deed, declaration, or condominium plan for a common interest development shall be liberally construed to facilitate the operation of the common interest development, and its provisions shall be presumed to be independent and severable.

~~(b)~~ (a) Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the governing documents of a common interest development.

~~6180-~~(b) In interpreting a deed or condominium plan, the existing physical boundaries of a unit in a condominium project, when the boundaries of the unit are contained...

6200

BSC

Sections 6200 and 6205, restatements of Sections 1375 and 1375.05, have sunset dates of July 1, 2010. This date is 6 months after the recodified Davis-Stirling Act is proposed to go into effect if enacted. If the CLRC intends to perpetuate the existence of these code sections governing Construction Defect Litigation, for purposes of continuity and reference simplification regarding this area of law, the sunset dates should be deleted and the proposed new sections re-drafted.

As proposed by the Tentative Recommendation, Sections 6200 and 6205 are excessively long, complex, nearly impossible to comprehend, and completely non “user-friendly.”

**ADDITIONALLY, C.A.R. recommends that Sections 6200 and 6205 be retained permanently, to foster the principle of a single reference source for all CID-related issues, and that Chapter 9, commencing with Section 6200, be re-numbered, re-organized and re-drafted as follows:**

**Subdivision (a) of Section 6200 should become the entire Section 6200, and Section 6200 should be entirely re-numbered as follows:**

6200. ~~(a)~~ Before an association files a complaint for damages against a builder, developer, or general contractor (“respondent”) of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of this ~~section~~ *chapter* shall be satisfied with respect to the builder, developer, or general contractor.

~~6200.~~**(b) 6205.** The association shall serve upon the respondent a “Notice of Commencement of Legal Proceedings.” The notice shall be served...This notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they

were named in the notice, including claims for indemnity applicable to the claim period set forth in subdivision ~~(e)~~(b).  
(a)The notice *required by this section* shall include all of the following:

- (1) The name and location....
- (2) An initial list of defects....
- (3) A description of the results....
- (4) A summary of the results....
- (5) Either a summary of the results of testing....

~~(e)~~(b) Service of the notice shall commence a period....

....All extensions shall continue the tolling period described in ~~subdivision (b)~~ *this section*.

~~(d)~~(c) Within 25 days of the date the association serves....

~~6200.(e)~~ **6210**. Upon receipt of the notice *served pursuant to Section 6205*, the respondent shall, within 60 days, comply with ~~the following:~~ *this section*.

~~6200.(e)(1)~~ (a) The respondent shall provide the association with access to, for inspection and copying of, all plans and specifications, subcontracts, and other construction files for the project that are reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed.

(1) The association shall provide the respondent with access to, for inspection and copying of, all files reasonably calculated to lead to the discovery of....

(2) To the extent any of the above documents are withheld based on privilege, a privilege log shall....

~~(2)~~ (b) The respondent shall provide written notice by certified mail to all subcontractors, design professionals.... and whose potential responsibility appears on the face of the notice.

(c) ~~This~~ *The notice required by subdivision (b) shall be provided to subcontractors, design professionals, and insurers, and shall include a copy of the Notice of Commencement of Legal Proceedings, and shall specify the date and manner by which the parties shall meet and confer to select a dispute resolution facilitator pursuant to paragraph (1) of subdivision (f) Section 6215, advise the recipient of its obligation to participate in the meet and confer or serve a written acknowledgement of receipt regarding this notice, advise the recipient that it will waive any challenge to selection of the dispute resolution facilitator if it elects not to participate in the meet and confer, advise the recipient that it may be bound by any settlement reached pursuant to subdivision (d) of Section 6205 Section 6285, advise the recipient that it may be deemed to have waived rights to conduct inspection and testing pursuant to subdivision (e) of Section 6205 (b) of Section 6275, advise the recipient that it may seek the assistance of an attorney, and advise the recipient that it should contact its insurer, if any.*

(d) Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional

insured, who receives written notice from the respondent  
...That subcontractor or design professional shall, within  
10 days of service of the written acknowledgement of  
receipt, provide to the association and the respondent a  
Statement of Insurance that includes both of the following:  
~~(A)~~ (1) The names, addresses, and contact persons....  
~~(B)~~ (2) The applicable policy numbers for each policy....  
~~(3)~~(e) Any subcontractor or design professional, or insurer  
for that subcontractor, design professional, or additional  
insured, who so chooses, may, at any time, make a written  
request to the dispute resolution facilitator for designation  
as a peripheral party.

(1) ~~That~~ A request *made pursuant to this section* shall be  
Served contemporaneously on the association and the  
respondent...as to peripheral parties may be finalized.

(2) Nothing in this subdivision shall preclude a party who  
has been designated a peripheral party....For the purposes  
of this subdivision, a peripheral party is a party having total  
claimed exposure of less than twenty-five thousand dollars  
(\$25,000).

~~6200(f)(1)~~ **6215.** Within 20 days of sending the notice set  
forth in ~~paragraph (2) of subdivision (e)~~ *subdivision (b) of  
Section 6210*, the association, respondent, subcontractors,  
design professionals, and their insurers who have been  
sent ~~a this notice as described in paragraph (2) of  
subdivision (e)~~ shall meet and confer in an effort to select a  
dispute resolution facilitator to preside over the mandatory  
dispute resolution process prescribed by this section.

(a) Any subcontractor or design professional who has been  
given timely notice of ~~this~~ *the meeting held pursuant to this  
section*, but who does not participate, waives any  
challenge he or she may have as to the selection of the  
dispute resolution facilitator...or have an office in the  
county in which the project is located.

(b) The dispute resolution facilitator and the participating...  
and the scheduling of events under this section.

(1) The case management meeting with the dispute  
resolution...in the county where the project is located.

(2) Written notice of the case management meeting with  
the dispute resolution facilitator shall be sent....

~~(2)~~(c) No later than 10 days prior to the case  
management meeting, the dispute resolution facilitator  
shall disclose to the parties....to resolve the conflict in a  
fair manner.

(1) The facilitator's disclosure shall include the existence  
of any ground specified in Section 170.1....with any party  
to the dispute resolution process.

(2) The disclosure *required by this section* shall also be  
provided to any subsequently noticed subcontractor....

~~(3)~~(d) A dispute resolution facilitator shall be disqualified  
by the court if he or she fails to comply with this ~~paragraph  
section~~ and any party.... If the dispute resolution facilitator  
complies with this ~~paragraph~~ *section*, he or she shall be

disqualified by the court....

~~(4)~~ (e) If the parties cannot mutually agree to a dispute resolution facilitator, then each party shall submit a list.... Each party may then strike one nominee from the other parties' list, and petition the court, pursuant to the procedure described in ~~subdivisions (h) and (e)~~ Sections 6255 and 6260, for final selection.... The court may issue an order for final selection of the dispute resolution facilitator pursuant to this ~~paragraph~~ subdivision.

~~(5)~~ (f) Any subcontractor or design professional who receives notice of the association's claim without having previously received timely notice of the meet and confer to select the dispute resolution facilitator shall be notified by the respondent regarding the name, address, and telephone number of the dispute resolution facilitator.

(1) Any such subcontractor or design professional may serve upon the parties and the dispute resolution....

(2) The court may replace the dispute resolution....

~~(6)~~ (g) The costs of the dispute resolution facilitator shall be apportioned in the following manner: one-third.... as allocated among them by the dispute resolution facilitator.

(1) The costs of the dispute resolution facilitator.... as they apply to any nonsettling party.

(2) The determination of the dispute resolution facilitator with respect to the allocation of these costs....

~~(7)~~ (h) In the event the dispute resolution facilitator is replaced at any time, the case management statement....

~~(8)~~ (i) The dispute resolution facilitator shall be empowered to enforce all provisions of this ~~section~~ chapter.

**6220.** *The case management meeting shall be conducted Pursuant to the provisions of this section.*

~~6200.(g)(1)~~ (a) No later than the case management meeting, the parties shall begin to generate a data compilation showing the following information regarding the alleged defects at issue:

~~(A)~~ (1) The scope of the work performed by each....

~~(B)~~ (2) The tract or phase number in which each....

~~(C)~~ (3) The units, either by address, unit number, or....

(2)(b) This data compilation shall be updated as needed....

~~6200.(h)~~ **6225.** At the case management meeting, the parties shall, with the assistance of the dispute resolution facilitator, reach agreement on a case management statement, which ~~shall set forth~~ contain all of the elements set forth in ~~paragraphs (1) to (8)~~ subdivisions (a) to (h), inclusive, except that the parties may dispense.... the following elements shall take place in the following order:

(1)(a) Establishment of a document depository.... provided for under this ~~section~~ chapter.

(1) All documents exchanged by the parties and all documents created pursuant to this subdivision.... and in subsequent litigation.

(2) When any document is deposited in the document

depository, the party depositing the document shall....

~~(2)~~ ~~(b)~~ Provision of a more detailed list of defects by the association to the respondent after the association completes a visual inspection of the project.

(1) This list of defects shall provide sufficient detail.... are provided with notice of the dispute resolution process.

(2) If not already completed prior to the case management meeting, the Notice of Commencement of Legal Proceedings shall be served by the respondent....

~~(3)~~ ~~(c)~~ Nonintrusive visual inspection of the project....

(4) ~~(d)~~ Invasive testing conducted by the association....

~~(5)~~ ~~(e)~~ Provision by the association of a comprehensive....

~~(6)~~ ~~(f)~~ Invasive testing conducted by the respondent....

~~(7)~~ ~~(g)~~ Allowance for modification of the demand....

~~(8)~~ ~~(h)~~ Facilitated dispute resolution of the claim....

~~6200.(i)~~ **6230.** In addition to the foregoing elements of the case management statement described in ~~subdivision (h)~~ *Section 6225*, upon mutual agreement of the parties, the dispute resolution facilitator may include any or all of the following elements in a case management statement:

~~(a)~~ ~~the~~ The exchange of consultant or expert photographs;

(b) expert presentations;

(c) expert meetings; or

(d) any other mechanism deemed appropriate....

~~6200.(j)~~ **6235.** The dispute resolution facilitator, with the guidance of the parties, shall at the time the case....

~~(k)(1)(A)~~ ~~(a)~~ At a time to be determined by the dispute resolution facilitator, the respondent may submit to the association all of the following:

~~(i)~~ (1) A request to meet with the board to discuss....

~~(ii)~~ (2) A written settlement offer, and a concise....

~~(iii)~~ (3) A statement that the respondent has access....

~~(iv)~~ (4) A summary of the results of testing....

~~(B)~~ ~~(b)~~ If the respondent does not timely submit the items required by this ~~subdivision~~ *section*, the association shall be relieved of any further obligation to satisfy the requirements of this ~~subdivision~~ *section* only.

~~6200(k)(1)(C)~~ **6240.** No less than 10 days after the respondent submits the items required by ~~this paragraph~~ *Section 6235*, the respondent and the board of directors of the association shall meet and confer about the respondent's settlement offer.

~~(D)~~ ~~(a)~~ If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to this ~~subdivision~~ *section*, the board shall hold a meeting open to each member of the association....

~~(E)~~ ~~(b)~~ No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

~~(i)~~ (1) That a meeting will take place to discuss....

~~(ii)~~ (2) The options that are available to address....

~~(iii)~~(3) The complete text of any written settlement offer....  
~~(F)~~(c) The respondent shall pay all expenses....  
~~(G)~~(d) The discussions at the meeting and the....  
~~(H)~~(e) No more than one request to meet and discuss a  
written settlement offer may be made by the respondent  
pursuant to this ~~subdivision~~ *section*.

~~6200(l)~~ **6245.** Except for the purpose of in camera review  
as provided in subdivision ~~(e)~~ of ~~Section 6205~~ *(b)* of  
*Section 6275*, all defect lists and demands....

~~6200(m)~~ **6250.** Any subcontractor or design professional  
may, at any time, petition the dispute resolution facilitator  
to release that party from the dispute resolution process  
upon a showing that the subcontractor or design  
professional is not potentially responsible for the defect  
claims at issue.

(a) The petition shall be served contemporaneously on all  
other parties, who shall have 15 days from the date of  
service to object.

(b) If a subcontractor or design professional is released,  
and it later appears to the dispute resolution facilitator that  
it may be a responsible party in light of the current defect  
list or demand, the respondent shall renounce the party as  
provided by ~~paragraph (2) of subdivision (e)~~ *subdivision (b)*  
*of Section 6210*, provide a copy of the current defect list or  
demand, and direct the party to attend a dispute resolution  
session at a stated time and location.

(c) A party who subsequently appears after having been  
released by the dispute resolution facilitator shall not be  
prejudiced by its absence from....

~~6200(n)~~ **6255.** Any party may, at any time, petition the  
superior court in the county where the project is located...  
or for appointment of a referee to resolve a dispute  
regarding any of the following:

~~(1)~~ (a) To take a deposition of any party to the process....

~~(2)~~ (b) To resolve any disputes concerning inspection,  
testing, production of documents, or exchange of  
information provided for under this ~~section~~ *chapter*.

~~(3)~~ (c) To resolve any disagreements relative to....

~~(4)~~ (d) To authorize internal extensions of timeframes....

~~(5)~~ (e) To seek a determination that a settlement is a good  
faith settlement pursuant to Section 877.6....

~~(6)~~ (f) To ensure compliance, on shortened notice, with the  
obligation to provide a Statement of Insurance pursuant to  
~~paragraph (2) of subdivision (e)~~ *subdivision (b)* of *Section*  
*6210*.

~~(7)~~ (g) For any other relief appropriate to the enforcement  
of the provisions of this ~~section~~ *chapter*, including the  
ordering of parties, and insurers, if any, to the dispute  
resolution process with settlement authority.

~~6200(o)(1)~~ **6260.** A petition filed pursuant ~~subdivision (n)~~

*Section 6255* shall be filed in the superior court in the county in which the project is located. The court shall hear and decide the petition within 10 days after filing.

(a) The petitioning party shall serve the petition on all parties, including the date, time, and location of the hearing no later than five business days prior to the hearing.

(b) Any responsive papers shall be filed and served no later than three business days prior to the hearing.

(c) Any petition or response filed under this section shall be no more than three pages in length.

(2)(d) All parties shall meet with the dispute resolution facilitator, if one has been appointed, and confer in person or by telephone prior to the filing of that petition to attempt resolve the matter without requiring court intervention.

~~6200(p)~~ **6265.** As used in this ~~section~~ *chapter*:

(1)(a) "Association" shall have the same meaning as defined in Section 4080.

(2)(b) "Builder" means the declarant, as defined in ~~subdivision~~ Section 4130.

(3)(c) "Common interest development" shall have the same meaning as in Section 4100, except that it shall not include developments or projects with less than 20 units.

~~6200(q)~~ **6270.** The alternative dispute resolution process and procedures described in this ~~section~~ *chapter* shall have no application or legal effect other than as described in this ~~section~~ *chapter*.

6200 (r) Delete as unneeded

~~6200.(r) This section shall become operative on July, 2002, however it shall not apply to any pending suit or claim for which notice has previously been given.~~

6200 (s) Delete as unneeded if the Construction Defect Litigation Chapter is to be permanently retained in the new Davis-Stirling Act, as recommended by C.A.R.

~~6200.(s) This section shall become operative on July 1, 2002, and as of January 1, 20011 is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.~~

6205 BSC

**Just as with Section 6200, C.A.R. recommends that for clarity and simplification purposes, Section 6205 be re-organized and re-numbered to read:**

~~6205.(a)~~ **6275.** Upon the completion of the mandatory pre-filing dispute resolution process described in ~~Section~~ *Sections 6200 through 6270*, if the parties have not settled the matter, the association or its assignee....

(b)(a) In assigning trial priority, the court shall assign....

(e)(b) Any respondent, subcontractor, or design professional who received timely prior notice of the inspections and testing conducted under ~~Section 6200~~

*the provisions of this chapter* shall be prohibited from engaging in additional inspection or testing, except if all of the following specific conditions are met, upon motion to the court:

(1) There is an insurer for a subcontractor or design professional, that did not have timely notice that legal proceedings were commenced under ~~Section 6200~~ *the provisions of this chapter* at least 30 days prior to the commencement of inspections or testing pursuant to ~~paragraph (6) of subdivision (h) of Section 6200~~ *Section 6225*.

(2) The insurer's insured did not participate in any inspections or testing conducted under then provisions of ~~paragraph (6) of subdivision (h) of Section 6200~~ *Section 6225*.

(3) The insurer has, after receiving notice of a complaint filed in superior court under ~~subdivision (a) Section 6200~~, retained separate counsel, who did not participate in the ~~Section 6200~~ dispute resolution process *pursuant to the provisions of this chapter*, to defend its insured as to the allegations in the complaint.

(4) it is reasonably likely that the insured would suffer....

(5) The information obtainable through the proposed additional inspections or testing is not available through any reasonable alternative sources.

**6280.** If the court permits additional inspections or testing upon finding ~~that these~~ *the* requirements of *Section 6275* are met, any additional inspections or testing shall be limited to the extent reasonably necessary to avoid the likelihood of prejudice and shall be coordinated among all similarly situated parties to ensure that they occur without unnecessary duplication.

(a) For purposes of providing notice to an insurer prior to Inspections or testing under ~~paragraph (6) of subdivision (h) of Section 6200~~ *subdivision (f) of Section 6225*, if notice of the proceedings was not provided by the insurer's insured, notice may be made via certified mail either by the subcontractor, design professional, association, or respondent to the address specified in the Statement of Insurance provided under ~~paragraph (2) of subdivision (e) of Section 6200~~ *subdivision (b) of Section 6210*.

(b) Nothing herein shall ~~effect~~ *affect* the rights of an intervenor who files a complaint in intervention. If the association alleges defects that were not specified in the pre-filing dispute resolution process under ~~Section 6200~~ *the provisions of this chapter*, the respondent, subcontractor, and design professional shall be permitted to engage in testing or inspection necessary to respond to the additional claims.

(c) A party who seeks additional inspections or testing based upon the amendment of claims shall apply to the

court for leave to conduct those inspections or testing.  
(d) If the court determines that it must review the defect claims alleged by the association in the pre-filing dispute resolution process in order to determine whether the association alleges new or additional defects, this review shall be conducted in camera.

(e) Upon objection of any party, the court shall refer the matter to a judge other than the assigned trial judge to determine if the claim has been amended in a way that requires additional testing or inspection.

~~6205.(d)~~ **6285.** Any subcontractor or design professional who had notice of the facilitated dispute resolution conducted under ~~Section 6200~~ *the provisions of this chapter* but failed to attend, or attended without settlement authority, shall be bound by the amount of any settlement reached in the facilitated dispute resolution in any subsequent trial, although the affected party may introduce evidence as to the allocation of the settlement.

(a) Any party who failed to participate in the facilitated dispute resolution because the party did not receive timely notice of the mediation shall be relieved of any obligation to participate in the settlement.

(b) Notwithstanding any privilege applicable to the pre-filing dispute resolution process provided by ~~Section 6200~~ *the provisions of this chapter*, evidence may be introduced by any party to show whether a subcontractor or design professional failed to attend or attended without settlement authority.

(c) The binding effect of this ~~subdivision~~ *section* shall in no way diminish or reduce a nonsettling subcontractor or design professional's right to defend itself or assert all available defenses relevant to its liability in any subsequent trial.

(d) For purposes of this ~~subdivision~~ *section*, a subcontractor or design professional shall not be deemed to have attended without settlement authority because it asserted defenses to its potential liability.

~~6205.(e)~~ **6290.** Notice of the facilitated dispute resolution conducted under ~~Section 6200~~ *the provisions of this chapter* must be mailed by the respondent no later than 20 days prior to the date of the first facilitated dispute resolution session to all parties.

(a) Notice shall also be mailed to each of these parties' known insurance carriers.

(b) Mailing of this notice shall be by certified mail.

(c) Any subsequent facilitated dispute resolution notices shall be served by any means reasonably calculated to provide these parties actual notice.

~~6205.(f)~~ **6295.** As to the complaint, the order of discovery shall, at the request of any defendant, except upon a showing of good cause....

~~6205.(g)(1)~~ **6300.** The only method of seeking judicial relief for the failure of the association or the respondent to complete the dispute resolution process under ~~Section 6200~~ *the provisions of this chapter* shall be the assertion, as provided for in this ~~subdivision~~ *section*, of a procedural deficiency to an action for damages by the association against the respondent after that action has been filed. A verified application asserting a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court

~~(2)~~ (a) Upon the verified application of the association or the respondent alleging substantial noncompliance with ~~Section 6200~~ *the provisions of this chapter*, the court shall schedule a hearing within 21 days....

~~(3)(A)~~ (b) If the court finds that the association or the respondent did not substantially comply with this ~~paragraph~~ *section*, the court shall stay the action for up to 90 days to allow the noncomplying party to establish substantial compliance.

(1) The court shall set a hearing within 90 days to determine substantial compliance....

~~(B)~~ (2) If, within the time set by the court pursuant to this ~~paragraph~~ *section*, the association or the respondent has not established that it has substantially complied with ~~this section~~ *the provisions of Sections 6275 through 6300*, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned.

(3) Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with ~~this section~~ *the provisions of Sections 6275 through 6300*.

6205(h) Delete as unneeded

~~6205.(h)~~ This section is operative on July 1, 2002, but does not apply to any action or proceeding pending on that date.

6205(i) Delete so as to eliminate sunset date.

~~6205.(i)~~ This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

6210 BSC

**Just as with Sections 6200 and 6205, for clarification simplification purposes, C.A.R. recommends that Section 6210 be re-numbered as a continuation of the re-numbering of those sections.**

~~6210.(a)~~ **6305.** As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been resolved regarding alleged defects in the common areas, alleged defects in the separate interests that the

association is obligated to maintain or repair, or alleged defects in the separate interests that arise out of, or are integrally related to, defects in the common areas or separate interests that the association is obligated to maintain or repair.

~~(a) where~~ *Where* the defects giving rise to the dispute have not been corrected, the association shall, in writing, inform only the members of the association whose name appear on the records of the association that the matter has been resolved by settlement agreement or other means, and disclose all of the following:

(1) A general description of the defects....

(2) A good faith estimate, as of the date....

(3) The status of the claims for defects in the design....

(b) Nothing in this section shall preclude an association from amending the disclosures required pursuant to ~~subdivision (a)~~ *this section*, and any amendments shall....

(c) Disclosure of the information required pursuant to ~~subdivision (a)~~ *this section* or authorized by subdivision....

(d) For the purposes of the disclosures required....

6215

BSC

**Just as with Sections 6200, 6205, and 6210, C.A.R. recommends that Section 6215 be re-numbered as a continuation of the earlier section re-numbering.**

~~6215. (a)~~ **6310.** Not later than 30 days prior to the filing of any civil action by the association against the declarant or other developer... the board shall deliver individual notice (Section 4040) to each member of the association who appears on the records of the association when the notice is provided.

(a) The notice *required by this section* shall specify all of the following:

(1) That a meeting will take place to discuss problems....

(2) The options, including civil actions, ~~that~~ *which* are available to address problems.

(3) The time and place of this meeting.

(b) Notwithstanding ~~subdivision (a)~~ *the provisions of this section*, if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may give the notice, as described above, within 30 days after filing of the action.

**EMAIL FROM JANET SHABAN  
(SEPTEMBER 21, 2007)**

Comments on "Statutory Clarification and Simplification of CID Law," June 2007

My thanks to the California Law Commission for its much-needed work.

P. 8: "A board could argue that the open meeting requirements do not apply to a gathering of the board to consider association business so long as the matters . . . are not scheduled in advance. That would be inconsistent with the transparency sought by open meeting laws." Yes, the law must not constrain "meeting" to one at which only previously scheduled business is considered.

P. 8: "The proposed law would . . . require that notice [of the agenda] be given to members." Yes, members must be informed what issues are to be considered.

The availability of the agenda concerns me. An agenda is currently posted on the bulletin board of my association's office. I have argued that copies of the agenda should be posted at community mailbox locations scattered throughout the property. The manager has contended that such postings would require too much of grounds patrol's (security's) time. If social gathering announcements do not require too much time to be posted at such locations—and they do not—I see no reason a meeting agenda could not be similarly posted.

P. 49: I'm happy to see that "the association shall deliver notice of the time and place of a board meeting at least four days before the meeting." My association currently posts the agenda the day of the meeting. I note the proposed law uses the word deliver. Is the intent that an agenda will be delivered to each member's unit? If so, excellent. Delivery to each unit would be superior to delivery to various public locations.

P. 10: "Under existing law, a member who is disputing an assessment debt does not have the right to compel that the matter be discussed in executive session. Arguably, the same privacy considerations that apply to member discipline, a payment plan request, or a decision to foreclose, would . . . apply to consideration of an assessment dispute."

"The proposed law would require that an assessment dispute be considered in closed executive session when requested by the member . . ." Yes, of course.

P. 40: "That provision ensures that business should be conducted in the open is not discussed privately, through informal contacts. However, such a restriction does impose a procedural burden, which may be too onerous for . . . directors . . ." The critical restriction is no "use of direct communication . . . employed by a majority of the members . . . to develop a collective concurrence as to action to be taken on an item . . ." (Italics mine).

P. 50, line 19: Yes, the specified exception should be discontinued.

P. 52: "If the only purpose served by conducting member discipline and assessment dispute proceedings in closed session is to protect the member's

privacy, should the member have the option to insist that the proceeding be conducted in the open?" Yes, indeed. The member might want and benefit by others' surveillance.

"What other interests are served by conducting such proceedings in closed session . . .?" Secret interests. Research has shown that when people know they cannot be identified with their behaviors, they may act differently than they do when they know they can be identified.

P. 52: "The minutes for any part of a board meeting held in executive session shall include only a general description of the matter considered in executive session." I find "a general description" vague. Perhaps specification of the kinds of details that should not be revealed could be given.

P. 52: "The member handbook . . . shall inform the members of their rights to obtain copies of board meeting minutes and shall describe the procedure for obtaining a copy of the minutes." Minutes are available at my association's board meetings. Otherwise, I was told, a person must purchase a copy at the office. I have argued that the association's dues should include "payment" for a copy of the minutes, that one should not be required to pay an additional amount for a copy of the minutes. My association has charged five dollars for a copy of the one- or two-page minutes.

P. 53: I approve of "The court may award reasonable costs and expenses, including . . . attorney's fees, to the association if it finds the action was not brought in good faith and with reasonable cause."

P. 57: "Proposed Section . . . continues existing law that allows a person who validly calls a special meeting to set the meeting date and distribute notices, if the board fails to do so in the time provided. . . . it would provide for reimbursement of the cost of notice from the association." Yes.

P. 60: Selection of election inspector includes (d) (1) "Determine which members are entitled to vote and the voting power of each." This brings to mind my association's "nominating committee." The "nominating committee" is empowered to determine whether a member is eligible to run for office or not, that is, to have knowledge of whether a member owes the association money or not. I believe such knowledge should not be public, i.e., should not be available to a "nominating committee." My understanding is also that the "nominating committee" may interview candidates and decide whether it wishes to recommend or nominate the candidates or not. Might the law address such screening?

P. 64: "the Commission invites comment on whether the meeting should be open to the general public." Yes, association/board meetings should be open to the general public. Why not? A prospective buyer would be wise to attend association/board meetings. A member might wish the company of a friend who isn't an association member. Members might desire their attorneys' attendance.

P. 68: "The court may award reasonable costs and expenses, including . . . attorney's fees, to the association if it finds that the action was not brought in good faith and with reasonable cause." Yes.

P. 68: I note that a member may inspect "A balance sheet, income and expense statement, budget comparison, or general ledger. This paragraph applies to any record of the types described, regardless of whether the record is interim or final, audited or unaudited, prepared pursuant to a fixed schedule or on an ad hoc basis. . . ." (a)(5) and note also a p. 69 comment: "Subdivision (a)(5) does not limit the inspection of financial statements to those that are 'interim,' 'unaudited,' and 'periodic or as compiled.' All financial statements of the types described are subject to inspection."

Am I to understand that a member is entitled to inspect a proposed budget?

I tried to obtain a copy of my association's budget committee's recommended budget, that is, the budget the committee planned to recommend to the board. My request was turned down. I argued that had I only volunteered for the budget committee, I would have possessed a copy and, besides, why should I not be given a copy in advance of the meeting at which copies would be distributed? I think 4700 provides that a member may inspect—and of course get a copy of—a proposed budget, but, if not, it must.

The reason I was given for not being allowed a copy of the proposed budget was that such a budget must not fall into the hands of prospective buyers. Why not? A prospective buyer might form a wrong impression, I was told. Such a person might not understand the budget was proposed (as opposed to adopted).

(I was not a prospective buyer or in contact with one. One of the individuals on the budget committee was a real estate agent.)

I have asked my association's management how the latest dues increases and assessment amounts were determined but have received no information. Should the law state that members are entitled to information about how dues changes and assessment amounts are determined?

P. 69: 4700 says a member may not inspect "The agenda or minutes of a board or committee meeting held in executive session." This worries me. Shouldn't members be informed about the kinds of secret meetings that take place at their associations? The sorts of issues discussed behind closed doors? Should not, for example, members know about the nature of lawsuits being brought against their associations? Should not, for example, members have a chance to be alerted to matters discussed in executive sessions that do not fall within the law—not that this would ever happen.

"Executive sessions" strike me as potential hiding places. The less boards are able to hide, the better for the membership.

P. 70: "It would seem that most contract approval decisions would be memorialized in meeting minutes rather than in a separate written documents." Nevertheless, the provision for inspection of "Written board approval of a vendor or contractor proposal or invoice" is important if it enables a member to learn the nature of the proposal or invoice.

P. 72: Proposed Section 4710 would make redaction mandatory." Good.

P. 72: 4720. (a) "The association may charge a fee to recover the direct and actual cost to copy or deliver a record. . . ."

(b) "The association may charge a fee of up to ten dollars . . . per hour . . . for the time actually and reasonably spent to retrieve and redact a record. . . ."

With the claim that locating and copying meeting minutes required fifteen minutes, my association charged five dollars. When I asked if a quarter of an hour was actually needed for this task, the answer was yes. I believe I have heard a justification that since a clerk cannot engage in some other work while she is locating and copying minutes, an association needs to be compensated for lost work time.

Does "the direct and actual cost to copy" need to be more specific?

P. 75: "The court may award reasonable costs and expenses, including . . . attorney's fees, to the association if it finds that the action was not brought in good faith and with reasonable cause." Yes.

P. 86: The authority to impose fines should derive only from the declarations, articles, or bylaws.

P. 87: An accused member must be informed of the "penalty that may be imposed for the violation." No penalty restrictions? No guidelines? Should fines be allowed to vary so that one person is fined one amount and another person another amount for the same violation? Should the law state that fines for specific violations must be set in advance?

P. 87: "Should there be some sort of hearing required before such a charge can be assessed against a member?" Yes.

P. 106: "Proposed Section 5620(c) continues the existing rule that a late fee may not be imposed while a payment plan is in effect. Should that rule also apply to interest on the amount owed?" Yes.

Other: I would like to see the law address the situation where a board member vacates a seat before his term is over. Let's say a member puts forth her application. Let's say the board argues that since hers is the only application and also a treasurer is needed it declines to consider the applicant. Let's say someone suggests that since she is next in line vote-wise (at an election held earlier), she should become the replacement board member. That makes sense to me.

A month or so later, say, another member puts forth her application. Hers is the only application. (The earlier applicant has withdrawn.) This second applicant is appointed.

Let's say the first applicant's credentials are exceptional. Not only is she more than qualified, she's willing to serve as treasurer. Let's say that to date, the board has no one willing to assume that responsibility. As I said, I would like the law to address the situation where a board seat becomes prematurely vacant.

**EMAIL FROM JANET SHABAN**  
**(SEPTEMBER 21, 2007)**

Editorial Comments on "Statutory Clarification and Simplification of CID Law,"  
June 2007

I can tell that you have gone to lengths for clarity and good organization. I think you've done an excellent job. I have a few suggestions.

You can use a single space at the ends of sentences. "A single character space, not two spaces, should be left after periods at the ends of sentences" (The Chicago Manual of Style, fifteenth edition, 2003, p. 61).

Commas with compound predicates might sometimes be omitted: "Compound predicate. A comma is not normally used between the parts of a compound predicate—that is, two or more verbs having the same subject, as distinct from two independent clauses—though it may occasionally be needed to avoid misreading or to indicate a pause" (249). An example of a compound predicate is on p. 5: "That definition facilitates drafting, but is not very informative." You might consider deleting the comma.

"Some are in the Davis-Stirling Act, others are in the Corporations Code." I believe this page 10 sentence contains a comma splice, that is, two independent clauses separated/spliced by a comma. Perhaps a semi-colon, that is, "Some are in the Davis-Stirling Act; others are . . ."

Page 20: "In an association with \$75,000 or more in annual gross income, a CPA review of the association's financial statement must be distributed, within 120 days after the end of the fiscal year." You could omit the comma after "distributed."

Page 26: "The proposed law should be given a one year deferred operative date." I believe hyphens are needed: "a one-year-deferred operative date." Phrasal adjective (or compound modifier), "a phrase that functions as a unit to modify a noun" (p. 171).

Page 48: "The governing documents may not provide for a quorum that is less than one-fifth of the number of directors authorized, or less than two . . ." I believe the word should be "fewer," that is, "fewer than two . . ." Similarly, the word on page 61 should be "fewer," that is, "not fewer than 30 days . . ." Page 65: "the number . . . is equal to or less than . . ." should be "fewer than . . ." The rule I remember is that "less" applies to that which cannot be counted, as in "I ate less apple pie than he did," where "fewer" applies to that which can be counted, as in "I ate fewer apples than he did."

Page 65: "campaign related" should, I believe, be "campaign-related information" (four instances on this page)

Page 69: You might omit the comma in (4) "assessments, that involves . . ."

Page 83: Perhaps (c) "On the written request . . . created as an interest bearing account" should be "an interest-bearing account."

Page 84: You could remove the comma following "association" on line 27.

Page 95, line 27: Perhaps instead of "a short term cash flow," "a short-term cash flow."

I just can't help myself.

Great work, Brian. Thanks so much.

Janet Shaban-483-7669

**EMAIL FROM TINA POLES**  
**(SEPTEMBER 21, 2007)**

Dear Mr. Herbert,

I live and I am on the board of Frogsong Co housing in Cotati, CA. I am concerned at the proposed changes to this act regarding Co housing, as it appears to me that the Commission is not familiar with the ways most co housing communities operate and are organized. In our community, everyone is on the board and we operate by consensus . We have no declarations or voting. My experience is that few attorney understand how most co housing communities operate. I could encourage you and the commission members to research various co housing communities, so that the final recommendations to the Davis-Stirling Common Interest Development Act support co housing while offering protection to the individual members of the community.

Thank you for you time,

---Tina Poles  
Frogsong Co housing.

**EMAIL FROM BOB SHEPPARD**  
**(SEPTEMBER 21, 2007)**

Brian,

Below are our further comments on the tentative recommendation of Study H-855. I've included both general comments that might apply to many parts of the draft and comments related to specific sections. If you have any questions about these comments, please feel free to contact me at your convenience. Thank you for the important work of the Commission and your staff.

Bob Sheppard  
Walnut House Cooperative

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**Restrictions on an association's freedom to govern itself**

Some associations have higher thresholds for making board decisions than allowed by the draft. They have reasons for doing so that support their values. The statute should not try to take away this freedom (see next section).

**Quorum requirements**

Sections 4515 and 4585 say boards or association members "may" make decisions without a quorum. The construction of the term "may" is unclear. If it is construed to grant a right to board or association members, this is indeed very problematic. The genesis of this language is from the Corporations Code. The following discussion presumes that the term "may" overrides the bylaws of an association that requires a quorum to make decisions.

There are arguments that an association is a corporation like any other and that allowing decision-making with less than a quorum should be acceptable. However, a non-homeowner corporation is much different than an association. Decisions by

the corporation are unlikely to take away a member's home, or restrict their activities and rights in their home. As to meeting attendance, homeowners are subject to scheduling issues and other limitations on their time. The operation of the two sections above—if they prevented members from “breaking” a quorum—could have serious consequences for associations like ours.

Here's a hypothetical example about an association that requires a quorum in order to conduct business. Under the bylaws, a quorum is two-thirds of all members. Many of the members value consensus and do not want to impose on the minority position. Some members just want to get their proposals passed. Under the governing documents, a meeting must attempt to reach consensus; if it can't so do, a two-thirds vote of all the members at a meeting is required to adopt a resolution. So if there are 20 members in the association, the quorum is 13. If 13 are present, it takes 9 votes to pass. However, if 20 members are present, it takes 14 votes to pass.

A controversial proposal is considered that's supported by 9 members. The 9 have previously decided to keep the meeting going for as long as possible until enough opponents have left to pass the proposal. A meeting is scheduled from 7 to 9 PM and begins with 18 members. The other members are opposed. There is extensive discussion but the opponents have not quite had their needs met. The issue would require several more hours of debate before the opponents would be able to support it. Some members have other commitments (family, etc.) and leave the meeting at 9. Those leaving the meeting are opposed to the proposal as it stands. The proposal involves the allocation of certain rights.

Before 9 PM, the proposal would have failed (9 out of 18 in favor; less than 2/3). After 9, there is no longer a quorum, but the meeting continues because the members believe the statute permits it by overriding the association's quorum requirement. There are not enough votes to adjourn. So now there are 9 in favor and the proposal passes. The opponents have been unfairly disenfranchised. This is why the sections of the draft mentioned above should not be construed to override an association's bylaws.

One possible consequence of this construction would be the difficulty of attracting a quorum to a controversial meeting, if opponents believed that proponents would attempt to manipulate the process by prolonging the meeting. Seemingly innocuous and “fair” statutes that might work in a corporate setting could be problematic in a homeowner's association.

If the statute were construed to allow the opponents to break quorum, they could have walked out at 9, or any other time during the meeting, secure in the knowledge that the proposal would not pass. I have checked minutes of various government bodies in California, and it is both permitted and used to prevent questionable actions from being taken.

A similar argument applies to board meetings. We request that the two sections above be clarified so as to not override an association's higher quorum and voting requirements. The clarification requested by us is consistent with one of the aim of Davis-Stirling: to provide a government-like model for voting requirements.

### **Size of an association**

The draft should work for associations of all sizes (e.g. Article 4).

### **Stock co-ops in which each member owns multiple and unequal numbers of shares**

In some co-ops, each unit might represent a different numbers of shares (e.g. 545 shares, 546 shares, etc.). The voting provisions of the draft should work with this scenario (Article 4).

### **Television "general notices"**

Under subsection 4045(e), the association has the option to provide general notice by only broadcasting television programming. We believe this subsection presumes that all members own television sets and watch them often. If a board desired to exclude as many members from its meetings as possible, it would merely need to broadcast notice infrequently and at odd hours. If this subsection is to be retained in the draft, the draft should require that all members own televisions and watch them often, so as not to miss a general notice.

### **Liens**

From a brief search of stock cooperative property indices, it appears that third-party lenders record deeds of trust against proprietary leases when lenders make

share loans to purchasers. Reconveyances are also recorded. Since I haven't viewed actual documents, this implies that the lenders have a right to judicial or non-judicial foreclosures. These co-ops appear to record every lease (through a memorandum) along with its subsequent cancellation. The court records show that lease terminations due to non-payment, etc. are handled as unlawful detainer actions. The co-op bylaws and proprietary leases that I'm familiar with allow for the termination of membership and leasehold interest using a non-judicial procedure that does not require the filing of a lien. The draft should reflect these practices, subject to the Commission's verification of them.

### **Cumulative Voting**

In most cases, the DRE requires cumulative voting of directors, primarily to protect the interests of developers during the period in which they own a minority of separate interests. Cumulative voting can also be used by a minority of members, in order to increase their representation. The more organized the minority is, the greater will be the number of directors that may disproportionately represent them. Imposing the requirement of cumulative voting on associations whose bylaws provide it as an option is problematic, not only because of the above but because of potential political instability in the association.

Many associations are marginally functional. Some bylaws require a higher threshold than a first-past-the-post method. For example, our co-op requires that a candidate be elected by two-thirds of the votes of all the members. This requirement helps assure that candidates have a broad base of support. If cumulative voting were mandated by the statute—when it was merely an option in the bylaws—each faction would see it in their interest to nominate at least one candidate, to protect them from other factions doing the same. This would likely lead to factional representation on the board, an undesirable outcome, because a board is charged with representing all members, not just their faction.

The problem of member notice in Corporations Code Sec. 7615(b) is a real one, but we urge the Commission to use a flyswatter rather than a hammer on this fly. It is not necessary for the statute to mandate cumulative voting (where optional) to assure fairness.

For such associations, we suggest something like the following:

- An association would set a reasonable deadline for a member to let it know of one's intention to cumulate votes. If this deadline were not in the bylaws or elections procedures, the association would be required to give notice of such a deadline in a general notice. The general notice could be included in the notice of a board meeting and the deadline would need to be a reasonable period of time after the notice were given. This would negate the need for a special notice.
- Prior to the deadline, any members desiring to accumulate votes would notify the association.
- As a result of that, if cumulative voting were to be used, the association would be required to give notice of the opening of nominations and the voting method. This notice could also be in a notice of a board meeting. If the date for the opening of nominations were in the governing documents, the association would be required to give such notice on or before such date. Otherwise, if cumulative voting were not to be used, the association could use its normal method for opening nominations. If no notice were required of the association and none were received by members by such date, members would have the right to presume that cumulative voting would not be used in the upcoming election.

We request that procedures accomplishing a notice requirement, such as those above, be incorporated into the draft and that the mandate for the use of cumulative voting be removed. Also, such provisions would override the Corp Code section cited above, as is currently in the draft.

We believe this would place a minimal burden on associations. Otherwise, they will either incur legal expenses to amend their bylaws, or they may suffer the political consequences described above.

Various parties have claimed that mandating cumulative voting where it is merely optional will provide "uniformity", "predictability", "simplification", etc. We do not find these labels persuasive. Each association should have to right to determine for itself whether it shares these values, based on its particular situation. As long as fair practices are used, we believe that the legislature should refrain from mandating any one particular solution for this issue, and let association members have the freedom to decide for themselves.

## **Declarations**

The functional elements of the declaration instrument in the draft include:

- recordation (notice),
- the name of the association,
- the legal description of the property,
- all enforceable equitable servitudes,
- the type of development (e.g. condo, co-op)

### **Historical context of the declaration**

According to the “Restatement: Servitudes”, the use of the declaration evolved from condominium CC&Rs; which were recorded as part of the deed for each unit. Using a declaration as a centralized recorded instrument simplified the preparation of the original deeds for each unit, while providing notice to the purchaser.

### **Recent practice**

I’ve checked the initial recorded of documents of many local stock co-operatives formed recently. Although the statute appears to require that a declaration be recorded upon the formation a co-op, I could find no evidence of this occurring. It appears that the DRE may not require them. As I’ve previously written, the organizational documents of a stock cooperative include the articles of incorporation, the bylaws, a proprietary lease and operating rules. There is also the deed or lease that conveys the interest in the development from the developer to the stock cooperative corporation.

When purchasers acquire units in a stock co-op, they sign and are given a proprietary lease and all of the other governing documents. All of these documents taken together—particularly the proprietary lease—provide disclosure of the elements that would fall within the scope of a condominium declaration. Therefore, the use of declarations for stock cooperative developments is unnecessary and superfluous. Because current and past practice does not include the use of declarations, the Commission’s draft should not impose this requirement on stock co-ops. We would suggest that the draft be tweaked to resolve this issue. The use of a declaration in a stock cooperative should be optional. Also, the document hierarchy provisions (6005) should place the proprietary lease at the top of the hierarchy. See sections 6000, 6005, 6025 and others.

### **Application of the statute**

The draft should clarify that previously created stock cooperatives and those without declarations are subject to the statute.

### **Statutory Construction**

The meaning of provisions should be unambiguous and clear to the lay person such as an association member or director. The construction of the word “may” is particularly problematic. It should not imply an interpretation that overreaches an association’s bylaws, unless there is an overriding policy issue. “May” could imply the permission for an association’s governing documents to grant a right, or it might grant to a member or director a right prohibited or not permitted by its governing documents. Where there is any ambiguity, the draft should be changed to resolve this, particularly if there is case law. If there is none, the Commission should clarify the meaning toward the side of protecting members’ rights, particularly minority rights. Please refer to my comments on quorum requirements. (e.g. see Sec 4515 and 4585)

### **Scattered-site co-ops**

Such developments have separate parcels, each with a dwelling unit. If the responsibility for maintaining each parcel falls to the member residing in it, the draft would exempt such co-ops from the statute. (Sec 4015(b), 4100).

### **Decisions reserved to the membership, rather than the board**

The draft presumes that certain decisions that might be reserved to the membership by an association’s bylaws, must be made by the Board. This would be problematic for some associations, one of which is ours. Sec 4060, 4180, 5900, 6115, 6120 and Article 5 generally.

### **All members are on the Board**

I know of several smaller associations falling into this category. See Sec. 4540, 4595(a), 6120 and Article 4. The draft should work for them.

### **Stock cooperative specific issues**

The definition of “governing document” should include “proprietary lease”, which itself should also be defined. The definition of operating rules should include rules flowing from the proprietary lease (e.g. “house rules”). (Sec 4150, 4165, 4190)

### **Inspections of common areas by a director**

The common area might include the space between the walls of separate interests. A director, unless authorized by the Board, should not have the right to invade an association member’s privacy by entering a member’s unit in order to gain access to a common area. (Sec 4785)

### **Satellite antennas**

The statutory regulation should be limited to the FCC’s rules in order to give the association maximum flexibility and freedom. (Sec. 5745)

### **Disclosure in stock cooperatives (5825)**

In many cooperatives, particularly those which are limited-equity, the stock co-op purchases the interest from the outgoing member and sells it to the purchaser. We believe it would be fairer for the cooperative to bear the disclosure responsibility and that that section be so clarified.

### **Grant of exclusive use common areas (Sec 5900)**

To clarify the statute and in fairness to existing grantees, prior grants of exclusive use common areas should be explicitly grandfathered.

**EMAIL FROM CURTIS SPROUL  
(SEPTEMBER 24, 2007)**

COMMENTS AND RECOMMENDATIONS OF SPROUL-TROST LLP

CONCERNING THE CALIFORNIA LAW REVISION COMMISSION  
STATUTORY CLARIFICATION AND SIMPLIFICATION OF THE COMMON  
INTEREST DEVELOPMENT LAW (June 2007)

Sproul-Trost, LLP, with offices at 2424 Professional Drive, Roseville, California, 94661, offers the following comments and recommendations concerning the proposed recommendations of the California Law Revision Commission to clarify and simplify California's Common Interest Development Law (Currently California Civil Code sections 1350 et seq. These comments were prepared by Curtis C. Sproul and Selena Gillham and any questions or inquiries from the Commission Staff can be directed to Mr. Sproul at 916-783-6262 or [csproul@sproullaw.com](mailto:csproul@sproullaw.com).

CHAPTER 1—PRELIMINARY PROVISIONS

Article 1 – General Provisions

§ 4015(a): General comment throughout: because the definitions portion of the new law capitalizes certain defined terms, shouldn't they be capitalized when used in other contexts in the statute (such as "common interest development")? Also most of the section headings are phrased in the singular ("Board Meeting", "Delinquency", "Levy of Assessment", "Maintenance Responsibility", even though the text of practically all such provisions suggests that a plural heading would be preferred.

§ 4015(b) Common Area should be initial capped and perhaps "as defined in Section 4095, below."

§ 4020(a)(3): should reference Article 4, rather than Article 3

§ 4020: numbering is off in some instances. I have commented on this before, but I strongly believe that there are a lot more provisions of the Davis-Stirling Act that are unnecessary over regulation in a business/commercial context. On that list I would add: Sections 5050 through 5070 and 5075 through 5115 (why should the State mandate business people to pursue a particular type of dispute resolution simply because the building they work in is a CID?); 5735 (Pets); 5740 (roofing

materials); 5875 and 5880 (transfer fees), and 6100 through 6125 (adoption of rules).

§ 4035 ("Delivered to the Board"). What would be the harm of also permitting a personal delivery of written documents at any open meeting of the Board of Directors?

§ 4040. (Individual Notice).

In the second line of subparagraph (a) include the word "any" before "one of the following methods".

Like the Corporations Code, Section 4040(a)(3) only permits e-mail, FAX or other electronic delivery "if the person has agreed to that method of delivery". My suspicion is that the qualifying language requiring consent was included in the Corporations Code because, at the time that Code's analogous provision was adopted, fewer people used electronic media as a principal means of communication. That qualification is going to quickly seem antiquated if it doesn't appear that way already. If a person does now own a computer or other electronic device, that form of delivery simply cannot be used as to that person.

In any event we would suggest that a provision be included discussing the mode of delivery of those documents provided to members who have agreed to electronic consent, for example § 4040(3) could state something to the following effect: "Electronic Delivery shall be made in PDF format. We suggest this provision because this will be a popular form of delivery and should be accessible to recipients who don't have certain programs etc."

§ 4040(a)(3): We assume that the person may assent to delivery of all types of Individual Notice documents, rather than having to assent to each of the required notices, but perhaps what constitutes assent can be spelled out. We suggest that the process for evidencing assent to receipt of individual notice by electronic means should not be patterned after the Corporations Code requirements, which are complicated, and that assent is can be achieved by a separate agreement signed by the member (including a facsimile signature).

§ 4040(c): For clarity we suggest that this subparagraph (c) should be revised to affirmatively state that the agreement must be found in the recorded Declaration or in a another written agreement signed by the member and delivered to the Association. This would clarify whether the member can assent to electronic delivery if it is not included as a provision in the Declaration. We suggest this change because it will allow Associations to implement an electronic format

without having to amend their Declaration, as may be inferred from the present language.

§ 4045 (General Notice): We suggest adding language specifically allowing for posting on an Association website and clarify whether a periodical can be electronic whether or not the person has assented to electronic delivery.

§ 4055. (Delivery failure): perhaps should expand to include process for delivery of the notice that failed, rather than just for future notices, particularly electronically. For instance: If electronic delivery to a member fails, notice shall be sent to that member by either personal delivery or first class US Mail.

## Article 2 -- Definitions

§ 4090 (Board Meeting definition). We respectfully suggest that this is a very ill-advised change in the current definition of what constitutes a board meeting under current Civil Code section 1363.05 (a congregation of a majority of the board at the same time and place to hear, discuss or deliberate upon "any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session"). The Mutual Benefit Corporation Law (Corporations Code section 7210) instructs that all the activities and affairs of the corporation are to be conducted and that all corporate powers are to be exercised by or under the direction of the Board, unless the State law or the governing documents reserves some action or approval to the members. Under the proposed definition the board members could not get together for any purpose remotely related to the business of the association without having to be in a formal meeting open to the members (other than executive session matters). Long range planning meetings, meetings with experts making presentations on general matters of interest, etc, would all be covered. Closing the same time and place loophole can be done while preserving the current language regarding the scope of what constitutes a meeting. Volunteer directors will be declining to serve in droves.

§ 4095(c) We suggest that the word "also" be inserted before "consist of"

§ 4115 (Definition of Condominium): After "separate interest" we recommend retaining the current terminology, namely: "in space called a unit" (see next comment).

§ 4125 (a) (Definition of Condominium Project) In subparagraph (a), why say "real property development" when the defined term is "common interest development?" In a similar vein, why speak of "ownership of a specified part of the development" when the defined term is "separate interest".

§ 4125(c) We recommend deleting "of the undivided interest in" because not all portions of the common area of a condominium project need to be held by the unit owners as undivided interests. It is becoming increasingly common for some portions of the project common area to be owned in fee by the project association.

§ 4125(d) We recommend changing "as separate interest" to read "the separate interests" since there will always be more than a single separate interest.

§ 4125(note 2): I would delete subparagraph (e) unless someone can shed light on why that sentence currently appears in Civil Code section 1351(f) (consult John Hanna or David VanAtta, perhaps?). We cannot think of any project that we have handled where ownership of a condominium (i.e., a unit coupled with an undivided interest in some portion of the project) also included ownership of another form of "separate interest". Clearly a condominium can and often has appurtenant exclusive use common areas, but EUCAs are not a "separate interest" as defined.

§ 4130 (Definition of Declarant). We would recommend inserting the word "the" before "Declarant in the first reference to "declarant" in the second line. At the end of the definition, instead of saying "'as belonging to the person who signed the original declaration" why not say: "as belonging to the declarant" since those right may very well transfer to a successor declarant.

§ 4135 (Definition of Declaration) (note): We see no problems caused by the elimination of exact requirements with § 6025. We see the change as being beneficial simply because the Act encompasses a vast range of varied projects and developments.

§ 4140 (Definition of Director). Consider adding at the end of the sentence: "in accordance with the procedures for the election, designation, or selection of directors set forth in the governing documents."

§ 4145 (Definition of Exclusive Use Common Area). We see no reason for changing the references to "owners" in Civil Code section 1351(i) with "members" – Exclusive use common areas are rights in portions of the common area that are appurtenant to ownership of a separate interest. EUCAs have nothing to do with association membership rights. If "members" was used simply because "member" is a defined term, consider adding a defined term for "owner" (such as: "The record holder, whether one or more persons or entities, of fee simple title to a separate interest, expressly excluding person or entities having an interest in a separate interest merely as security for the performance of an obligation until such person or entity obtains fee title thereto and those parties who have leasehold

interests in a separate interest."). Adding a definition of "owner" also seems wise since "owner" is used in the definition of who is a "member".

§ 4150. (Definition of Governing Documents). We would recommend retaining the language quoted in the Comment ("any other documents which govern, etc") because many of the more complicated common interest development projects will have other key documents, not mentioned in the list set forth in Section 4150, that are of critical importance to the governance of the project and to the rights and obligations of owners/members. For example, it is not uncommon in a resort or a condominium hotel project for the project to be integrated with other elements of the overall resort or hotel complex by easements and shared facilities use agreements (recorded) that confer rights of use and enjoyment in favor of the common interest project in adjacent facilities that are outside of the project boundaries. Also, under the proposed, more restrictive, definition of "governing documents" would a declaration of annexation applicable to particular phases (which often contain substantive changes to a declaration, as applied to the phase) be a "governing document"?

Some of the problems noted in the NOTE following Section 4150 are simply examples of poor drafting in the current Davis-Stirling Act. For example, the sentence in Civil Code section 1355(a) stating that the Declaration can be amended pursuant to the governing documents or this title probably should have said, from the outset, "pursuant to its terms or this title" since the provisions for amending a declaration are always included in the declaration, itself.

§ 4160 (Definition of Member). We recommend consideration of the addition of this sentence to the definition of "Member": "Member" also means any person who is designated in the declaration or in the articles or bylaws of the association as a member and, pursuant to a specific provision or provision of those governing documents has the right to designate a person to serve on the board of directors or who has the right to vote on certain matters specified in the declaration, articles, or bylaws.

This addition is proposed because in many resort developments or hotel/condominium projects the owner of the adjacent resort (golf course, ski area, etc) or the owner of the hotel), who may not be owners of separate interests in the project are designated as a class of membership with rights either to have a representative on the board or the right to vote on certain matters that affect or may affect their business interests.

§ 4175 (Definition of Planned Development). In subparagraphs (a) and (b) we recommend replacing ""separate ownership of a specified part of the

development" with "ownership of a separate interest" . See similar comment with respect to Section 4125(a), above.

With respect to section 4175(c), we recommend the following revision of the text to make it read more clearly and to conform the text of (c) to the organization of subparagraphs (a) and (b):

(c) A development in which the common area consists entirely of mutual or reciprocal easement rights appurtenant to the separate interests when ownership of the separate interests is coupled with membership in an association that has the power to enforce an obligation of an owner of a separate interest that pertains to the owners' rights to the beneficial use and enjoyment of the common area by means of an assessment that may become a lien upon the separate interests in accordance with Article 3 (commencing with Section 5600) of Chapter 5.

§ 4185 (Definition of Separate Interest). We prefer retention of the current definition of separate interest found in Civil Code section 1351(l), rather than the proposed amalgamation of the definition in subparagraph (b), as applied to condominiums and planned developments. Our objection is related primarily to the other criticisms of the manner in which the proposed Act defines condominium interests. In the context of a condominium common interest development, a "separate interest" should be defined as a "unit" and in a planned development the definition should be limited to a "lot or parcel". I have never seen a planned development in which the separate interest was an "area or space".

## CHAPTER 2. MEMBER BILL OF RIGHTS

This Chapter is currently reserved and I would recommend its removal entirely for the reasons I presented in my letter to the Commission dated April 1, 2002, in which I wrote (NOTE the text below includes some updates from the 2002 letter text):

Observations on any proposal for a "Property Owners' Bill of Rights" or referendum authority. A persistently popular proposal advanced by critics of community association boards of directors is that California law ought to embrace some sort of "property owners bill of rights" or member initiative process. While these concepts have been defined in various ways, generally they include the identification of certain property owner or membership rights that cannot be disturbed by Board action alone (i.e., altered or amended by an action by the Board of Directors that does not require concurrent consent by some percentage of

the owner/members) and the right of members to reverse Board decisions or establish Association policy by some sort of private initiative process.

The first response to these critics of the status quo is that current California law already identifies a number of important decisions or Association actions that can only be undertaken with the prior consent of the Association's members. Those member protection provisions are found not only the Davis-Stirling Act (see Civil Code §§1355, 1356, 1366), but also in the Department of Real Estate Regulations governing the content of common interest governing documents (See DRE Regulation §§2792, 2792.21(b)), and California Corporations Code (See Corporations Code §§7222, 7224, 7233, 7812, 8610, and 8719). In accordance with traditional concepts of corporate governance the types of actions that statutory law reserves for member review and approval are typically "big ticket" items that are likely to have a significant impact on the nature, or even the existence of, the subject corporation, such as a proposal to merge, dissolve, sell all or substantially all of the assets, or a proposal to remove directors without cause.

To that list, the Davis-Stirling Act and the DRE Regulations have added:

- The rights of members to approve amendments of the governing documents, approval of long-term contracts, and the approval of large increases in the regular assessment and substantial special assessments.
- The rights of common interest owners to display the United States flag (Civil Code section 1353.5).
- The rights of owners to display certain non-commercial signs (Civil Code section 1353.6), to challenge the adoption of certain Operating Rules (Civil Code section 1357.140).
- The rights of owners to modify separate interests to facilitate handicap access (Civil Code section 1360).
- The rights of owners to maintain a limited number of pets in a separate interest (Civil Code section 1360.5).
- The rights of owners to physical access to an owner's separate interest (Civil Code section 1361.5).
- The rights of members to attend most meetings of the Board of Directors (Civil Code section 1363.05).

- The right of members to approve any proposals by a board to create exclusive use common areas after the development has commenced (Civil Code section 1363.07(a)).

- The rights of members to be accorded fair procedures with respect to disciplinary matters and architectural review and approvals (Civil Code sections 1363.810- 1363.850; 1369.510 – 1369.590; and 1378).

- Members' rights of inspection (Civil Code section 1365.2).

- Members' rights to receive annual or other periodic reports, summaries, and disclosures from their association that are too numerous to recite here.

Apart from those big ticket items requiring member approval, the idea that the general membership should have the upper hand in Association management through either additional approval requirements or a member initiative process is fraught with problems. As much as some community association members may distrust or even despise their association board members, it is only the elected directors who are bound by fiduciary principles to take actions that they believe to be in the best interest of the corporation they are serving and the best interest of the members of that corporation, taken as a whole. In addition, it is only the members of the board who are under a statutory obligation to conduct a reasonable investigation of the facts before making corporate decisions.

The risks associated with member approval requirements and member initiative rights are heightened by the level of apathy Community Association members consistently demonstrate with respect to the business and affairs of their Association. Apathy makes member approvals extremely difficult to obtain and, with very high percentages of the eligible voters asleep most of the time, resort to member initiative remedies is likely to be utilized, in most instances, by well organized minority factions who are often virtually at war with their community's duly elected board. Those factions are under no obligation to temper their policies and actions with a view towards the best interests of the community as a whole, they are under no obligation to be accurate in their presentation of issues, they have no duty to investigate relevant facts or circumstances, and they have no fiduciary obligations vis-à-vis their neighbors.

We support the added member and owner protections that have been added over the years to Davis-Stirling Act (listed above). However we see no need to codify these protections into a so-called "Members' Bill of Rights" in order to mollify critics of community association governance that have as their principal agenda impeding, if not paralyzing, the ability of community association boards and their managers to perform their day-to-day functions. For the same reasons we strongly

oppose the suggestion in the note to section 4420 that the 4420 restrictions should apply to the entire Davis-Stirling Act. That would be nothing more than an invitation to endless frivolous litigation.

## CHAPTER 3 –ASSOCIATION GOVERNANCE

### Article 1- Association Existence and Powers

§ 4420 (No limitation on Rights) (NOTE): See comment above

### Article 2-Board Meetings

§ 4520 (notes): The exception of notice to Board Members when the meeting place is designated by the governing documents should remain because a Board should be able to choose to lower costs (including time/effort required) by using the governing documents to specify time and place for the Directors, particularly if they have a disinterested constituency. However, if a member requests notice or if a Director requests such notice, then an agenda should be sent.

§§ 4525 and 4540 (Board Meetings and Executive Sessions). In both sections the title should be plural ("Board meetings open; exceptions" and "Executive session board meetings"). We also recommend that the text of both sections be revised to eliminate the implication that prior to conducting an executive session board meeting the board must always meet in open session, with the associated member notification requirements for open session meetings. There are many occasions (such as meetings at an attorney's office to discuss litigation or personnel matters) where it is impractical to begin the meeting as one that is open to attendance by the members.

§ 4535 (Teleconference). We recommend changing the title to read "Teleconference Meetings" or "Teleconference and Other Electronic Means of Conducting Board Meetings" if the comments that follow are embraced.

First, because of the open meeting rules, consideration should be given to limiting the right of community association boards to conduct meetings by these means to those situations where the meeting qualifies for conduct as an executive session meeting (same comment applies to section 4545 (actions without a meeting)). If that limitation is imposed, consideration should be given to expanding the scope of the section to include meetings conducted through the use of conference telephone, electronic video screen communication or electronic transmission (see Corporations Code section 7211(a)(6)).

§ 4550 (Minutes of Board Meetings). Although the comment says that subparagraph (a) essentially repeats Civil Code section 1363.05(d), it is actually much more restrictive in that the current Code provision permits (within the 30 day timeframe) "minutes proposed for adoption that are marked to indicate draft status or a summary of the minutes". This quoted language is much more compatible in an environment of volunteer boards who may (and often do) wait until the next regularly scheduled board meeting to actually approve the minutes of the prior meeting.

§ 4550(c): In this subparagraph the reference should be to Article 5, rather than Article 3.

§4555 (note): We would prefer the language from the CCP (also for 4685(e) and 4735(g)).

#### Article 3- Member Meetings

§ 4580 (Quorum) (note): We would support permitting the articles (rare) or the declaration (much more common) to also establish quorum requirements..

§ 4595 (Notice of Regular Meeting) (note). We do not believe that the restatement results in any substantive change.

§ 4615 (Court ordered meetings). Note 2 asks for comments on dispensing with any meeting quorum requirement that might otherwise be imposed by the governing documents. That rule seems sensible to me: The meeting should be conducted and held in accordance with the terms of the court order. The failure to achieve a stated quorum requirement might very well be the reason why resort to the court was required.

§ 4620 (Court ordered modifications of meeting requirements). This is a good addition to the Act. When I saw that Section 4025 had eliminated Corporations Code section 7515 I protested the omission, but here is essentially the same protective provision.

#### Article 4 --- Member Elections

§ 4630 (Election Provisions) (note): see comment for § 4580, above, allowing for any governing documents to provide the election rule is versatile in drafting complicated governing documents. But why here and in Section 4635 should the

Act refer to an election inspector rather than an "inspector of elections" (the term used for many years now in the Corporations Code)?

GENERAL COMMENT: With respect to director elections, we think the Act could be improved by add a provision like that found in Corporations Code section 7522(d) which reads: "If after the close of nominations the number of people nominated for the board is not more than the number of directors to be elected, the corporation may without further action declare that those nominated and qualified to be elected have been elected." Admittedly, in the context of Corporations Code section 7522, that provision only comes in to play for corporations with 5,000 or more members, but I never understood why the same principle would not be equally beneficial for much smaller mutual benefit corporations, including owner associations. The secret ballot voting procedures are complicated and costly for large associations. If there are not more candidates than there are positions to be filled, why not declare the winners and call it a day? I see that this is covered in Section 4665(f) – good.

§ 4635 (Election Inspectors) (note): We favor expanding the kinship disqualification to cover relatives of employees or contractors. Retention of the job of the employee or contractor could turn on the outcome of an election.

§ 4640 (Secret Ballots) (note). We support expansion of the types of member elections that are subject to the secret ballot voting requirements.

§ 4650 (Counting Ballots) (note). The reference to "open to the public" in subparagraph (c) should be revised to read "open to all members". The public has no business observing the tabulation of ballots by a private organization.

§ 4665(e): (Nominations of Candidates) Consider adding: "and may provide that any nominations or announcements of candidacy that are made or received after the stated deadline are of not effect." An association we represent is currently faced with a situation where a person who wanted to run for election missed the deadline for becoming a candidate, however she continues to view herself as a candidate and she is demanding to have the same right to sit at the table with other timely candidates at candidates' forums and similar events.

§ 4670 (Campaign Related Information) (note): Release of liability should be preserved to protect the association. We are concerned by elimination of the concept found in Civil Code section 1363.03(a)(1) of access being "for a purpose that is reasonably related to the election". We are not sure that "campaign related information" (particularly with its "including, but not limited to" list, covers the same concept.

§ 4675 (Voting Rights) In subparagraph (d), after the phrase "permit cumulative voting" consider adding: ",but not otherwise". Particularly with the secret ballot voting rules, cumulative voting is a mess.

§ 4685 Insofar as this provision ("Judicial Enforcement") pertains to the nullification of election results, I question the wisdom of the one year statute of limitations and would urge the Commission to stick with the nine month limitation as to such actions that is found in Corporations Code section 7527. My assumption is that the Committee that drafted the Nonprofit Corporations Law chose a nine month limitations period for election challenges so that there could be more certainty regarding the proper composition of a board going into an annual election cycle. If the challenge can be asserted at the very end of a year, that could throw the next year's annual election into chaos.

I also favor the CCP language suggested in Note 2 with respect to the award of reasonable costs, expenses and attorneys' fees over the language now found in subparagraph (e).

#### Article 5 –Inspection of Records

§ 4700 (Member Inspection Rights).

§ 4705 (Inspection Procedures) (note 1): Can be left as is because if no place is agreed upon, the member can request a document pursuant to subsection (d).

(note 2): Electronic delivery should not be available in an alterable form because of the possibility of errors or changing portions of the documents for whatever reason. Electronic copies facilitate delivery, storage and cut costs (for either the owner or the association) associated with duplicating lengthy documents in paper form, but should not be made available to a member who wishes to alter a document in some way or there may be conflicting copies of certain documents. If electronic delivery is made available in an alterable format, then there should be a provision that make it an "unofficial copy" of some sort.

§ 4710 (Redaction) (note): This is an important addition privacy concern and the addition is a great idea. We support making the redaction requirements mandatory.

§ 4715 (Optional redaction). Subparagraph (b) of this Section is ill-advised (requirement that persons who have opted out of being on a list must still be sent materials that are being circulated by other members. In a good majority of the time, owners want to be left off the membership to protect their privacy AND to avoid having to receive unsolicited mail from other members who may, and often are, advocating extreme minority agendas.

§ 4730 (Denial of request). Because all of the inspection provisions and protections in Chapter 13 of the Mutual Benefit Corporation Law are being discarded, I think it is important to preserve the protections against inspection abuse that are included in the Mutual Benefit Law, particularly the more broadly stated protections found in Corporations Code section 8338. The right of the corporation to provide a reasonable alternate means to actual delivery of the membership list that is in Corporations Code section 8330 would also be beneficial. Without that protection a member could obtain the membership list for an ostensibly valid purpose related to his or her interests as a member and then proceed to use the list for other purposes such as commercial/business solicitations. This concept comes in the back door through the "Court Action to Enforce" provisions of Section 4735(d)(5), but that is only when the association has been sued by a member, rather than being stated affirmatively as an alternative right held by the association.

§ 4735 (Action to Enforce) (note 2): We prefer the language from CCP 1038, providing for "actions not brought in good faith and with reasonable cause."

§4745 (Limited Liability) (note): We recommend retaining the negligent standard, particularly given the fact that the directors are serving in a volunteer capacity and perhaps failing to omit a member's name in one place would then open a volunteer to liability if the liability limitation were to be limited.

§ 4750 (Application of Article). Subparagraph (a) makes no sense in this context, unless the text of Civil Code section 1365.2(g) is also included in the subparagraph. With respect to the NOTE we support this exemption for associations that are still in developer control. As the comment notes, the association and its directors are still subject to the Mutual Benefit Corporation Law.

#### Article 6 –Record Keeping

§ 4785 (Director Inspection): It would be preferable in our opinion to simply repeat the text of Corporations Code section 8334 here (which would add references to a right to also copy records). We would recommend adding this sentence at the end of Section 4785: "Any exercise of such rights by a director shall at all times be subject to the director's obligations to the association as stated in Corporations Code section 7231 of the Corporations Code." This is a very big issue and problem in the context not only of owner associations, but mutual benefit corporations in general. Many persons who are successful in getting elected to the board are not particularly well educated or sophisticated and at other times they get elected (often due to cumulative voting) to represent interests of a small minority faction in the community. Those directors cannot be reminded too

often that their rights as directors are, at all times, tempered by their fiduciary obligation to act in the best interests of the association and its members as a whole.

#### Article 7- Annual Reports

GENERAL COMMENT: In Sections 4800, 4805 and 4810 shouldn't the phrase "shall prepare" be followed by the words "and distribute to the Members" as is done in Section 4815?

§ 4810 (Member Handbook) This section should specify what form of delivery is acceptable, because the notice of availability is § 4820 does not seem applicable to this situation.

#### Article 8. Director Standard of Conduct

GENERAL COMMENT: The heading to this Article is misleading in that the only provision presented deals solely with interested director transactions and not with the general standard of conduct of directors. Wouldn't it be an improvement to have a new section 4855 called "Performance of Duties; Degree of Care" and then, as you have done in current 4855, proceed to state that regardless of whether the association is incorporated or unincorporated, the performance duties and degree of care set forth in Corporations Code section 7231 applies to the conduct and actions of directors. That addition would bring the revised Act into territory that the California Supreme Court declined to venture in *Lamden v. La Jolla Shores Clubdominium Homeowners Ass'n*, 21 Cal. 4th 249 (1999), but it would be a welcome improvement in my opinion.

§ 4855 (Interested Director transactions). NOTE: I have always thought it was a simple error for the current law to reference Corporations Code section 310. The reference ought to be to Corporations Code sections 7233 and 7234.

#### Article 9 –Managing Agent

§ 4900 (Prospective Managing Agent) (note 2): The 90 day rule seems reasonable. The period begins with negotiations which could be less than 90 days prior to contract signing so one possible improvement would be to say "in no event more than 90 days , but at least 30 days prior to entering into an agreement.

Also, since California now has a specific law for the certification of common interest managers (Business & Professions Code sections 11500 -11506), consider adding at the end of Section 4900(a)(2): "If the manager holds a certification

pursuant to Business & Professions Code sections 11500 et seq, that fact and the date that the certification was issued shall also be disclosed."

§ 4905 (Trust Fund Account). NOTE: We recommend that subparagraph (h) be deleted due to the passage of time. There should be no more permitted commingling.

#### Article 10 --- Government Assistance

We have no comments.

### CHAPTER 4 –DISPUTE RESOLUTION

#### Article 1- Disciplinary Action

§ 5000 (Authority to Impose Fines). With respect to providing notice to the members of the fine schedule, even though that issue is clearly covered in new sections 6110(a)(3) and 6115, what would be the harm of saying here: "Individual notice of any fine schedule or amendments thereto shall be provided to the members in accordance with Sections 6110(a) and 6115." While that may seem like an unnecessary repetition, this is a long Act and the director-reader may be a rather unsophisticated volunteer who could benefit from some cross-referencing reminders.

§ 5005 (Disciplinary Hearing). This section continues an ambiguity that exists under the current provisions of the Act, namely the relation of this provision (now Civil Code section 1363(h) to the Internal Dispute Resolution process that is now going to be presented in Sections 5050- 5070. In other words, if the dispute is of a kind that is covered by the Internal Dispute Resolution provisions, does the Association still have to comply with Section 5005 and, if so, is compliance with 5005 a prerequisite to proceeding under sections 5050-5070?. The same issue really also applies to actions under Sections 5075 through 5115: Before commencing the ADR process, does the Association need to comply with Section 5005, Sections 5050-5070, or both??? In our opinion there ought to be some category of minor differences/disputes between an association and a member that can start and stop with compliance with the 5005 hearing process. Then the Article 2 and Article 3 procedures kick in for larger disputes that have the potential for going to a formal court action, with the Article 2 process preceding the Article 3 process unless considerations pertaining to expiration of an applicable statute of limitation or the need for injunctive relief necessitate leap-frogging directly to the ADR process.

§ 5015 (Guests, Invitees and Tenants). Addition of "tenant" is an improvement.

#### Article 2- Internal Dispute Resolution

§ 5050 (Application of Article). Here an attempt has been made to address the concern stated above, but subparagraph (c) does not clearly draw a bright line to instruct the reader/Board what disciplinary actions are covered by Section 5005 and what disciplinary actions need to go through the Article 2 process.

#### Article 3- ADR

We have no comments with respect to this Article other than the comment presented with respect to section 5005, above.

#### Article 4 – Civil Actions

§ 5130 (Enforcement of this Part) (note): We support the clear statement made by this section in its current form.

### CHAPTER 5 - FINANCES

§ 5550 (Inspection of Major Components). Consider whether a specific definition of "major components" should be added to the list of defined terms used in the Act, even if it is an "including, without limitation" list.? See NOTE at end of Section 5555.

#### Article 2 – Assessments

§ 5575 (b) (Limitation on Assessment authority). While this statement of the limitation on the authority of an association to levy assessments seems sensible, I have always thought that the phrase "costs for which it is levied" is too vague and invites disputes. Budgeting and forward planning always involve guess-work, no matter how refined. Would it be an improvement to add at the end of the sentence: "as reasonably determined by the association's annual budget and reserve funding plan"?

§ 5580 (Assessment Increase) Currently subparagraph (b) only permits a member vote on large assessment increases at a meeting. Very often, particularly in large associations this vote would be conducted by use of a mailed ballot. That sort of member voting and solicitation process ought to be expressly authorized.

In subparagraph (d) consider adding a statement to the effect that this disclosure of assessment increases can be included in the annual budget distribution, rather than being still one more separate notice.

(note): We agree that the appropriate reading says to not exceed 20% of the prior year's assessment amount.

§ 5640 (Lien for Damages or Fines) (note): We concur that the text of 5640 is an improvement over the existing statutory and regulatory law on this subject.

§ 5655 (Foreclosure). Subparagraph (a)(2) states that before the association can commence foreclosure the Board must offer the targeted owner the right to participate in internal dispute resolution or ADR. Previously this same owner has been given multiple notices pursuant to Sections 5615, 5630 and 5670, the owner has been given the right to propose a payment plan (Section 5620) and has already been offered the opportunity to participate in internal dispute resolution (Section 5625). It is respectfully suggested that the Civil Code foreclosure process provides adequate additional notice of the commencement of a foreclosure proceeding and that subparagraph (a)(2) of proposed section 5655 is being overly accommodating of a delinquent owner, and likely reflects the constant criticism of Association boards that the Commission has received from anti-association activists. Once the foreclosure process begins, the delinquent owner has at least another 90 days to resolve the matter and stop the process, followed now by a right to redemption (proposed section 5660), which is a significant departure from the traditional rules distinguishing between judicial and non-judicial foreclosures.

#### Article 4 – Insurance and Liability

We have no comments on this Article

### CHAPTER 6 – PROPERTY MAINTENANCE

#### Article 1- Maintenance

§ 5700 (Maintenance Generally) (note) We recommend revising subparagraph (b) to also say "repair, replacement and maintenance" since the declaration can always serve as a means of modifying the default rule. For example, some exclusive use common area elements, such as balconies in a condominium project, are integrally integrated with the adjacent building structure and the Declarant may wish to call for a maintenance and repair program that imposes routine maintenance on the owner, while reserving to the association the responsibility for

repairing and replacing the balcony structure. If that is desired, the CC&Rs can address the issue and state that allocation of responsibilities.

#### Article 2- Limitation on Association Authority

§ 5725 (Application of Article): We are concerned with the blanket limitation on association authority with respect to structures built off-site and solar energy systems, since the referenced Civil Code provisions cited in sections (a) through (c) PERMIT reasonable regulations. For example, many declarations include sign provisions that authorize reasonable restrictions as to design and color of signs so that the streetscape is not blighted by a variety of sign colors and presentations. With respect to manufactured housing, the law permits reasonable regulations and minimum pitch and eave requirements are common. Many developments, particularly in more affluent communities, prefer trellis solar systems so long as such systems are as efficient as a roof mounted system.

§ 5730: (Flag and other Non-commercial displays). The authorization of non-commercial displays by signs, posters and banners that are not more than 9 square feet in size is in the existing law, but we are of the opinion that 9 square feet is an excessive standard. That standard permits very large signs that can, and often are, unsightly..

§ 5745: (Television Antenna) We support the improvements made in this section.

### CHAPTER 7 –PROPERTY OWNERSHIP AND TRANSFER

#### Article 3 – Transfer Fee

§ 5825 (Disclosure to Prospective Purchasers): Consider adding an express statement describing what constitutes a "copy"—can prospective purchasers receive this information electronically? It would probably be best left in paper form, in which case this should be stated.

#### Article 5 –Transfer of Separate Interest

§ 5945 (Transfer of EUCAs): Transfer of EUCA rights should not be permitted where the EUCA space is integrated into the separate interest to which it is appurtenant, such as a balcony or patio area. Transfers of other EUCA areas, if

authorized by the declaration, is often beneficial (parking spaces, free-standing garage spaces, etc)..

## CHAPTER 8 – GOVERNING DOCUMENTS

### Article 2 - Declaration

§ 6040 (Amendments)(note 2): We support the text of this Section

§ 6045 (Approval of Amendment). Class and third party amendment approval requirements ought to be honored and protected. It is becoming increasingly common for Counties to require that certain provisions be included in a declaration to implement project conditions of approval that have a life behind the filing of the final subdivision map (such as minimum parking requirements). Also, provisions in the bylaws or the declaration that are for the express benefit of a minority class of members (or any class for that matter) ought to be amendable only with the consent of at least a majority of the protected class.

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# Memorandum

Page 1 of 3

**TO:** Mr. Brian Hebert, Assistant Executive Secretary, CLRC

**From:** Donald W. Haney, CPA, MBA

**COPY:** CAI-CLAC, ECHO, CACM

**Date:** 9/24/2007

**SUBJECT:** ACCOUNTING PROVISIONS-STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW-MEMORANDUM 2006-33

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## Introduction

Thank you for taking the time to review and consider my comments.

## Standards

I understand your concerns about standards and their role in the law. I have a number of thoughts about that issue and in no particular order they are:

1. The California legislature should not be in the accounting standards setting business. The American Institute of CPAs (AICPA) and the Financial Accounting Standards Board (FASB) are the accounting standards setting bodies in the United States. These bodies expend an incredible amount of professional time and money to develop and maintain these standards. These standards evolve and change over time and the legislature should not try to track those changes in the law.
2. The law should not act as an accounting manual for the HOAs. It should only point to the “ascertainable standard of care.” How the associations obtain and deploy their accounting support, in general, should not be of interest to the legislature. The legislative interest is to obtain an “informed consent” model. As in - do the association members and other stakeholders have sufficient information about and access to the association’s financial affairs to exercise their oversight duties on the governing body?
3. The legislature should not be in the business of dictating accounting procedures. How accounting processes are executed, in general, should not be dictated by the law. “Best practice” evolves and changes as the tools change. I see a number of instances where the law is way behind current practice. How can you have two signatures on a check when checks no longer exist? It would be like the legislature trying to set medical protocols in the law. You do not want to be there.
4. The issue here is dispute resolution. To resolve disputes my attorney friends want an ascertainable standard of care so that all parties have a common base against which they can identify deviations from standards. The overwhelming majority of associations do not get into such disputes, but when they do, there should not be a lot of wiggle room that judges (who typically do not have an accounting knowledge base) and juries (who almost assuredly do not have an accounting knowledge base) have to sort out. Such situations lead to bad decisions and related precedents. In other words, if the legislature says the standard is “accrual basis”, you do not want lay judges and juries deciding what that is. It will lead to chaos.
5. There are places in the law for ambiguity and “fat” words– “the reasonable man; prudent business judgment, etc.” This is not one of them.

6. The association's size is irrelevant to its corporate duties. Whether it has two units or 2,000, it still has to extract enough funds from its owners to perform its duties. A harsh truth for small communities, but still the requirement.

## Major components

A structural component is generally defined as a life of the building item such as the building and road infrastructures. If you included these items in the Major Repair and Replacement study and funded their replacement with current assessments, the assessments would be the size of a mortgage payment. Such a situation would make this type of housing option financially untenable.

## Tax returns

The IRS and FTB can only audit returns up to three years, unless there is some type of suspected criminal activity in which case they can open and audit any and all years. This is another example of what the legislature should not be doing. There are other governing bodies that set record retention guidelines and the law should point to those standards since they change over time.

## Audit/Review thresholds

I do not know where you got the \$100 number. My experience suggests that the average is much higher than that number.

As I indicated in my memo these thresholds are what I think are reasonable suggestions based upon my experience. The most important thing is the concept – thresholds based upon units not assessments. I am sure that such levels could be quickly resolved. Start someplace and see what happens.

## The 4825 and 5500 conflict

Conflict may not be the correct word. Section 4825 refers to Generally Accepted Accounting Principles (GAAP) which should be capitalized so that intent is clear. Section 5500 refers only to revenues and expenses on the “accrual basis” which begs the question regarding the balance sheet accounts. All I am suggesting is to make the language consistent and to get rid of the “...or other basis ...” language. As previously stated such language will complicate the dispute resolution process. Also, as previously stated the legislature should not be in the standards setting or business process setting business. Sections (c) and (d) of 5500 are not necessary. They are “accounting manual” items. They do not pass the “so what” test. If the association does not follow those procedures, who is damaged and what are the consequences? If you establish a law, there must be consequences for failing to comply and you must have an enforcement process in place. Otherwise, they are just words. The CID law is filled with rules for which there are no consequences and no enforcement processes.

## Bank and other accounts

“Accounts” can have several meanings in accounting land. A bank “account” is an account that the bank maintains for the association to reflect its cash activity. A general ledger “account” is an account on the association’s books and records used to keep track of its accounting transactions. You want to distinguish the difference. There is no material difference between the terms “brokerage” accounts and “investment” accounts. “Investment” accounts would probably suffice.

## Payment application

Current section 1366 (e) provides that the association may recover “Interest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and cost of collection, and reasonable attorneys fees...” In our legal advisors view “all sums” includes interest even though it is not specifically enumerated. Yes, this procedure creates interest calculated on interest. But, that is a common business practice and in thirty years of practice we have never been challenged on this issue. Furthermore, such interest effect is usually trivial compared to the typical overall delinquent amount. Therefore, there is no material affect on the amount due based upon the payment application rules. Moreover, applying the payment to the “balance forward” is the common business practice in all consumer credit environments of which I am aware.

## Conclusion

Mr. Hebert, I hope that I have adequately responded to you questions. If you have follow ups or other questions, please do not hesitate to contact me.

On August 21, 2006 you sent me an email with similar questions to which I think I responded, but can not locate right now. Do you have any loose ends for that exchange?

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**ALEC PAULUCK**  
1001 Pine St. #703  
San Francisco, CA 94109-5006

September 20, 2007

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RE: Statutory Clarification and Simplification of CID Law

The Davis-Stirling Act is in dire need of improvement and changes as recommended and suggested in your "Tentative Recommendation" June 2007. I was interested in condominium laws in Florida, prior to California's condominium legislation in 1960.

When California first introduced condominiums for legislation in Sacramento in 1960, there was much confusion. Condominium was an unknown word to many in 1960. The condominium concept of ownership was shifted between The Dept. of Real Estate, Dept. of Securities, and Dept. of Corporations, and Business and Professional Dept. This new concept of ownership was considered a conflict of interest, between departments, because grant deeds were issued for condominium ownership, vs. stock and shares issued for cooperative style of ownership. Condominium are referred to as 'family units'.

Dept. of Securities considered condominium law, however, it wasn't long to see the conflict of interest. To mix cooperatives with condominiums is wrong. Condominium buyers are issued grant deeds, referred to as 'family units.' Cooperatives sell shares and applicants must be introduced by a current member, then appear before a board of directors to be accepted into the cooperative.

Please do not mix cooperatives with condominiums.

Sincerely,

  
Alec Pauluck

September 28, 2007

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RE: Statutory Clarification and Simplification of CID Law

Page -7- Definition of "Meeting." ... any congregation of a majority of members of the board at the same time."

This is a serious subject which needs careful scrutinization since owners get very suspicious when a few directors get together. Some attorneys, at seminars, say that directors must be careful when a board casually congregates in a group, to always develop some kind of minutes. The Sunshine Act apparently is a big issue to consider, otherwise directors could get into trouble..

Definition of "Meeting" A duly constituted meeting, planned in advance, with a written notice of meeting distributed to all directors and posted in a location for members to read, three (3) days in advance, with a written agenda.

The agenda may be changed at the meeting by vote of the majority directors present. Any other gathering of a group of directors would not constitute a duly constituted meeting, unless all the above elements are met.

APPROVAL OF AGENDA: This subject is important as required in Parliamentary Procedures. Often people do not show up for meetings, or certain reports are not ready for discussion, and changes are needed to alter the agenda format.

Any other gathering of a group of directors would not be considered as a duly constituted meeting. (Some directors like to meet to celebrate or discuss a birthday, holiday, or funeral, without any discussion on association business.) Directors should be permitted to meet and congregate without feeling threatened or accused of secret meetings.

Any disturbance or disruption by anyone in the audience could be asked to leave. If the disturbance continues, the board may postpone the meeting to another date by the majority vote of the board.

Meetings are to be held at a location in or near the condominium site. (There have been instances where the board of directors voted to hold a meeting at some distant resort with food and lodging, as a good will gesture for volunteering. This must be clarified since directors are volunteers, not paid, not on the payroll, and no discounts in assessments.)

Sincerely,

