

Second Supplement to Memorandum 2007-55

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

The Commission continues to receive comments on the tentative recommendation on *Statutory Clarification and Simplification of CID Law* (June 2007). The comments are attached in the Exhibit as follows:

	<i>Exhibit p.</i>
• Samuel L. Dolnick, La Mesa (12/7/07)	1
• Elizabeth M. O'Brien, United Laguna Hills Mutual (12/11/07).....	7
• John Raniseski & Jim Viele, Sun City Roseville Community Association (12/10/07).....	2
• Bob Sheppard, Walnut House Cooperative (12/10/07)	3
• Steven Taddei, Woodstock Homes Corporation (12/12/07)	8

The issues raised in these letters are summarized briefly below. All statutory references are to the Civil Code.

TIME FOR NOTICE OF BOARD MEETING

Under existing Section 1363.05(f), an association must provide notice of the time and place of a board meeting and an agenda for that meeting, at least four days before the meeting. The notice must be posted and mailed to those who have requested mailed notice.

As noted in a prior memorandum, the proposed law would expressly provide that a notice is effective on the date it is sent. To avoid any unreasonably short periods that would result from that rule, statutory periods that are 10 or fewer days under existing law would be extended by five days or so.

In continuing the provision governing notice of a board meeting, the staff recommended that the four day period be extended to 10 days. See proposed Section 4520(b) in CLRC Memorandum 2007-56, which would provide:

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

(b) Unless the governing documents provide for a longer period of notice, the association shall deliver notice of the time and place of a board meeting at least 10 days before the meeting.

Both Sun City and Bob Sheppard have written in opposition to the proposed 10-day notice period.

Sun City writes that the increased lead time would impose a significant hardship. "Even preparing the final agenda to meet the 4-day requirement is sometimes difficult." See Exhibit p. 2.

Bob Sheppard comments: "Sometimes, our board needs to meet several times a month and a ten day notice requirement would be a hardship." See Exhibit p. 4.

Existing Section 1363.05 would allow for the posting of a notice a mere four days before a meeting. It now appears that associations are relying on that extremely short notice period and that extension of the period might cause problems. **In order to avoid causing a new problem for associations, the staff recommends that the existing four-day period be restored in proposed Section 4520.**

Sun City also asks whether proposed Section 4520(b) is intended to govern only notice of the time and place of a board meeting. See Exhibit p. 7. The intent was for that provision to apply to a board meeting notice generally and not just to part of its content. **To clarify that point, the staff recommends that the provision be revised, nonsubstantively, as follows:**

(b) Unless the governing documents provide for a longer period of notice, the association shall deliver notice ~~of the time and place~~ of a board meeting at least 10 days before the meeting.

STOCK COOPERATIVES

Elizabeth O'Brien, president of United Laguna Hills Mutual, writes to express support for the changes to proposed Sections 6000 and 6005, which would reflect the special nature of stock cooperatives. See Exhibit p. 7.

However, Steven Taddei comments that his cooperative does not wish to be governed by the Davis-Stirling Common Interest Development Act. See Exhibit pp. 8-9. The staff was told informally that Mr. Taddei's cooperative had received legal advice indicating that the Davis-Stirling Act does not apply to it because it does not have a recorded declaration. The staff was also told that another cooperative in Richmond had litigated the issue and that the trial court had ruled

that the Davis-Stirling Act does not apply to a cooperative that does not have a recorded declaration.

This input suggests that there may be a split within the cooperative community as to how the ambiguous application of the Davis-Stirling Act to a cooperative without a declaration should be resolved. **The Commission should consider whether the recommended change to proposed Section 6000, providing that the Davis-Stirling Act applies to a stock cooperative without a declaration, might be premature.** Perhaps the matter should be set aside until a more comprehensive review of stock cooperatives can be conducted.

SMALL ASSOCIATIONS

Samuel Dolnick writes to suggest that the Commission specifically study how the Davis-Stirling Act should be changed to better reflect the realities faced by small associations. See Exhibit p. 1. Bob Sheppard makes the same suggestion. See Exhibit p. 3. That issue is on our list of topics for possible future study.

MISCELLANEOUS COMMENTS

Bob Sheppard offers additional comments on a number of aspects of the proposed law. See Exhibit pp. 3-6.

Respectfully submitted,

Brian Hebert
Executive Secretary

SAMUEL L. DOLNICK
5706-348 Baltimore Drive
La Mesa, CA 91942-1654
Phone/Fax 619-697-4854

December 7, 2007

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

Re: Simplification of CID Law, December 2007

Dear Mr. Hebert:

Please let me take this opportunity to commend the staff and CLRC in the attempts they are making to make some sense out of the Davis-Stirling Common Interest Development Act (Act) and other sections of California Codes impinging on the Act so that volunteer board members and owners will understand their responsibilities to a greater degree. The material that was presented, both by the staff and by the individuals who responded to prior recommendations, not only made interesting reading but also had much substance.

My concern is on the Background portion on page 1, lines 9-12 and footnote ⁶ at the bottom of the page.

According to the data presented over two million housing units “consist of 25 or fewer separate interests.”⁶ “Over two-thirds of associations have 50 separate interests or fewer.” Thus, of the 41,000 CIDs in California 20,500 have fewer than 25 separate interests. If 50 separate interests are included than 27,333 CIDs must be considered.

For the most part these associations are managed by their board of directors; they do not have professional management, nor have attorneys on retainer, nor in many cases, even more tragically, are even aware of the Act. Lines 13-19, on page 1, details the difficulties much better than I can.

The Recommendations, in my opinion, do not really help or meet the realistic needs of the 27,333 CIDs of 50 or less separate interests. The staff Recommendations do apply, without difficulty, to the 13,667 CIDs that have hired community association management firms and have attorneys on retainer. It is much more difficult for the 27,333 CIDs, having 50 or less separate interests, to do the necessary policing of the Recommendations. Some method has to be found to take care of this majorities needs so they are not in violation of the Act.

Respectfully submitted,

Sam Dolnick
Senior Condo Owner

**JOHN RANISESKI & JIM VIELE, SUN CITY
ROSEVILLE COMMUNITY ASSOCIATION
(DECEMBER 10, 2007)**

VIA EMAIL TO bhebert@clrc.ca.gov

December 10, 2007

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

Re: Section 4520 – Notice of Board Meetings

1. The proposed increase in the statutory time period for notice of board meetings to 10 days, referred to on page 17 of 2007-47s1, was not noticed until we reviewed the Final Draft Recommendation 2007-56. Now that a binding agenda is required with the notice, such an increase would create a significant hardship for our Association. Even preparing the final agenda to meet the 4-day requirement is sometimes difficult.

The Association's ability to use email, and for many a website, allows a method to provide timely notice of a meeting to absentee owners without increasing the time period for notice.

We urgently request that you restore the 4-day requirement.

2. Note that Section 4520 (b) only requires delivery of a notice of the time and place of the board meeting. Would this mean the agenda does not have to be included?

3. As noted under your earlier comments, 4520(a) would exempt certain Associations from providing notice, including the agenda. This appears to go against the spirit of the new legislation, Section 1363.05, so, if you restore the 4-day requirement, we suggest the phrase "Unless the time and place of a meeting is fixed by the governing documents" in 4520(a) be deleted.

Thank you for your reconsideration of retaining the 4-day time period for notice of a board meeting.

Sincerely,

John Raniseski
President, Board of Directors

Jim Viele
Chair, Governmental Affairs Committee

MEMO

Date: December 10, 2007
From: Bob Sheppard, Walnut House Cooperative, Berkeley
To: California Law Review Commission, Attn: Brian Hebert
Re: Comments on CID study

We appreciate and support the efforts by the Commission and its staff to begin including the needs of stock cooperatives into its work; we request that you study this issue as soon as possible. “Scalability” is an issue is also very important to us, as most associations are small. Davis-Stirling does not scale well and we are grateful to see that the Commission’s staff is cognizant of this. This is another area we would like the Commission to begin studying and we hope that a description of this issue will be included in the final recommendation. Most of Davis-Stirling seems to implicitly assume that all associations either are run by professional management companies or employ their own paid staff; the needs of self-managed associations (including “emerging” associations such as cohousing developments) seem to be missing. This is another area we believe should be studied by the Commission.

Here are our further comments on the latest draft and memos.

4090. Board meeting definition. We propose the following further analysis of this issue. For example, with a nine-member board, a quorum might be a majority (5 members). And a decision might require a majority of board members in attendance. Thus, the approval of 5 members would be needed if 9 board members were in attendance, but the approval of only 3 members would be needed if a bare quorum were present.

Is it fair for 3 board members to meet and deliberate on their own if they could pass a proposal? We think not. The minimum number of board members necessary to pass a proposal, or a quorum (whichever is less), should constitute a board meeting for the purposes of this section.

4150. “Governing documents” and “proprietary leases”. The definition of “governing documents” should be clarified to include a stock cooperative’s proprietary lease, which is the instrument granting the right of exclusive occupancy to the owner of a separate interest. This instrument traditionally includes many elements of a declaration, including many of a member’s rights, duties and restrictions. Therefore, the term “proprietary lease” should also be defined. We believe that a previous staff memo indicated that such changes would be made.

4420. Limitation of rights. Is the following possible under the last sentence of the section? “Hi, welcome to our association. We’ll reduce your assessment by \$10 a month if you waive your rights. If you don’t, we’ll scrutinize you to see if you violate the CC&Rs. Then we’ll fine

you. Please choose one option.” If so, the last sentence of this section should be deleted.

4520(b). Notice of board meeting. The final draft provides for a 10 day notice, rather than four. If this is not a typo, it would be a substantial hardship for us and probably many other small associations. Our bylaws provide for a five day notice. Sometimes, our board needs to meet several times a month and a ten day notice requirement would be a hardship.

4540. “Adjourning to executive session”. We oppose the elimination of term “adjourn”. Allowing a board to meet without an open meeting “wrapper” reduces member oversight and board accountability. It eliminates the right of members to address the board before the closed session begins and to know the outcome at the end of the session itself, long before the minutes might be published. We believe Robert’s Rules (which many associations use) also requires this. If the board wishes to meet at their attorney’s office, other members can wait outside the office during the executive session.

4545. Action without a meeting. The current status is a tension between the Open Meeting Act in the Civil Code and the relevant provisions of the Corp. Code. At least one legal commentator has indicated that—under this scenario—an action without a meeting could be taken only in an emergency. We support this. If 4545 stands, it would likely override the Corp. Code and thus would constitute new law. Therefore, we support deleting 4545 and allowing the current tension to stand. We also believe this should be resolved and we support the Commission studying this further, as it is a controversial and complex issue.

4645. In-person voting. We were disappointed to see that this section had been removed from the latest draft and believe it would have provided a significant benefit for small and self-managed associations, by eliminating valueless complexity. The opposing opinions expressed in the comments did not persuade us. We object to the removal of this section and urge the Commission to reinstate it. If necessary—as indicated by another commentator—a provision allowing 5% of the members to petition for a 30-day balloting period should cure any policy issues regarding non-resident members.

It seems absurdly bureaucratic, for example, to require an eleven unit association, in which all members are occupants, to conduct an election with a one month balloting period. If the Commission is unwilling to reinstate this section, we suggest that a comment be inserted into the final recommendation describing the issue and including the complete text of the omitted section.

Even though the section is a restatement of previously existing law, the inclusion of this section was initiated by the Commission’s staff. If included, the legislature can delete it if they choose; at least they’ll have that option.

4590(a). Teleconferencing discrimination. Since this section is discretionary, if a member

opposed to a board initiative wanted to teleconference, could a board deny it? This section should be applied in a non-discriminatory manner.

4660(a). Proxies. This is problematic for us; others have also expressed the same concerns. In our association, a member may give a proxy only to an occupant of our building (e.g. member, spouse, sublessee, etc.) to assure that the proxy holder has some connection with our association's issues. However, we allow each meeting attendee only one vote, to prevent the consolidation of proxies. We consider the Corp. Code proxy definition much more reasonable and we'd like to see it substituted. If the Commission is unwilling to do this, we'd appreciate your inserting a comment or note into the final recommendation explaining these concerns.

4700(a)(13). Inspection of correspondence. We are not persuaded by some commentators' arguments, but believe the issue should be studied further before being proposed.

4705(a). Records inspections. Small associations may wish to handle inspections more informally. This would also be less of a burden on small or self-managed associations. For example: "A member may request the board's permission to inspect association records. The board may require that the request be in writing, that the request identify the records to be inspected and that the request state a purpose for the inspection that is reasonably..."

4705(d). Electronic records. It would be more straightforward to prosecute members who fraudulently modify copies of association records and present the records as originals. The association's use of authentication identifiers (e.g. checksums) would constitute evidence that a document had been modified.

5000. Non-fine discipline. The following would address our previously stated concerns: "An association shall not fine or otherwise discipline a member for a violation of the governing documents unless, at the time of the violation, the governing documents expressly authorize the use of a fine or other disciplinary action and include a schedule of the amounts that can be assessed and other disciplinary actions that can be imposed for each type of violation."

5015. Tenant liability. This could cause the following problem: A tenant would have already entered into a long-term lease with a member, prior to the enactment of the new law. The member would not have the option to "add" a term to the lease, but the member would then be liable under the new statute.

5580(a). Assessment increase. We have concerns with 5580(a) interfering with the sovereignty of a membership over its board. However, Sec 1366 is current law and 5580 clarifies it. Therefore, we have concerns about the underlying policy but support the clarification of it. We

think the sovereignty issue should be studied.

5700. Maintenance responsibilities. The use of the term “declaration” is generally problematic for stock cooperatives and their members, particularly since this section affects a member’s budget. A work-around would be helpful, as we’ve previously proposed.

5700(c). Pests: election and assessments. This subsection—which is new—is potentially very problematic for stock cooperatives, which have pre-existing contractual and governance relationship with their members. In our case, the provision would override pre-existing provisions that have existed for decades. It would also impose a one-size-fits-all requirement for a special assessment. Since it is new law, we would like this provision either deleted, made optional for stock cooperatives or made subject to provisions of existing governing documents of stock cooperatives.

5745. Antennas. We’ve previously indicated our concern about this section. However, we support further study if the Commission chooses not to resolve our concerns.

5825. Disclosure. In many limited-equity stock cooperatives, the seller sells their unit back to the cooperative and the cooperative sells the unit to a new buyer. Thus, the disclosure would take place between the cooperative and the new buyer. We would like to request that a note be inserted for clarification.

6000(b) and 6005(d). Creation of a CID, document hierarchy. We support the modification of these sections to accommodate stock cooperatives.

Accounting. Stock cooperatives—particularly those with mortgages insured by HUD—use HUD’s method of accounting, as mandated by a HUD regulatory agreement. We and other cooperatives are subject to private regulatory agreements that are similar to HUD’s. We would like the Commission to study this issues so that any problems with the statute could be resolved to bring it into convergence with established cooperative housing accounting practices.



Laguna Woods Village

PO Box 2220, Laguna Woods, CA 92653

UNITED LAGUNA HILLS MUTUAL

December 11, 2007

Mr. Brian Hebert
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303
Via email: commission@clrc.ca.gov

Re: Stock Cooperatives associated with Simplification of CID Law

Dear Mr. Hebert:

I am writing to you on behalf of the largest stock cooperative housing mutual corporation in California, United Laguna Hills Mutual, located in the senior community of Laguna Woods Village. Today my board, by unanimous vote, requested that I prepare a letter to you expressing concerns associated with Stock Cooperatives and how that is addressed in current and proposed CID law.

We appreciate your efforts in addressing some of the ambiguity that exists in the current statutes as they apply to stock cooperatives relative to the non-existence of declarations and condominium plans. Specifically subdivision (b) of section 6000 and (d) of section 6005, in the Tentative Recommendation for Statutory Clarification and Simplification of CID Law, attempts to provide clarification that stock cooperatives may not have a recorded declaration and that certain sections of the law do not apply to stock cooperative housing.

On behalf of more than 8,000 seniors residing in the 6,323 stock cooperative housing units of United Laguna Hills Mutual, we respectfully request that a comprehensive study of the application of the current and proposed CID law be undertaken relative to stock cooperatives to make clear the provisions of the law as it applies to stock cooperatives

Sincerely,

Elizabeth M. O'Brien
President, United Laguna Hills Mutual

Cc: United Laguna Hills Mutual Board Members
Milt Johns, PCM-General Manager
Wendy Bucknum, PCM-Governmental and Public Affairs Manager

STEVEN TADDEI, WOODSTOCK HOMES CORPORATION
(DECEMBER 12, 2007)

Dear Mr. Hebert,

Thank you for speaking with Linda Cazares yesterday regarding our Cooperative. This letter is to give you some background on Woodstock Homes that may be useful when you go into your meeting on Thursday.

Woodstock was built in 1941 for employees at the Alameda Naval Air Station and became surplus property at the end of World War II. The tenants formed a group and bought the entire property, forming one of the first Cooperatives in the United States. It was called Alameda Mutual Homes and the loan was paid off in 20 years. In 1966, we reorganized as Woodstock Homes with updated bylaws. The bylaws were updated in 1995 and will probably be updated again in 2008. We actually have many of the original members from 1946 that are still residents.

The Shareholders share the organizational responsibilities, electing, unpaid, Board of Directors to keep it running. The Board, consisting of a President, Vice President, Secretary, Treasurer, and Maintenance Director meets twice per month and there are two General Meetings per year.

Stock Cooperatives work differently than normal real estate and Common Interest Developments. The residents do not own their unit. Their share of stock entitles them to a 99 year lease on the unit. Instead of having a deed on each individual unit, there is one deed for the entire Woodstock property which consists of 200 units and covers five city blocks. Each Shareholder owns one-two hundredth of the entire property and agrees to abide by the Bylaws, Policies, and Lease Agreement. They also pay appropriate property taxes.

Woodstock is run financially by maintenance fees that are between \$140.00 and \$210.00 per month, depending on the size of the unit. The maintenance fees cover:

- Exterior Maintenance; Painting, roofing, streets, and paving. .
- Insurance on buildings, including earthquake .
- Gas, water, sewage, garbage, and recycling

We're proud of the fact that we've never been sued by a shareholder, never had a foreclosure, and never had a special assessment. We're also proud of the fact that a recent study of our reserves showed our Cooperative to be strong.

As you can see, there are vast differences between housing cooperatives and traditional real estate such as condominiums. Because of the differences, we feel that it is not productive to have one law that puts the same regulations on both types of living conditions. It causes a great deal of confusion which leads to undue expenses. Over the past two years, Woodstock has been forced to spend substantial money on legal fees to research responsibilities we may or may not have under the Davis Stirling Act. This burden could become so heavy; our maintenance fees would have to rise. A substantial rise in maintenance fees would be a serious problem for many of our residents earning working class wages or living on fixed incomes.

We feel that The Davis Stirling Act and the suggested recommendations are written in a manner that is forcing cooperatives to adapt their existing form of (functional) governance and conform to being a Common Interest Development.

We urge you to strongly consider recommending to the California Law Revisions Committee that any decisions on this matter be postponed until we are given the opportunity to give our input. Please give us and other Cooperatives the opportunity to voice our concerns. Our understanding is that there was active discussion with many Common Interest Developments and many were able to provide input, however we do not believe that Cooperatives were equally represented.

Thank you for your consideration in this matter. Should you need to speak with us further, please don't hesitate in calling.

Sincerely,
Steven Taddei, President Board of Directors
Woodstock Homes Corporation