

First Supplement to Memorandum 2011-34

Common Interest Developments: Commercial and Industrial Associations (Draft of Recommendation)

This supplement presents additional technical matters not raised in Memorandum 2011-34 that also require resolution before a final recommendation in the study can be approved and submitted to the Legislature.

Except as otherwise indicated, all statutory references in this memorandum are to the Civil Code.

ADDITIONAL TECHNICAL REVISIONS TO PROPOSED CONFORMING REVISIONS

The proposed law includes a number of proposed conforming revisions. These revisions propose amendment of statutory sections outside the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1378) (hereafter "Davis-Stirling Act"), to revise cross-references in those sections to Davis-Stirling Act provisions that would be continued in the proposed law.

In Memorandum 2011-34, the staff noted that two sections for which conforming revisions are proposed, Government Code Sections 12956.1 and 12956.2, were amended by legislation enacted in 2011, 2011 Cal. Stat. ch. 261 (SB 559 (Padilla)). The memorandum noted that the proposed revisions of those sections would therefore need to be redrafted, so that the revisions would accurately set forth each section's new text. Memorandum 2011-34, p. 21.

The staff has since learned of additional legislation enacted in 2011 that requires similar redrafting of conforming revisions in the proposed law.

Government Code Sections 12956.1 and 12956.2

Subsequent to the enactment of the legislation referenced in Memorandum 2011-34 amending Government Code Sections 12956.1 and 12956.2, the two sections were amended a second time by another 2011 bill, 2011 Cal. Stat. ch. 719,

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.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

§§ 23, 23.5, 24, 24.5 (AB 887 (Atkins)). Because AB 887 was chaptered after SB 559, the versions of Sections 12956.1 and 12956.2 in Sections 23.5 and 24.5 of that bill (which incorporate the changes made by SB 559) will become operative, and the other versions will not. See Gov't Code § 9605.

The changes made by AB 887 to Sections 12956.1 and 12956.2 would be implemented by revising the staff draft recommendation as follows:

Gov't Code § 12956.1. (amended) Restrictive covenant based on discriminatory grounds

SEC. ____. Section 12956.1 of the Government Code is amended to read:

12956.1. (a)

(b) (1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14-point boldface type, the following:

"If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

(2)

Gov't Code § 12956.2. (amended). Restrictive Covenant Modification

SEC. ____. Section 12956.2 of the Government Code is amended to read:

12956.2. (a)

(b) Before recording the modification document, the county recorder shall submit the modification document and the original document to the county counsel who shall determine whether the original document contains an unlawful restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall return the documents and inform the county recorder of its determination. The county recorder shall refuse to record the modification document if the county counsel finds that the original

document does not contain an unlawful restriction as specified in this paragraph.

(c)

The staff recommends that **those changes be made.**

Vehicle Code Section 22651

Another section for which a conforming revision is proposed, Vehicle Code Section 22651, was also affected by a bill enacted late in the 2011 legislative session. 2011 Cal. Stat. ch. 538, § 4.5 (AB 1298 (Blumenfield)).

The changes made to Section 22651 by AB 1298 would be implemented by revising the staff draft recommendation as follows:

Veh. Code § 22651 (amended). Circumstances in which removal of vehicle is permitted

SEC. ____. Section 22651 of the Vehicle Code is amended to read:
22651.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. Except as provided in ~~subdivision (v)~~ subdivisions (v) and (w), a vehicle shall not be removed unless signs are posted giving notice of the removal.

(o) (1)

(3) For the purposes of this subdivision, the vehicle shall be released ~~to the~~ under either of the following circumstances:

(A) To the registered owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(B) To the legal owner or the legal owner's agency, without payment of any fees, fines, or penalties for parking tickets or registration and without proof of current registration, if the vehicle will only be transported pursuant to the exemption specified in Section 4022 and if the legal owner does all of the following:

(i) Pays the cost of towing and storing the vehicle.

(ii) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of an offense relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency has a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of parking penalties for any notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. Upon receipt of any surplus,

the legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5.

(4) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled has a deficiency claim against the registered owner for the full amount of parking penalties for any notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

~~(4)~~ (5) As used in this subdivision, “offstreet parking facility” means an offstreet facility held open for use by the public for parking vehicles and includes a publicly owned facility for offstreet parking, and a privately owned facility for offstreet parking if a fee is not charged for the privilege to park and it is held open for the common public use of retail customers.

....
(w) (1) When a vehicle is parked or left standing in violation of a local ordinance or resolution adopted pursuant to subdivision (p) of Section 21100, if the registered owner of the vehicle was previously issued a warning citation for the same offense, pursuant to paragraph (2).

(2) Notwithstanding subdivision (a) of Section 22507, a city or county, in lieu of posting signs noticing a local ordinance regulating advertising signs adopted pursuant to subdivision (p) of Section 21100, may provide notice by issuing a warning citation advising the registered owner of the vehicle that he or she may be subject to penalties upon a subsequent violation of the ordinance that may include the removal of the vehicle as provided in paragraph (1). A city or county is not required to provide further notice for a subsequent violation prior to the enforcement of penalties for a violation of the ordinance.

The staff recommends that **those changes be made.**

PARALLELISM WITH STATUTORY TEXT OF RECODIFICATION LEGISLATION

The Commission has previously decided that, whenever possible, the statutory text of the proposed law should parallel the statutory text of pending legislation that would implement the Commission’s recommendation to recodify the existing Davis-Stirling Act. Minutes (October 2010), p. 8.

In a recent comparison of that pending legislation with the proposed law in this study, the staff discovered a minor discrepancy in the text used to draft a provision that appears in both bodies of law.

The provision — appearing in Section 4040(a) of the recodification legislation, and in Section 6514(a) of the proposed law — addresses how an association must provide “individual notice.” The text of the two subdivisions is identical, except for the text appearing in Section 6514(a) that is indicated in underline below:

6514. (a) If a provision of this act requires that an association deliver a document by “individual delivery” or “individual notice,” the document shall be delivered to the member to be notified by one of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the association.

(2) E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery. The consent may be revoked, in writing, by the recipient.

At a previous Commission meeting, in the course of discussing and ultimately revising the language of Section 4040(a) of the proposed recodification legislation, the Commission deleted that underlined text from Section 4040. Minutes (August 2010), p. 7. However, the underlined text has not yet been deleted from Section 6514(a) of the proposed law.

The failure to delete the text from Section 6514(a) was inadvertent, and there is no rationale for a different wording of this provision in the two proposed laws. Parallelism between the two laws would therefore appear to dictate deleting the underlined text from proposed Section 6514(a).

Does the Commission wish to do so?

Respectfully submitted,

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