

Memorandum 2013-42

**Statutory Clarification and Simplification of CID Law
(Revised Recommendation)**

At its June meeting, the Commission considered Memorandum 2013-23 and its First and Second Supplements, discussing issues relating to the Commission's recommendation on *Statutory Clarification and Simplification of CID Law (Further Clean-Up Legislation)*.

At that time, the Commission approved certain revisions to the recommendation proposed in Memorandum 2013-23 and its First Supplement, and directed the staff to incorporate those revisions in a revised recommendation to be presented to the Commission for approval at a future meeting. Minutes (June 2013), pp. 3-5.

This memorandum presents a draft of that revised recommendation for the Commission's approval. **The Commission should decide whether to approve the attached draft recommendation, with or without changes, as a final revised recommendation.**

Respectfully submitted,

Steve Cohen
Staff Counsel

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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

#H-855

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

Revised RECOMMENDATION

Statutory Clarification and Simplification of CID Law:
Further Clean-up Legislation

August 2013

California Law Revision Commission
4000 Middlefield Road, Room D-2
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SUMMARY OF RECOMMENDATION

Assembly Bill 805 (Torres), enacted in 2012, implements a Law Revision Commission recommendation to reorganize and recodify the Davis-Stirling Common Interest Development Act. The bill repeals the existing statute (Civ. Code §§ 1350-1378) as of January 1, 2014, and replaces it with a new statute (Civ. Code §§ 4000-6150) that will become operative on the same day.

This recommendation proposes to correct an erroneous cross-reference and make four minor revisions to clarify meaning.

This recommendation was prepared pursuant to Resolution Chapter 108 of the Statutes of 2012.

STATUTORY CLARIFICATION AND
SIMPLIFICATION OF CID LAW:
FURTHER CLEAN-UP LEGISLATION

1 Assembly Bill 805 (Torres), enacted in 2012,¹ implemented a Law Revision
2 Commission recommendation² to reorganize and recodify the Davis-Stirling
3 Common Interest Development Act³ (hereafter, “Davis-Stirling Act”), the primary
4 statutory authority governing common interest developments (hereafter, “CIDs”).
5 The bill repeals the existing statute as of January 1, 2014, and replaces it with a
6 new statute⁴ that will become operative on the same day.⁵

7 Before the new legislation becomes operative, clean-up legislation is needed to
8 clarify the meaning of four sections in the new statute, and correct an erroneous
9 cross-reference. The proposed revisions are explained below.

10 **Approval by a Majority of a Quorum**

11 Civil Code Section 4070 governs the construction of provisions of the Davis-
12 Stirling Act that require an action to be approved “by a majority of a quorum of
13 the members.”⁶ The rule stated in that provision was intended to apply regardless
14 of whether member approval is secured at a meeting, or through the use of written
15 ballots outside a meeting.⁷

16 In order to avoid any misunderstanding of that application, the Commission
17 recommends that Section 4070 be revised to expressly state its intended meaning.

18 **Document Authority**

19 Civil Code Section 4205 provides guidance on two fundamental aspects of CID
20 governance that are not clearly addressed in the Davis-Stirling Act: (1) the general
21 supremacy of the law over a CID’s governing documents, and (2) the relative
22 authority of different types of governing documents.”⁷

23 The section reads as follows:

24 4205. (a) To the extent of any inconsistency between the governing documents
25 and the law, the law controls.

1. See 2012 Cal. Stat. ch. 180.

2. *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm’n Reports 235 (2010).

3. Civ. Code §§ 1350-1378.

4. Civ. Code §§ 4000-6150.

5. 2012 Cal. Stat. ch. 180, § 3.

6. See Civ. Code §§ 4230(d), 4365(d), 5605(a), 5605(b), 5620(b).

7. *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm’n Reports 235, 249 (2010).

1 (b) To the extent of any inconsistency between the articles of incorporation and
2 the declaration, the declaration controls.

3 (c) To the extent of any inconsistency between the bylaws and the articles of
4 incorporation or declaration, the articles of incorporation or declaration control.

5 (d) To the extent of any inconsistency between the operating rules and the
6 bylaws, articles of incorporation, or declaration, the bylaws, articles of
7 incorporation, or declaration control.⁸

8 The purpose of that section is to establish clear rules of supremacy, for
9 application where a conflict between different authorities must be resolved. The
10 section was not intended to establish a substantive standard as to *when* such a
11 conflict exists.

12 To avoid any misunderstanding of the limited purpose and effect of Section
13 4205, the Commission recommends that the language in the section be revised to
14 more closely parallel language that is routinely used in comparable contexts
15 (where a rule of supremacy is established without exhaustive specificity as to the
16 circumstances in which the rule must be applied).⁹

17 The Commission also recommends a parallel terminological revision to Civil
18 Code Section 4350, which addresses the validity and enforceability of a specific
19 type of governing document, a CID’s operating rules.¹⁰

20 Meeting Notice

21 Civil Code Section 4920 restates a provision (Civil Code Section 1363.05(f))
22 that governs the timing of board meeting notice. Both provisions specify the
23 minimum period of notice for board meetings generally (four days),¹¹ for meetings

8. 2012 Cal. Stat. ch. 180, § 2.

9. Specifically, the language indicating which authority “controls” in the event of “inconsistency” would be replaced with language indicating which authority “prevails” in the event of “conflict.” That would be consistent with the terminology used in the constitutional provision addressing “conflict” between local law and general law. See Cal. Const. art XI, § 7. It would also be consistent with numerous statutes that provide for the supremacy of one statute over another. See, e.g., Civ. Code §§ 799.10, 2924h, 5100(e); Educ. Code §§ 24953(h), 69522; Fish & Game Code § 7090(h); Food & Agric. Code § 13169; Health & Safety Code §§ 1568.065, §1787; Ins. Code § 11580.2; Pub. Res. Code §§ 2770.6, 2772.5, 71530; Pub. Util. Code § 5142; Veh. Code § 15200. Finally, it would be consistent with language used by the courts in holding that the general law prevails over a common interest development’s governing documents in the event of a “conflict.” See, e.g., *Cebular v. Cooper Arms Homeowners Ass’n*, 142 Cal. App. 4th 106, 119; 47 Cal. Rptr. 3d 666 (2006) (“If there is a conflict between the law and a declaration of covenants, conditions, and restrictions, the statutory and common law prevail.”); *Thaler v. Household Finance Corporation*, 80 Cal. App. 4th 1093, 1102; 95 Cal. Rptr. 2d 779 (2000) (“In the event of a conflict between CC&Rs and the [Davis-Stirling] Act, the Act prevails as a matter of law.”).

10. 2012 Cal. Stat. ch. 180, § 2.

11. Civ. Code § 4920(a).

1 held solely in executive session (two days),¹² and for emergency meetings (no
2 advance notice is required).¹³

3 Section 1363.05(f) also provides that an association’s bylaws may impose a
4 longer period of notice than the statute requires. However, that rule does not apply
5 to an emergency meeting or a meeting held solely in executive session.

6 Section 4920 broadened the scope of that rule, so that it applies to all types of
7 board meetings.¹⁴

8 That broadened application could have unintended effects. If an association’s
9 governing documents were drafted to specify a longer period of notice for “board
10 meetings” generally (without drawing a distinction between regular board
11 meetings, emergency meetings, and meetings held solely in executive session),
12 Section 4920 would apply that longer notice requirement to all meeting types. In
13 many cases, that result would not have been intended and could be problematic
14 (especially with regard to emergency meetings, which typically must be held
15 without delay).

16 To avoid that unintended result, the Commission recommends revising Section
17 4920 to state that a governing document provision extending the meeting notice
18 period does not apply to an emergency meeting or a meeting held solely in
19 executive session unless it expressly states that it applies to those types of
20 meetings. That would preserve the option of stating longer notice periods for
21 special meetings, without the risk of unintended consequences when the provision
22 is applied to governing documents that are drafted in broad terms.

23 **Cross-Reference Correction**

24 The proposed law would also correct an erroneous cross-reference.¹⁵

12. Civ. Code § 4920(b)(2).

13. Civ. Code § 4920(b)(1).

14. The provision was also broadened to apply to all types of governing documents, not just an association’s bylaws.

15. See proposed amendment to Civ. Code § 4530 *infra*.

PROPOSED LEGISLATION

1 **Civ. Code § 4070 (amended). Approved by majority of quorum of members**

SEC. _____. Section 4070 of the Civil Code is amended to read:

2 4070. If a provision of this act requires that an action be approved by a majority
3 of a quorum of the members, the action shall be approved or ratified by an
4 affirmative vote of a majority of the votes represented and voting ~~at a duly held~~
5 ~~meeting at~~ in a duly held election in which a quorum is present represented, which
6 affirmative votes also constitute a majority of the required quorum.

7 **Comment.** Section 4070 is amended to make clear that it applies to any lawfully conducted
8 member election, whether conducted at a meeting, by mailed ballot pursuant to Sections 5100-
9 5145, or by any other lawful means.

10 **Civ. Code § 4205 (amended). Document authority**

SEC. _____. Section 4205 of the Civil Code is amended to read:

11 4205. (a) To the extent of any ~~inconsistency conflict~~ between the governing
12 documents and the law, the law ~~control~~ shall prevail.

13 (b) To the extent of any ~~inconsistency conflict~~ between the articles of
14 incorporation and the declaration, the declaration ~~control~~ shall prevail.

15 (c) To the extent of any ~~inconsistency conflict~~ between the bylaws and the
16 articles of incorporation or declaration, the articles of incorporation or declaration
17 ~~control~~ shall prevail.

18 (d) To the extent of any ~~inconsistency conflict~~ between the operating rules and
19 the bylaws, articles of incorporation, or declaration, the bylaws, articles of
20 incorporation, or declaration ~~control~~ shall prevail.

21 **Comment.** Section 4205 is amended to clarify its meaning. The section is intended to provide
22 guidance on how to resolve a conflict between the specified authorities. It is not intended to state
23 a rule for determining when such a conflict exists.

24 The amendment would conform the terminology used in Section 4205 to that used in numerous
25 other statutory provisions that establish a rule of supremacy between authority without
26 exhaustively specifying the circumstances in which the rule is to be applied. See, e.g., Civ. Code
27 §§ 799.10, 2924h, 5100(e); Educ. Code §§ 24953(h), 69522; Fish & Game Code § 7090(h); Food
28 & Agric. Code § 13169; Health & Safety Code §§ 1568.065, 1787; Ins. Code § 11580.2; Pub.
29 Res. Code §§ 2770.6, 2772.5, 71530; Pub. Util. Code § 5142; Veh. Code § 15200.

30 **Civ. Code § 4350 (amended). Requirements for validity and enforceability**

SEC. _____. Section 4350 of the Civil Code is amended to read:

31 4350. An operating rule is valid and enforceable only if all of the following
32 requirements are satisfied:

33 (a) The rule is in writing.

34 (b) The rule is within the authority of the board conferred by law or by the
35 declaration, articles of incorporation or association, or bylaws of the association.

1 (c) The rule is not ~~inconsistent~~ in conflict with governing law and the
2 declaration, articles of incorporation or association, ~~and~~ or bylaws of the
3 association.

4 (d) The rule is adopted, amended, or repealed in good faith and in substantial
5 compliance with the requirements of this article.

6 (e) The rule is reasonable.

7 **Comment.** Section 4350 is amended to conform the terminology used in subdivision (c) to that
8 used in Section 4205.

9 **Civ. Code § 4530 (amended). Information to be provided by association**

10 SEC. _____. Section 4530 of the Civil Code is amended to read:

11 4530. (a) Upon written request, the association shall, within 10 days of the
12 mailing or delivery of the request, provide the owner of a separate interest, or any
13 other recipient authorized by the owner, with a copy of the requested documents
14 specified in Section 4525.

15 (b)(1) Upon receipt of a written request, the association shall provide, on the
16 form described in Section 4528, a written or electronic estimate of the fees that
17 will be assessed for providing the requested documents. The documents required
18 to be made available pursuant to this section may be maintained in electronic
19 form, and may be posted on the association's Internet Web site. Requesting parties
20 shall have the option of receiving the documents by electronic transmission if the
21 association maintains the documents in electronic form. The association may
22 collect a reasonable fee based upon the association's actual cost for the
23 procurement, preparation, reproduction, and delivery of the documents requested
24 pursuant to the provisions of this section.

25 (2) No additional fees may be charged by the association for the electronic
26 delivery of the documents requested.

27 (3) Fees for any documents required by this section shall be distinguished from
28 other fees, fines, or assessments billed as part of the transfer or sales transaction.
29 Delivery of the documents required by this section shall not be withheld for any
30 reason nor subject to any condition except the payment of the fee allowed pursuant
31 to paragraph (1).

32 (4) An association may contract with any person or entity to facilitate
33 compliance with the requirements of this ~~subdivision~~ section on behalf of the
34 association.

35 (5) The association shall also provide a recipient authorized by the owner of a
36 separate interest with a copy of the completed form specified in Section 4528 at
37 the time the required documents are delivered.

38 **Comment.** Paragraph (4) of subdivision (b) of Section 4530 is amended to correct an
39 erroneous cross-reference.

40 **Civ. Code § 4920 (amended). Notice of board meeting**

41 SEC. _____. Section 4910 of the Civil Code is amended to read:

1 4920. (a) Except as provided in subdivision (b), the association shall give notice
2 of the time and place of a board meeting at least four days before the meeting.

3 (b) (1) If a board meeting is an emergency meeting held pursuant to Section
4 4923, the association is not required to give notice of the time and place of the
5 meeting.

6 (2) If a nonemergency board meeting is held solely in executive session, the
7 association shall give notice of the time and place of the meeting at least two days
8 prior to the meeting.

9 (3) If the association's governing documents require a longer period of notice
10 than is required by this section, the association shall comply with the period stated
11 in its governing documents. For the purposes of this paragraph, a governing
12 document provision does not apply to notice of an emergency meeting or a
13 meeting held solely in executive session unless it specifically states that it applies
14 to those types of meetings.

15 (c) Notice of a board meeting shall be given by general delivery pursuant to
16 Section 4045.

17 (d) Notice of a board meeting shall contain the agenda for the meeting.

18 **Comment.** Section 4920(b)(3) is amended to provide that a governing document addressing
19 the period of notice for a board meeting does not affect an emergency meeting or a meeting
20 conducted solely in executive session, unless it expressly states such application. That preserves
21 part of the effect of the first sentence of former Section 1363.05(f).