

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

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

April 2013

(with revisions approved in Aug. 2013)

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
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NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Statutory Clarification and Simplification of CID Law: Further Clean-up Legislation*, 43 Cal. L. Revision Comm'n Reports 23 (2013).

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CALIFORNIA LAW REVISION COMMISSION

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August 23, 2013

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

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.

Respectfully submitted,

Xochitl Carrion
Chairperson

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

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

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

Approval by a Majority of a Quorum

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

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. See Civ. Code § 5115(b) (in election conducted by mailed ballot, “each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.”)

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

Document Authority

Civil Code Section 4205 provides guidance on two fundamental aspects of CID governance that are not clearly addressed in the Davis-Stirling Act: (1) the general supremacy of the law over a CID's governing documents, and (2) the relative authority of different types of governing documents.”⁸

The section reads as follows:

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

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

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

(d) To the extent of any inconsistency between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration control.⁹

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

To avoid any misunderstanding of the limited purpose and effect of Section 4205, the Commission recommends that the language in the section be revised to more closely parallel language that is routinely used in comparable contexts (where a rule of supremacy

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

9. 2012 Cal. Stat. ch. 180, § 2.

is established without exhaustive specificity as to the circumstances in which the rule must be applied).¹⁰

The Commission also recommends a parallel terminological revision to Civil Code Section 4350, which addresses the validity and enforceability of a specific type of governing document, a CID's operating rules.¹¹

Meeting Notice

Civil Code Section 4920 restates a provision (Civil Code Section 1363.05(f)) that governs the timing of board meeting notice. Both provisions specify the minimum period of notice for board meetings generally (four days),¹² for meetings held solely in executive session (two days),¹³ and for emergency meetings (no advance notice is required).¹⁴

10. 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.").

11. 2012 Cal. Stat. ch. 180, § 2.

12. Civ. Code § 4920(a).

13. Civ. Code § 4920(b)(2).

14. Civ. Code § 4920(b)(1).

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

Section 4920 broadened the scope of that rule, so that it applies to all types of board meetings.¹⁵

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

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

Cross-Reference Correction

The proposed law would also correct an erroneous cross-reference.¹⁶

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

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

PROPOSED LEGISLATION

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

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

4070. If a provision of this act 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 a majority of the votes represented and voting ~~at a duly held meeting at in a duly held election in~~ which a quorum is ~~present~~ represented, which affirmative votes also constitute a majority of the required quorum.

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

Civ. Code § 4205 (amended). Document authority

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

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

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

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

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

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

The amendment would conform the terminology used in Section 4205 to that used in numerous other statutory provisions that establish a rule of supremacy between authority without exhaustively specifying the circumstances in which the rule is to be applied. 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.

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

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

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

(a) The rule is in writing.

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

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

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

(e) The rule is reasonable.

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

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

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

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

(b)(1) Upon receipt of a written request, the association shall provide, on the form described in Section 4528, a written or electronic estimate of the fees that will be assessed for providing the requested documents. The documents required to be made available pursuant to this section may be maintained in electronic form, and may be posted on the association's Internet Web site.

Requesting parties shall have the option of receiving the documents by electronic transmission if the association maintains the documents in electronic form. The association may collect a reasonable fee based upon the association's actual cost for the procurement, preparation, reproduction, and delivery of the documents requested pursuant to the provisions of this section.

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

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

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

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

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

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

SEC. ____ . Section 4920 of the Civil Code is amended to read:

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

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

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

(3) If the association's governing documents require a longer period of notice than is required by this section, the association

shall comply with the period stated in its governing documents. For the purposes of this paragraph, a governing document provision does not apply to notice of an emergency meeting or a meeting held solely in executive session unless it specifically states that it applies to those types of meetings.

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

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

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