

Second Supplement to Memorandum 2007-47

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

This supplement continues the discussion of the comments received in response to the Commission’s tentative recommendation on *Statutory Clarification and Simplification of CID Law* (June 2007).

Two additional comment letters are attached in the Exhibit as follows:

- |  |                   |
|--|-------------------|
|  | <i>Exhibit p.</i> |
| • E. Howard Green, Santa Barbara (9/21/07) .....   | 1                 |
| • Maurice H. Oppenheim, Roseville (10/18/07) ..... | 4                 |

**General Support**

Both Mr. Green and Mr. Oppenheim are generally supportive of the proposed law. See Exhibit pp. 1, 4. In addition to stating general support, Mr. Green and Mr. Oppenheim offer comments on specific parts of the proposed law.

Some of those specific comments suggest changes to existing law. Those suggestions will be noted for possible future study, but are not discussed in this memorandum.

**List of Suggested Changes**

Howard Green suggests that the narrative “preliminary part” of the proposed law should conclude with a list of the suggestions that the Commission has received for changes to existing law. See Exhibit p. 1.

**The staff recommends against doing so.** It is likely that there will not be sufficient time to compile such a list before the December meeting. Nor is it clear that it would be useful to include such a list in the final recommendation. The staff intends to prepare a comprehensive list of CID suggestions for Commission consideration in early 2008. That informal treatment seems sufficient for the purpose of tracking suggestions and deciding where to next allocate the Commission’s resources on this study. Making the list part of a formal recommendation would not contribute to that decision making process.

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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](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

### **Board Action Without a Meeting**

Howard Brown opposes proposed Civil Code Section 4545, which would continue a Corporations Code provision that allows a board to act without a meeting (with the unanimous written assent of the board members). He feels that provision is contrary to the spirit of the open meeting requirements of the Davis-Stirling Act. See Exhibit p. 2.

### **Committee Meetings**

Proposed Civil Code Section 4560 provides that the board meeting provisions apply to a “board meeting or a meeting of a committee that exercises a power of the board.” Howard Green would like the scope of the meeting requirements to be expanded to include a meeting of a committee that does not exercise board power, but instead offers recommendations to the board. See Exhibit p. 2.

**The staff recommends against that change.** It makes sense that a committee that exercises board power should be subject to the same meeting requirements as the board itself. However, those requirements are not cost-free. They impose significant notice-related costs on the association and also impose scheduling and meeting space constraints. To extend those requirements to an advisory committee would add costs and procedural inflexibility where it isn’t clear that the additional burden would be justified. Such a change should not be made without a better understanding of the possible range of functions performed by advisory committees. The suggestion should be noted for possible future study.

### **Other Comments**

Howard Green also offers comments on provisions that are not discussed in the First Supplement to Memorandum 2007-47. See Exhibit pp. 2-3. The staff intends to discuss those provisions in a future memorandum, and will include discussion of Mr. Green’s comments at that time.

Respectfully submitted,

Brian Hebert  
Executive Secretary

E. Howard Green  
4400 Shadow Hills  
Santa Barbara  
CA 93130-3903

September 21, 2007

California Law Revision Commission  
4000 Middlefield Road  
Palo Alto CA 94303-4739

Reference: Clarification of the CID Statutes

I am now enmeshed in my third California Condo experience and am pleased that your organization has undertaken to consolidate and simplify the current laws applicable to Common Interest Developments.

The work shows considerable quality, and I support the general directions and thrust. However, a single overarching concern is that the work scope necessarily does not allow reaching into a number of complex issues during these efforts.

A number of times in the preliminary working papers one has seen a staff comment that a recommendation appeared meritorious, but would require considerable staff, industry, and public dialog to shape into appropriate statute. This occurred in my own recommendations regarding certain matters of Governance.

Academic and professional reports often are judged by the quality of a penultimate section with recommendations for further research; this could be particularly true for your report to the Legislature (and the People) in the area of Common Interest Developments.

Please don't miss this opportunity to identify what you didn't address – the work so far is fine, but more remains to be accomplished.

Attached are a few points (within the scope of the current work effort) which may be suitable for inclusion in the current or clean-up round of the CID rewrite.

Please continue the Good Work.

Sincerely,

E. Howard Green

Attachment

## Areas for Potential Clarification

section = S

- S 4150      **Governing Documents refer to Declarations which are done by the Builder and Articles (of Incorporation) which are filed with the Secretary of State (I believe); Lay people may expect to see some reference to “CC&Rs”**
- S 4545      **Note a shift to make CID Governance conform more to Public bodies (as it should); NO Public Body provides for decisions w/o meetings (except those delegated to Staff); This is old ‘corporate’, not from Sterling Davis; in my own association has caused considerable mischief by inappropriate usage; if continued should be strongly bounded as to permitted actions (no filling of vacancies, no approval of any financial matters, no changes to rules, regulations, policies, practices, etc.) This strongly flies in the face of 2007 legislative action on CID meetings following agenda topics only.**
- S 4560      **Scope of Article; provides for committees only when exercising the powers of the BoD; too narrow a definition because it excludes committees which recommend; all committee work should be open; Posting of meeting notices and agendas should be same for committees as full BoD; exemption to not require minutes;**
- New s4561      **Written materials, whether in final or draft form, prepared for, distributed at, or directly discussed by any Association Staff, Committee Representative, or Board Officer at any Open Meeting shall be delivered to Owners (who have filed a written request for such with the Association or BoD as a Standing Request) in a manner that is at least as timely as such materials may be distributed to Board members, and to all other Owners attending a meeting and requesting copies.**
- S 4820      **Delivery of Reports by Notice (if so elected by the Association) must provide a Substantial Summary of the Report with the Notice; Notice process is to provide for a ‘Standing Request’ by any Owner so that all future similar reports are to be Delivered, at the same time, or before, the Notice is supplied to others; add penalties for failure to perform.**
- S 4830      **Failure for the Association to provide statutorily mandated reports in a timely manner; statute should include modest to severe fines for repeated or continuing offenses against the responsible officers; Officer may seek forgiveness only by personal suit in Small Claims for excusable neglect.**
- S 5125,-30      **These sections really belong “above” s.5000 as they define the three classes of litigation; should be augmented (if moved) with that special non-class defined now in Article 1 (which I’d use the Military phrase Non-judicial punishment).**

**S 5050(a)** Do ANY of the three classes (above) NOT meet the definition of what is covered by s.5050(a) ?? why do we care about “Part 3” anymore? Was not the current effort purpose to bring all that stuff into this rewrite?

This should be crystal clear to lay people !

**S 5055** Believe Scope should be for the Chapter, not just the Article.

**S 5070** A full detailed rules and procedures of the process should be documented in advance; this section does not seem to require such, only “notice” or description.

**S 5075** Non joined Owners should be able to petition the Mediator (or Court) for such standing as they may be appropriate, including third party Intervener, when Litigation or ADR is between another Owner and the Association.

**S 5080** seems like ADR doesn’t apply if over \$5000, or under \$7500 Small Claims

**S 5090(c)** What rules apply for arbitration?

**New S 5087** The party on whom a request for resolution is served may instead of either accepting the request (per s.5090) or rejecting the request (per s.5085(c)), offer to start or resume internal dispute resolution process defined in s.5050-5065.

In our Association, the Board did not think they could reopen discussions, but HAD to fight, losing because they did not have a valid case, spend money on ineffective defense, and cost us \$40,000 at least.

**S 5090,5105** Costs of Litigation (whether Court or Mediated) should not be borne by an Owner when they are the Prevailing Party -- to include costs of counsel and mediators; this includes any assessments covering costs when the association is the Losing Party and attempts to recover from Owners;

**New- S 5120** Aggravated Owners may sue any BoD member(s) (as an individual) and the BoD’s Attorney for engaging in spiteful or malicious prosecution and/or frivolous or ineffective defense in any Litigation.

OCT 18 2007

Maurice H. Oppenheim  
7689 Rosestone Lane Roseville, CA 95747-8361  
E-mail: icon6@accessbee.com Telephone: (916) 773-5409 **File:** \_\_\_\_\_

**SUBJECT: Support for California Law Revision Commission Tentative Recommendation Dated June, 2007, Section 4670 And Opposition to the Sun City Roseville Requested Amendment to Paragraph (c) Requiring The Association to Sponsor All Election Events.**

The California Law Revision Commission (here after CLRC) tentative recommendation Section 4670 follows its predecessor Civil Code Section 1363.03, subdivision (a) by requiring an association with common area meeting space to provide such space on an equal basis to each candidate and advocate for events that provide campaign related information.

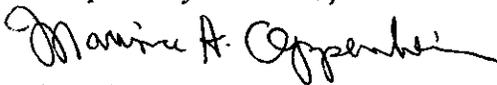
The suggested amendment by Sun City Roseville would restore total event control to the Association by making the Association a sponsor of campaign events. In the past the Association has been the sponsor of only two campaign related events on Association Property for each election on dates and times of its own choosing. In the election held during June, 2007, Association Rules did not permit a candidate to request the of a meeting room.

The Association argues that allowing more events would cause it to lose revenue received as rental from outside users of Association facilities. This can be prevented. There are six meeting rooms that can be used, an outside meeting area and a ballroom. Some accommodations can be enlarged. There is less room use early in the morning and after dinner at night. During any seven day week, there are vacant rooms. Resident clubs are the heaviest users of the rooms. If necessary these clubs could be asked to postpone a meeting if the room were needed for an election event.

The Association implies nine candidates will be involved in every election. The past election was unusual. It involved the personality of Board members and some actions taken by the Board. Otherwise the number has been consistently less. For the seven member board, four are elected one year (the past election) and three the next year.

Candidates and advocates are better managers of their time and events than insiders who may have a conflict of interest. Presumably, this was a factor of importance considered by the California Legislature in adopting Civil Code Section 1363.03.

Respectfully submitted,



Maurice H. Oppenheim

Law Revision Commission  
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OCT 18 2007

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



ZURICH

I just learned about  
the amendments proposed  
to the Commission's Tentative  
Recommendation. I  
support the Commission's  
position. M. H. O.

Insurance solutions for small businesses