Study H-855 May 29, 2008

Memorandum 2008-28

Common Interest Development Law: Priorities

The Commission has broad authority to study revision of statutory law relating to common interest developments (CIDs), specifically:

> Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to formation and management of these developments and transaction of real property interests located within them, and to determine to what extent they should be subject to regulation.

2007 Cal. Stat. res. ch. 100.

In December 2007, the Commission completed its work on the proposed recodification of existing CID statutory law. See *Statutory Clarification and Simplification of CID Law* (December 2007). As a result, the Commission currently has no active CID study topic. If the Commission wishes to continue studying CID law generally, it needs to decide how to proceed.

This memorandum discusses general alternatives and presents a catalog of the CID reform suggestions that the Commission has received to date. The catalog is intended primarily as a reference for the Commission. Inclusion of a suggestion is not intended as a recommendation either for or against study of the issue presented, as most listed items have not yet been analyzed by the staff.

Two recently received letters on CID reform are attached as an Exhibit:

GENERAL APPROACHES TO CONTINUED STUDY

The staff sees three general approaches that the Commission could follow in continuing this study: (1) take a temporary hiatus while finishing legislative work on the pending CID recodification bill, (2) conduct a comprehensive study

of all issues within a defined subject area (e.g., review all accounting procedures), or (3) study one or more specific issues.

These possibilities are discussed below.

Hiatus

The Commission's latest recommendation in this study, *Statutory Clarification and Simplification of CID Law* (December 2007), was introduced as AB 1921 (Saldaña) on February 8, 2008. The bill has since passed out of the Assembly, and is presently pending in the Senate.

AB 1921 has consumed a considerable amount of staff resources, and will likely continue to do so throughout this year and possibly into the next (a cleanup and coordination bill may be needed in 2009). This is taxing the Commission's resources and is also drawing heavily on the resources of the various CID interest groups that normally participate in our deliberative process.

It might make sense to take a break from addressing any new CID issues, until the pending matters are fully resolved. This would relieve the pressure on everyone's resources. It would also simplify the work on new CID topics, as we would know whether we should use existing law or the recodified law as the starting point in our analysis and drafting.

The main disadvantage to this approach is delay.

Comprehensive Study of Broad Subject Area

Alternatively, the Commission could select a broad subject area for comprehensive study. For example, all issues relating to CID accounting procedures could be thoroughly examined, and comprehensively reformed.

The main advantage of a comprehensive approach is that it would allow the Commission to consider all related issues at once. This would make it easier to identify and balance policy trade-offs, across an entire subject area. It would also reduce the risk of inadvertent change that might result if only one piece of a complex whole is studied. A reform that appears sensible in a narrow area might cause problems when placed into a larger context.

On the down side, a broad recommendation may be harder to enact, because of the increased likelihood that it will contain controversial and polarizing elements. If the recommendation is not enacted, the resource cost will have been greater than if a smaller proposal had failed.

Possible candidates for comprehensive study are discussed briefly below:

Scope of Application of the Davis-Stirling Act

There are a number of issues involving the appropriate scope of application of the Davis-Stirling Common Interest Development Act ("Davis-Stirling Act"). For example, there are questions regarding the extent to which the act should apply to the following types of communities:

- A nonresidential development.
- A stock cooperative without a recorded declaration.
- A development without common area, in which there is a mandatory association with the power to enforce assessments.
- A resident-owned mobilehome park.
- An association organized as a for-profit corporation.

This area needs attention. The Commission has received a number of complaints over the years about developments that are *almost* CIDs, and that would benefit from the good governance provisions of the Davis-Stirling Act. We have also received comments suggesting that commercial CIDs are qualitatively different from residential CIDs and should not be subject to the micro-management of the Davis-Stirling Act.

There would probably be some political opposition to any expansion of the Davis-Stirling Act to developments that are not currently covered by the act. This would include general opposition from those who oppose the Davis-Stirling Act as a whole, and specific opposition from developers who specifically design developments to avoid the application of the act. There would probably also be concern about retroactive application of any change in the scope of the act.

Special Treatment of Small Associations

Half of all associations in California have 25 units or fewer. The governance procedures mandated in the Davis-Stirling Act do not seem to have been drafted with such small associations in mind. Many of those provisions work well in a 1,000 unit community, but are too costly and complicated for a community of 25 or fewer homeowners. See, e.g., Exhibit p. 1, in which Nancy Lynch describes the difficulty her 7 unit community has in trying to comply with the requirements of the Davis-Stirling Act.

The staff believes that there would be significant benefit in developing a "Davis-Stirling Light," to provide streamlined governance procedures for small associations. Such a reform could enhance compliance with the law, at a more reasonable cost to small associations, without undermining good governance.

If the Commission is interested in pursuing this option, the staff would first meet with legislative staff who have been active in CID reform in recent years, to see how much acceptance there would be for a project of this sort.

Reserve Funding

Many CIDs do not have adequate funds set aside for future repairs and replacement of common physical components (e.g., common roof, elevator, plumbing, electrical, etc.). When components fail, the current members are often left facing a large special assessment to pay for an entirely predictable cost, which could have been identified years in advance and funded through small assessments over a long period of time.

Underfunded reserves are a sort of negative equity, which may not be apparent to a prospective purchaser. This can lead to an unfair distribution of the cost of repair and replacement. Members who sell before those costs come due can avoid paying their share; new purchasers may pay too large a share.

The Legislature has been unwilling to mandate full funding of reserves. Politically, that is understandable. The cost of funding reserves will be immediately painful for some CID homeowners, many of whom are on a fixed retirement income.

Instead, the law requires that an association prepare reserve studies and plans and distribute them to the membership. The theory seems to be that if you force homeowners to *understand* the problem, they will voluntarily make the hard choices necessary to address it.

Many see the existing reserve funding requirements as overly complex, especially for small and unsophisticated associations. It might be possible to replace the current provisions with a much simpler system that serves the same end. However, considerable reform efforts have been invested in the current system and there might be significant resistance to any wholesale change.

Other Financial Issues

Don Haney, a CPA who specializes in CID accounting, has made a number of related proposals for comprehensive improvement of the financial provisions of the Davis-Stirling Act. This would include examination of the current assessment collection provisions, greater transparency and consistency in financial reporting, and clearly ascertainable standards for accounting generally. See Exhibit pp. 2-17.

The staff believes that there is a lot of good that can be done on this general topic. However, some financial provisions are probably too politically sensitive to be addressed at this time.

Homeowner Rights

The Commission has long been urged to study whether certain basic rights should be guaranteed to CID homeowners. For example, should the Davis-Stirling Act prohibit an association from regulating member speech, association, and religious observance? What if an association bans solicitation and a member wants to go door to door to discuss a political issue? To proselytize? To sell magazines?

For two reasons, the staff is leery of attempting to distill all of constitutional jurisprudence down into a handful of provisions drafted specifically for homeowner associations:

First, it is not clear that there is a need to do so. Many fundamental rights are already protected by the California Constitution. Where specific concerns about member rights have arisen, those issues have been addressed narrowly (e.g., existing law guarantees the right to display noncommercial signs, with restrictions on size and form).

Second, it seems likely that any codification of rights for homeowner association members will raise more questions than it answers, by creating new language that needs to be interpreted and applied by the courts.

Elections, Meeting Procedures, Record Inspection

Each of these areas of CID law have two characteristics in common: (1) They would undoubtedly benefit from thorough and careful study. (2) They are the product of recent and sometimes controversial reforms. There would be strong pressure to make significant changes in these areas, but also strong resistance.

While it seems likely that the Commission could identify a number of improvements that could be made on these topics, it also seems likely that the work would require a large commitment of resources and ultimately might be unproductive.

Specific Topics

Rather than studying a broad area of law, the Commission could target its resources on narrow topics that could be addressed relatively easily. For

example, the following topics are important and could yield enactable reforms, with a relatively modest investment of resources:

- Extend the application of the Davis-Stirling Act to a development that lacks "common area," but has a mandatory association that can compel the payment of assessments.
- Exempt entirely nonresidential CIDs from some governance provisions of the Davis-Stirling Act.
- Clarify the application of the Davis-Stirling Act to a stock cooperative that lacks a recorded declaration.
- Clarify the use of "accrual" accounting in CIDs.
- Exempt small associations from one aspect of CID governance law (perhaps the election procedure) to test the waters for broader simplification of the law governing small associations.

The Commission could also choose any other matter that is identified in the attached catalog.

Recommendation

The staff has no strong recommendation on which option the Commission should choose. All three of the general approaches have merit. However, the staff would recommend that the Commission be particularly focused on pragmatic concerns in making this decision. Our resources are currently spread very thin, and CID law has proven to be a very difficult field in which to accomplish reform. Even very modest changes are often met with stiff resistance.

Respectfully submitted,

Brian Hebert
Executive Secretary

Steve Cohen
Staff Counsel

EMAIL FROM NANCY LYNCH (MAY 16, 2008)

The burdens that the legislature has placed on our small 7 unit homeowner's association are overwhelming. Our self managed homeowner's association complies as best we can, but we almost need a full time lawyer and accountant with the continual changes in the Davis-Stirling Act. There needs to be relief given to smaller homeowner's associations. We are already regulated by the California Corporations Code. I am dismayed that the government places so little faith in the ability of 7 homeowners to manage their affairs. There is too much government intervention and our members feel it is personally interfering with their lives. We consider this a very serious issue and I hope someone addresses our concerns. We are just trying to have our lawns mowed and pay a few other bills.

The required disclosures for the reserves are far too cumbersome for most small homeowner's associations. Fortunately, I am a CPA with a calculator and can meet that requirement as well as the additional expanded disclosure requirements. There are other small associations that will require outside assistance to meet the requirements. I am sure it is not the intention of the legislature to unfairly burden its citizens.

Our bylaws indicate if 2 board members are together, there apparently is a board meeting. If I have a board member over for some coffee, do I need to post the notice 4 days in advance. If any other homeowner decides to join our "meeting", do I need to give them coffee also? I am well aware of the option to amend our bylaws. However, we have 2 board members in one household so I won't be able to invite any fellow board members for coffee or dinner. I envision the day when no one will want to serve on our board because of the micromanagement of the legislature.

I would like to see legislation proposed exempting smaller homeowner's associations from what I consider to be an unfair burden. The law should be reasonable given the size of a particular association. If it is not reasonable, I don't believe you can expect compliance.

I believe that smaller homeowner's associations do not have the necessary funds to seek legal advice and amend their governing documents every time there is a change in the law. Obviously in larger associations, that cost is shared among many more members and isn't as burdensome.

While I have no objection to SB1921, I would like someone to address the concerns of smaller homeowner's associations.

Nancy Lynch
255 View Street
Mountain View, CA 94041
650-961-2937

EMAIL FROM DON HANEY, HANEY INC. (MAY 26, 2008)

Brian,

It was a pleasure meeting you and listening to your comments at the ECHO session last week. As you have found out, there was not much interest in your work until it showed up as a real legislative document.

I thank you and the Commission for your work up to now. I know that was and is not easy dealing with some of the "special interests" associated with this body of law. The reorganization and codification is a great start. However, as you stated, there are some significant challenges (you used some other words, but this is a public document) with the existing code and the CLRC is debating with itself about whether or not it should embark on a "clean up" mission of CID law. I hope that it will accept this challenge. My truth is that one in four Californians live in a CID. The state has an incredible public policy interest that these entities' operate within an appropriate and respectful governance environment and on a sound financial basis.

At that meeting you asked me to consider what should be the Commission's priorities as it goes forward with its attempt to improve this body of law. I will restrict my suggestions to the finance issues. All the other areas (meetings, voting, etc.) are important, but if the finances and funding are not handled the nuances of the other governance processes do not matter.

So for whatever it is worth here are my top issues for the Commission to handle:

Assessment collection – the clear number one immediate public policy crisis. The bad debt losses that some California CIDs have incurred and will incur will bankrupt them as the rest of the owners can not cover the losses. In Florida some communities have assessment increases of over 25% to handle this problem. I have attached a piece I wrote on this issue for your consideration as well as suggested minor amendments to the Small Claims Act. At least 22 other states including Nevada, Oregon and Washington have adopted the "Priority Lien" provision of the Uniform Common Interest Development Act. Due to legislative pressure by the lenders, California has not. Moreover, the lack of equity and falling market values have combined to invalidate the lien and foreclosure "hammer" to collect unpaid assessments. CIDs need simple and inexpensive ways to get and collect money judgments. I do not want to be overly dramatic here, but this problem is huge. I can get supporting evidential matter if you need it, but the problem should be intuitively obvious.

Major Repair and Replacement recognition and funding – a longer term financial disaster that will happen. Despite the law's last 25 years of attempting to identify and disclose this problem to CID stakeholders, they are clueless. Moreover, in many cases Boards have passively and actively acted to minimize the availability of this information. We have lost clients because the balance sheets we produce clearly identify the "accrued obligation" and the related available funding. When the big deficit in Equity shows up there and not some note deep in the disclosure documents, the impact is significant to

lenders and others. Some boards simply do not want such information that visible. As I have said in the past, the funding deficit in the state can be measured in the billions. These chickens will indeed come home to roost.

Accrual accounting – I have attached my thoughts on this issue.

Consequences – A delicate matter. Unfortunately, in our culture if we do not have consequences to our actions, the "so what" mentality prevails. This body of law lacks consequences for failure to comply. The lonely voice in the community complaining about governance and performance abuses by the CID Board may be crazy or not. Apathy by the owners about such matters is rampant. CID owners must have some low cost way to compel the Board to comply with the law and resolve disputes without being so onerous that qualified individuals will not serve on these boards. A clear material (fat words that will cause trouble) failure to comply should result in at least removal from the board and trigger new elections. This issue lies more in legal land than accounting land, but I wanted to get it out there.

Report distribution – If the goal is "transparency", "informed consent", and "ascertainable standards", the budget, financial statements, disclosures, etc. should be mandatory no cost distributions to all owners. Unless I misunderstood the rewrite they have become "requested" items. To not distribute these documents to all owners creates a number of "you did not tell me the gun was loaded" dispute situations.

So these are my thoughts for right now. I wanted to get them to you before the June 5th meeting.

Don

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The Case for Accrual Accounting

For California Homeowners Associations

December 21, 2007

By: Donald W. Haney, CPA

Issue:

Recent amendments to the Davis-Stirling Common Interest Development Act (the Act)[1] require California Homeowners Associations (as defined in the Act) (HOAs-Associations) to maintain their operating books and records using an "accrual or modified accrual" accounting basis. The law does not further define these terms or point to professional standards that do. The accounting profession has no "modified accrual" standard. Moreover, there are no legal consequences for Associations that fail to comply or some process that can be deployed by aggrieved stakeholders to force compliance.

Since there are no definitions for the terms, confusion exists among interested parties as to how they can comply with this new law. Some parties are taking the position that since there are no definitions and no consequences for failure to comply, any accounting process or standard is "good enough." This response defeats the presumed legislative intent.

Presumed Legislative Intent:

The apparent legislative intent for establishing accounting standards for California HOAs was to respond to HOA members, buyers and other stakeholders expressed concerns about the accounting information they received from Associations. These complaining stakeholders asserted in some form or another that the financial information that they received was not sufficient for them to make an "informed consent[2]" judgment about the Association's compliance with the governing documents and suffered measurable damages as a result. Presumably, this law's **primary** intent was to provide an "ascertainable standard[3]" to which Associations could be held legally accountable.

Legislative History:

The terms "accrual or modified accrual" were introduced in 2006 as replacements for GAAP[4] which was the previous term of art originally adopted in 2005. While the term "GAAP" is an ascertainable standard established by professional accounting standard setting bodies, there was concern that the GAAP or the accrual standard alone was too onerous for HOAs' routine accounting processes and reports especially for smaller communities. However, the remedy in this case (modified accrual) lacks such definition that it is worse than the presumed problem. Moreover, this writer found at least three states (Washington, Virginia and Texas) that require associations to maintain their books and records according to GAAP. Upon further review there may be other states that require the same or the functional equivalent of the same standard. It would be useful to research what the effect of this standard has been in the GAAP adopting states. One Washington based CPA asserted that the law is largely ignored in that state. However, the question remains – is it a useful standard for settling disputes?

By: Donald W. Haney, CPA

Position:

There are good, better and best legislative responses to this situation:

- **Good** –
  - Delete the term "modified" from the law and point to the professional accounting standard setting bodies for the "accrual" standard.
  - Make the standard optional for associations with less than 50 units provided that information regarding "material"[5] unreported assets, liabilities, revenues and expenses is readily available and disclosed to members, buyers, and other appropriate stakeholders.
  - Allow at least one year, but not more than two for associations to comply with this new requirement.
- **Better** – Include "**Good**" and establish some process for aggrieved stakeholders to force "specific performance[6]" and receive "liquidated damages[7]" for "material" departures from the accrual basis standard.
- **Best** – Include "**Better**" and declare that associations' obligation to repair and replace major common area components that are probable, reasonably estimable[8], and disclosed on the obligatory[9] major repair and replacement study satisfy the accounting standards that require such obligations to be accrued on the association's balance sheet using defined estimating techniques[10].

Proposed language for these changes will be developed upon request.

Rational:

The rational for "**good**" should be clear. It eliminates the "modified" term for which there is no ascertainable standard, gets the legislature, industry trade associations, and individual accountants out of the accounting standard setting business (a business for which they are ill suited), and provides an option for smaller communities that still provides relevant information to stakeholders.

The rational for "**better**" should also be clear. It will encourage compliance and provide consequences for "material" departures from the standard. Moreover, the enforcement mechanism is driven by the stakeholders who are affected by the failure to comply. There might be some concern over the soft word "material." However, it is not any different than other legal terms of art – "prudent business judgment, reasonable man, etc." The intent is to minimize egregious omissions of significant assets, liabilities, revenues and expenses.

By: Donald W. Haney, CPA

The rational for "**best**" requires a more extended discussion than appropriate in this paper and will be more controversial. However, the chain of logic and related standards are fairly straight forward:

- A number of times the Act refers to associations' duty to periodically repair maintain and replace major common area facilities as "obligations."
- The Act requires associations to prepare detailed studies that identify these components; estimate their current cost to replace; calculate and disclose an annual provision and current obligation; and produce a 30 year cash flow projection. While the art and science associated with this process is a work in progress and needs clear definitions and computational rules, it is moving in the right direction.
- Typical association governing documents specify that the association must repair, maintain and replace major common area facilities at or near the state as received from the developer. Some documents will require that the regular assessments must include a reasonable provision to fund these obligations without the need for special assessments.
- It is well known by HOA industry professionals that there is a vast Major Repair and Replacement funding gap in the state and that this under funding problem is typically not obvious on the financial reports despite all the efforts to mandate complicated and arcane disclosures. If a large deficit shows up in the owners' equity section of the balance sheet, it will be hard to miss even by the most accounting illiterate readers. Moreover, it would be extremely hard for plaintiff's counsel to argue that the funding gap was not clearly disclosed.
- Accounting standards[11] require business entities[12] to record losses and expenses when it is probable that an entity has incurred a loss or expense and the amount is reasonably estimable. These standards do not require that the cure or the exact disbursement has occurred. They only require that the obligation to cure or perform is probable and reasonably estimable. Examples of such items currently required to be accrued on corporate financial statements include the funding of and related obligation for employee pensions; the post retirement health care obligation; the obligation to perform certain clean up activities after the end of an asset's life, the deferred income taxes obligation, etc. In the HOA world two non controversial situations[13] requiring loss accruals are: known construction defect obligations and pest control damages for which the association is obligated to cure[14] and for which reasonable estimates of the cost to cure exist.
- While the accounting standards setting bodies have not issued any specific "on point" publications about this problem, none of the existing HOA published standards preclude it and the author has had such practice sanctioned as GAAP by the AICPA as a result of a grueling and formal challenge process initiated by another CPA.[15]

By: Donald W. Haney, CPA

Discussion:

What is all the controversy about accrual basis anyway? How complicated can this be? These and other protestations abound in this conversation. The protestations against the accrual basis usually come from individuals and groups not familiar with the finance world. They see this requirement as an unnecessary burden and not worth the effort. "Check book" accounting is good enough for these individuals and groups.

For the vast majority of associations in California the directors and their professional advisors focus on the income statement and, except for the cash position, they ignore, do not understand or are unaware of other balance sheet assets and the related third party claims on these assets. The fact is that for many associations the balance sheet issues are significant and growing in sophistication and complexity. Properly disclosing these accounting elements in accordance with ascertainable standards is critical if stakeholders (members, buyers, vendors, lenders, etc.) are to do their due diligence, perform their oversight function and grant their informed consent to the association's leaders' stewardship.

Some of these HOAs are small cities. A few are not much more than duplexes with common area. There are two classic mistakes that can be made here "pounding tacks with sledge hammers" and significant errors of omission and commission that amount to fraud[16].

A partial list of some of the material assets and liabilities omitted and misstated are:

1. Large special assessments with long term payoff terms and assumption on sale conditions;
2. Significant unpaid assessments that will require the other association members to cure with increased monthly assessments;
3. Omission of significant personal property assets that the association has the normal bundle of ownership rights that will require funding plans to maintain and replace;
4. Failure to disclose prepaid expenses which are cash disbursements made in the past that have future benefits thereby reducing the need for future cash outflows;
5. Omission of short and long term investments and marketable securities with complex terms, conditions, and risks that may not be realized or exchanged at par or have significant tax effect on future cash flows;
6. Omission of significant short term amounts due to vendors for services rendered in the past which distorts the income statement and suggests that assessments are good enough when they might in fact be significantly below an appropriate level;

7. Omission of long term debt incurred by the association to perform major repairs and replacements, to cure construction defects or handle other such items. These situations require current and future members to deliver the funds required to service this debt; and most importantly
8. Omission of the Major Repair and Replacement obligation as discussed above. The difference between the amount on hand to service these obligations and the obligation (the funding gap) can be huge[17] and dramatically affect stakeholders' understanding of the financial situation at hand.

A thorough discussion of the economic damages suffered by stakeholders for these errors of omission and commission are reserved for another day. Moreover, the rebuttal to the argument that the accountants will "clean up" the books annually so there is really no harm to maintaining the books and records on a cash basis is also reserved for another day. However, the vast majority of Association directors are not financially literate. Therefore, if management companies or managers only produce cash basis reports during the year and are not financially literate enough to present issues and suggest solutions, directors may not have sufficient information to respond to changed conditions which could create unnecessary and burdensome financial consequences to stakeholders.

Finally, for associations that require annual independent audits by CPAs there is a new auditing standard[18] that requires the audited association's internal accounting staff or outsourced accounting service produce GAAP compliant financial reports without the assistance of the independent CPA performing the audit. The technical standard is that the independent CPA performing the audit can not be part of the client's internal control process. Most associations' internal accounting staff or outsourced accounting service provider are not capable of independently producing GAAP compliant financial reports. This new audit standard will require associations to acquire this capability.

Conclusion

There following conclusions should be compelling and obvious to all:

1. A statewide accounting standard for California homeowners associations would benefit all stakeholders;
2. There is no accounting standard for "modified accrual" and the term should be eliminated from the law;
3. Trade associations, lawyers, individual accountants, and the legislature should not be involved in the accounting standards setting business;
4. The accrual standard as established by the United States standard setting bodies (AICPA; FASB) provides a well considered and vetted ascertainable standard; and

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5. A legislative directive that an Association's obligation to maintain, repair and replace major components that are probable and reasonably estimable as to time and cost satisfies the FASB 5 requirement and shall be recognized on Associations' books and records will vastly improve stakeholders' knowledge and awareness of significant funding gaps. Such awareness should encourage all concerned to respond to the situation and help avoid an "Enron" like meltdown of unit market values.

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End Notes

[1] The Davis-Stirling Act-Civil Code Section 1365.2 (a) (1) (C)

[2] Informed consent is a legal condition whereby a person can be said to have given consent based upon an appreciation and understanding of the facts and implications of an action.

[3] An ascertainable standard is defined as a clearly measurable standard under which the obligated party is legally accountable.

[4] GAAP – Generally Accepted Accounting Principles as established by the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA)

[5] Material - (FASB) Statement of Financial Accounting Concepts No. 2: "…the magnitude of an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement." The definition is a little fuzzy as to precision, but it is like pornography – accountants know it when they see it.

[6] Specific performance - grants the plaintiff what he actually bargained for in the contract rather than damages (pecuniary compensation for loss or injury incurred through the unlawful conduct of another) for not receiving it; thus specific performance is an equitable rather than legal remedy. By compelling the parties to perform exactly what they had agreed to perform, more complete and perfect justice is achieved than by awarding damages for a breach of contract.

[7] Liquidated Damages – A legal term of art generally defined as when the parties to a contract agree to the payment of a certain sum as a fixed and agreed upon satisfaction for not doing certain things particularly mentioned in the agreement, the sum is called liquidated damages.

[8] As defined by FASB Accounting Standard #5 issued March 1975. Probable does not mean …virtual certainty…" (FASB 5, paragraph 84). It means that the future event or events are likely to occur. Sometimes also referred to as the - more likely than not standard. In the HOA world if the association must periodically paint the building, clearly, that obligation is probable and reasonably estimable as to time and amount. Analogous standards for recognition and measurement can be found at FASB 143, Accounting for Asset Retirement Obligations.

[9] The Act at CC 1365 (a)

[10] The Act at CC 1365.2.5 (4) requires one method commonly referred to as the "Straight Line Method." There are other generally accepted finance techniques for calculating this obligation.

[11] FASB 5 and FASB 143 as cited above.

[12] While HOAs are not for profit corporations, they are business entities for accounting purposes.

[13] These standards are not technically controversial, but some CPAs resist their application because they are concerned that taking such action will be "foot in the door" for recording the MRR obligation.

[14] Clearly, if an association has the responsibility to cure pest control damages and obtains an estimate from a qualified professional for the cost to cure, the two tests of FASB 5 have been met – probable and reasonably estimable. The same is true with construction defect obligations. However, "gain contingencies" (FASB 5, Para. 17) from lawsuit proceeds would generally not be accrued until judgment or settlement has occurred. Prior to judgment or settlement disclosure of such gain contingencies should be made. However, "…care shall be exercised to avoid misleading implications as to the likelihood of realization."

[15] In late 1996 a retired national CPA firm partner wrote a letter to the AICPA challenging my practice of accruing the MRR obligation in a homeowners association of which he was a member and which I had performed an audit in accordance with Generally Accepted Auditing Standards (GAAS). In the CPA world it is known as an alleged ethics violation. On June 14, 1999 after a long and arduous process concluding with a "trial" with a "jury" of five CPA peers and the AICPA as the Ethics Charging Authority, I was found not guilty of the alleged ethics violation. The jury listened to all the arguments on both sides and concluded that my treatment was an acceptable practice under the circumstances. Independent CPAs who have audited or reviewed our clients with the liability accrued have had "clean opinions" regarding this technique on their independent quality review by other CPAs.

[16] The Enron meltdown and subsequent demise of Arthur Anderson, a premier world wide accounting firm, was the result of "rules" prevailing over "principles" or form prevailing over substance. Essentially, Enron established other entities in which their ownership interest was under the borderline rules for including in their consolidated report. These off shore entities incurred substantial obligations for which Enron was ultimately responsible. Had these obligations been fully disclosed on its consolidated financial reports, this debacle could have been minimized or avoided entirely. This story is more complicated than presented here, but is well chronicled elsewhere.

[17] I recently purchased a condominium in the Palm Springs area. When I asked the real estate agent (a veteran agent working the complex) about the reserves, he in essence stated that they were well funded at about $2,500,000. He was correct. That amount was on the Balance Sheet. However, a fully funded amount was about $8,500,000. Buried in the financial statement notes, the budget disclosures and the reserve study was the fact that the reserves were only about 34% funded and the annual reserve contributions need to grow from about $1,200,000 or $1,200 per year per owner to about $2,700,000 or $2,700 per year per member over the next eight years to handle anticipated major expenditures. The agent and several other owners were shocked when this situation was made known to them. Clearly, despite all the legislative efforts to disclose these conditions to owners and buyers, the message is not getting through.

There were other substandard accounting issues present in this situation, but they can be discussed another day.

[18] Statement on Auditing Standard (SAS 112) effective for all financial statement audits for periods on or after December 15, 2006.

The Lien and Foreclose Assessment Collection Hammer is Broken

(Can it be Fixed?)

By Donald W. Haney, CPA, MBA, MS (Tax)

Mr. Haney's accounting firm, Haney Accountants, Inc., has delivered an outsourced accounting service to Common Interest Developments (CIDs) for over thirty years. His service includes billing and collecting the assessments from start to finish. His career includes four years as a senior vice president and CFO of a national bank. His comments here are intended to increase the reader's awareness of this issue and to suggest strategies for consideration. They are not intended as legal advice. An appropriate response to this situation requires collaborative efforts by industry trade associations, their professional advisors, and the California legislature. He can be contacted at www.dw@haneyinc.com or toll free 888.786.6000 x325

California Homeowners Associations (CIDs) are suffering bad debt losses due to lack of equity in the units and superior lien holders' foreclosure actions:

The perfect storm has hit California CIDs and it has affected their ability to collect delinquent assessments. The storm's components are:

1. Lenders are making 100% of Fair Market Value (FMV) residential loans to owners;
2. FMVs are declining;
3. Many of these loans are made to "sub-prime" borrowers and contain complex variable interest rate features with significant payment escalators;
4. Some owners and investors with equity in their residential real estate have borrowed that equity to pay consumer debt or to make sure that they are not leaving any equity on the table;
5. The usual factors (job loss, divorce, death, bankruptcy, etc.) affecting owner occupants' and investors ability to pay their CID assessments continue to occur at a slight increase from their usual rate; and
6. The FMV decline and lack of remaining equity have combined to encourage residential real estate owners and investors to abandon their investment which leaves the CID and other lenders holding the bag.

The critical assumption underlying the assessment collection process for California CIDs is that there is equity in the unit. With equity in the unit the lien and foreclosure collection model will eventually collect all unpaid assessments and associations will not incur any assessment losses. The system expects the lenders to be the "equity protectors." As stated above, the market and the lenders have collaborated to invalidate this critical assumption. Moreover, the first mortgage holders' liens are superior to the association's lien in California. If there is no equity in the unit, **even if perfectly executed the existing lien and foreclosure hammer no longer works for CIDs in many cases and they are suffering bad debt losses.** These losses must be covered by the other owners or come from reserves which in most cases are critically under funded– not a good thing in either case. For some associations these losses are significant and place severe burdens upon the owners who are current with their assessment obligations. We have to find a new tool kit to collect unpaid assessments.

The options for a new assessment collection model:

The current assessment collection system in essence positions the CID as a **secured** creditor. A secured creditor has some "hard asset" that it can take from the debtor and convert to cash to satisfy the unpaid debt. The non-judicial lien and foreclosure process was designed as a relatively straight forward method for the association to acquire a security interest in the owner's unit and, as a last resort, convert that interest into cash to collect unpaid assessments. As stated above, this model assumes sufficient equity to satisfy the unpaid obligation.

Since this model no longer works in many cases, the only options are processes used to collect **unsecured** debt and **legislative action**. The lowest cost unsecured creditor collection process for CIDs is **Small Claims Court** and the appropriate legislative action is for California to adopt the "**Priority Lien**" plan in effect in at least twenty-two other states. Neither of these options represents a perfect solution to the problem, but clearly they have become significant tools to improve CIDs' ability to collect unpaid assessments.

The Lien and Foreclose Assessment Collection Hammer is Broken

(Can it be Fixed?)

By Donald W. Haney, CPA, MBA, MS (Tax)

Small Claims Court:

As part of the recent revision of the non-judicial foreclosure process (Civil Code §1367.4) the California legislature strengthened CIDs' ability to utilize the small claims court process (Code of Civil Procedure §116.540 (i) & (j)). Significant boundaries and issues with this process are:

1. Since an CID is not a "natural person" (CCP §116.221) its small claims limit is $5,000 and less than $2,500 per case if more than two cases per year are required (CCP §116.231);
2. Uneven decisions by small claims court "judges" (CCP 116.725 provides for a motion to correct a clerical error or erroneous legal basis error).
3. The time and costs associated with the process;
4. Even if you get the judgment, the collection process can be arduous; and
5. You must be able to find and serve the debtor.

This last requirement could prove the most daunting. **Most HOAs do not have the information about the debtor that they need to serve the debtor and to collect on judgments**. Before granting credit most lenders gather significant information regarding the debtor. In this case a CID becomes an unsecured creditor the moment the owner is delinquent on their assessments. The typical information gathered is:

1. Social Security Number;
2. Driver's License Number;
3. Bank account information (may be found in EFT authorizations and check based payments);
4. Professional licenses (MD, Real Estate, CPA, Attorney, Insurance, etc.)
5. Employer contact information;
6. Next of kin contact information; and
7. Credit reports.

Up to now the CIDs have generally not collected such information and the legal ability and process to do so must be fully vetted by our legal brethren. Several delicious questions that they need to answer are:

1. Can CIDs use their "reasonable rules and regulations" power to acquire such information and, if so, what do those rules and regulations look like?
2. Can CIDs like cooperatives veto a buyer due to bad credit?
3. Can CIDs require "security deposits" by owners to minimize their credit risk and if so how much is reasonable?
4. What are the risks to CIDs that gather and maintain owners' sensitive credit information?

Without these tools the CID's ability to pursue the unsecured creditor is severely compromised. Moreover, if CIDs are to use this venue to collect delinquent assessments, they must have industrial strength accounting systems and providers. While the law (cited above) allows small claims court representative to be "…an agent, a management company representative, or bookkeeper…" (Lawyers are not allowed to represent clients in small claims court), such representative may not be "…employed solely to represent the party in small claims court."

The Priority Lien:

The Uniform Common Interest Ownership Act (1994) (UCIOA) §3-116 allows an HOA to collect up to six months of unpaid assessments from foreclosing lenders. Currently, at least twenty-two other states have adopted this element of the UCIOA. Up to now it has not been adopted in California. Space does not allow a fuller discussion of this option. However, it has been a useful tool in these other states and it is clearly time for the industry trade associations and legislative advocates to pursue this option.

Conclusion:

Small Claims Court, a Priority Lien law, and Lawsuits are powerful tools that must be deployed in the CID assessment collection process. In addition **Bad Debt Collectors** can be used for foreclosed upon properties. Industry trade associations and related professionals must develop small claims court templates; pursue the priority lien option with the legislature; and move quickly and promptly on unpaid assessments.

The CID Assessment Collection Crisis
Described and Remedies Proposed

By
Donald W. Haney, CPA, MBA, MS(Tax)

Mr. Haney's accounting firm, Haney Accountants, Inc., has delivered an outsourced accounting service to Common Interest Developments (CIDs) for over thirty years. His service includes billing and collecting the assessments. His comments here are intended to increase the reader's awareness of the current assessment collection crisis and to suggest remedies for consideration. This situation requires collaborative efforts by industry trade associations, their professional advisors, and the California legislature. He can be contacted at www.dw@haneyinc.com or toll free 888.786.6000 x325

Executive Summary

It is California Law (Civil Code §1366 (a) & 1366) that a Common Interest Development (CID, Homeowners Association) "…shall levy regular and special assessments sufficient to perform its obligations …" and such assessments together with late charges, reasonable collection costs, and interest "…shall be a debt the owners of the separate interest at the time the assessment or other sums are levied." While this writer was unable to find specific statutory or case law reference to a CID's duty to collect those assessments and other sums, clearly such duty exists and it is in the public interest for such assessments to be collected at the lowest possible cost. Moreover, as a matter of public policy, owners who pay their assessments should not be required to subsidize the owners who do not pay.

Due to priority lenders' foreclosure actions and the up tick in bankruptcies as well as limitations in the existing assessment collection tools, CIDs are experiencing significant bad debt losses. Therefore, owners who are paying their assessments must cover these bad debt losses. For some CIDs these bad debt losses are large and growing. The resulting harm to the remaining owners is significant and puts them in jeopardy of also losing their homes to the foreclosure process.

While judicial foreclosure and collection law suits are available tools to collect CID assessments, they are costly and time consuming processes. The primary low cost assessment collection tools available to CIDs are the non-judicial lien and foreclosure process and small claims court (CC §1367.4). With the decline in Fair Market Values (FMV) and related mortgage debt in excess of FMV the non-judicial lien and foreclosure process has proven ineffective for CIDs. This situation has transformed CIDs from **secured creditors to unsecured creditors**. Moreover, the small claims court process currently severely limits CIDs' ability to use this venue and the Davis-Stirling Act does not clearly establish CIDs' ability to collect the information an **unsecured creditor** needs to fulfill its duty to collect assessments.

Since someone who is not paying their mortgages or their CID assessments is typically encountering some financial difficulty, there are no "good" solutions to this situation. However, many individuals and investors that are abandoning their real estate investments have other assets and income sources. Also, foreclosing priority lenders have the resources to "catch up" on past due and current assessments, but are not required to do so in California. Therefore they are not paying these obligations. Several legislative remedies exist that could help these troubled CIDs reduce their bad debt losses and the resulting impact on the owners who pay their assessments:

1. Make minor changes to the Small Claims Act (SCA, Code of Civil Procedure §116.110 through §116.950) to improve CIDs ability to use this venue to collect unpaid assessments;
2. Adopt the "Priority Lien" provision of the Uniform Common Interest Ownership Act (UCIOA) (1994) §3-116 that allows CIDs to collect up to six months of unpaid assessments from foreclosing lenders which is the law in at somewhere between twenty and thirty other states; and
3. Make some minor changes in the Davis-Stirling Common Interest Development Act (Civil Code §1350 through §1378).

These issues and suggest remedies are more fully described below.

The CID Assessment Collection Crisis
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The Crisis

The perfect storm has hit California CIDs and it has affected their ability to collect delinquent assessments. The storm's components are:

1. Lenders are making 100% of Fair Market Value (FMV) residential loans to owners;
2. FMVs are declining;
3. Many of these loans are made to "sub-prime" borrowers and contain complex variable interest rate features with significant payment escalators;
4. Some owners and investors with equity in their residential real estate have borrowed that equity to pay consumer debt or to make sure that they are not leaving any equity on the table;
5. The usual factors (job loss, divorce, death, bankruptcy, etc.) affecting owner occupants' and investors ability to pay their CID assessments continue to occur at a slight increase from their usual rate;
6. The FMV decline and lack of remaining equity have combined to encourage residential real estate owners and investors to abandon their investment which leaves the CID and other lenders holding the bag; and
7. The resulting bad debt losses by CIDs' require the remaining owners to pay additional assessments to cover these losses. **For some owners this added financial burden puts them at risk of losing their homes to foreclosure** - clear collateral damage of the nationwide housing crisis.

The critical assumption underlying the assessment collection process for California CIDs is that there is equity in the unit. With equity in the unit the lien and foreclosure collection model will eventually collect all unpaid assessments and associations will not incur any assessment losses. The system expects the lenders to be the "equity protectors." As stated above, the market and the lenders have independently operated to invalidate this critical assumption. Moreover, the first mortgage holders' liens are superior to the association's lien in California. If there is no equity in the unit, **even if perfectly executed the existing lien and foreclosure hammer no longer works for CIDs in many cases and they are suffering bad debt losses.** These losses must be covered by the other owners or come from reserves which in most cases are critically under funded– not a good thing in either case. For some CIDs these losses are significant and place severe burdens upon the owners who are current with their assessment obligations. We have to find a new tool kit to collect unpaid assessments.

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The Small Claims Act (SCA, Code of Civil Procedure §116.110 through 116.950):

1. SCA Issues

As part of the recent concern by the California legislature regarding CID foreclosures, the legislature apparently wanted to open up small claims court to CIDs and their owners as a place to obtain judicial oversight of the collection process. The amendments to CC 1367.4 were clearly intended to enable CIDs to use this venue. As part of this process the SCA was amended to recognize CIDs (CCP §116.540 (i)) and give them the opportunity to have representatives appear in small claims court (SCC §116.540 (j)) an unlimited number of times. However, the SCA was not fully vetted for unintended consequences and CCP §116.231 effectively limits CIDs to pursuing claims of less than $2,500.

2. SCA Remedies

a. In the definition section (CCP §116.130) add paragraph - "(l) "Homeowners Association" means a party that is an association created to manage a common interest development, as defined in Section 1351 and its successors of the Civil Code."

b. At CCP §116.221 insert "or a homeowners association," in the first sentence after "…by a natural person…" and before "…if the amount…" This change will allow CIDs to pursue unpaid assessments up to $7,500.

c. At CCP §116.231 change "(a) Except as provided in subdivision (d),…" to read "(a) Except as provided in subdivisions (d) and (e),…" and add subdivision (e) to read "(e) The limitation on the number of filings exceeding two thousand five hundred dollars ($2,500) does not apply to filings by homeowners associations." This change will allow CIDs to pursue claims greater than $2,500.

These small changes to the SCA will give CIDs the ability to use the low cost SCC process to obtain the judgments and collection tools they need to reduce their bad debt losses while making sure that delinquent owners have their day in court. These changes are consistent with the legislative intent of the most recent revision to the lien and foreclosure statutory process, and consistent with the public policy goal of minimizing association bad debt losses.

The Priority Lien:

The Uniform Common Interest Ownership Act (UCIOA) (1994) has been adopted in some form or another by somewhere between twenty and thirty states including California's neighboring states – Nevada and Oregon. The UCIOA at §3-116 grants CIDs a priority position over all other liens (except tax liens). This section is extensive and somewhat complex, but is readily available on the web. Its primary intent is to assure that CIDs eventually obtain the full amount of their unpaid assessments and forces foreclosing lenders to pay at least six months of unpaid assessments as part of their foreclosure event.

According to knowledgeable sources, there was an attempt by the California legislature to adopt this feature in California some years ago, but the proposed legislation was vetoed by the then sitting governor who was reportedly pressured for the veto by mortgage lenders. It is time to revisit this remedy.

The CID Assessment Collection Crisis
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Donald W. Haney, CPA, MBA, MS(Tax)

The Davis-Stirling Common Interest Development Act (CID Act, Civil Code § 1350 through §1378)

1. CID Act Issues

The entire assessment collection scheme in both California law and typical governing documents is based upon the assumption of owner's equity in the unit and that the lien and foreclosure process would eventually cure any unpaid assessments. Since the assumption is now invalid in many cases, the process is ineffective. Moreover, the California legislature is extremely concerned about homeowners' losing their homes due to the foreclosure process. The fact that many of these owners are investors gaming the system and that the bankruptcy laws also affect CIDs' ability to collect assessments seems to have fallen under the legislative radar.

Essentially, without a priority lien position California CIDs have been transformed from **secured creditors to unsecured creditors**. As described above the California legislature clearly wanted to make the small claims court process available to CIDs (CC §1367.4). However, in this writer's view, they were not given the clear ability to collect the information needed to personally serve the delinquent owner and to collect money once judgments are obtained.

There is also a troublesome phrase in §1367.4 (b) (1) (B) that reads in part "(B) In the discretion of the court, an additional amount…equal to the amount owed for the period from the date of the complaint is filed until satisfaction of the judgment. …up to the amount of the jurisdictional limits of the small claims court." The "In the discretion of the court…" phrase is the problem. There could be a substantial time lag between date the complaint is filed and the subsequent judgment is collected.

2. CID Act Remedies

Because the law requires CIDs to personally serve on site delinquent owners during the foreclosure process, it is probable that CIDs have the implied "reasonable rules and regulations" authority to "register" all owners and collect from them the information they need to complete this process. However, such authority is not clearly memorialized in the law or the governing documents. Typically, **unsecured creditors** gather the following information before granting unsecured credit to borrowers:

1. Social Security Number;
2. Driver's License Number;
3. Bank account information;
4. Professional licenses (MD, Real Estate, CPA, Attorney, Insurance, etc.)
5. Employer contact information;
6. Local agent for service (for foreign investors);
7. Next of kin contact information;
8. Credit reports;
9. etc.

There also needs to be some privacy and security standards associated with gathering and maintaining such information such as exempting this information from the "open access" to books and records provisions.

Delete the "In the discretion of the court, …" provision of CC §1367.4 (b) (1) (B).

California Law Revision Commission (CLRC)

1. CLRC Issues

In its "Tentative Recommendation" dated June 2007 the CLRC ported the basic small claims court language of CC §1367.4 (b) (1) to its §5645 (b) (page 109). The concerns expressed above continue to exist in this restructuring of the CID Act.

2. CLRC Remedies

The remedies suggested above for the CID Act apply to the CLRC's "Tentative Recommendation." In addition to the recommendations to amend the CID Act suggested above a small surgical cure to the limitations of the current SCA might be to add a section to §5645 (b) such as: 5645 (b) "(3) For the purposes of the Small Claims Act (Code of Civil Procedure §116.110 thru §116.950) an association shall be considered an "individual".

Other strategies to consider

Another loss mitigation strategy is the "deposit" notion. CIDs can in most cases be considered **unsecured creditors** these days and, unlike cooperatives, apparently can not "veto" buyers for poor credit, lack of unit equity or other reasons. Therefore, it would seem to be a "reasonable rule and regulation" to require new buyers to provide a deposit of "N" number of monthly assessments as collateral to partially secure their assessment payment. Obviously, when does "N" become unreasonable and other related terms and conditions related to the deposit have to be developed.

Conclusion

The collateral damage to CIDs due to the residential market value decline and the changing mortgage lending protocols is significant and growing. Traditional assessment collection strategies are proving ineffective. Legislative remedies and non traditional collection processes must be explored, adopted and deployed. The paper's intent is to move that process along.

CATALOG OF CID ISSUES

This exhibit provides a list of CID-related issues that have been presented to the Commission, organized by subject.

Most entries include a citation to one or more sources of the issue, in order to provide background. If there is no source cited, the issue arose as a result of staff research or informal communications. Professor French's background study, Scope of Study of Laws Affecting Common Interest Developments (November 2000), is cited hereafter as "Background Study."

Correspondence to the Commission that is not included as an exhibit to a memorandum is on file with the Commission.

This list exists for informational purposes only and is not intended as an endorsement of any of the proposals listed below. Most of the proposals listed have not yet been analyzed by the Commission.

If any person knows of an issue that was brought to the Commission's attention but was inadvertently omitted from the list, please inform the staff and it will be added.

Unless otherwise indicated, all statutory references are to sections of the Civil Code.

Unless otherwise indicated, references to "the Act" are references to the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1378).

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SCOPE OF APPLICATION OF ACT

Stock Cooperatives

A stock cooperative is a development owned entirely by a corporation, in which rights of exclusive occupancy of specified parts of the development are granted to shareholders.

Under existing law, the Act applies only to stock cooperatives with recorded declarations. The proposed law makes the Act applicable to all stock cooperatives. However, some provisions of the Act may be problematic as applied to stock cooperatives, due to structural and functional differences from other types of developments.

• Should the Act be revised to address applicability to stock cooperatives? *Statutory Clarification and Simplification of CID Law* (December 2007), p. 27, First Supplement to CLRC Memorandum 2007-47.

Small Associations

• The number of members in homeowner's associations in CIDs across the state range in size from less than ten to several hundred or more. Should the Act provide for differential application based on an association's size? Third Supplement to CLRC Memorandum 2007-47, p. 1; email from Nancy Lynch, 3/16/08; letter from Duncan McPherson, 12/31/07.

Commercial Developments

• The Act provides that some but not all of its provisions are inapplicable to nonresidential developments. Should the list of inapplicable provisions be expanded? CLRC Memorandum 2007-47, Exhibit p. 236, CAI comments, March 2008.

• Should provisions of the Act apportioning responsibility for termite management be made inapplicable to commercial developments? Letter from Duncan McPherson, 12/31/07.

• Should provisions of the Act relating to pets be made inapplicable to commercial developments? Letter from Duncan McPherson, 12/31/07.

• Should the Act's provision that common area is owned by members as tenants in common, based on the number of owned separate interests, be made inapplicable to commercial developments? Letter from Duncan McPherson, 12/31/07.

• Should a collection of sections be added to the Act intended to apply only to commercial developments? Letter from Duncan McPherson, 12/31/07.

Planned Developments

• Does application of the Act to a "planned development," a term defined by the Act, require clarification? Letter from Duncan McPherson, 12/31/07.

Developments Without Common Area

The Act applies only to a development that includes "common area," as defined. Section 1374. However, various developments without common area may nevertheless benefit from application of some or all provisions of the Act, either on a mandatory or opt-in basis.

Developments with CC&Rs

• Should some or all of the provisions of the Act be made applicable to, or available to, developments without common area that have established CC&Rs? Background Study at 5; CLRC Memorandum 2001-19, Exhibit p. 90; Second Supplement to CLRC Memorandum 2001-19, Exhibit pp. 19-20; Letter from Curtis Sproul, 4/1/02; Letter from Janelle Dalton, 1/28/03.

Older HOAs

• Should the Act be made applicable to developments lacking common area that predate the enactment of the Act in 1985? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 7; Email from Keith Turner, 4/14/08.

Senior Communities

• Would "senior only" developments lacking common area represent a special case for opt-in coverage of the Act? First Supplement to CLRC Memorandum 2001-19, Exhibit pp. 14-20.

Special Scenarios

There are many special scenarios in which applicability of the Act is unclear, or the rationale for non-applicability is unclear.

Private Roads

• Does or should the Act apply to the owners of a private right-of-way who share an obligation to maintain that right-of-way under Section 845? CLRC Memorandum 2001-19, p. 14; First Supplement to CLRC Memorandum 2001-19, Exhibit pp. 1-5.

Mutual Water Company

• Does or should the Act apply to a mutual water company or other similar entity? Minutes (February 2001).

Master Associations and Sub-Associations

• Does or should the Act apply to a master association (a combination of two or more community associations) or to a sub-association (an association comprised of fewer than all of the members of a community association)?

For Profit Corporations

• The Act presently applies only to unincorporated associations, and non-profit corporations. Should the Act be made applicable to a residential development organized as a *for profit* corporation? Email from Michael Brady, September 21, 2007.

Joint Neighborhood Associations

• Some but not all provisions of the Act apply to "joint neighborhood associations." Should the Act be comprehensively reviewed to determine whether other provisions of the Act should be made applicable to such associations? CLRC Memorandum 2007-55, p. 25.

CIDs with no Distinguishable Board

• Should the Act provide special rules for CIDs in which the Board consists of all members of the association? First Supplement to CLRC Memorandum 2007-47.

Developments with no Sold Units

• Should the Act address the status of a development with a recorded declaration but no sold separate interests? Email from Duncan McPherson, 2/24/08.

INTEGRATION OF OTHER AUTHORITY

Uniform Common Interest Ownership Act

• Should the Act be replaced in part with the Uniform Common Interest Ownership Act (UCIOA)? See CLRC Memorandum 2003-37, and First Supplement to CLRC Memorandum 2003-37. The Commission previously decided against recommending enactment of UCIOA as a whole, but indicated it would look to that act as a source of language and ideas. Minutes (Nov. 2003).

Remaining Coordination with Corporations Code

• The Act provides for expedited "emergency meeting procedures." Should the Act clarify the relationship between these procedures and meeting procedures provided for in the Corporations Code? CLRC Memorandum 2001-19, Exhibit p. 88.

Other Code Sections

• Are there CID-related provisions in other codes that should be incorporated into the Act? CLRC Memorandum 2005-25.

• Should the Act identify law applicable to residential developments to which the Act does *not* apply? Letter from Duncan McPherson, 12/31/07.

HOMEOWNER RIGHTS

Homeowner Bill of Rights

• Should the Act include a "Homeowners Bill of Rights," i.e., a clear and coherent statement of the rights of CID homeowners? See CLRC Memorandum 2001-19, pp. 10-12; First Supplement to CLRC Memorandum 2001-63; Letter from Curtis Sproul, 4/1/02; Letter from Samuel L. Dolnick, 1/31/03; CLRC Memorandum 2005-02, Exhibit p. 34.

Equal Protection

• Should the Act expressly prohibit selective enforcement of association restrictions? Second Supplement to CLRC Memorandum 2001-19, Exhibit pp. 29-30.

• Should the Act expressly guarantee equal access to common facilities? CLRC Memorandum 2001-19, Exhibit p. 79.

Freedom of Expression

• To what extent should the Act permit or require an association newsletter to serve as a forum for homeowner expression? CLRC Memorandum 2001-19, Exhibit p. 9; Second Supplement to CLRC Memorandum 2006-25.

• Should the Act address whether an association's governing documents may prohibit homeowners from communicating with other homeowners on association-related issues, under a general prohibition on solicitation? Letter from Steve Woods, 7/13/01.

Limitation of Rights

• To what extent should the Act provide that member rights under the Act may not be limited by contract or governing documents? First Supplement to CLRC Memorandum 2007-47.

Privacy

• Should the Act address the ability of an association to inspect the interior of a homeowner's garage, in order to ensure compliance with a restriction relating to interior garage size? Letter from Rachel Gross, 3/9/2000.

• Should provisions in the Act protecting information relating to member assessment delinquency be eliminated? Third Supplement to CLRC Memorandum 2007-47, p. 1.

Roof Repair

• Should provision governing roof repair be revised to refer to a "member," rather than a "homeowner"? Letter from Duncan McPherson, 12/31/07.

Liability for Association Debt

• Should the Act provide members with some financial protection if association liability on a judgment exceeds its insurance coverage and available reserves? Letter from James Lingl, 10/31/01, email 2/13/08.

GOVERNING ASSOCIATION

Decision Making Power

• Should sections of the Act that reserve decision making power to a board be revised to allow the membership as a whole to exercise the same power? In other words, should an association be more like a direct democracy, with most decisions in the hands of the membership as a whole, or more like a representative body (as it typically is now), with most decisions being made by elected representatives? First Supplement to CLRC Memorandum 2007-47.

• Should provisions mandating member comment or involvement in rulemaking procedures be expanded? Letter from Kazuko K. Artus, 9/7/07.

Delegation of Authority

• Should the Act include a provision expressly allowing delegation of an association's authority to its agents? What limits on delegation would then need to be set? CAI comments, March 2008.

Committees

• Should provisions of the Act applicable to boards be made applicable to all committees acting on behalf of a board, including those that make recommendations to a board? Letter from Howard Green, 9/21/07, Second Supplement to CLRC Memorandum 2007-47, p. 2, Letter from Duncan McPherson, 12/31/07.

"Board" vs. "Association"

• Do references in various provisions of the Act to "board" need to be revised to instead read "association"? Letter from Duncan McPherson, 12/31/07.

Adoption of Formal Policies

Should the Act require boards to adopt formal policies on major governance issues? Second Supplement to CLRC Memorandum 2006-04.

Training Requirements

• Should the Act require directors to complete training in basic management responsibilities? Email from Kris Ecklund, 7/14/01.

• Should the Act specify how the training should be paid for? Letter from Kazuko K. Artus, 9/7/07.

Compensation for Service

• Should the Act authorize board members to have some part of their dues waived, in order to create an economic incentive to serve on the board? Letter from Bruce Osterberg, 1/01/05.

Director Standard of Care

• Should the Act include a provision setting forth the duties and standard of care for a director, whether the association is incorporated or not? CLRC Memorandum 2007-47, Exhibit p. 249.

Board Inspections

• Should a provision in the Act permitting director inspection of all common area (including exclusive use common area) be revised to address possible abuse? CAI comments, March 2008.

Powers and Responsibilities of Association

Temporary Removal of Resident

Should the Act broaden an association's authority to cause temporary removal of residents for termite treatment of a separate interest? CAI comments, March 2008.

Pest Control

• Should the Act require an association to disclose information on pesticide use within the common area? Letter from Gaylan Frederic, 4/20/05.

• Should pest control in common walls, floors, and ceilings be an association responsibility, notwithstanding any contrary provision of the association's governing documents? Letter from Arthur Schmid, 12/5/01.

Parking Enforcement

• Should the Act address whether associations have or should have authority to use the "Denver Boot" to immobilize illegally parked cars? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 8.

State Registry

• Does a provision of the Act requiring disclosure to a state registry of the number of units in a development require revision, in the case of a commercial development? Letter from Duncan McPherson, 12/31/07.

Liability Issues

Director Tort Liability

• Should the Act's limitation on director tort liability be broadened? CAI comments, March 2008.

Member Volunteers

• Should the provision exempting a director who is an "employee" as defined from limited director tort liability be revised? Letter from Duncan McPherson, 12/31/07.

• Concerns about liability may lead an association to require that maintenance work be performed exclusively by professionals, even where work could be competently done by homeowner volunteers. Should the Act be revised to make clear that an association does not increase its potential liability by involving homeowner volunteers in maintenance activity? CLRC Memorandum 2001-19, Exhibit p. 96.

Action Against Volunteer Director Or Officer

• Code of Civil Procedure Section 425.15 requires court approval before a complaint may be filed against a volunteer director of a nonprofit corporation that is exempt from federal income tax, for a negligent act or omission in the course of his or her duties. The person seeking to file the complaint bears the burden of establishing "evidence that substantiates the claim." This pre-filing burden helps to deter frivolous claims against volunteer directors.

Should the Act make this provision apply to a director or officer of a homeowners association, regardless of whether the association is tax exempt? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 20.

Sanctions

• Should the Act provide monetary sanctions for violation of statutory provisions by a board or association, or by their legal advisors? Email from Cecil Proulx, December 5, 2007; email from Samuel M. Ross, 11/24/05.

Enforcement Mechanisms

• Should the Act provide enforcement mechanisms for various sections imposing affirmative duties on boards (e.g., inspection of major components, reserve studies)? Letter from Kazuko K. Artus, 9/7/07.

Property Managers

• Should the Act require property management to be a licensed profession, subject to state regulation? CLRC Memorandum 2004-19, Exhibit p. 69; Letter from Gaylan Frederic, 4/20/05.

GOVERNING DOCUMENTS

Creation of Common Interest Development

• Is there a need for the Act to address a scenario in which a change in circumstances causes a development that qualified as a CID when formed to no longer qualify (e.g., all separate interests later acquired by one common owner)? Letter from Duncan McPherson, 12/31/07.

Inconsistent Governing Documents

• To what extent does or should the Act preempt an inconsistent provision of an association's governing documents? Minutes (September 2004).

• Should the Act address the scenario in which a conflict between an association's CC&Rs and other governing documents is created by a change in law? Email from Duncan McPherson, 2/24/08.

Department of Real Estate Approval

• The DRE is required to approve a development's original set of governing documents. Should the Act require DRE approval if a development that is not formed as a CID later takes steps to become a CID (e.g., by acquiring common property and recording a declaration)? Letter from Frances Ruby, 7/21/03.

Amendment of Documents

• Should procedural provisions of the Act relating to the amendment of documents be clarified? Email from Hank Lawrence, 7/24/01.

• Do provisions of the Act allowing amendment of a condominium plan need expansion? CAI comments, March 2008, Letter from Duncan McPherson, 12/31/07.

Should DRE approval be required for amendments of documents? Letter from Frances Ruby, 7/21/03.

• Should the Act simplify the process for making clarifying or technical amendments to governing documents? Email from Lynn Lombard, 9/28/04.

• Should the Act prohibit supermajority requirements for amendment of governing documents? See CLRC Memorandum 2001-19, p. 16 (amendment of condominium plan under Civ. Code § 1351(e)); First Supplement to CLRC Memorandum 2001-19, pp. 2-3 (supermajority requirement provided in CC&Rs).

• Should the Act provide for more member involvement in amendments to governing documents? Letter from Kazuko K. Artus, 9/7/07.

Renewal and Updating

• Should the Act specify whether governing documents that expire by their own terms are subject to automatic renewal? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 7.

• Should the Act require periodic updating of CC&Rs, to prevent them from becoming outdated? Letter from Gaylan Frederic, 4/20/05.

Model Documents

• Should the Act provide a model declaration and by-laws, to simplify the modernization of obsolete governing documents? Email from Kris Ecklund, 7/14/01.

Nonamendable Declarations

• Should the Act provide for a judicial override of nonamendable declarations? CLRC Memorandum 2007-55, pp. 57-58.

Deletion of Developer Provisions

• Should the Act simplify an existing procedure for deletion from governing documents of obsolete provisions relating to construction and marketing? Letter from Curtis Sproul, 4/1/02, CLRC Memorandum 2007-55, p. 60.

Restrictive Covenants

• Does the provision of the Act prohibiting unlawful restrictive covenants in a governing document require clarification or revision? Letter from Duncan McPherson, 12/31/07.

Bylaws

• Should the Act contain a special chapter pertaining to bylaws? Letter from Kazuko K. Artus, 9/7/07.

NOTICES

General Provisions

• Should the procedures and time frames in the Act for providing notice to members be standardized and simplified? CLRC Memorandum 2001-19, Exhibit p. 88; First Supplement to CLRC Memorandum 2001-19, Exhibit p. 7; Letter from Curtis Sproul, 4/1/02.

Type of Notice

• Does or should the Act allow notice to be posted on an electronic kiosk? CLRC Memorandum 2006-25.

• Does or should the Act allow notice to be given through webcasting? CLRC Memorandum 2007-47, Exhibit p. 97.

• Do provisions allowing electronic notice need to be modernized? Does more detail need to be provided as to how assent to electronic notice is shown? CLRC Memorandum 2007-47, Exhibit p. 237.

When Notice Required

• Should the Act exempt an association from providing notices to members who have opted out of inclusion in the membership list? CLRC Memorandum 2007-55, p. 19.

• Should the Act allow a member that opts out of the association mailing list to also opt out of specified *mailing*, thereby superseding another member's right to demand individualized mailing of certain material to such a member? CLRC Memorandum 2007-47, Exhibit p. 113.

Costs

• Should the Act provide that a member that opts out of an association mailing list, but still requests individual mailed notice, have to bear the (extra) cost of mailing? CAI comments, March 2008.

Time Shares

• Do notice provisions in the Act need to be revised to address fractional ownership in a CID? Letter from Duncan McPherson, 12/31/07.

MEETING PROCEDURES

Decisions Without Meeting

Should a provision in the Corporations Code allowing certain actions by the board to be taken without a meeting be narrowed or eliminated? Second Supplement to CLRC Memorandum 2006-25; First Supplement to CLRC Memorandum 2007-41; Letter from Howard Green, 9/21/07.

Open Meeting Requirements

• Should the Act guarantee that a member may record board meetings (other than those that take place in executive session)? Email from Richard Lavelle, 12/23/03, First and Second Supplements to CLRC Memorandum 2006-04.

• Should the Act require greater specification as to the content of meeting minutes, to ensure that events at meetings are more clearly documented? CLRC Memorandum 2005-02, Exhibit p. 74; CLRC Memorandum 2005-10, Exhibit p. 35.

• Should a possible loophole in the Act that exempts business conducted by a series of separate conversations, electronic mail messages, and the like from the definition of "meeting" be addressed? CLRC Memorandum 2006-25.

Executive Session

• The Act requires that board meetings be open to members and that members be permitted to speak, but allows certain topics to be discussed in a closed executive session. Should the Act clarify or change the scope of the executive session exception? CLRC Memorandum 2001-19, Exhibit pp. 2, 88.

• Should the Act allow a member that is the subject of a consideration of discipline in a closed session the option of requesting the meeting be open?

• Should the Act preclude directors from meeting in executive session in violation of open meeting rules by classifying themselves as "officers," rather than "directors"? Email from Steven Chasco, 2/6/08.

• Should the Act restrict discussion in executive session of matters that might lead to litigation? Second Supplement to CLRC Memorandum 2006-25.

• Should the Act provide more detail as to when a board is permitted to meet in executive session to discuss member discipline? First Supplement to CLRC Memorandum 2006-04.

• Should a member who is the subject of an executive session (and thus allowed under existing law to speak at the session) be precluded from observing deliberations? CLRC Memorandum 2007-55, p. 4.

• The Act allows a board to meet in executive session to consider "personnel matters." Should this term be defined? First Supplement to CLRC Memorandum 2007-55, p. 4.

• Should the Act require a board to announce matters to be considered in executive session before adjourning to executive session? Letter from Kazuko K. Artus, 9/7/07.

• Should procedural rules relating to the commencement or conducting of an executive session be clarified or specified? Letter from Duncan McPherson, 12/31/07.

• Should the Act clarify whether matters that may be considered in executive session may also be considered in open session? Letter from Kazuko K. Artus, 9/7/07.

• Should the Act clarify whether minutes are to be prepared or preserved relating to matters considered in executive session? Letter from Duncan McPherson, 12/31/07.

• Should the Act bar a member from access to minutes of executive sessions? CLRC Memorandum 2007-47, Exhibit p. 102.

Emergency Meetings

• Should provisions in the Act relating to who may call an emergency board meeting be clarified? Letter from Kazuko K. Artus, 9/7/07.

Adjournment

Should the provision in the Act allowing or requiring adjournment of a board meeting be re-examined? Letter from Kazuko K. Artus, 9/7/07.

Member Participation

• Should the Act specify under what circumstances members may make motions at board meetings? First Supplement to CLRC Memorandum 2006-04.

• Should the Act allow a board to restrict member comment at a board meeting to a specific time or portion of the meeting? CLRC Memorandum 2007-47, Exhibit p. 101.

Teleconferencing

• If teleconferencing is used at a meeting, should the Act require the meeting to be recorded? Second Supplement to CLRC Memorandum 2006-04.

• Should a member of the association be guaranteed the right to participate by teleconference? Second Supplement to CLRC Memorandum 2006-04.

• Should the Act provide for internet conferencing? CLRC Memorandum 2007-47, Exhibit p. 101.

Postponements

• Should the Act provide tighter restrictions on postponing mandatory meetings, to prevent postponements by a board for improper purposes? Email from Renee Beckerman, 5/15/08.

Consideration of Non-agenda Items

• Should a provision of the Act allowing consideration of non-agenda items at a meeting, absent objection, be revised? Letter from Kazuko K. Artus, 9/7/07.

Quorum Requirements

• Should quorum requirements for any meeting other than board meetings be deleted? CLRC Memorandum 2007-47, Exhibit p. 136.

Minutes

• Do the Act's provisions relating to how members obtain copies of meeting minutes need revision? CLRC Memorandum 2007-47, Exhibit p. 222.

• Should the Act permit member access to minutes of executive sessions? CLRC Memorandum 2007-47, Exhibit p. 223.

Meeting Location

• Do provisions regulating meeting location need revision? Letter from Duncan McPherson, 12/31/07.

ELECTIONS

Nominating Committees

• Should the power of nominating committees be restricted by the Act? For example, should information regarding disqualifying indebtedness of a potential candidate to the association be available to such a committee? Should the Act provide more detail as to allowable screening of potential candidates? CLRC Memorandum 2007-47, Exhibit p. 222.

Voting Procedure

• Do the Act's provisions relating to delivery of ballots require modernization? CLRC Memorandum 2007-47, Exhibit p. 105.

• Can or should additions be made to the Act's procedural provisions relating to voting to increase efficiency and voter privacy? CLRC Memorandum 2007-47, Exhibit pp. 105-110.

• Should the Act include procedural rules for extending a voting period beyond the end date specified in an election notice? Letter from Kazuko K. Artus, 9/7/07.

• Should the Act compel use of institutionalized vote processing organizations such as the League of Women Voters, when requested by members? Email from Mel Klein, 4/14/08.

• Should the Act expressly authorize voting by electronic mail? Email from Mel Klein, 4/14/08.

• Should the Act expressly require that vote tallies be disclosed to members? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 9.

• Should the Act incorporate election provisions that govern governmental entities? Second Supplement to CLRC Memorandum 2001-19, Exhibit p. 20.

• Should the Act clarify or substantively reform procedures governing written ballots and proxy ballots? Email from Eileen Findlay, 4/3/03, Email from Richard Lavelle, 5/4/07, Email from Mel Klein, 4/14/08.

• Should proxy voting be eliminated, in light of voter confidentiality requirements? CLRC Memorandum 2007-47, Exhibit p. 136.

• Should the Act develop specific procedures for differential voting power? CLRC Memorandum 2007-04, First Supplement to CLRC Memorandum 2007-47, p. 56.

• Do voting provisions need to be revised to address delegate voting systems? Letter from Duncan McPherson, 12/31/07, email 2/24/08.

• Is there a need to reconcile a provision of the Act permitting nomination from the floor if an election is held at a member meeting with a provision providing that a ballot is irrevocable once it is received by the election inspector? First Supplement to CLRC Memorandum 2007-47, p. 61.

• Should the Act clarify or address in more detail the required content of a ballot? Letter from Kazuko K. Artus, 9/7/07.

• Should a provision of the Act requiring a board or member meeting for counting ballots be revised or eliminated? Letter from Kazuko K. Artus, 9/7/07.

• Do provisions relating to cumulative voting need revision? Letter from Duncan McPherson, 12/31/07.

• Should the Act's voting provisions require a voter to identify his or her status as an officer, partner, or other agent of an entity owner? Letter from Duncan McPherson, 12/31/07.

Terms of Office

• Should the Act require all board positions to terminate on the same schedule (rather than being staggered), and that cumulative voting be used, in order to provide for proportional representation of minority candidates? Letter from Fred Flam, 4/25/02.

• Should the Act mandate term limits for directors? CLRC Memorandum 2007-47, Exhibit p. 157; First Supplement to CLRC Memorandum 2007-47.

Supervision of Elections

• Should elections be subject to third party supervision? Email from Mel Klein, 2/19/04.

• Should the Act address in more detail or revise the qualifications to serve as an election inspector? CLRC Memorandum 2007-04.

• Should the Act address in more detail the duties and obligations of an election inspector? Letter from Kazuko K. Artus, 9/7/07.

Ballot Confidentiality

• Should the Act require all votes to be conducted by secret ballot? CLRC Memorandum 2001-19, Exhibit p. 78.

• Should provisions of the Act be tightened to better ensure voter confidentiality? Email from Mel Klein, 4/14/08, Letter from Kazuko K. Artus, 9/7/07.

• Should the Act include a provision allowing a member to waive the confidentiality of the member's ballot? CACM comments, February 2008.

• Should the Act add new procedures for secret voting, in person? CLRC Memorandum 2007-04.

• Should the Act provide more detailed confidentiality provisions specifically applicable to proxy voting? CLRC Memorandum 2007-04.

• Should the double envelope secret ballot procedure be revised to address differential voting power? Fourth Supplement to CLRC Memorandum 2007-04.

• Should provisions relating to storage of voted ballots be revised? Email from Mel Klein, 11/27/07.

• Does the Act's quorum requirement when applied to voting by secret ballot need revision? Letter from Kazuko K. Artus, 9/7/07.

Campaigning

• Should the Act's provisions relating to use of common meeting space prior to an election be revised? Second Supplement to CLRC Memorandum 2007-47, Exhibit p. 4.

• Should provisions of the Act related to the distribution of campaign related information prior to an election be tightened? CLRC Memorandum 2007-47, Exhibit p. 157; First Supplement to CLRC Memorandum 2007-47.

• Should the Act regulate the extent to which a board may use association funds to influence the outcome of an election (e.g., by distributing a printed endorsement of a candidate)? Letter from Joe Weiner, 5/24/04.

Director Recusal or Recall

• Should the Act include more comprehensive provisions relating to director recusal based on self-interest? CLRC Memorandum 2007-55, pp. 33-34.

• Should the Act incorporate Corporations Code Section 7222, which provides special requirements to recall a director? First Supplement to CLRC Memorandum 2007-47.

• Should the statutory procedure set forth in the Act for recall of a director be revised to provide for recall of fewer than all directors, when an association uses cumulative voting to elect its directors? See Corp. Code § 7222. Email from James Lingl, 6/20/01.

Election Problems

• Should the Act address a scenario in which a quorum is not achieved in voting for directors? Should it provide that the current directors hold over, even if other candidates received more votes? Email from Ian Engh, 4/15/04.

• Should the Act clarify when an action may be brought in small claims court to address an alleged violation of election procedures? CLRC Memorandum 2007-04.

• Should the requirement that the outside envelope of a secret ballot be signed be revised, to address identity theft concerns? Fourth Supplement to CLRC Memorandum 2007-04.

• Should the Act include a provision allowing less than a quorum of board members or a sole remaining board member to appoint other board members in the case of a mass resignation or exodus of board members? CLRC Memorandum 2007-47, Exhibit p. 101.

• Should the Act provide for how a board vacancy must be filled when a director vacates his or her seat before his or her term expires? CLRC Memorandum 2007-47, Exhibit p. 224.

Scope of Record Inspection Right

• Should the provisions in the Act that govern member access to association records be comprehensively reformed to provide broader access to association records, clarify the scope of required access, and better protect individual privacy?

• Alternatively, should provisions in the Act relating to the rights of members to inspect association records be narrowed, consistent with inspection rights relative to other corporations? CAI comments, March 2008, Letter from Duncan McPherson, 12/31/07.

• Should the scope of the inspection provisions be narrowed to lessen the financial burden on smaller associations? Letter from Duncan McPherson, 12/31/07.

• Should the Act provide members with the right to inspect correspondence received by an association, in addition to regularly maintained records? CLRC Memorandum 2007-55, p. 11; First Supplement to CLRC Memorandum 2006-04.

• Should the Act specify how to determine or enforce the "legitimate purpose for record inspection" requirement for inspecting records? CAI comments, March 2008.

• Should the Act expressly allow members access to preliminary budget or other material used to determine assessment increases? CLRC Memorandum 2007-47, Exhibit p. 223.

Costs

• Should the Act limit the fees an association may charge to provide access to records? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 7; Letter from Nancy Levy, 12/16/2003.

• Should provisions in the Act relating to member reimbursement for association record inspection costs distinguish based on the size of the record inspection? CLRC Memorandum 2007-55, p. 18.

• Should the Act provide revised procedures for collecting costs relating to copying of records? CAI comments, March 2008.

• Should the Act require a member who demands that an association mail material to persons that have opted out of inclusion in the membership list be required to pay for mailing the material? CACM comments, February 2008.

• Should the term "single record request" as used in a record request provision be defined? CAI comments, March 2008.

• Should the term "direct and actual cost" as used in a record request provision be defined? CLRC Memorandum 2007-47, Exhibit p. 224.

• Should the cap on reimbursement of redaction costs be increased? CAI comments, March 2008.

Association Duties

• Should the Act require an association to maintain membership lists and check registers that are free from any private information, in order to facilitate prompt provision of copies to members without delay or concern relating to privacy protection? Letter from Bruce Osterberg, 10/26/05.

• Should a provision of the Act requiring an association responding to a request for financial records to prepare the records in accordance with accrual accounting procedures be revised? Letter from Duncan McPherson, 12/31/07.

Procedure

• Should the time periods for compliance with requests be lengthened? Letter from Duncan McPherson, 12/31/07.

Exceptions

• Should inspection of certain documents (e.g., "ad hoc" financial reports, general ledger transactions, check register, written approval of contracts, employee compensation) be specially treated based on considerations involving burden and privacy? CAI comments, March 2008.

• The Act generally exempts privileged information from member inspection, but also generally provides that "contracts" are not considered privileged information. Should this latter provision be clarified to exclude contracts that *contain* privileged information? CLRC Memorandum 2007-55, p. 13.

Redaction

• Should the scope of required redaction of requested records be made clearer? Should liability for over or underinclusive redaction be limited? CAI comments, March 2008.

• Should the Act's provision requiring the board to justify reasons for redaction upon member request be deleted? CLRC Memorandum 2007-47, Exhibit p. 113.

Attorney Fees

• Should the Act standardize attorney fee provisions relating to an action to enforce a record request? (The Act currently provides that if a court finds that an association acted unreasonably in denying a record request, an attorney fee award is mandatory, but if the

court finds that an action to enforce a denied record request was frivolous, an attorney fee award is discretionary.) CACM comments, February 2008.

Inspection by Board

• Should a provision in the Act permitting director inspection of all association records be enlarged? CACM comments, February 2008.

PROPERTY USE RESTRICTIONS

Architectural Review

• Should the Act require an association to state any legal authority on which it bases its decision to deny a member's request to make a physical change to a separate interest? Third Supplement to CLRC Memorandum 2004-20.

• Should the Act restrict an association's discretion to apply broadly stated architectural restrictions? CLRC Memorandum 2004-49.

• Should the Act address whether an association may impose a use restriction that local government is prohibited from imposing? See, e.g., Gov't Code § 65852.2 (limitation on ability to restrict construction of second units on residential property).

• Should the Act contain statutory guidelines for architectural review, designed to minimize certain common nuisances? Letter from Gaylan Frederic, 4/20/05.

• Should the Act require restoration to the status quo if a change is made without required approval? Letter from Gaylan Frederic, 4/20/05.

• Should the Act expressly provide that approved changes are "grandfathered" and cannot be subsequently disapproved by later elected boards? Letter from Gaylan Frederic, 4/20/05.

Use of Separate Interest

• Should provisions in the Act regulating an association's authority to restrict the use of a separate interest be re-examined? CLRC Memorandum 2007-55, p. 49.

• Should the Act address whether an association may prohibit operation of a home business that has no tangible effect on the community (e.g., where the homeowner's home business operations are limited to the receipt of mail and telephone calls)? Phone call from Dora Canales, 9/15/05.

Improvements to Separate Interest

• Should Act prohibit improvement to separate interest that reduces insulation, sound or moisture barriers? Letter from Duncan McPherson, 12/31/07.

Display of Flags and Signs

• Should a provision of the Act generally protecting a member's display of the U.S. flag be expanded to include a display of other flags? CACM comments, February 2008.

• Should the Act provide tighter restrictions relating to sign display? CLRC Memorandum 2007-47, Exhibit p. 253.

Satellite Antenna

• Should provisions of the Act that govern satellite antennas be reviewed and revised? CLRC Memorandum 2007-55, pp. 50-51, Letter from Duncan McPherson, 12/31/07.

• Should provisions of the Act that govern satellite antennas be amended to reflect recent rulings by the FCC? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 8.

Pets

• Should the Act regulate the extent to which an association may preclude or allow pets? First Supplement to CLRC Memorandum 2007-47, Exhibit pp. 35, 137.

• Should the Act clarify when a statutory override on pet restrictions takes effect based on revision of an association's governing documents? Phone call from Ruth Watson, 1/7/05.

• Should the Act require associations to bar animals that have previously injured a human being? Letter from Kazuko K. Artus, 9/7/07.

Exclusive Use Common Area

• Should the Act address whether a declaration must identify the areas that are "exclusive use common area" (common area to which use is granted to some but not all members)? Email from Lester Thompson, 1/10/01.

• Subject to limited exceptions, an association may not grant exclusive use of a portion of common area to a member unless provided for in the governing documents, or based on a 2/3 majority vote of owners of separate interests. Should the Act provide an additional exception for fencing inadvertently placed just outside an owner's separate interest, in order to allow the owner to repair the fence? Email from Lee Gordon, October 17, 2007.

• Should the Act be revised to limit the granting of exclusive use common area to the membership acting alone, rather than the board and members together? First Supplement to CLRC Memorandum 2007-47, Exhibit p. 20.

• Should the Act validate grants of exclusive use common area that occurred before a the law required member approval for such a grant? First Supplement to CLRC Memorandum 2007-47, Exhibit p. 235.

• Should the Act address whether a member's duty to maintain exclusive use common area includes a duty to repair and replace, rather than only keeping the area clean and orderly? Email from Al De Camara, 11/29/2000.

• Do provisions in the Act allocating responsibility for maintenance of or improvements to exclusive use common area need refining? Letter from Kazuko K. Artus, 9/7/07.

• Should the Act expand the "communication wiring" referenced in the definition of exclusive use common area to include any utility or service line serving a special interest? Letter from Duncan McPherson, 12/31/07.

• Should the provision of the Act addressing the granting of exclusive use of common area be revised to reflect considerations relating to condominiums (as contrasted with other developments)? Letter from Duncan McPherson, 12/31/07.

Access for Persons with Disabilities

• Do the Act's provisions relating to modification of a separate interest to accommodate access for persons with disabilities need revision? CLRC Memorandum 2007-47, Exhibit p. 120.

Association Responsibilities

• Should the Act address whether a decision to abandon maintenance of part of the common area may be made by the Board, or requires a member vote? CLRC Memorandum 2006-33.

• Should the Act grant associations greater flexibility to make changes to common area necessitated by structural obsolescence or disaster? J. Wagner, *Condominium Common Area: Property Unreasonably Restrained?*, 5 John F. Kennedy U. L. Rev. 29 (1993).

FINANCIAL ISSUES

Reserve Funding

The Act requires that an association's annual operating budget include a description of the process used to calculate and maintain a reserve fund adequate to defray future capital repair and replacement costs relating to common area.

• Should the Act clarify or otherwise reform the reserve study requirements? Letter from Bruce Osterberg, 10/15/2003, CLRC Memorandum 2007-55, p. 41.

• Should the Act mandate adequate reserve *funding*, rather than only reserve study? CLRC Memorandum 2006-33, CLRC Memorandum 2001-19, Exhibit p. 11.

• Should the Act define a "major component" for purposes of the reserve funding study plan required by the Act? Second Supplement to CLRC Memorandum 2006-33, CLRC Memorandum 2007-47, Exhibit p. 251.

• Should the Act define a "capital asset" for purposes of the reserve funding study plan required by the Act? Second Supplement to CLRC Memorandum 2006-33.

• Should the term "remaining useful life" be defined? Letter from Kazuko K. Artus, 9/7/07.

• Should the Act address whether or how reserve funds may be used to pay for a new amenity, or a significantly enhanced replacement of an existing amenity? Letter from William Carley; CLRC Memorandum 2007-47, Exhibit p. 23.

• Should the signature requirement for withdrawal of funds from a reserve account be modernized? CLRC Memorandum 2007-47, Exhibit p. 16.

Accounting Methods

• Should the Act require associations to maintain operating books and records using professional accounting standards and terminology? Letter from Donald Haney, CPA, 12/21/07; First Supplement to CLRC Memorandum 2007-47, pp. 10-11, Exhibit p. 14.

• Should reference in the Act to a "modified" accrual basis of accounting be revised? CLRC Memorandum 2007-47, Exhibit p. 116.

• Should the Act specify that required accounting standards are minimums? CAI comments, March 2008.

Audits

• Should the Act require periodic formal audits of association financial records, rather than "reviews"? Letter from Samuel Dolnick, 2/8/08; First Supplement to CLRC Memorandum 2004-20, Exhibit pp. 5-6; CAI comments, March 2008.

• Should the Act require a state audit in some circumstances? Letter from Bruce Osterberg, 1/10/05.

• Should the Act provide a consequence for associations that fail to maintain operating books and records according to statutory requirements? Letter from Donald Haney, CPA, 12/21/07.

• Should the managing agent of an association that has access to funds be required to undergo a criminal background check? Post a bond? Letter from Samuel Dolnick, 2/8/08.

Assessment Collection

• Should the Act's limitation on an assessment to "the costs for which it is levied" be loosened, to allow for more flexible financial planning? CLRC Memorandum 2007-47, Exhibit p. 251.

• Should the Act address with more specificity the means by which assessments are collected? CLRC Memorandum 2007-55, p. 42.

• Should the Act allow a member to designate an allocation of an assessment payment made? Email from Nancygcal@alum.bu.edu.

• Should the Act cap or otherwise regulate assessment collection costs? Letter from Curtis Sproul, 4/1/02.

• Should the Act's limitation on assessments to actual cost contain an express exception for a negotiated fee for a special service? CAI comments, March 2008.

• Does the fee specified in the Act for late payment of an assessment need adjustment? CAI comments, March 2008.

• Should the maximum annual rate of assessment increase allowed by the Act be revised? Letter from Kazuko K. Artus, 9/7/07.

• Should the Act enable an association to require a tenant on property with an overdue assessment to pay rent to the association to satisfy the overdue amount? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 7; Email from Clifford J. Treese, 9/20/04.

• Should the Act incorporate forcible detainer laws to allow an association to evict members for nonpayment of assessments? Email from Clifford J. Treese, 9/20/04.

• Should the Act specify the meaning of the term "current" as used in the statement of an association's current regular assessment? Minutes (August 2006).

• Should a provision in the Act requiring a payment receipt to indicate the person receiving the payment be deleted? Letter from Duncan McPherson, 12/31/07.

• Should provisions relating to late fees be clarified? Letter from Duncan McPherson, 12/31/07.

Special Assessments

• Should the Act define the terms "regular assessment" and "special assessment"? Letter from Kazuko K. Artus, 9/7/07.

• Should the Act allow an association to shift financial responsibility for unfunded replacement obligations to members as individuals? Email from Steve Stapleton, 9/27/04; Email from Sharon Stephens 7/2/03.

• Should the Act regulate an association's borrowing or sale of association property in lieu of a special assessment? Letter from Kazuko K. Artus, 9/7/07.

• Does a limitation on special assessments tied to the "budgeted gross expenses" of an association require clarification? CLRC Memorandum 2007-47, Exhibit p. 16.

Assessment Parity

• Should the Act permit the imposition of unequal assessments based on specified characteristics of the separate interests (e.g., higher road maintenance assessment for units at end of road; higher utility assessments for larger units, etc.)? See, e.g. CLRC Memorandum 2001-19, p. 14.

Assessment Increases

• Should the manner of calculating the maximum permissible annual assessment increase be revised? Letter from Duncan McPherson, 12/31/07.

• Should an increase be generally allowed only once within a specified period of time? CLRC Memorandum 2007-47, Exhibit p. 57.

• Should the 30 day advance notice provision relating to annual assessment increases be revised to account for members residing out of state? Letter from Duncan McPherson, 12/31/07.

Assessment Enforcement

• Should the Act delete the requirement of a payment plan "meeting" regarding delinquent assessments, if an association offers a payment plan option through an exchange of paperwork? CAI comments, March 2008.

• Should details relating to the provided for delinquent assessment payment plan be revised or clarified? Letter from Duncan McPherson, 12/31/07.

• Should the Act delete mention of a right to record inspection from required pre-lien notice? CAI comments, March 2008.

• Should the Act grant priority to a lien for overdue assessments over other encumbrances? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 7; Email from Clifford J. Treese, 9/20/04; Letter from Duncan McPherson, 12/31/07.

• Should the Act restrict or eliminate nonjudicial foreclosure to collect overdue assessments? CLRC Memorandum 2001-19, Exhibit p. 78; Second Supplement to CLRC Memorandum 2001-19, Exhibit p. 22; letter from Amador Valdez, 3/21/05.

• Should the Act provide that an assessment lien may be enforced only at the time a home is sold? Email from Clifford J. Treese, 9/20/04.

• Should the Act address whether an association may record a lien against separate property for *future* assessments, before they come due? Telephone call from Donie Vanitzian, 9/16/04.

• Should the Act's limitation on lien foreclosure to assessment delinquencies more than 12 months old or greater than $1800 be revised, so as to prevent a homeowner from permanently maintaining a delinquency just below the statutory thresholds? CLRC Memorandum 2007-55, pp. 45-46.

• Should the Act clarify whether an association can assign its lien foreclosure rights? Letter from Duncan McPherson, 12/31/07.

• Should the Act provide that a lien release given to a member must show the recording information relating to the release? Letter from Duncan McPherson, 12/31/07.

• Should provisions in the Act referring to a late fee as a "penalty" be revised? Letter from Duncan McPherson, 12/31/07.

• Should the Act clarify whether multiple assessment delinquencies by a member that owns more than one separate interest can be aggregated for purposes of lien foreclosure? Letter from Duncan McPherson, 12/31/07.

Mechanics Liens

• Should provisions in the Act be revised that deem express consent to have been given for work performed? Letter from Kazuko K. Artus, 9/7/07.

Tax Reform

• Should tax law be revised to provide incentives for associations to maintain a certain ratio of low income housing units? Email from Clifford J. Treese, 9/20/04.

Foreclosure

• Should the Act require less process as a precondition to foreclosure? CLRC Memorandum 2007-47, Exhibit p. 252.

Availability of Financial Reports

• Should the Act provide for mandatory dissemination of an association's annual financial reports, rather than the "on-demand" dissemination provision in existing law? CLRC Memorandum 2007-55, p. 29.

• Should the Act require the filing of financial status information with the Secretary of State, in order to provide an accessible public record? CLRC Memorandum 2006-33.

Performance Benchmarks

• Should the Act's financial reporting requirements require the providing of information relating to core services to members (e.g., asset and revenue management, compliance with governing documents, board of director activity, communications and community relations)? Email from Clifford J. Treese, 9/20/04.

Self-Dealing

• Should the Act address whether a director or officer should be allowed to approve a contract affecting that person's own economic interests? Email from James Robertson, 9/14/04; Email from Susan Jolivette-Gauthier, 9/7/04.

• Should the Act mandate contracting procedures, in order to reduce the risk of favoritism and self-dealing? Should competitive bids be required? CLRC Memorandum 2001-19, Exhibit p. 78.

Insurance Requirements

• Should provisions mandating insurance coverage in a fixed dollar amount be revised to instead mandate coverage amount based on a price index? Letter from Kazuko K. Artus, 9/7/07.

• Should the Act address the scenario in which governing documents require an association to maintain insurance of a type that is no longer readily available? Minutes (May 2001).

DISPUTES

Member Discipline

• Should the Act include more detailed provisions relating to allowable member discipline? Second Supplement to CLRC Memorandum 2006-25; Letter from Duncan McPherson, 12/31/07; CLRC Memorandum 2007-47, Exhibit p. 224.

• Should the Act limit the authority of an association to impose penalties on members for noncompliance with CC&Rs? CLRC Memorandum 2001-19, Exhibit p. 15.

• Should the Act specify when an association is authorized to suspend a member's voting privileges? Email from Steve Stapleton, 9/27/04.

• Should the Act's limits on an association's ability to impose a disciplinary fine be made applicable to the imposition of non-monetary penalties? CLRC Memorandum 2007-55, p. 36.

• Should the Act provide for a disciplinary committee to initially hear and decide disputes, rather than board? Letter from Duncan McPherson, 12/31/07.

• Should the Act require institutional separation of an association's enforcement functions from its quasi-legislative and quasi-adjudicative functions? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 12.

• Should the Act guarantee members a right to be represented by counsel at an association disciplinary proceeding? Email from William Collette, 5/12/04.

• Should the Act provide for recordation of a notice of member noncompliance? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 7.

• Should the Act require, before an owner is penalized for tenant misconduct, that the owner be provided with detailed information about the offense? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 7.

• Should the Act address the extent to which a board may delegate its powers to discipline members? First Supplement to CLRC Memorandum 2006-25.

Alternative Dispute Resolution

• Should participation in internal dispute resolution be mandatory for members? CACM comments, February 2008.

• Should the Act include more procedural requirements relating to IDR? Second Supplement to CLRC Memorandum 2006-25.

• Should the Act specify how the type of alternative dispute resolution is to be chosen, prior to the initiation of a civil action? Email from Mel Klein, 11/27/07.

• Should participation in alternative dispute resolution by members other than the member who is a principal in the dispute be allowed or required? Letter from Howard Green, 9/21/07.

• Should the Act's provision allowing member appeal of an IDR decision to the board be modified to address a circumstance in which the full board participates in the initial IDR process? CLRC Memorandum 2007-47, Exhibit p. 116.

Limitation of Member Liability

• Should the Act's provision limiting the tort liability of a member based on tenancy-in-common ownership of common area be revised? Letter from Duncan McPherson, 12/31/07.

Attorney's Fees

• Should the Act allow attorney's fees to an association when a non-compliant member causes an association to incur substantial attorney's fees, but cures the deficiency before actual litigation commences? Email from Josephine Lewis, 12/18/07.

Enforcement by Government Entities

• Should the Act grant specific enforcement authority to the AG's office? Email from Bill Stelter, 2/13/08; Cecil Proulx, 12/6/07, Letter from Kazuko K. Artus, 9/7/07.

• Should the Act expressly provide that a city attorney's office may bring a 17200 action against a non-compliant board? Email from Mel Klein; CLRC Memorandum 2005-25, Exhibit p. 3.

Judicial Enforcement

• Should the Act reconcile and combine all provisions relating to judicial enforcement in a single generally applicable provision? CLRC Memorandum 2006-25.

• Should the Act add detailed procedural provisions relating to judicial enforcement of a provision of the Act? CLRC Memorandum 2007-55, p. 40.

• Does the statute of limitation for commencement of an enforcement action need revision? CLRC Memorandum 2007-47, Exhibit p. 247.

• Should the Act provide for judicial enforcement in small claims court? CLRC Memorandum 2007-47, Exhibit p. 165.

• Should the provision relating to the impact of comparative fault in an enforcement action be clarified? Letter from Kazuko K. Artus, 9/7/07.

• Is there a means for the Act to provide a member an enforcement action remedy that penalizes the offending board but not the other members of the development, and yet doesn't discourage volunteer service on the board? Letter from Kazuko K. Artus, 9/7/07.

• Should the Act allow a malicious prosecution action against a director in his or her individual capacity, or against the board's attorney, for bringing an action or asserting a defense against a member that is totally without merit? Letter from Howard Green, 9/21/07.

CONSTRUCTION DEFECT LITIGATION

• Do the provisions of the Act relating to construction defect litigation still have application following enactment of SB 800? Letter from Duncan McPherson, 12/31/07.

ISSUES RELATING TO SALE OF UNIT

Transfer of Exclusive Use Common Area

• Should the Act provide more limitation on the transfer of certain categories of exclusive use common area? CLRC Memorandum 2007-47, Exhibit p. 253.

Financial Status

• Should the Act require a seller of a separate interest to disclose information about the financial health of the association, including information on the funding of reserves and the rate of delinquency on assessments? CLRC Memorandum 2001-19, pp. 14-15. Exhibit p. 53.

Partition Action

• Should the provision of the Act relating to a partition of a condominium project be revised to instead refer to a termination? Letter from Duncan McPherson, 12/31/07.

Planned Unit Developments

• Does the provision of the Act relating to transfer of a separate interest in a planned unit development require revision? Letter from Duncan McPherson, 12/31/07.

Right of Recission

• Should the Act allow a potential purchaser of a separate interest to examine governing documents in advance of closing, with a right to rescind without penalty during the period of examination? CLRC Memorandum 2001-19, Exhibit p. 5.

Disclosures by Seller

Real Estate Listings

• Should the Act require an offer to sell a separate interest to clearly indicate that the property is part of a CID? CLRC Memorandum 2001-19, Exhibit p. 14.

Percentage of Leased Units

• Should the Act require a seller of a separate interest to disclose the percentage of leased units in the development, or in the building in which the interest is located? Letter from Roland M. Davis, 2/1/2008.

Age Restrictions

• Should the requirement in the Act that a seller disclose an unlawful age restriction in a governing document be revised or deleted? Letter from Duncan McPherson, 12/31/07.

Copies of Documents

• Should the Act allow a seller to provide a prospective buyer with electronic copies of documents required to be provided? CLRC Memorandum 2007-47, Exhibit p. 253.

ISSUES RELATING TO DEVELOPERS

Developer Documents

• Should a developer be required to provide an association with copies of construction plans and related documents? First Supplement to CLRC Memorandum 2001-19, Exhibit p. 9.

Developer Representations

• Should the Act specify whether an association is bound by representations made by the developer when selling separate units? Telephone inquiry, 10/2/03.

TERMINOLOGY

General Terms

• Should terms commonly used throughout the Act, such as "common interest development," "common area," and "planned development," be reconciled and more precisely defined? Letter from Michael Rabkin, 3/21/08.

"Member" or "Owner"

• Should the definition of "member" be revised to address scenarios in which a member of an association may not be an "owner" of a separate unit? Letter from Duncan McPherson, 12/31/07.

• Should a definition of the term "owner" be added to the Act? First Supplement to CLRC Memorandum 2007-47.

• Should all references to the term "owner" be replaced with references to "member"? CAI comments, March 2008.

"Common Interest Development"

• Should the definition include a reference to the required recordation of a declaration? First Supplement to CLRC Memorandum 2007-4.

"Community Service Organization"

• Should a "community service organization or similar entity," which under existing law may generally not impose or collect a fee or assessment in conjunction with a transfer of property be defined? Letter from Curt Sproul, CLRC Memorandum 2005-25, Exhibit p. 5.

"Master Association"

• Should the Act include a definition of a "master association" (an umbrella organization established to provide governance of multiple CIDs)? Should some or all of the Act's provisions relating to associations be made applicable to such an association? First Supplement to CLRC Memorandum 2007-47.

"Board Meeting"

• Does the provision defining this term require revision, in order to exclude scenarios such as board members taking a class on association governance (as opposed to doing association business)? Letter from Duncan McPherson, 12/31/07.

"Managing Agent"

• Do undefined terms within this definition (e.g., "control," "the assets") themselves require definition? Letter from Duncan McPherson, 12/31/07.

• Should the definition of this term include bookkeepers, accountants, attorneys, or collection agents? CLRC Memorandum 2007-47, Exhibit p. 100.

"Governing Documents"

• Should the definition of the term "governing documents" be revised to delete an existing open-ended catchall clause that includes any documents that "govern the operation of the common interest development or association"? Second Supplement to CLRC Memorandum 2006-04.

• Should the definition include other documents that in some manner governing operation of a development, such as trusts, ground leases, or special types of CC&Rs? Letter from Duncan McPherson, 12/31/07.

• Should the terms "articles of incorporation" and "bylaws" be separately defined? Letter from Kazuko K. Artus, 9/7/07.

MISCELLANEOUS

Calculation of Time

• Should the Act include a provision relating to how time is calculated, for purposes of various provisions of the Act? Email from Howard Green.

Status as Government Entity

• Should CIDs be made subject to the types of statutory restraints applicable to a governmental entity? Letter from George Staropoli; CLRC Memorandum 2005-25, Exhibit p. 6.

Senior Community Certification

• Should the Act allow senior communities to seek periodic re-certification from the state, in order to avoid disputes about whether the community has maintained its status as a senior-restricted community? First Supplement to CLRC Memorandum 2001-19, Exhibit pp. 8, 14-20.

Involvement of State Agencies

• Should the Act require a state agency to prepare templates that could be used by associations when preparing annual reports, or the required member handbook? CLRC Memorandum 2007-55, p. 28; letter from Kazuko K. Artus, 9/7/07.

Construction Defect Litigation

• Should provisions in the Act relating to construction defect litigation, set to expire on January 1, 2010, be extended? CLRC Memorandum 2007-55, p. 62.

"Common Interest Development Manager"

• Should the Act incorporate provisions from Business and Professions Code Sections 11500-11506, which provide a program for the certification of a "common interest development manager" on the completion of certain voluntary education requirements? CLRC Memorandum 2006-25.

(Business and Professions Code sections were subject to a January 1, 2008, sunset date, but the sunset date for these provisions was extended to January 1, 2012. 2007 Cal. Stat. ch. 236.)