

Second Supplement to Memorandum 2010-48

Common Interest Development: Statutory Clarification and Simplification of CID Law (Comments on Governing Document Provisions)

The Community Associations Institute, California Legislative Action Committee, has submitted a list of comments on the issues discussed in Memorandum 2010-48. A copy of the list is attached as an Exhibit.

Respectfully submitted,

Brian Hebert
Executive Secretary

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

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

| Memorandum Reviews | | |
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| MM2010-48 | | |
| Section | Page No. | Comments in Memorandum |
| 4205 | 1 to 5 | Proposed revision seems reasonable. Example, bottom of pg. 4 re qualifications for voting shows why this is the case. |
| 4205 | 5 | Deference to Governing Documents. "Unless the declaration provides otherwise", seems to have clear meaning as written. |
| 4210(a) (e) | 6 | McPherson changes re (a) and (e) make sense, and should be made. |
| 4210 | 6, 7 | Moved 4210 to 5600. Recommend leaving in current location. |
| 4215 | 7 | Do not Broaden the provision so that it applies to any type of governing documents. Is not appropriate for documents such as operating rules, as indicated. |
| 4220 | 8, 9 | Boundaries of Condominiums. Further study is required. The example of Laguna Woods Village still needs an answer, as boundaries do change, when old materials are no longer available, current building codes indicate the boundary may change due to meeting code, original plans are not available, or fire may have destroyed a building, with no original plans available. |
| 4225 | 9, 10 | Scope of Recordation. The suggested change to (c) would be appropriate. |
| 4230 | 12 | Deletion of Declarant Provisions. The staff recommends that the issue be noted for possible future study is appropriate. Hopefully, the issue of the old 75% Super Majority of Quorum voting for any change in the Declarations, can be addressed. |
| 4235 | 12 to 15 | Agree that Section 4235(b) is appropriate as currently stated. |
| 4250 | 15 to 17 | Name of the Association; Prohibited Content; Pre-1986 Declarations; Sope of Content. Issues do need further study. |
| 4255 | 17, 18 | Special Content of Declaration. The proposed change to " declaration or an amendment to the declaration." should not create a problem. |
| 4260 | 18 | Authority to Amend Declaration. No change is appropriate. |
| 4265 | 18 to 20 | Perpetual extension of the declaration seems reasonable, and suggest it be approved. |
| 4265 | 19, 20 | Timing of Extension Agreement. 4265(b) revision proposed is acceptable. |
| 4265 | 20 | "Approval of Members" suggested change makes sense. |
| 4265 | 20 | Should (d) be added? If the declaration is not amended before its termination date, entirely new declarations must be approved by t"a majority of all members" and recorded. |
| 4270 | 20, 21, 22 | "majority approval requirement as requiring the approval of more that 50%" seems appropriate, and should be used. |
| 4270 | 22 | Replace "governing documents" with "declaration" throughout proposed Section 4270. |
| 4270 | 23 | Non-owner Consent. Suggested change to (a) seems acceptable. Except should "person" be "other party", as most mortgages are held by lending institutions, not "persons". In the current situation with foreclosures is process, and owners no longer occupying their units, determining the "other person whose approval is required", has proven to be a formidable task. Even when found, few mortgage holders have responded to correspondence requesting their approval. Could that problem be solved by adding an "(e) When other persons or parties are contacted by registered or certified mail, due to a proposed change in the "declaration", they shall have thirty(30) days to respond, or their approval is deemed as to having been given". |
| 4270 | 23, 24 | Replace "writing" with "amendment" in (2), not (3). |
| 4275(c)(2) | 24 | Compliance with Law. Proposed change is acceptable. |
| 4280(a)(3) | 26,27 | Delete (a)(3) because the Managing Agent frequently is "transitory in nature". Signatories as described in 4295(b) on pg. 29 of MM10-48 is an appropriate change to make. To also change the definition of "condominium plan" also makes sense. |
| 4295 | 27, 28 | Simplified procedure for the amendment process make sense for for study. |
| 4295 | 29 | Would not appear to require modification. |
| 4350 | 30 | Agree further study is appropriate. |
| 4355 | 30, 31 | Section 4360 already requires (a) thirty days prior to considering the change to give written notice of the proposed change, and a description of the purpose and effect of the change. Written notice of the change must be given within 15 days of making the change. Section 4365 gives the members the procedure for Reversal of Rule Changes by members. Agree that revision is unnecessary. |
| 4360 | 31, 32 | The suggested change on p. 33 seems appropriate. |
| 4360 (a) (c) | 32, 33 | Rulemaking Referendum. The changes proposed on pp. 34 and 35, would satisfy the suggested changes without significantly changing the existing policy. |
| 4365 | 33 to 35 | Rules made prior to 2004 do exist. Therefore, Section 4370 is necessary. |
| 4370 | 35, 36 | |