

Memorandum 2013-19

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

On August 17, 2012, Assembly Bills 805 and 806 (Torres) were enacted, implementing the Commission's recommendation to recodify the Davis-Stirling Common Interest Development Act (hereafter, "Davis-Stirling Act"). 2012 Cal. Stat. chs. 180, 181; *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010). Both bills have an operative date of January 1, 2014.

At the December 2012 meeting, the Commission approved a final recommendation proposing technical "clean-up" revisions needed to address problems that had arisen in the process of enacting AB 805 and AB 806. Minutes (Dec. 2012), p. 3; *Statutory Clarification and Simplification of CID Law (Clean-Up Legislation)*, 42 Cal. L. Revision Comm'n Reports 307 (2012). In approving that recommendation, the Commission deferred consideration of whether to recommend a clarification of Civil Code Section 4205. Minutes (Dec. 2012), p. 3.

At the February 2013 meeting, the Commission approved staff recommendations relating to a proposed revision of Section 4205, and directed the staff to prepare a draft final recommendation consistent with its decisions. Memorandum 2013-6 and First Supplement to Memorandum 2013-6; Minutes (Feb. 2013), p. 4.

Attached to this memorandum is a staff draft of a final recommendation proposing a revision of Section 4205. The draft recommendation also includes proposed technical revisions of three other sections of the Davis-Stirling Act, which will be discussed in more detail in this memorandum.

After consideration of this memorandum and the staff draft recommendation, the Commission will need to decide whether to approve the

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The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

draft recommendation, with or without changes, as a final recommendation for submission to the Legislature.

Except as otherwise indicated, all statutory references in this memorandum are to the Civil Code.

HIERARCHY OF GOVERNING AUTHORITY

The staff draft recommendation includes the proposed revisions of Section 4205 that were approved by the Commission at the February 2013 meeting. The rationale for the proposed revisions is explained in the narrative preliminary part of the recommendation, as well as in the proposed Commission Comment that follows the proposed revision of the section.

The explanation clarifies that while Section 4205 was intended to establish a hierarchy of authority governing a common interest development (hereafter, "CID"), the section was not intended to prescribe the circumstances in which that hierarchy would apply. To avoid any misunderstanding as to that latter point, the proposed law would revise the section's text to more closely parallel language regularly used in comparable contexts (a constitutional provision, multiple statutes, and appellate court decisions) that express a hierarchy of competing authority, without specifying the precise circumstances in which that hierarchy applies.

ADDITIONAL TECHNICAL REVISIONS

The staff has been alerted to a few other technical revisions that appear appropriate for inclusion in the clean-up recommendation.

"Approval by Majority of Quorum of Members"

Section 4070 was added to the Davis-Stirling Act to standardize the meaning of provisions that require the approval of a "majority of a quorum of the members." *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235, 248, n. 21 (2010).

The section reads as follows:

4070. If a provision of this act requires that an action be approved by a majority of a quorum of the members, the action shall be approved or ratified by an affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a

quorum is present, which affirmative votes also constitute a majority of the required quorum.

2012 Cal. Stat. ch. 180, § 2.

Peter Saputo, an attorney involved in the practice of CID law, has informally suggested that Section 4070 could be understood as applying only when an election is conducted at a member meeting, and not when an election is conducted outside of a meeting (e.g., by mailed ballot).

That was not the Commission's intention. Three of the provisions governed by Section 4070 expressly apply to an "election" (as an alternative to action at a member meeting). See Civ. Code §§ 5605(a), 5605(b), 5620(b).

To avoid any misunderstanding, the staff recommends that Section 4070 be revised to expressly state that it applies to any election, including one conducted outside of a meeting. See attached draft, pp. 5, 7.

Technical Correction of Reference Errors

Pursuant to standard Commission drafting practice, the recodification recommendation generally divided long sections into shorter sections. This often requires adjusting cross-references to a section that has been broken up.

In two instances, the staff overlooked cross-references that should have been revised. **The staff regrets the errors and recommends that they be corrected.** See proposed revisions to Sections 4530 and 5610, in the attached draft.

RECOMMENDATION

The staff recommends that **the Commission approve the attached draft recommendation for printing and submission to the Legislature.** The staff will seek to have all approved revisions added as amendments to Senate Bill 745 (Senate Committee on Transportation and Housing), a pending omnibus housing bill that includes the clean-up revisions recommended at the December 2012 meeting.

Respectfully submitted,

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Staff Counsel

#H-855

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

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

April 2013

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SUMMARY OF RECOMMENDATION

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

This recommendation proposes minor technical revisions to clarify meaning and correct two erroneous cross-references.

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

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

1 Assembly Bill 805 (Torres), enacted in 2012,¹ implemented a Law Revision
2 Commission recommendation² to reorganize and recodify the Davis-Stirling
3 Common Interest Development Act³ (hereafter, “Davis-Stirling Act”), the primary
4 statutory authority governing common interest developments (hereafter, “CIDs”).
5 The bill repeals the existing statute as of January 1, 2014, and replaces it with a
6 new statute⁴ that will become operative on January 1, 2014.⁵

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

10 **Approval By Majority of Quorum of Members**

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

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

18 **Document Authority**

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

23 The section reads as follows:

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

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

3. Civ. Code §§ 1350-1378.

4. Civ. Code §§ 4000-6150.

5. 2012 Cal. Stat. ch. 180, § 3.

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

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

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

1 4205. (a) To the extent of any inconsistency between the governing documents
2 and the law, the law controls.

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

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

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

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

14 To avoid any misunderstanding of the limited purpose and effect of Section
15 4205, the Commission recommends that the language in the section be revised to
16 more closely parallel language that is routinely used in comparable contexts
17 (where a rule of supremacy is established without exhaustive specificity as to the
18 circumstances in which the rule must be applied).¹⁰

19 **Cross-Reference Corrections**

20 The proposed law would also correct two erroneous cross-references.¹¹

9. 2012 Cal. Stat. ch. 180, § 2.

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

11. See proposed amendments to Civ. Code §§ 4530, 5610 *infra*.

PROPOSED LEGISLATION

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

2 SECTION 1. Section 4070 of the Civil Code is amended to read:

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

9 **Comment.** Section 4070 is amended to make clear that it applies to elections conducted
10 outside of a meeting. See also Section 5115(b) (ballots received to be counted as persons in
11 attendance at meeting for purposes of establishing quorum).

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

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

14 4205. (a) To the extent of any ~~inconsistency~~ conflict between the governing
15 documents and the law, the law ~~control~~ shall prevail.

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

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

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

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

27 The amendment would conform the terminology used in Section 4205 to that used in numerous
28 other statutory provisions that establish a rule of supremacy between authority without
29 exhaustively specifying the circumstances in which the rule is to be applied. See, e.g., Civ. Code
30 §§ 799.10, 2924h, 5100(e); Educ. Code §§ 24953(h), 69522; Fish & Game Code § 7090(h); Food
31 & Agric. Code § 13169; Health & Safety Code §§ 1568.065, 1787; Ins. Code § 11580.2; Pub.
Res. Code §§ 2770.6, 2772.5, 71530; Pub. Util. Code § 5142; Veh. Code § 15200.

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

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

34 4530. (a) Upon written request, the association shall, within 10 days of the
35 mailing or delivery of the request, provide the owner of a separate interest, or any
36 other recipient authorized by the owner, with a copy of the requested documents
37 specified in Section 4525.

38 (b)(1) Upon receipt of a written request, the association shall provide, on the
39 form described in Section 4528, a written or electronic estimate of the fees that
40 will be assessed for providing the requested documents. The documents required

1 to be made available pursuant to this section may be maintained in electronic
2 form, and may be posted on the association's Internet Web site. Requesting parties
3 shall have the option of receiving the documents by electronic transmission if the
4 association maintains the documents in electronic form. The association may
5 collect a reasonable fee based upon the association's actual cost for the
6 procurement, preparation, reproduction, and delivery of the documents requested
7 pursuant to the provisions of this section.

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

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

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

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

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

23 **Civ. Code § 5610 (amended). Emergency exception to assessment approval requirements**

24 SEC. ____ . Section 5610 of the Civil Code is amended to read:

25 5610. Section 5605 does not limit assessment increases necessary for emergency
26 situations. For purposes of this section, an emergency situation is any one of the
27 following:

28 (a) An extraordinary expense required by an order of a court.

29 (b) An extraordinary expense necessary to repair or maintain the common
30 interest development or any part of it for which the association is responsible
31 where a threat to personal safety on the property is discovered.

32 (c) An extraordinary expense necessary to repair or maintain the common
33 interest development or any part of it for which the association is responsible that
34 could not have been reasonably foreseen by the board in preparing and distributing
35 the annual budget report under Section 5300. However, prior to the imposition or
36 collection of an assessment under this ~~subdivision~~ section, the board shall pass a
37 resolution containing written findings as to the necessity of the extraordinary
38 expense involved and why the expense was not or could not have been reasonably
39 foreseen in the budgeting process, and the resolution shall be distributed to the
40 members with the notice of assessment.

41 **Comment.** Subdivision (c) of Section 5610 is amended to correct an erroneous cross-reference.