

First Supplement to Memorandum 2008-64

Statutory Clarification and Simplification of CID Law: Status Report

Two letters are attached to this memorandum as Exhibits. The first is a letter from Curtis Sproul, explaining the process that is being followed to develop and communicate the “ad hoc CID attorney group’s” concerns about the Commission’s proposed recodification of the Davis-Stirling Act. See Exhibit p. 1.

The second letter is from Dick Preuss, Vice-Chair, CAI-CLAC Executive Committee. He describes the efforts that his group is making to review the proposed law and suggest additional improvements. See Exhibit p. 4.

Every interested person or group is invited to review the proposed law and offer suggestions or criticisms. This second round of review was *prompted* by the opposition of the ad hoc CID attorney group, but it is *not limited* to consideration of their views. As is always the case, the Commission is interested to hear any constructive criticism of its proposals.

Respectfully submitted,

Brian Hebert
Executive Secretary



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December 8, 2008

Mr. Brian Hebert
Assistant Executive Secretary
California Law Revision Commission
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Sent via e-mail to: bhebert@clrc.ca.gov

***Re: CLRC Memorandum 2005-18; Project to Clarify and
Simplify the Laws Relating to Common Interest Developments***

Dear Brian:

Thank you for sending me a copy of the California Law Revision Commission's Memorandum dated December 5, 2008 [2008-64], which presents a status report to the Commission regarding the CLRC Project to Clarify and Simplify the Laws Relating to California Common Interest Developments. The work of the California Law Revision Commission (the "Commission") over the past several years culminated this year in the introduction of legislation in the California Legislature (Assembly Bill 1921) which proposed a comprehensive revision and reorganization of the Davis-Stirling Common Interest Development Act (California Civil Code section 1350 et seq; referred to in this letter as the "Davis-Stirling Act"). With the consent of the author of that AB 1921 (Assemblyperson Saldana), the Bill was tabled for this legislative session and is now likely, in some form, to become a two year bill in the next legislative session.

As you are aware, this past summer the Real Property Law Section of the State Bar of California designated an adhoc subcommittee of the Section's Subsection on Common Interest Developments (the "Committee"), which was given the mission of reviewing and commenting on the latest draft of the tabled AB 1921 legislative proposal and to assist the Commission in its efforts to clarify and simplify the Davis-Stirling Act (without introducing or proposing changes in substantive law). The impetus for organizing the Committee was a letter that was sent to the Commission dated April 18, 2008, signed by 20 lawyers that regularly deal with and apply the Davis-Stirling Act in their representation of a broad range of constituencies in the real estate industry, including developers, homeowner associations, individual homeowners, property managers, accountants, and consultants. At an informal meeting held in Sacramento on August 4, 2008, eight attorneys from this diverse group met with you and Commissioner Ed Regalia to

discuss concerns about the tabled AB 1921 and how the group could provide meaningful input to the Commission regarding the subject matter of the Bill and the Commission's efforts pertaining to revisions to the Davis-Stirling Act. At that meeting, the attorneys agreed, with the Commission's concurrence, to delegate future collective commentary regarding the Commission's work to improve the Davis-Stirling Act to a subcommittee of the Real Property Law Section of the State Bar. The executive committee of the Real Property Law Section later convened and appointed the adhoc subcommittee, comprised of Paul Dubrasich (a member of the Executive Committee of the Section), Marianne Adriaticio (co-chair of the Section's Subsection on Common Interest Developments), Mary Howell (a common interest practitioner who specializes in issues related to age and disabilities discrimination), David Van Atta (an author of the Hanna & Van Atta law treatise on Common Interest Developments and a member of the original select committee appointed by the Legislature to assist in drafting the legislation that became the Davis-Stirling Act), Katie Jacobsen (a partner with the Luce Forward firm in San Diego that represents many common interest development clients), and the undersigned. Subsequently, attorney Sandra Bonato was invited to join the Committee due to her interest in the project and her leadership in commenting on the Commission's draft Davis-Stirling revision proposals.

In consultation with the Commission staff a timeline for the Committee's input and analysis was proposed that would have resulted in a report and recommendations from the Committee. The goal was to provide initial input by the end of calendar year 2008. Due to a number of factors, not the least of which has been the adverse impact on the real estate industry caused by the global economic down-turn and its resulting impact on real estate law practitioners, the work of the Committee has not been able to proceed in strict compliance with the originally established deadlines.

Nevertheless, significant progress has been made by the Committee and regular contacts and communications have continued between the Committee's representatives and Brian Hebert, representing the Commission's staff. Here is a brief overview of the work of the Committee to date:

The Committee has conducted regular conference call meetings and the members of the Committee have exchanged emails on a regular basis. The approach taken in these discussions has had two principal points of focus. First, the members of the Committee have analyzed and discussed the extent to which the Davis-Stirling Act can be improved and made more accessible to persons who must regularly consult or apply the law by (i) reorganizing the presentation of some substantive topics within the Act; (ii) combining several existing provisions of the Act which duplicate each other to a certain extent; and/or (iii) by dividing multiple substantive topics that are currently addressed in a single provision of the Act, but have little relation to each other, into separate provisions. These discussions among the Committee members have included a review and consideration of the organization of the Act that was proposed in Assembly Bill 1921 as well as other organizational proposals.

To date, our initial work has not resulted in any broad consensus regarding the extent to which the current Davis-Stirling Act can be improved by these sorts of reorganization efforts.

Some members believe the Act can serve the common interest community well with minor revisions, while others would prefer to see more change in an effort to achieve clarity, improve accessibility, and eliminate duplication. In the final analysis, most members of the Committee view this debate as being of secondary importance, because the answer will emerge from the changes that are recommended when discrete substantive areas of the Act are examined more closely.

That conclusion leads me to the second part of this interim report, namely that several members of the Committee have volunteered to address specific sections of the Davis-Sterling Act and have provided initial commentary to the Committee as a whole for consideration. This process is ongoing, and the Committee will collectively review and comment on this initial commentary with the goal of arriving at a reasonable consensus on these issues in the first quarter of the coming year. In accordance with established State Bar protocols, the Committee's work and recommendations will need to first be reviewed and approved by the Executive Committee of the Real Property Law Section.

As with our review and analysis of the organization of topics within the Act, this work focusing on discrete sections of the Act is also being pursued with an approach that challenges the members of the Committee to identify and preserve revisions proposed by the Commission staff which are considered to be an improvement over existing law and to identify and propose other or further revisions that will, in the opinion of the Committee members, improve the clarity and accessibility of the Act to the diverse constituencies that consult the law on a regular basis.

Sincerely,



Curtis C. Sproul

On behalf of the Common Interest Development Legislative Advisory Committee,
A special committee of the State Bar Real Property Law Section
Law Section Common Interest Committee

cc: Scott Rogers, Chairman, Executive Committee of the
State Bar Real Property Law Section
Pam Wilson, State Bar Director of Sections
Paul Dubrasich
Marianne Adriaticio
Mary Howell
David Van Atta
Katie Jacobsen
Sandra Bonato

December 8, 2008

Mr. Brian Hebert
Executive Secretary
California Law Review Commission
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(via email and post)

Dear Brian,

Community Associations Institute would like to comment on Memorandum 2008-64, dated December 5, 2008, **Statutory Clarification and Simplification of CID Law: Status Report**.

As you know, we exchanged several letters last year pertaining to changes we felt were necessary in AB 1921, and the majority of those changes were made. But there were changes which you felt were beyond the scope of your authority to change, which were not made, and if the Davis-Stirling Act rewrite is now scheduled for a revised draft in 2009, the California Legislative Action Committee (CAI-CLAC) of CAI would like to send our recommended changes to CLRC in 2009.

We have a group of fourteen individuals-nine attorneys, three community managers and two homeowners, who are currently reviewing all 246 pages of the last rewrite of AB1921. These rewrites were to be in my hands by February 1, 2009, and I assume it will take about two weeks to put them into a form for your review.

We believe, just as we did in 2008, that there are some necessary substantive changes, and we will address those as well. Even though you did not feel those types of changes could be made, it now feels from your work with the Attorney Group representing the Real Property Section of the State Bar, that may now be possible.

As our association, CAI, which has eight Chapters in California, represents the 41,000 CID associations within the state, including mixed use CIDs, we believe it is imperative that the changes we are proposing be considered by the California Law Review Commission prior to the Bill being formulated.

We can discuss this matter in Burbank on December 11, 2008.

Respectfully,

/s/

Dick Pruess, Vice Chair, CAI-CLAC Executive Committee

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