

Study H-852

November 26, 2003

First Supplement to Memorandum 2003-37

**Common Interest Development Law: Uniform Common Interest  
Ownership Act (Comments of Carl H. Lisman)**

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Attached to this memorandum is a copy of a letter from Carl H. Lisman of the Joint Editorial Board for Uniform Real Property Acts, distributed and considered at the Commission meeting on November 21, 2003.

Respectfully submitted,

Brian Hebert  
Assistant Executive Secretary

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There appears to be a consensus that something is wrong with the Davis-Stirling Common Interest Development Act. The Law Revision Commission believes that it can be saved by incremental change. The alternative is to replace it with a modified version of the Uniform Common Interest Ownership Act.<sup>1</sup>

The strength of UCIOA is its cohesiveness and balanced treatment of disparate interests and the benefits of uniformity to buyers and sellers of units, residential lenders and others. It would better serve the needs of California than Davis-Stirling.

*Uniformity.* As the Law Revision Commission has recognized, uniformity provides certainty and reduces costs in interstate transactions. There are two other important benefits to Californians not yet mentioned: First, we live in a mobile society, and home buyers and sellers in approximately half the states already have dealt with UCIOA in one form or another when buying or selling; while real estate is not movable, California residents are. Second, the large purchasers of residential mortgages were active participants in the drafting of UCIOA and their underwriting standards look for what UCIOA offers.

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<sup>1</sup> UCIOA is the law in Alaska, Colorado, Connecticut, Minnesota, Nevada, Vermont and West Virginia. The Uniform Condominium Act (or variants thereof) - which applies essentially the same law to the condominium form of ownership only - is the law in Alabama, Maine, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Pennsylvania, Rhode Island, Texas, Virginia and Washington. Other states have enacted parts of UCIOA and the Uniform Condominium Act.

Scope. Post-Effective Date. UCIOA applies to all common interest communities after its effective date, except to (a) planned communities and cooperatives containing 12 or fewer units with no reserved Development Rights, planned communities containing any number of units if expenses chargeable by the association of unit owners are below a specified amount and (b) any common interest community in which the units are restricted exclusively to non-residential occupancy. Neither of the *de minimus* exclusions are critical to UCIOA; the commercial/industrial exclusion recognizes that the protections of the law are less important in that context.

Pre-Effective Date. UCIOA recognized that the law of an enacting state may not have developed three fundamental concepts important to all common interest communities, so it mandates that (a) there should not be double taxation of common elements, (b) local government regulation should not treat the common interest form of ownership differently than other types of real estate ownership, and (c) if there is an exercise of eminent domain, how a taking affects owners of units and how to deal with common elements.

It also imposes - on a going-forward basis without affecting prior actions - a number of other provisions (set out in Section 2-104) which have proven to be helpful, including provisions to shorten deed descriptions when units are sold, the so-called association "super-lien," the requirement of resale certificates and others. A state like California - because Davis-Stirling would not be repealed but left in place for regimes existing prior to the UCIOA effective date - could conclude that existing provisions make this approach unnecessary.

*Why Use UCIOA as the model?* The simple answer is that UCIOA works in almost all

areas of its coverage, a body of law and lore has been developed that implements it, and those who use it regularly - including developers, lawyers, lenders, buyers and sellers, owners, tenants, managers, brokers and government regulators - find it easy to understand and apply.

▶ The structure of UCIOA is readily understood -

Article I	General Provisions, Definitions, Applicability
Article II	Creation, Alteration and Termination of Common Interest Communities
Article III	Management of Common Interest Communities
Article IV	Protections of Purchasers
Article V	Administration and Registration

▶ It provides a fair framework for developer flexibility by authorizing - but not requiring - flexibility in development and for a period during which the developer can control the activities of the association, as well as providing for statutory protections of lenders to developers.

▶ It sets out a comprehensive set of rules for association governance. Many of the rules of Article 3 were written to ensure balanced protections for unincorporated associations.

▶ UCIOA contains extensive protections for purchasers from developers or others by requiring delivery of a public offering statement or resale certificate (as appropriate). It prohibits waivers of specified rights.

*Is a Piecemeal Approach Better under the Circumstances?* Judging the political winds is best left to the Law Revision Commission. However, in most instances, the policy embedded in each UCIOA position was carefully considered, both directly and indirectly.

*Where California might Deviate from UCIOA.* There are probably two subjects that could be left to existing law - or a different law entirely - while still using UCIOA as the template: Construction defect claims against developers and homeowner "bills of rights." Both already have been addressed by California.