

First Supplement to Memorandum 2004-47

2004 Legislative Program: Technical Follow-Up

The Commission's recommendation on *Alternative Dispute Resolution in Common Interest Developments* (September 2003) was implemented by AB 1836 (Harman), 2004 Cal. Stat. ch. 754. The recommendation included provisions repealing Code of Civil Procedure Section 383 and continuing its substance in the Davis-Stirling Common Interest Development Act (as Civil Code Sections 1368.3 and 1368.4). In drafting that part of the recommendation, the staff overlooked three statutory cross-references to former Section 383 that should have been revised to reflect the repeal of Section 383.

The staff recommends that those cross-references be revised as follows:

Civ. Code § 945 (amended). Application of requirements relating to action for construction defect

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in ~~Section 383 of the Code of Civil Procedure~~ Sections 1368.3 and 1368.4 shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

Comment. Section 945 is amended to correct the cross-reference to former Code of Civil Procedure Section 383. Sections 1368.3 and 1368.4 continue former Code of Civil Procedure Section 383 without substantive change.

Civ. Code § 1363 (amended). Community association management

1363. ...

(c) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

The association, whether incorporated or unincorporated, may exercise the powers granted to an association by ~~Section 383 of the~~

~~Code of Civil Procedure and the powers granted to the association in this title.~~

...

Comment. Section 1363 is amended to delete the cross-reference to former Code of Civil Procedure Section 383. This is a nonsubstantive change. The substance of former Code of Civil Procedure Section 383 is continued in this title. See Sections 1368.3 and 1368.4.

Civ. Code § 1374 (amended). Application of Davis-Stirling Common Interest Development Act

~~1374. Nothing in this title may be construed to apply to a development wherein there does not exist a common area as defined in subdivision (b) of Section 1351, nor may this title be construed to confer standing pursuant to Section 383 of the Code of Civil Procedure to an association created for the purpose of managing a development wherein there does not exist a common area.~~

This section is declaratory of existing law.

Comment. Section 1374 is amended to delete the cross-reference to former Code of Civil Procedure Section 383. This is a nonsubstantive change. The substance of former Code of Civil Procedure Section 383 is continued in this title. See Sections 1368.3 and 1368.4.

The cross-reference in Section 945 is revised to refer to both Section 1368.3 and Section 1368.4, which together continue the entire substance of former Section 383. It is likely that a reference to Section 1368.3 alone would be sufficient (Section 1368.3 continues the provisions establishing the standing of an association to sue in its own name). However, Section 945 refers to the rights of associations “and others” as set forth in former Section 383. That language makes it unclear exactly what is being referenced. Out of caution, the draft revision preserves the full scope of the existing reference.

Because the substance of former Section 383 has been continued in the Davis-Stirling Common Interest Development Act, any reference within that Act to “this title” now includes a reference to the substance of former Section 383. For example, in Section 1363, a reference to the powers granted “in this title” includes the powers granted by former Section 383. In Section 1374, the language limiting the application of “this title” includes a limitation on the application of former Section 383. Therefore, the separate references to former Section 383 are now redundant and can be deleted.

The proposed changes seem to be straightforward and nonsubstantive. However, it might be prudent to circulate the changes for a brief period of public comment. If ultimately approved, the changes could perhaps be amended into a CID bill in 2005 (e.g., a bill implementing a Commission recommendation on preemption of CID architectural restrictions). Alternatively, if the Commission feels confident that the proposed changes are unproblematic, they could be approved now as a final recommendation.

Respectfully submitted,

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