

Memorandum 2005-18

Statutory Clarification and Simplification of CID Law (Discussion of Issues)

Common interest developments are governed by a complex body of law. The Corporations Code regulates both incorporated and unincorporated homeowner associations (to different degrees). In addition, all CIDs are subject to the Davis-Stirling Common Interest Development Act (Civ. Code § 1350 *et seq.*), a statute that is considered by many to be unnecessarily complex and difficult to understand. There are also a handful of CID-related statutes located elsewhere in the codes.

CID law must be understood and applied by directors in over 36,000 homeowner associations statewide. These directors are volunteers chosen from among the members of their communities. Individual CID homeowners (in over three million CID homes statewide) also have an interest in understanding CID law. It directly affects their property rights and the living conditions within their communities. For the most part CID homeowners and their directors are nonlawyers.

The Commission has decided that the next phase of its study of CID law will focus on reorganizing and simplifying CID law in order to make it easier to understand and use. In the course of that project, noncontroversial substantive improvements may also be made.

This memorandum describes the general approach that the staff intends to follow in this project.

METHODOLOGY

One Step or Many?

One question that must be considered at the outset is whether to approach reorganization of CID law in a series of incremental steps, completing work on one part of the law before beginning work on the next. The alternative would be to work straight through, with the goal of preparing a single reorganization proposal.

An incremental approach is the more cautious alternative. The political feasibility of the project can be tested by submitting a small part of the whole for legislative consideration. If it is enacted, we can proceed from where we left off, with some confidence that our work will bear fruit. If it is not enacted, then we can set the reorganization project aside without having wasted too much effort.

That was the approach used when the Commission worked on proposed nonsubstantive reorganizations of environmental law and criminal sentencing law. In each case, the Commission was unsure of the political prospects of the proposed reorganization and completed a small part of the whole in order to test the waters. As it turned out, there was significant political opposition to those efforts and both projects were set aside.

The staff does not think that we need to be so cautious in working on CID law. The opposition to the reorganization of environmental and criminal sentencing laws was based on two general arguments: (1) “it ain’t broke,” and (2) the transitional costs associated with section renumbering would outweigh any benefit from improved organization. We have not heard anyone suggesting that CID law is fine the way it is. Nor does it seem likely that the primary beneficiaries of reorganization (CID homeowners and their directors) would have any institutional loyalty to the present section numbering scheme.

There are also practical advantages to working through the entire reorganization process before submitting a recommendation to the Legislature. It would facilitate reconsideration of decisions made early in the project to reflect new insights gained in later phases of the project. If instead we were to proceed in incremental steps, it would be much harder to revisit decisions made early in the project, because those decisions might already have been enacted into law.

Furthermore, if we approach the project as a whole, it should be easier to make fundamental changes to the existing organization of the law. An incremental approach would require us to leave the existing organization largely unchanged, updating each part of the law *in situ* as we move forward.

The staff recommends that we work toward a single comprehensive proposal for reorganization of CID law. If it turns out that there is political opposition to the project, we can reconsider that approach.

General Organization

In 2003, the Legislature enacted a Commission proposal to add chapter and article headings to the Davis-Stirling Act (*Organization of Davis-Stirling Common*

Interest Development Act, 33 Cal. L. Revision Comm'n Reports 1 (2003)). This relatively simple step made it easier to locate relevant law within the Act. The current organization of the Davis-Stirling Act, as reflected by the headings, is as follows:

CHAPTER 1. GENERAL PROVISIONS

Article 1. Preliminary Provisions

Article 2. Definitions

CHAPTER 2. GOVERNING DOCUMENTS

Article 1. Creation

Article 2. Enforcement

Article 3. Amendment

Article 4. Operating Rules

CHAPTER 3. OWNERSHIP RIGHTS AND INTERESTS

CHAPTER 4. GOVERNANCE

Article 1. Association

Article 2. Common Interest Development Open Meeting Act

Article 3. Managing Agents

Article 4. Public Information

Article 5. Dispute Resolution Procedure

CHAPTER 5. OPERATIONS

Article 1. Common Areas

Article 2. Fiscal Matters

Article 3. Insurance

Article 4. Assessments

CHAPTER 6. TRANSFER OF OWNERSHIP INTERESTS

CHAPTER 7. CIVIL ACTIONS AND LIENS

Article 1. Miscellaneous Provisions

Article 2. Alternative Dispute Resolution

CHAPTER 8. CONSTRUCTION OF INSTRUMENTS AND ZONING

CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

CHAPTER 10. IMPROVEMENTS

The headings proposed by the Commission reflect the existing organization of the Davis-Stirling Act. The Commission did not tinker with that underlying organizational structure.

The current project provides an opportunity to improve the general organization of the Davis-Stirling Act. Substantively related provisions can be grouped together. For example, sections limiting the scope of aesthetic restrictions can currently be found in all of the following locations:

- In Article 1 (Creation) of Chapter 2 (Governing Documents): Civ. Code §§ 1353.5 (flag displays), 1353.6 (noncommercial signs), 1353.7 (roofing materials).
- In Chapter 3 (Ownership Rights and Interests): Civ. Code § 1360 (modification of unit by owner).
- In Chapter 10 (Improvements): Civ. Code § 1376 (television antenna).

It would be better if those sections were grouped together in one location.

In addition, we should consider reorganizing the Davis-Stirling Act to make it more accessible to CID homeowners. The outline below offers one possible approach, with provisions relating to member rights and duties near the front of the Act, followed by provisions on the governing association and finances. Matters of less day-to-day importance are toward the end.

CHAPTER 1. GENERAL PROVISIONS

- Article 1. Short Title
- Article 2. Scope and Application
- Article 3. Definitions

CHAPTER 2. RIGHTS AND DUTIES OF MEMBERS

- Article 1. Bill of Rights [Reserved]
- Article 2. Property Use
- Article 3. Inspection of Records
- Article 4. Actions Requiring Member Approval
- Article 5. Member Duties

CHAPTER 3. COMMUNITY ASSOCIATION

- Article 1. Existence and Powers of Association
- Article 2. Directors
- Article 3. Election and Recall of Directors
- Article 4. Open Meetings
- Article 5. Operating Rules
- Article 6. Member Discipline
- Article 7. Architectural Review
- Article 8. Internal Dispute Resolution
- Article 9. Managing Agents

CHAPTER 4. FINANCES AND MAINTENANCE

- Article 1. Operating Budget
- Article 2. Reserve Funding
- Article 3. Assessments
- Article 4. Assessment Collection
- Article 5. Insurance
- Article 6. Maintenance

CHAPTER 5. GOVERNING DOCUMENTS

Article 1. Creation
Article 2. Amendment
Article 3. Construction of Documents

CHAPTER 6. CIVIL ACTIONS

Article 1. Civil Actions
Article 2. Alternative Dispute Resolution

CHAPTER 7. TRANSFER OF OWNERSHIP

CHAPTER 8. CONSTRUCTION DEFECT LITIGATION

There are, of course, other organizing principles that could be used. The staff invites suggestions on how to make the organizational structure more intuitive and clear.

Location

If the Commission were to try to maintain section number continuity, then it would make sense to keep the Davis-Stirling Act in its present location. Existing section numbers could then be preserved to the maximum extent.

However, if we intend to make improvements to the general organization of the Act, most section numbers would change. In that event, there would seem to be no compelling reason to keep the Davis-Stirling Act in its present location. In fact, doing so might create confusion between old and new numbers. A better approach might be to move the Act to a new location in the Civil Code.

There is a large gap in the Civil Code between Sections 3548 and 7100. The Davis-Stirling Act could be located in that gap, with enough room for sensible spacing between section numbers and the use of whole, rather than decimal section numbers. This would place the Act within Division 4 “General Provisions.” That would not be as good a subject match as the Act’s current location within Division 2 “Property,” but it would fit. The staff is inclined to move the Act to that location.

Drafting Style

In drafting statutes we are generally guided by established drafting conventions and the need to avoid legal ambiguity. This can lead to language that is spare and mechanical and which may not be easy for a layperson to understand.

To a large extent that is unavoidable. Natural language can be too fuzzy for use in a statute. However, it may be that we can provide natural language guidance in the Commission Comments.

Our standard practice is to limit a Comment to a brief statement of the derivation of a change in the law. In some cases, we will add commentary to clarify a potentially confusing point. We typically do not simply reiterate the effect of a proposed change in the law.

In this project we should probably be more expansive in our Comments. For example, if existing Section 1350 were recodified as Section 4000, our typical commentary would be as follows:

4000. This title shall be known and may be cited as the Davis-Stirling Common Interest Development Act.

Comment. Section 4000 continues former Section 1350 without change.

Although the meaning of that section might seem plain to an attorney, more explanation might be helpful to a layperson, thus:

Comment. Section 4000 continues former Section 1350 without change. It allows a person to refer to this title by its name (the “Davis-Stirling Common Interest Development Act”) rather than by its location in this code (“Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code”). Either form of reference can be used.

The more conceptually difficult a provision is, the more useful expanded commentary would be.

The problem with expansive commentary is that our Comments have legal as well as educational significance. They are used by the courts as evidence of legislative intent. If we are too casual with our language, we might contribute to a judicial interpretation of a provision that was never intended. Minimalist and regimented Comment language helps to avoid that problem.

The staff recommends that we try providing more expansive commentary, at least initially. If it turns out to be problematic we can return to our usual, more conservative, practice.

Overlapping Authority

The complexity of CID law is due in part to the overlap between the Corporations Code and the Davis-Stirling Act. This is further complicated by the fact that some homeowner associations are unincorporated and are therefore not subject to the full range of nonprofit corporations law.

A CID homeowner who knows about the Davis-Stirling Act but is ignorant of the application of corporations law will have an incomplete understanding of governing law. A homeowner who is aware of both sources of law may not be sure, in a particular case, how the two sources are intended to interact.

The staff recommends that the relationship between the Davis-Stirling Act and the Corporations Code be made clearer, in the following ways:

(1) A section should be added providing that, to the extent of any conflict between the Davis-Stirling Act and the Corporations Code, the Davis-Stirling Act prevails. This would provide a default rule that could be used when analyzing a conflict between the two sources of law.

(2) It may be appropriate to duplicate some elements of corporations law in the Davis-Stirling Act. This would make the Davis-Stirling Act a more comprehensive source for CID law. It would also help to educate CID homeowners about rights arising under the Corporations Code that may not be well known. Furthermore, it could provide greater uniformity in the law by moving a provision that currently does not apply to an unincorporated homeowner association to the Davis-Stirling Act, where it would apply to all homeowner associations.

Respectfully submitted,

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