

Third Supplement to Memorandum 2007-47

**Statutory Clarification and Simplification of CID Law
(Comments on Tentative Recommendation)**

The Commission has received another letter commenting on the tentative recommendation on *Statutory Clarification and Simplification of CID Law* (June 2007). It is attached in the Exhibit as follows:

- Exhibit p.*
- Alan H. Burson (10/24/07) 1

Mr. Burson makes four general suggestions:

(1) Existing CID law should be comprehensively reviewed to determine which parts should apply to small associations. The staff sees the merit in that suggestion. It should be noted for possible future study. Mr. Burson also makes specific suggestions on how the law should be changed for small associations. **Those suggestions should be considered in connection with the broader question.**

(2) The voting laws should be changed to allow a proxy to be given to a non-member. That would be a substantive change in recently enacted law. **The staff recommends against making that change at this time.** Mr. Burson also notes a technical inconsistency relating to proxies, which the staff will address in preparing a draft of the final recommendation.

(3) Existing provisions that protect the privacy of member information relating to assessment delinquency should be eliminated. That would be a significant and potentially controversial change in the law. **It is beyond the scope of the current study.**

(4) Boards should not be precluded from communicating about association business outside of formal meetings. **That is consistent with the approach recommended by the staff.** See CLRC Memorandum 2007-44, p. 30.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The staff does not intend to discuss those suggestions at the October meeting, unless the Commission or a member of the public requests discussion at the meeting.

Respectfully submitted,

Brian Hebert
Executive Secretary

Exhibit

**EMAIL FROM ALAN H. BURSON
(10/24/07)**

Subject: Proposed Common Interest Development Law Revision

Dear Mr. Hebert,

1. Issue: Although the background section of the Tentative Recommendation regarding the revision of the CID law notes that most CIDs are small, that fact appears to be ignored in both the current CID law and the proposed recommendations. This is nowhere more obvious than in the many 2 and 3 unit projects that exist throughout the state. I would submit that there is a better case to be made for exempting such small projects from the provisions presently found in section 1373 than there is for exempting industrial condominiums from such provisions. Additionally, sections such as 1363.03 - 1363.05 and 1365 - 1365.2 are mostly just burdens without benefit where the Members of the Association and Members of the Board are one and the same. Additionally, it is simply uneconomical for most such associations to hire the professional management and legal assistance that is practically, if not legally required by the CID law.

Suggestion: Exempt small associations (perhaps defined as where the number of board members equals the number of separate interests and each separate interest is entitled to appoint or elect a member to the governing body, or where the membership acts as the governing body, and where all members are entitled to inspect and copy all association documents at all times) from the provisions currently set forth in §1373 plus sections 1363.03 - 1363.05 and 1365 - 1365.2, plus any other provisions obviously inapplicable to such small associations. I would suggest a committee be appointed to address the impact of each provision of the CID Act on small, self managed associations.

Suggestion: Rather than mandating that the CID law supersedes the Corporations Code, give at least small associations the choice as to which law to follow. I would submit that for most smaller associations they can operate more effectively and efficiently under the corporate model than under the governmental model being embraced by the CID law.

2. Issue. In small associations, and here I am talking about projects of probably 50 or fewer units, the annual meeting has been as much a social get-together as a business meeting. It is the one time an effort must be made to get at least half of the members present. There are rarely - very rarely - contested elections. The almost universal problem in such associations is trying to convince people to serve on the board (and it is getting harder with each new law enacted), not issues that are trying to be addressed with section 1363.03 - 1363.04. The annual meeting used to provide a forum where someone could be drafted to serve on the board when there were an insufficient number of persons willing to serve. Now that opportunity is gone. This law is doing more to break down the "community" in more associations than it is benefiting. These days, there is little or no reason for any member to show up at the annual meeting these days.

Suggestion: Provide that in associations with fewer than 50 separate interests, elections may be at a meeting unless the board or 5% or more of the membership request that an election be by secret ballot. And in associations of more than 50 members allow election of directors at a meeting - and not using the secret ballot process - where the number of persons seeking to be elected to the board is less than or equal to the number of directors to be elected at a specified date (e.g. 60 days) before the meeting.

3 Issue: Proposed section 4660 and current section 1363.03(d)(1)(A) provides that a "Proxy" means a written authorization by a member ... that gives another member the power to vote on the member's behalf..."

This provision limits a member from giving his or her proxy to anyone other than another "member." Thus a wife who is on record title would be prevented from giving her proxy to her spouse who is not on record title or an infirm elderly person who owns a unit could not give her adult child the ability to attend a meeting and speak or vote on her behalf. Without a proxy, presumably the person not on title could be prevented from attending a meeting in place of the spouse who is on title. This is actually happening in some associations today.

This provision of section 4660 is also in apparent conflict with section 4610(b)(2) which talks about giving a proxy to a "person."

Suggestion: Use the definition of proxy found in Corporations Code section 5069. An owner should be able to give a proxy to any "person" not just to another "member."

4. Issue: The recent statutory provisions regarding privacy in connection with delinquencies, filing liens and foreclosure, which are also contained in the recommended revisions, all ignore that the owners who are not delinquent have a

very immediate financial interest in whether their fellow owners are paying their share. Again these provisions relate to projects both large and small. An owner in a 10 unit complex is looking at an 11% increase in his assessments if another owner does not pay. As an owner I can go onto the internet and see if any of my fellow owners are delinquent in paying their property taxes. Why should I not be able to see if they are behind in their homeowner's dues? The secrecy behind assessment delinquencies, recording of liens and commencing foreclosure is ridiculous. Both recording of liens and filing of notices of default are notices "to the world" of the circumstance of non-payment. Why is announcing to the world that the owner of unit "X" is delinquent is okay, but announcing it to those who are most affected by the delinquency veiled in secrecy? This secrecy in the process of collecting assessments also increases the chances that owners are treated differently. I would like to know if the board president is allowing his friends to be delinquent without consequence.

Suggestion: Provide that records regarding assessment payments are open to inspection by all members. Get rid of the provisions about referring to delinquent units only by assessor's parcel numbers and acting on delinquent assessments in executive session.

5. Issue. Modeling association operation on legislative operation is a flawed concept except for the largest associations. Most association boards meet, at best, only once per month. Many smaller associations meet only every other month or every third month. The law should address that fact and address the fact that, like it or not, much association business is conducted these days by e-mail. The Corporations Code is addressing the electronic age while the CID law seems to be ignoring it.

Thank you for your consideration of the foregoing.

Alan Burson

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