Study H-856 April 17, 2009

First Supplement to Memorandum 2009-18

Common Interest Development Law: Nonresidential Associations (Public Comment)

The Commission has received three comments addressing the Commission's study of the applicability of the Davis-Stirling Common Interest Development Act ("Davis-Stirling Act") to nonresidential CIDs:

The comments are discussed below. Except as otherwise indicated, all statutory references in this memorandum are to the Civil Code.

COMMENT OVERVIEW

Jeffrey Wagner, an attorney, has written to the Commission on behalf of a stakeholder working group ("Stakeholder Group") formed to provide comment on this study. Exhibit p. 5. The Stakeholder Group consists of 11 attorneys with CID practices, and two property managers that manage nonresidential CIDs. Exhibit p. 8.

The Stakeholder Group letter includes detailed recommendations for the proper treatment of nonresidential CIDs. Most of those recommendations are beyond the scope of the current memorandum and will be considered as this study progresses. To the extent that the Stakeholder Group's comments bear on the issues discussed in Memorandum 2009-18, they will be discussed in this supplement.

The Stakeholder Group recommends that all of the provisions that are currently inapplicable to a nonresidential CID under Section 1373 should remain inapplicable. The overarching rationale for the Stakeholder Group's recommendations is similar to the view expressed by the Legislature in Section 1373(b), that some provisions of the Davis-Stirling Act "impose an undue and

unnecessary burden on nonresidential developments that do not need the consumer-oriented protection applicable to homeowners." Exhibit p. 5. Arguments specific to particular provisions are noted below.

Duncan McPherson, one of the attorneys in the Stakeholder Group, has written separately to provide general background information on the nature of nonresidential CIDs, which "colors the thinking of many of us with regard to these non-residential CIDs and their associations." See Exhibit pp. 3-4. The Commission should bear those considerations in mind as this study progresses.

Donald Haney, a CPA whose clients include many nonresidential CIDs, writes in response to questions posed to him by the staff. Exhibit pp. 1-2.

COMMENT ON EXISTING EXEMPTIONS

Memorandum 2009-18 focuses on the provisions that are currently inapplicable to a nonresidential CID, pursuant to Section 1373. Comments relevant to those provisions are discussed below.

Section 1356. Supermajority Voting Requirement

Existing Section 1356 provides a procedure that can be used by a CID to petition the court for relief from a supermajority voting requirement in its declaration, when attempting to amend the declaration. Under Section 1373(a)(1), that provision does not apply to a nonresidential CID.

In Memorandum 2009-18, the staff described the likely legislative rationale for the inapplicability of Section 1356: Because nonresidential CID owners are sophisticated business actors, they are likely to have carefully read the declaration before purchasing a separate interest and to have relied on the terms of the declaration.

The Stakeholder Group agrees. It recommends that Section 1356 remain inapplicable to nonresidential CIDs, because "commercial declarations often require a greater than 50% majority vote for reasons such as protecting the interests of minority owners," and "commercial owners and their lenders would not want these requirements overruled by a court." Exhibit p. 9.

Section 1365. Annual Budget and Reports

Existing Section 1365 requires that an association prepare and distribute specified financial reports. Under Section 1373(a)(4), that provision does not apply to a nonresidential CID.

In discussing that exemption, the staff noted that business owners are already subject to financial reporting and disclosure provisions of the Corporations Code. The Legislature may have concluded that those more general requirements are adequate and that business owners should not be micro-managed on financial matters.

The Stakeholder Group writes in support of that conclusion. It recommends that Section 1365 remain inapplicable to nonresidential CIDs because "[nonresidential] owners should be given the liberty to choose how much accounting information they need and how frequently to provide it to owners." Exhibit p. 10.

Section 1368. Seller Disclosures

Existing Section 1368 requires that an owner of a separate interest in a CID make certain disclosures to a prospective buyer of the separate interest. Under Section 1373(a)(1), that provision does not apply to an owner of a separate interest in a nonresidential CID.

In discussing that exemption, the staff identified a likely legislative rationale: nonresidential CID owners are more sophisticated than homeowners and can make necessary inquiries to protect themselves when purchasing commercial property.

The Stakeholder Group supports that conclusion, noting: "Common law and other statutory disclosure protections provide adequate protection to commercial owners." See Exhibit p. 11. The Stakeholder Group recommends that Section 1368 remain inapplicable to nonresidential CIDs. *Id.*

Section 1365.5. Reserve Study and Limitations

Existing Section 1365.5 requires the board of directors of a CID to conduct a periodic review of the association's financial documents and information, and to conduct a periodic study to assess the adequacy of the association's reserve accounts. The section then limits how these reserve funds may be spent, and regulates the levying of special assessments to fund the reserve accounts. Under Section 1373(a)(5), that provision does not apply to a nonresidential CID.

The Stakeholder Group recommends that Section 1365.5 remain inapplicable to nonresidential CIDs. "Many different arrangements are appropriate for management of nonresidential CIDs and there is no reason to impose these requirements on directors which are more suited to residential CIDs." Exhibit p. 10.

Mr. McPherson adds that the maintenance of a reserve account by a nonresidential CID to pay for needed future repairs and replacement can cause adverse tax consequences. Exhibit p. 3. As a result, he indicates that nonresidential CIDs most often do not maintain reserve accounts, and instead pay for needed capital improvements each year out of regular annual assessments imposed on owners (which therefore can vary widely in amount, from year to year).

Mr. Haney, however, indicates that for many years he has been able to protect his nonresidential CID clients from any adverse tax consequences based on maintaining reserve accounts, and believes that other tax preparers should be able to do the same. Exhibit p. 1.

Mr. Haney also elaborates on whether a CID's use of accounting standards in preparing financial statements can serve the same objective as the reserve study required under Section 1365.5. Exhibit p. 2.

He states that financial statements that are prepared in accordance with Generally Accepted Accounting Principles (GAAP) should include some information about major repairs and replacements that will be needed in the future. However, Mr. Haney concludes that the relevant accounting principle, which is over 20 years old, is not a complete substitute for the reserve study required under Section 1365.5. He believes that both the accounting standards and California law on this issue "need to be reconsidered and redone." *Id.*

Overhaul of the reserve accounting procedures for CIDs generally is beyond the scope of this study, but might be addressed in a future study.

Sections 1366(b) and 1366.1. Assessments and Assessment Increases

Existing Sections 1366(b) and 1366.1 provide statutory rules governing the imposition of assessments. Section 1366(b) provides that assessments may be increased by any amount, but that an increase above a specified threshold must be approved by the membership. Section 1366.1 provides that an association may not impose or collect assessments that exceed the cost for which the assessments

are levied. Under Section 1373(a)(6)-(7), those provisions do not apply to a nonresidential CID.

In discussing these exemptions, the staff noted that the statutory rules, which override an association's governing documents, may frustrate the reliance interests of sophisticated business owners, and can interfere with financial practices that make sense in a commercial setting.

The Stakeholder Group recommends that Sections 1366(b) and 1366.1 remain inapplicable to nonresidential CIDs. "It is understandable that the Legislature wants to protect homeowners on a fixed income from substantial increases in Regular Assessments. However, these protections are not suited for nonresidential CIDs where the flexibility to raise funds as and when needed through different funding mechanisms seems more appropriate." Exhibit p. 9.

Section 1357.100 *et seq*. Rulemaking Procedures

Existing Section 1357.100 *et seq* impose some general limitations on an association's ability to adopt "operating rules." The rules must be reasonable and consistent with controlling governing documents and law, and must be adopted using a statutory notice and comment rulemaking process that includes the right of members to overturn an unpopular rule by referendum. Under Section 1373(a)(2), the operating rule provisions do not apply to a nonresidential CID.

The Stakeholder Group recommends that the operating rule provisions remain inapplicable to nonresidential CIDs. "Operating Rules affect the way of life in a residential association and it is reasonable to impose restrictions on rule changes. Similar factors do not exist in nonresidential CIDs and these sections add unnecessary burdens to the rule creation process in nonresidential CIDs." Exhibit p. 9.

Section 1378. Architectural Review Procedures

Existing Section 1378 provides general procedural requirements for "architectural review" by an association (i.e., association review of a proposed change to a separate interest that requires association approval). Under Section 1373(a)(4), that provision does not apply to a nonresidential CID.

The Stakeholder Group recommends that Section 1378 remain inapplicable to nonresidential CIDs. "Control of architectural changes can be a vital aspect of a commercial development. Each development needs the flexibility to fashion controls that work best for that development." Exhibit p. 11.

CONCLUSION

The staff appreciates the input of stakeholders on the issues discussed here. It is extremely valuable to have input from practitioners, who can help to assess the practical consequences of the matters being discussed.

Respectfully submitted,

Steve Cohen
Staff Counsel

Memorandum

TO: Steve Cohen, Staff Counsel, CLRC

From: Donald W. Haney, CPA, MBA, MS (Tax)
Email: dw@haneyinc.com
Phone: 888.786.6000 x325

COPY: Brian Hebert, Executive Secretary, CLRC

Date: April 7, 2009

SUBJECT: **Request for comments**

Request for Comments

In an email to me dated April 2, 2009 you requested my comments on certain issues related to non residential & residential CIDs. Specifically, you asked two questions:

1. Are there any unintended tax consequences to non-residential CIDs for accumulating funds in a investment (reserve) accounts; and
2. Are there accounting standards relating to known repair or replacement matters that, if properly followed, would supersede the provisions of Section 1365.5 effectively make it unnecessary to apply it to CIDs?

1. Non-residential CID tax issues

Short answer-A non-residential CID that engages a competent income tax preparer will not pay income tax on accumulated investment funds.

Discussion-A non-residential CID (NRCID) does not qualify for Internal Revenue Code (IRC) Section 528 treatment. Congress created this IRC Section 528 in the late 70's to establish a clear tax home for residential CIDs. NRCIDs in California are typically mutual benefit not for profit corporations, but are not tax exempt under any of the available IRC 501 (c) Sections. Therefore, as a "…membership organization …operated primarily to furnish services…to members and which is not exempt from taxation…" the tax home for these entities is IRC 277.

The practical effect of Section 277 requires NRCIDs to pay tax on their investment income and any unrelated business taxable income (a longer conversation for another day). The instant question is – what are the tax effects, if any, for a NRCID when its current year member assessments exceeds its current year expenditures as the association builds up funds to handle future major repairs and replacements? This situation would create income. Is this income taxable?

There are several remedies available in this situation, in my opinion; the most reliable is to treat this income from members as "contributions to capital" as permitted under IRC Section 118. The IRS requires certain documentation to support this treatment, but the professional literature readily provides this information. I have personally prevailed on this treatment when challenged by the IRS in a client situation several years ago and have never had any other challenge to this position over the last thirty-two years.

Disclaimer-My comments do not intend to serve as situational professional tax advice. They are merely introductory comments intended only as a general response to this question.

2. Accounting Standards for Major Repair and Replacement Obligations

Short Answer-Financial Statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) include substantial notes and disclosures. In the case of Common Interest Realty Associations (CIRAs, the CPA designation for CIDs) there is a specific Accounting and Audit guide that requires mandatory unaudited supplemental information that discloses certain information regarding the obligation for and funding of future major repairs and replacements. Whether this standard should replace the current California legal byzantine disclosure requirements, is another issue. At the end of the day, I think not. Both the accounting standards and the California law need to be reconsidered and redone.

Discussion – In my opinion, which I think is shared by most CPAs and other concerned industry professionals, the accounting recognition, funding and disclosure surrounding CIDs' obligation to maintain common areas at a certain standard of care is the most important yet vexing unresolved accounting and public policy question in this body of law. The law has developed a well intended, but almost paranoid Gordian disclosure knot that few understand. During this process, the California legislature and the industry trade groups rarely, if ever, consulted the professional accounting bodies, individuals or literature to look for guidance in this area.

My comments on this situation are:

A. Yes, an accounting standard exists that addresses this issue for GAAP compliant reports. However, most associations produce GAAP compliant reports only once a year if they need an independent CPA review or Audit. Moreover, this GAAP standard is over 20 years old. It does not reflect our current understanding of the issue nor does it address the accounting nature of these obligations. It needs revisiting by the accounting standard setting bodies.

B. The California law devoted to this issue has become an almost incomprehensible "how to" cook book. In lay terms, several questions need to be answered:

a. What are the big things that we have to maintain or replace that do not occur annually?

b. When do they occur?

c. How much do they cost?

d. Who is going to pay for it?

All the law has to do is set those standards and let the professionals argue about and develop the techniques that answer these questions. Over time, relevant actionable presentations will emerge.

When the time is right, the CLRC needs to revisit the issue of the accounting and disclosures standards related to CIDs' major repair and replacement obligation and funding.

EMAIL FROM DUNCAN MCPHERSON (APRIL 11, 2009)

Steve, I just reviewed the Commission's Memorandum 2009-18 related to non-residential CIDs. I have been working with Jeff Wagner and the other attorneys in "his" group on coming up with a suggested list of exemptions for non-residential CIDs. There are several things I want to bring to your attention that colors the thinking of many of us with regard to these non-residential CIDs and their associations.

The first is that the ownership and voting is very different than in a residential CID. Generally in a residential CID the ownership with be of a single family lot or condominium unit which will be assessed equally with the other lots or condominiums and which will have a single vote like other lots or condominiums. In the case of a commercial CID the size of the ownership interests can be very different and both voting rights and assessments are often based on either the square footage of a lot or of a building or of ownership space within a building. This leads to voting rights which often require serious calculations to figure out. A voting right and assessment obligation of one unit per 100 or 1000 square feet is not uncommon.

Second since the tax exemptions for commercial CIDs are not the same as for residential association the non-residential association most often does not maintain reserves and assess when money is needed for capital improvements so the budgets and assessments from year to year may be quite different.

Third especially in the case of condominium offices or light commercial condominiums the owners generally want management to be handling the same functions as management would handle if the space were rented to them and do not want to be bothered much about operations unless there is a serious problem. Generally there is a somewhat less interest in the actual corporate operations of the association. Also often there are dominate owners of space that effectively control the voting power and pay the majority of the costs. Since you do not have a one vote per interest owned situation and do not have equal assessments most of the time (since assessments are based on size) the owners look to these larger owner(s) to call the shots.

Fourth, there may be a large number of tenants in commercial subdivisions because the owners either hold the interests for investment and do not use them themselves or lease out portions of their separate interests. While of course you can also get tenants in the residential CID, you may find that dominate users in the case of commercial subdivisions are tenants and those tenants often have leases that allow them to take on some of the attributes of the owner relative to the association.

Fifth, the common areas are very different. In the residential association the common areas are either part of the "home" or they are generally recreational or landscaping in nature. In the case of a non-residential association the common areas are generally access roads or drives or form part of buildings such as lobbies and utility rooms. This

often creates a different emphasis as to what is important in the CID between the residential type and the commercial.

LAW OFFICE OF
JEFFREY G. WAGNER
1777 N. CALIFORNIA BLVD., SUITE 200
WALNUT CREEK, CALIFORNIA 94596-4150

JEFFREY G. WAGNER
VIVIAN H. PARK

(925) 952-9021

FACSIMILE: (925) 952-9109
JWAGNER@JWAGNERLAW.COM
VPARK@JWAGNERLAW.COM

April 14, 2009

Via Email scohen@clrc.ca.gov

Steve Cohen
Staff Counsel
California Law Revision Commission
3200 Fifth Avenue
Sacramento, CA 95817

Re: Common Interest Development Law
Nonresidential Associations

Dear Steve:

This letter contains proposals for consideration by the Commission in its study of the application of the Davis Stirling Common Interest Development Act (the "Act") to nonresidential common interest developments. We understand that the study is focusing primarily on the Act exemptions set forth in CC §1373. The proposals were prepared by a Committee consisting of attorneys and managers with extensive experience in preparing governing documents for commercial and mixed-use projects or managing these projects. Attached as Exhibit A to this letter is a list of the Committee members.

Our recommendations are as follows:

Exemption List: Attached as Exhibit B is a list of the Act provisions that the Committee proposes should be included in CC §1373 and a brief description of the reason for including the provision in the exemptions. This list includes all of the provisions currently exempt under CC §1373. The underlying rationale for the exemptions is that these provisions impose an undue and unnecessary burden on nonresidential developments that do not need the consumer-oriented protection applicable to homeowners. In addition, the opt in rights discussed below provide a commercial development with the flexibility to adopt any exempt provision in order to meet the particular needs of the development.

Opt In Rights: The Committee proposes that CC §1373 include a provision that allows non-residential developments to opt into any of the exempt provisions. We would suggest including a new subdivision (c) as follows:

> "(c) As long as the governing documents expressly provide that any of the subdivisions, sections or articles specified in subdivision (a), or portions thereof, apply to the common interest development, those subdivisions, sections or articles, or portions thereof, shall apply."

Application of Future Legislation: The Committee recommends that CC §1373 include a provision that the addition of any new section to the Act would not apply to nonresidential developments unless the section includes a statement that it is to apply to nonresidential developments.

CC §1351(b) and §1351(k)(2) Problem: The Committee requests the Commission address an existing problem under the Act with respect to certain nonresidential developments. Under the current definitions of a "Planned Development" in CC §1351(k) and "Common Area" in CC §1351(b), nonresidential developments without "common area" in the traditional sense may be considered common interest developments subject to the Act.

Common area for a planned development in the traditional sense consists of a parcel of land that is owned either by an association or in common by the owners of the separate interests within the development as described in CC §1351(k)(1). Under CC §1351(k)(2), a planned development also is established if a power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area through means of an assessment, which may become a lien upon the separate interest. Under CC §1351(b) "common area" as used in CC §1351(k)(2) may consist of mutual or reciprocal easement rights appurtenant to the separate interest.

There are many commercial developments with mutual or reciprocal easements (such as easements over a shared parking area) coupled with lien rights if an owner fails to pay its share of the costs to maintain the easement area. Most of these developments do not consider themselves planned developments subject to the Act, and it is unlikely that the Legislature intended to cover these types of projects under the Act. The Committee would like to eliminate the ambiguity caused by CC §1351(b) and CC §1351(k)(2). Our recommendation would be to include the following clarifying language in either CC §1351(k)(2) or CC §1373:

> "A development limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions and restrictions that has been recorded in the official records of the county in which the development is located and has no common area other than mutual or reciprocal easements appurtenant to the separate interests is not a planned development under Section 1351(k) and not a common interest development regardless of whether there are lien rights, unless the declaration contains an election that the development qualifies as a planned development or common interest development. The purpose of this Section ____ is to clarify the application of the

Davis-Stirling Common Interest Development Act and is not intended to impose requirements on any development where the declaration was recorded prior to the date this Section ____ became operative."

Mixed-Use Developments: The final issue that the Committee would like addressed is the application of CC §1373 to mixed-use projects which contain both residential and nonresidential components. The Committee feels that the exemption should apply in the following situations:

(1) A development with residential and nonresidential components and two or more associations and/or two or more declarations. An association and/or a declaration in this type of development that has only nonresidential members and encumbers only nonresidential property should be eligible for the CC §1373 exemptions.

(2) A development with a master association and a master declaration and the members of the master association consist of: (a) a commercial association, commercial lots or unit owners and/or apartments and (b) one or more residential associations with no individual homeowner members. The master association and the master declaration should be eligible for the CC §1373 exemptions.

(3) A development with a reciprocal easement agreement and the parties to the agreement consist of: (a) commercial associations, commercial lot or unit owners and/or apartments and (b) one or more residential associations with no individual homeowner members. The reciprocal easement agreement should be eligible for the CC §1373 exemptions.

In each of the above situations, associations in these mixed-use developments with individual homeowner members and declarations encumbering individual residential units would not be eligible for the CC §1373 exemptions.

If you have any questions or comments on any of the above, please give me a call.

Very truly yours,

Jeffrey G. Wagner

JW:ya

Enclosures

cc: CLRC Committee Via Email (w/encs.)

EXHIBIT A - Committee Members

Jeff Beaumont (Attorney)
Rapkin Gitlin & Beaumont
1241 Johnson Ave. No. 341
San Luis Obispo, Ca. 93401
Tel. (866) 788-9998
jbeaumont@rgblawyers.com

Marty Bohl (Attorney)
501 West Broadway, Suite 520
San Diego, CA 92101
Tel. (619) 446-0080
mbohl@bohllaw.com

Cathy Croshaw (Attorney)
Luce, Forward, Hamilton & Scripps LLP
121 Spear Street, Suite 200
San Francisco, CA 94105
Tel. (415) 356-4623
ccroshaw@luce.com

John Hecht (Attorney)
Hecht Solberg Robinson Goldberg & Bagley LLP
600 West Broadway, 8th Floor
San Diego, CA 92101
Tel. (619) 239-3444
jhecht@hechtsolberg.com

Scott Jackson (Attorney)
Jackson DeMarco Tidus Peckenpaugh
2030 Main Street, Suite 1200
Irvine, CA 92614
Tel. (949) 851-7427
sjackson@jdtplaw.com

Brent Kocal (Manager)
Kocal Properties, Inc.
P.O. Box 1459
Folsom, CA 95763
Tel. (916) 985-3633
bkocal@kocalproperties.com

Duncan McPherson (Attorney)
Neumiller & Beardslee
509 W. Webster Ave., Fifth Floor
Stockton, CA 95203
Tel. (209) 948-8200
dmcpherson@neumiller.com

Peter Saputo (Attorney)
Little & Saputo
1901 Olympic Blvd., Suite 100
Walnut Creek, CA 94596
Tel. (925) 944-5000, ext. 102
peter@littleandsaputo.com

Nancy Scull (Attorney)
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, CA 92101
Tel. (619) 236-1414
nscull@luce.com

Craig Stevens (Manager)
Mar West Real Estate
250 El Camino Real, Suite 210
Tustin, CA 92780
Tel. (714) 838-3200, ext. 203
cstevens@marwestrealestate.com

Dave Van Atta (Attorney)
Hanna & Van Atta
525 University Ave., Suite 600
Palo Alto, CA 94301
Tel. (650) 321-5700
dvanatta@hanvan.com

Jeff Wagner (Attorney)
Law Office of Jeffrey Wagner
1777 N. California Blvd., Suite 200
Walnut Creek, CA 94596
Tel. (925) 952-9021
jwagner@jwagnerlaw.com

Chris Waud (Attorney)
Little & Saputo
1901 Olympic Blvd., Suite 100
Walnut Creek, CA 94596
Tel. (925) 944-5000
chris@littleandsaputo.com

EXHIBIT B - CID Act Provisions

[NOTE: Bold identifies the provisions currently exempt under CC §1373.]

1350.7 (Document Delivery Methods): This section only applies to Sections 1357.130 and 1357.140, neither of which should apply to nonresidential associations.

1352.5 (Prohibition Against Restrictive Covenants): This section is expressly limited to violations of Government Code Section 12955, which section is limited to housing accommodations, which does not apply to nonresidential CIDs.

1353 (Airport Influence Areas and SF BCDC Jurisdiction) should not apply to nonresidential CIDs. The policy decisions which support providing this disclosure to residential owners do not apply. The developer should have the liberty to draft its own disclosures.

1353.6 (Noncommercial Signs): Nonresidential CIDs are commercial enterprises and signage can properly be limited to commercial signage. This section should not apply to nonresidential CIDs.

1353.7 (Roofs) should not apply to nonresidential CIDs. The language of the statute even uses the term "homeowner."

1355.5 (Amendment of Provisions Intended to Facilitate Developer) should not apply to nonresidential CIDs. There is generally a greater balance of bargaining power between buyer and seller in nonresidential CIDs making the protections of 1355.5 unnecessary.

1356 (Amendment of Declaration by Court Order): commercial declarations often require a greater than 50% majority vote for reasons such as protecting the interests of minority owners. Commercial owners and their lenders would not want these requirements overruled by a court.

1357.100 - 1357.150 (Operating Rules) should not apply to nonresidential CIDs. Operating Rules affect the way of life in a residential association and it is reasonable to impose restrictions on rule changes. Similar factors do not exist in nonresidential CIDs and these sections add unnecessary burdens to the rule creation process in nonresidential CIDs.

1360.5 (Pet Keeping) should not apply to nonresidential CIDs. Pets may have an important role in a family, to those who live alone, etc., this is not the case with commercial enterprises.

1363 (b) (Budget Requirements) should not apply to nonresidential CIDs. The owners should be given the liberty to choose how much accounting information they need and how frequently it should be distributed.

1363(e) (Notice of Meetings) should not apply to nonresidential CIDs. The owners should be given the liberty to choose how formally they want to conduct their meetings.

1363(f) (Access to Records) should not apply to nonresidential CIDs. The owners should be given the liberty to choose how much accounting information they want to make available for inspection.

1363(h) (Discipline) should not apply to nonresidential CIDs. The proper discipline to impose in a nonresidential CID is a business decision and the owners should be given the liberty to establish their own procedures on discipline.

1363(i) (Discipline Authority) should not apply to nonresidential CIDs. If (g) and (h) are not applicable to nonresidential CIDs, (i) no longer applies and should not be applicable either.

1363.03 (Secret Ballot Procedure) should not apply to nonresidential CIDs. The owners should be given the liberty to choose how they want to vote and what matters require approval by the members, rather than approval by the board.

1363.04 (Campaigns) should not apply to nonresidential CIDs. The issues present in the election process applicable to residential associations are far different than the business and economic decisions which are involved in nonresidential associations.

1363.05 (Open Meeting Act) should not apply to nonresidential CIDs. The owners should be given the liberty to choose how they want to conduct their business affairs and whether they want to do so privately or openly.

1363.07 (Grants of Exclusive Use) should not apply to nonresidential CIDs. The CC&Rs should be able to establish whatever protections do or do not seem appropriate relating to grants of exclusive use. There is no good reason to compel the board to obtain the approval of the owners as a prerequisite to the grant of exclusive use rights.

1363.09 (Violations of Article) This section only applies to Sections 1363.03, 1363.04, 1363.05 and 1363.07, none of which should apply to nonresidential associations.

1363.810 - 1363.850 (Dispute Resolution Procedures) should not apply to nonresidential CIDs. The CC&Rs should be able to establish whatever Dispute Resolution Procedures seem appropriate. There is no good reason to compel the use of a particular dispute resolution procedure between nonresidential owners and the association.

1365 (Financial Documents) should not apply to nonresidential CIDs. The owners should be given the liberty to choose how much accounting information they need and how frequently to provide it to owners.

1365.1 (Required Notice) should not apply to nonresidential CIDs. The owners should be given the liberty to choose how much information concerning lien rights should be provided to owners.

1365.2 (Inspection and Copying) should not apply to nonresidential CIDs. The owners should be given the liberty to choose how much accounting information they need to obtain and what they want to make available for inspection.

1365.2.5 (Funding Disclosure Summary) should not apply to nonresidential CIDs. The owners should be given the liberty to choose how they want to fund reserves and what information to make available concerning reserves.

1365.3 (Community Service Organization Report) should not apply to nonresidential CIDs. The section relies in large part upon 1365.2 which should not apply to nonresidential CIDs.

1365.5 (Director's Duty of Review) should not apply to nonresidential CIDs. Many different arrangements are appropriate for management of nonresidential CIDs and there is no reason to impose these requirements on directors which are more suited to residential CIDs.

1366(a) (Limitations on Increase in Regular Assessments) should not apply to nonresidential CIDs. It is understandable that the legislature wants to protect homeowners on a fixed income from substantial increases in Regular Assessments. However, these protections are not suited for nonresidential CIDs where the flexibility to raise funds as and when needed through different funding mechanisms seems more appropriate.

1366(b) (Limitations on Increase in Assessments) should not apply to nonresidential CIDs. See comment under Section 1366(a).

1366.1 (Excessive Assessments Prohibited) should not apply to nonresidential CIDs. See comment under Section 1366(a).

1367.1(a)(5) and (a)(6) refer to 1363.810 and 1369.510 which should not apply to nonresidential CIDs and therefore these paragraphs should be deleted.

1367.1(c) refers to 1363.810 and 1369.510 and establishes a meet and confer procedure which should not apply to nonresidential CIDs and therefore this subdivision should be deleted.

1367.4 (Foreclosure of Assessment Liens) imposes limitations on foreclosure which are not suited to nonresidential CIDs. It is understandable that the legislature wants to protect homeowners from loss of their home, these protections are not suited for nonresidential CIDs.

1367.5 (Recording of Assessment Lien in Error) is based upon the meet and confer procedure in 1363.810 and the alternative dispute resolution procedures of 1369.510 which should not apply to nonresidential associations.

1367.6 (Payment Under Protest) is based upon the dispute resolution procedures of 1363.810 which should not apply to nonresidential associations.

1368 (Documents to Furnish Purchaser and Transfer Fees) should not apply to nonresidential CIDs. Section 1368 refers to provisions currently exempt (i.e., §1365) or proposed to be exempt (i.e., 1363(h)). Common law and other statutory disclosure protections provide adequate protection to commercial owners.

1369.510 - 1369.590 (Alternative Dispute Resolution) should not apply to nonresidential CIDs. The CC&Rs should be able to establish whatever Dispute Resolution Procedures seem appropriate. There is no good reason to compel the use of a particular dispute resolution procedure.

1375, 1375.05 and 1371 (Action Against Developer) should not apply to nonresidential CIDs. The CC&Rs should be able to establish whatever Dispute Resolution Procedures seem appropriate. There is no good reason to compel the use of a particular dispute resolution procedure.

1376 (Antennas and Satellite Dishes) should not apply to nonresidential CIDs. The legislature may want to preserve the rights of individuals to receive telecommunication services in their residence; however, nonresidential CIDs involve different dynamics. The CC&Rs should be able to establish whatever antenna and satellite restrictions are reasonable and not contrary to the Telecommunications Act of 1996.

1378 (Architectural Committee) should not apply to nonresidential CIDs. Control of architectural changes can be a vital aspect of a commercial development. Each development needs the flexibility to fashion controls that work best for that development.