

## First Supplement to Memorandum 2009-24

**Common Interest Development Law: Nonresidential Associations  
(Discussion of Issues)**

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The staff has further examined the legislative history relating to the exemption of nonresidential CIDs from provisions of the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1378) (hereafter “Davis-Stirling Act”). The results of that examination shed additional light on the issues discussed in CLRC Memorandum 2009-24, and are discussed below.

## ALTERNATIVE LEGISLATIVE RATIONALE UNDERLYING CIVIL CODE SECTION 1373

CLRC Memorandum 2009-24 discusses multiple rationales for the Legislature’s decisions made in connection with Civil Code Section 1373 (which exempts nonresidential CIDs from specified provisions of the Davis-Stirling Act). The memorandum then discusses whether the identified rationales should be extrapolated to support the exemption of nonresidential CIDs from other provisions of the Davis-Stirling Act.

A closer examination of the Davis-Stirling Act *at the time Section 1373 was enacted* suggests another, more general rationale for the Legislature’s exemption decisions — the Legislature may have been distinguishing between “foundational” provisions and “operational” provisions. **If so, that general policy distinction might be helpful in determining whether and how to expand upon the policies underlying Section 1373.**

**Davis-Stirling Act in 1987**

In 1987, the Davis-Stirling Act was much smaller than it is today. It contained only 25 sections, as compared to 88 today. Many of the original sections have been expanded by the addition of new provisions.

When enacted, the Davis-Stirling Act replaced then-existing statutory law on condominiums with a similar statutory treatment of “common interest

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developments” (which includes condominiums, but also includes planned unit developments, community apartment projects, and stock cooperatives).

Most of the original provisions of the Davis-Stirling Act could be described as “foundational” provisions. That is, they relate to the basic structure and creation of common interest developments. Such provisions define owner property rights, the governing documents of the development, and the basic powers and duties of the governing association.

In contrast, the original Davis-Stirling Act contained only a few “operational” provisions (i.e., provisions specifying how the governing association is to conduct its day-to-day operations).

In general, the effect of Section 1373 was to exempt nonresidential CIDs from all of the operational provisions that existed at that time, while preserving the application of the foundational provisions. There are two minor exceptions, involving provisions that were mostly “foundational” but that included some “operational” details. See Civ. Code §§ 1364 (maintenance obligations), 1366 (assessment setting and collection).

Although not expressly stated in any of the legislative history located by the staff, a decision to preserve the application of foundational provisions (which define the character of the CID form of property ownership) while exempting nonresidential CIDs from operational provisions (which were probably designed with homeowners in mind, and may not be appropriate for business owners) is compatible with that history.

As discussed in prior materials, it appears that the Legislature had not originally intended that the Davis-Stirling Act apply to nonresidential CIDs at all. When that application was pointed out, a bill was introduced to entirely exempt nonresidential CIDs from the Davis-Stirling Act. A stakeholder group objected that, while nonresidential CIDs should generally be exempt from the Davis-Stirling Act, some provisions of the Davis-Stirling Act are beneficial to nonresidential CIDs. See CLRC Memorandum 2008-63, p. 4, Exhibit pp. 1-2.

As it turns out, all of the examples of beneficial provisions cited by the stakeholder group were “foundational” provisions (e.g., provisions relating to creation, governing documents, and collection of assessment debt), and all of the provisions proposed for exemption were “operational” provisions (with the two exceptions noted above, they were *all* of the operational provisions that existed at the time). *Id.*

Thus, while none of the legislative history speaks expressly in these terms, it would be accurate to describe the overall effect of Section 1373 as preserving the application of foundational provisions while exempting nonresidential CIDs from operational requirements.

### **Possible Use by the Commission**

If the Commission finds that the general rationale described above is the best way of understanding the Legislature's intentions when enacting Section 1373, then the process of extrapolating from those intentions could be approached on a much broader and simpler basis.

The Commission could establish a presumption that the Legislature's intention was to preserve the application of foundational provisions, while exempting nonresidential CIDs from operational requirements. The staff could then identify and analyze the Davis-Stirling Act in those terms, with special attention paid to provisions that present unusual policy considerations that might weigh in favor of a different result.

Alternatively, if the Commission believes that the more narrowly drawn rationales set out in CLRC Memorandum 2009-24 are the better way to understand the Legislature's intentions, the staff would continue along the lines outlined in that memorandum. The provisions discussed there would be examined for possible extrapolation of the policies identified in the memorandum. All other provisions would be examined later in the study, on their individual merits, without any presumption as to whether they should be applicable to a nonresidential CID.

A third approach would combine the two alternatives discussed above. The rationales presented in CLRC Memorandum 2009-24 would remain relevant in analyzing the sections discussed in that memorandum, but would be supplemented by consideration of the operational v. foundational distinction. For all remaining provisions, a rebuttable presumption based on that distinction could be applied.

Respectfully submitted,

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