Study H-856 June 10, 2009

Second Supplement to Memorandum 2009-24

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

The Commission has received two additional comments on this study generally, and on issues raised in CLRC Memorandum 2009-24. Both comments are reproduced in the attached Exhibit.

Kazuko Artus expresses concerns relating to the interests of individual owners in nonresidential CIDs. She wonders whether "they would not be hurt by reduced applicability of the Davis-Stirling Act to their associations." See Exhibit p. 2.

John Laubach expresses general dissatisfaction with the Davis-Stirling Act as applied to nonresidential CIDs. He indicates that all nonresidential owners want from the act are "basic protections, a functional mini-government, basic financial information and minimal administration costs." See Exhibit p. 3.

Respectfully submitted,

Steve Cohen
Staff Counsel

Kazuko K. Artus, Ph.D., J.D.
San Francisco
Kazukokartus@aol.com

8 June 2009

Mr. Steve Cohen
Staff Counsel
California Law Revision Commission

Mr. Cohen:

Re: CID Law: Nonresidential Associations

I have read Memorandum 2009-24 and preceding CLRC Staff Memoranda distributed since 2008 which discussed or touched upon the question of whether nonresidential CIDs should be exempted from certain provisions of the Davis-Stirling Act. I have noticed that no reference is made in those documents to input from any person speaking as a member of a nonresidential CID association. It is troubling. Have I overlooked any?

What is at stake is the interest of the owners of separate interests in nonresidential CIDs. Unless those owners complained that "some provisions of the Davis-Stirling Act 'impose an undue and unnecessary burden on nonresidential developments,'" First Supplement to Memorandum 2009-18, pp. 1-2, and advocated to have their associations exempted from such provisions, there seems to be little point in using the very limited resources of the Commission to consider making any further provisions inapplicable to nonresidential CIDs. See Memorandum 2009-13. It is not a good idea, anyway, to try to fix something which is not broken.

At least two contributors have expressed their articulated concerns, based on their observations of members of nonresidential CID associations, about curtailing the applicability of Davis-Stirling Act provisions to nonresidential CIDs, and one of them suggested that the Commission seek "input from small business owners who own office condos, . . ., or from attorneys who represent the small business owner, to determine what types of protections need to be in place for this population." See Memorandum 2009-18, pp. 4-5. Their comments should be given a serious consideration in the absence of input from members of nonresidential CID associations.

Those who advocate reducing the provisions of the Davis-Stirling Act applicable to non-residential CIDs, including the Stakeholder Group, appear to have only tangential interest in nonresidential CID associations, and fail to offer any factual

evidence to show that members of such CID associations are so sophisticated that they would not be hurt by reduced applicability of the Davis-Stirling Act to their associations.

I do not believe that business operators are more sophisticated than the average person. I am sure that you have seen over the past two years numerous episodes demonstrating that they are not.

But, even if they were, it would not follow that all or most of members of nonresidential CID associations are "business actors who are comfortable operating within the traditional business structures established by the Corporations Code," Memorandum 2008-40, pp. 32-33. You noted that the term "nonresidential CID" is used to mean "a common interest development that is limited to industrial or commercial uses by zoning or by a declaration . . . ." Memorandum 2008-63, pp. 7-8. This definition is silent about the owners of nonresidential CIDs. Since the user and the owner of a separate interest in a CID (whether nonresidential, residential or mixed use) are not necessarily identical, members of nonresidential CID associations can be unsophisticated persons with no knowledge of "the traditional business structures established by the Corporations Code." An unsophisticated individual may own a separate interest in a nonresidential CID by inheritance or by wise or unwise investment in nonresidential real estate.

Sincerely,

Kazuko K. Artus

EMAIL FROM JOHN LAUBACH
(JUNE 9, 2009)

Dear Mr. Steve Cohen,

I am a board member on two (2) non residential/commercial owners associations. I am writing this letter requesting that you "clean up" the Davis Sterling Act as it relates to properties like ours. The owners of these properties are looking to simplify management and eliminating laws that don't make sense, like the requirement on larger associations to hire an inspector of elections. This is an expensive unnecessary item.

The owners are sophisticated and can watch out for themselves, all they want is basic protections, a functional mini-government, basic financial information and minimal administration costs.

We approve of and back the attorneys and management companies referred to as "the Stakeholders Group"

Please feel free to contact me directly to get an actual owners perspective. The Davis Sterling Act does not work for our association and is not entirely in our best interests.

Sincerely
John Laubach
Laubach Construction, Inc.
9841 Irvine Center Dr. #120
Irvine, CA 92618