

Admin.

October 19, 2009

First Supplement to Memorandum 2009-38

New Topics and Priorities

As discussed in Memorandum 2009-38, the Commission is continuing to work toward completion of a recommendation to recodify the principal statutory law governing common interest developments, the Davis-Stirling Common Interest Development Act. It is expected that the recommendation will be finalized in 2010, in time for legislative consideration in 2011. See Memorandum 2009-38, p. 16. See also Memorandum 2009-44.

The Commission is also actively working on a proposal to determine which provisions of the Davis-Stirling Act should be applicable to nonresidential CIDs. The staff expects that study will also be completed in 2010.

In addition to those topics, the Commission has a long list of CID-related suggestions that could be taken up and studied as resources permit. For example, there are a number of questions that have been raised about the scope of application of the Davis-Stirling Act. See Memorandum 2009-38, p. 16.

Dick Preuss has written on behalf of the California Legislative Committee of the Community Associations Institute (a national CID advocacy group). His communication included a cover email (see Exhibit) and an attached letter. The attachment to his email addressed specific details of the recodification study and will be discussed later, in another memorandum. The cover email itself addressed his group's views about how the Commission should prioritize its work on CID issues. He writes:

Because of current issues facing our industry due to the economic times, foreclosures, short sales, delinquent CID members, defaulting developers and many other causes, we believe it is appropriate to ask CLRC to help solve some of these issues through changes in CID Law.

They may be considered as substantive changes, but we strongly feel that the talents of CLRC can better be spent solving these current issues, which were not foreseen when the Davis-Stirling Act was enacted, than spent time on issues affecting a fewer number of constituents. For example, Non-residential

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.

associations are small in number compared to residential, yet time is allocated to investigate this area of law, while the problems outlined affect many more associations and their members.

See Exhibit.

The staff agrees that the housing foreclosure crisis is causing serious problems for CIDs. If a mortgage lender forecloses on a home, and the proceeds of sale are less than the amount owed on the mortgage, no funds will be left over to pay overdue association assessments (because the CID's lien is junior to that of the mortgage lender). The unpaid assessments must instead be made up by the remaining owners in the CID.

However, it is not clear that a Commission study is the best way to address problems relating to foreclosure. A Commission study is most helpful to the Legislature where (1) the issue is not being actively addressed by the Legislature itself, (2) the issue is technically complicated, (3) the issue does not involve polarizing policy questions. The staff does not believe that a study of CID foreclosure issues would meet any of those criteria. The Legislature (and the federal government) are actively engaged in studying foreclosure issues. The special problems faced by CIDs would seem to involve fairly simple legal issues, but very weighty policy questions (e.g., should CID liens be given some priority over otherwise senior liens?).

For example, in 2008 CLAC-CAI sponsored a bill to give some limited priority to CID assessment liens. Under that bill, a mortgage lender who forecloses on a CID property would be responsible to pay up to six months overdue assessment debt out of the foreclosure sale proceeds. See SB 1511 (Ducheny). That reform was relatively simple, legally. It was expressed in a single, fairly straightforward code section. However, the proposal prompted substantial stakeholder opposition and was amended out of the bill before its first committee hearing. A Commission study was not required for the Legislature to consider that reform proposal and such a study would probably have had little effect on the ultimate outcome.

The staff recommends against tabling the current studies, in order to instead work on foreclosure-related issues. Considerable resources have already been expended on the currently pending studies, and good progress has been made. The Commission should see that work through to completion.

However, when the Commission is again able to begin work on new CID-related topics, CLAC-CAI's proposals should be considered.

Respectfully submitted,

Brian Hebert
Executive Secretary

EMAIL FROM DICK PREUSS, CLAC-CAI
(10/19/09)

Dear Brian,

Attached are ideas which are different than the comments previously posed by the California Legislative Committee of Community Associations Institute. There are eight Chapters of CAI in California, which represent the 46,000 CID associations, which house between twenty-five and thirty-three percent of the people in California.

Because of current issues facing our industry due to the economic times, foreclosures, short sales, delinquent CID members, defaulting developers and many other causes, we believe it is appropriate to ask CLRC to help solve some of these issues through changes in CID Law.

They may be considered as substantive changes, but we strongly feel that the talents of CLRC can better be spent solving these current issues, which were not foreseen when the Davis-Stirling Act was enacted, than spent time on issues affecting a fewer number of constituents. For example, Non-residential associations are small in number compared to residential, yet time is allocated to investigate this area of law, while the problems outlined affect many more associations and their members.

We look forward to discussing these issues at the Commission meeting October 22, 2009.

Respectfully,

Dick Pruess
Vice-Chair, CLAC Executive Committee

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