

## Memorandum 2010-8

**Statutory Clarification and Simplification of CID Law  
(Staff Draft of Preliminary Part)**

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This memorandum continues the Commission's work to recodify the Davis-Stirling Common Interest Development Act ("Davis-Stirling Act") in order to improve the Act's organization, make it easier to understand and use, and implement noncontroversial substantive improvements.

A staff draft of proposed legislation has already been approved for inclusion in a tentative recommendation. See Minutes (December 2009), pp. 3-5.

This memorandum presents a staff draft of the narrative "preliminary part" of the tentative recommendation. It provides an overview of the proposed law, along with a specific description of every substantive change that would be made by the proposed law. Those changes are also described in the Comments and Notes that follow each affected section in the proposed legislation.

On approval of the attached draft, with or without any changes, the staff will compile the completed tentative recommendation and release it for public review and comment.

It is expected that the draft could be released around March 1, 2010. The proposed public comment deadline is May 1, 2010. That would provide approximately 60 days for review, with the comments received in time for consideration at the Commission's June 2010 meeting.

Sixty days would be a slightly short period for review of such a lengthy proposal. However, most of the interested groups have already been closely following the development of the proposed legislation, which was approved in December 2009. Many of the substantive changes in the proposed law were included in the prior version of the recommendation, without objection from the interested groups.

What's more, the conservative approach taken by the Commission in preparing the proposed legislation should greatly expedite review. The language in the proposed legislation is a verbatim continuation of existing law *except as*

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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](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

*expressly indicated.* The discussion in the preliminary part, the Comments, and the notes will help reviewers to concentrate their attention on the provisions that would make changes to existing language.

That said, if the Commission believes that a longer comment period is warranted, the deadline could be extended. However, that would probably result in postponement of our review of public comments until the August 2010 meeting. That would mean that the Commission would only have three meetings in which to discuss public comments and make any necessary adjustments to the proposed law.

**The Commission needs to decide (1) whether to approve the attached draft for inclusion in a tentative recommendation, with or without changes, and (2) how long the public comment period should be.**

Respectfully submitted,

Brian Hebert  
Executive Secretary

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Statutory Clarification and Simplification of CID Law

February 2010

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **May 1, 2010**.**

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

The Law Revision Commission recommends that the existing Davis-Stirling Common Interest Development Act be repealed and replaced with a new statute that continues the substance of existing law in a more user-friendly form.

The new statute would provide the following advantages for homeowners who must read, understand, and apply the law governing CIDs:

- (1) Related provisions would be grouped together in a logical order. This would make relevant law easier to find and use. It would also provide a clear organization to guide future development of the law.
- (2) Sections that are unclear or confusing would be revised for clarity, without any change in their substantive effect.
- (3) Sections that are excessively long would be divided into shorter sections.
- (4) To the extent practical, consistent terminology would be used throughout.
- (5) Some governance procedures would be standardized so as to simplify routine matters.
- (6) Various noncontroversial substantive improvements would be made.

This recommendation was prepared pursuant to Resolution Chapter 98 of the Statutes of 2009.

## STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

### BACKGROUND

1  
2 A common interest development (“CID”) is a housing<sup>1</sup> development  
3 characterized by (1) separate ownership of dwelling space (or a right of exclusive  
4 occupancy) coupled with an undivided interest in common property, (2)  
5 covenants, conditions, and restrictions that limit use of both the common area and  
6 separate ownership interests, and (3) management of common property and  
7 enforcement of restrictions by a community association. CIDs include  
8 condominiums, community apartment projects, housing cooperatives, and planned  
9 unit developments.<sup>2</sup>

10 There are over 46,000 CIDs in California, ranging in size from three to 27,000  
11 units each.<sup>3</sup> These developments comprise over 4.8 million total housing units.<sup>4</sup>  
12 Most CIDs are relatively small, with over half consisting of 25 or fewer separate  
13 interests.<sup>5</sup>

14 Homeowner associations are run by volunteer directors who may have little or  
15 no prior experience in managing real property, governing a nonprofit association  
16 or corporation, complying with the laws regulating CIDs, and interpreting and  
17 enforcing the restrictions and rules imposed by the governing documents of an  
18 association.<sup>6</sup>

19 Association management is made more difficult by the complexity of the law  
20 that governs CIDs. The governing law has two main sources, which overlap and  
21 are not entirely consistent with one another:

- 22 • *The Corporations Code*. If an association is incorporated, it is governed by  
23 the Nonprofit Mutual Benefit Corporation Law.<sup>7</sup> An unincorporated  
24 homeowner association is subject to both the general law on unincorporated

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1. Although most CIDs are residential, a CID may also include commercial units. An entirely nonresidential CID is exempt from many of the laws that govern residential CIDs. See Civ. Code § 1373.

2. See Civ. Code § 1351.

3. Levy & Erlanger, *2008 California Community Association Statistics* 1 (2008).

4. *Id.*

5. Over two-thirds of associations have 50 separate interests or fewer. *Id.*

6. Many associations contract for professional management, accounting, and legal assistance. However, most associations are small and may not be able to afford those services. See *supra* note 5.

7. Corp. Code § 7110 *et seq.*



1 To simplify public review of this proposal, every section heading in the  
2 proposed legislation is coded to indicate whether it is “unchanged,” “revised,” or  
3 “new.” The meaning of this coding is explained below:

- 4 • An “unchanged” provision would continue existing law almost verbatim,  
5 with only minor and plainly technical changes (which are identified in the  
6 Comments that follow each of these sections).
- 7 • A “revised” provision contains changes in language to clarify unclear law or  
8 to make a minor substantive improvement. Any changes made in these  
9 sections are described in the Comments and Notes that follow these  
10 sections.
- 11 • A “new” section would be an addition to the law (rather than continuing an  
12 existing provision). The purpose of a new provision is explained in the Note  
13 that follows the section.

14 A “disposition table” following the proposed law shows the precise relationship  
15 between every provision of the existing Davis-Stirling Act and the provision of the  
16 proposed law that would continue it. In a few instances, an existing provision  
17 would not be continued in the proposed law because it is unnecessary. Those  
18 provisions would be listed in the disposition table as “omitted.”

#### 19 GENERAL ORGANIZATION OF PROPOSED LAW

20 The proposed law would reorganize the contents of the Davis-Stirling Act into  
21 nine chapters, as follows:

- 22 Chapter 1. General Provisions
- 23 Chapter 2. Governing Documents
- 24 Chapter 3. Ownership and Transfer of Interests
- 25 Chapter 4. Property Use and Maintenance
- 26 Chapter 5. Association Governance
- 27 Chapter 6. Finances
- 28 Chapter 7. Insurance and Liability
- 29 Chapter 8. Dispute Resolution and Enforcement
- 30 Chapter 9. Construction Defect Litigation

31 Generally speaking, this organizational structure would begin with the  
32 foundational provisions<sup>12</sup> of the Davis-Stirling Act (proposed Chapters 1-4),  
33 followed by the operational provisions<sup>13</sup> (proposed Chapters 5-8). The last chapter

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12. I.e., the provisions that address the basic elements of the CID form of property ownership — the existence and nature of the common area, the governing documents, property ownership rights, rules for property transfer, and rules delineating maintenance obligations.

13. I.e., the provisions that address the ongoing operational duties and procedures — meeting procedures, election procedures, recordkeeping, record inspection, reporting requirements, accounting, reserve funding, assessment setting and collection, insurance requirements, dispute resolution, and enforcement of restrictions.

1 would preserve existing construction defect claim procedures essentially  
2 unchanged. Those provisions are the subject of regular legislative attention.

3 **The discussion that follows identifies all of the substantive changes to**  
4 **existing law that would be made by the proposed law. It is not intended as a**  
5 **complete summary of common interest development law.**

## 6 CHAPTER 1. GENERAL PROVISIONS

7 The proposed law would include a chapter of general provisions (i.e., provisions  
8 that apply to the act as a whole).<sup>14</sup> The general provisions include (1) rules  
9 governing the application of the Davis-Stirling Act, (2) procedures used to deliver  
10 notices, (3) standardized rules for member approval of an action that requires  
11 member approval, and (4) definitions for commonly used terms. For the most part,  
12 those provisions would continue existing law. Significant changes to existing law  
13 are discussed below.

### 14 Application of Davis-Stirling Act

15 Under existing law, an entirely nonresidential CID is exempt from specified  
16 provisions of the Davis-Stirling Act, on the grounds that those provisions “may  
17 not be necessary to protect purchasers in commercial or industrial developments”  
18 and would simply add unnecessary costs and burdens.<sup>15</sup>

19 The proposed law would continue those exemptions with two changes:

- 20 (1) An exemption would be added for the member election provisions of the  
21 Davis-Stirling Act.<sup>16</sup> The member protections provided by those sections are  
22 not needed in a commercial association, which would instead conduct its  
23 elections under the procedures provided in the Corporations Code for  
24 entities of its type.<sup>17</sup>
- 25 (2) Existing law provides an emergency exception to certain assessment setting  
26 procedures, but provides that the emergency exception does not apply to a  
27 nonresidential CID.<sup>18</sup> This rule does not make sense as a matter of policy.  
28 The emergency exception provides necessary flexibility to address  
29 unforeseen circumstances that should be available to all CIDs, regardless of  
30 type. The proposed law would not exempt nonresidential CIDs from the  
31 emergency provision.

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14. See proposed Chapter 1 (commencing with Section 4000) of Part 5 of Division 4 of the Civil Code.

15. Civ. Code § 1373. The Commission is currently conducting a separate study of the application of the Davis-Stirling Act to nonresidential CIDs. The changes proposed in this tentative recommendation are not intended to affect or supersede any conclusions that might be reached in that separate study.

16. See proposed Civ. Code § 4020(a)(3).

17. See Corp. Code § 7510 *et seq.*

18. See Civ. Code § 1373(a)(6).

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## Notice Procedures

2 The proposed law would standardize the procedures used for the delivery of  
3 various statutory notices. The standardized procedures should reduce the risk of  
4 error and help to control governance costs.

### 5 **Method of Delivery**

6 The proposed law would recognize three classes of notices and would specify  
7 the manner of delivery for each:

8 (1) An “individual notice” would be delivered individually to a specific member  
9 of the association.<sup>19</sup> Individual notice is appropriate where a member’s  
10 individual interests would be affected. An individual notice could be  
11 delivered by first class mail or electronic delivery (with the consent of the  
12 recipient).

13 (2) A “general notice” would be provided to all members and could be provided  
14 by various forms of posting or publication.<sup>20</sup> General notice is appropriate  
15 for matters of general interest to the membership, such as the time, place,  
16 and agenda for a pending board meeting.<sup>21</sup> An individual member would  
17 have the right to have general notices delivered by the methods specified for  
18 delivery of an individual notice.<sup>22</sup>

19 (3) A notice that is to be “delivered to the association” would be delivered by  
20 first class or certified mail, to the person designated by the association for  
21 receipt of notices (or to the president or secretary of the association, if no  
22 person is designated).<sup>23</sup> This would give greater certainty as to how to  
23 communicate with the board regarding official matters.

### 24 **Time of Delivery**

25 The proposed law would add a “mailbox rule” to provide clarity as to the time of  
26 delivery of a notice.<sup>24</sup> This will help to avoid disputes relating to delivery  
27 deadlines.

### 28 **Minimum Font Size**

29 Two provisions of existing law specify a minimum font size for particular  
30 reports that must be provided to the members of an association.<sup>25</sup> The proposed

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19. See proposed Civ. Code § 4040.

20. See proposed Civ. Code § 4045.

21. See, e.g., proposed Civ. Code § 4520 (board meeting notice given by general notice, unless member requests individual notice).

22. See proposed Civ. Code § 4045(b).

23. See proposed Civ. Code § 4035.

24. See proposed Civ. Code § 4050. The proposed provision would also address notices delivered electronically.

25. See Civ. Code §§ 1365(d), 1365.1(a).

1 law would generalize and standardize those requirements so that they apply to all  
2 notices and reports that an association must provide to an association member.<sup>26</sup>  
3 This will help to protect the rights of association members who have visual  
4 impairments.

## 5 Terminology

### 6 **Consistent Terminology**

7 The terminology used in existing law is not consistent. In many cases, two or  
8 more different terms are used to describe the same thing. This can lead to  
9 misunderstanding and unnecessary litigation to resolve ambiguities. For example,  
10 existing law uses the terms “director,” “board member,” and “member” to refer to  
11 a member of an association’s board of directors. That inconsistent terminology can  
12 lead to confusion (especially with respect to the term “member,” which can also  
13 refer to a member of the association). To address that problem, the proposed law  
14 would add a definition of the term “director”<sup>27</sup> and would revise a number of  
15 provisions to use the defined term.<sup>28</sup>

16 Similarly, the proposed law would standardize the terminology used to refer to  
17 the board,<sup>29</sup> board meetings,<sup>30</sup> common area,<sup>31</sup> the declarant,<sup>32</sup> governing  
18 documents,<sup>33</sup> a managing agent,<sup>34</sup> a member,<sup>35</sup> or an occupant.<sup>36</sup>

19 Some definitions in existing law have expressly limited application but would be  
20 proper if applied more broadly. The proposed law would generalize those  
21 definitions so that they apply to the Davis-Stirling Act as a whole.<sup>37</sup> This will

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26. See proposed Civ. Code § 4060.

27. See proposed Civ. Code § 4140.

28. See proposed Civ. Code §§ 4090, 4930, 5100, 5110, 5240, 5665, 5673, 5705, 5915.

29. See proposed Civ. Code §§ 4165, 4177, 4178, 4180, 4205, 4225, 4230, 4350, 4360, 4365, 4370, 4525, 4600, 4765, 4925, 4930, 4935, 4950, 5100, 5105, 5110, 5120, 5200, 5215, 5240, 5300, 5375, 5380, 5400, 5500, 5510, 5550, 5560, 5570, 5605, 5673, 5705, 5730, 5850, 5855, 5865, 5910, 5915, 6000, 6150.

30. See proposed Civ. Code §§ 4360, 4925.

31. See proposed Civ. Code §§ 4110, 4145, 4185, 4265, 4500, 4505, 4510, 4610, 4615, 4630, 4635, 4730, 4775, 4790, 5725, 5730, 5805.

32. See proposed Civ. Code §§ 4230, 4250(b),

33. See proposed Civ. Code §§ 4010, 4065, 4070, 4215, 4230, 4525, 4710, 4730, 4765, 5115, 5130, 5865, 5915, 5925

34. See proposed Civ. Code §§ 4155, 4205, 4280, 4815, 4930, 5375, 5380, 5405.

35. See proposed Civ. Code §§ 4040, 4160, 4225, 4230, 4265, 4270, 4275, 4365, 4525, 4605, 4705, 4710, 4725, 4760, 4765, 4790, 4810, 4925, 4930, 4950, 4955, 5105, 5110, 5605, 5930, 5935.

36. See proposed Civ. Code §§ 4163, 4110, 4760, 4930, 5725, 5860.

37. See proposed Civ. Code §§ 4155 (“managing agent”), 4163 (“occupant”), 4165 (“operating rule”), 4177 (“reserve accounts”), 4178 (“reserve account requirements”), 4180 (“rule change”).

1 simplify understanding of the law, lead to more uniform results, and provide a  
2 settled definition for the future development of the law.

3 **“Board Meeting”**

4 Existing law defines a board meeting as a gathering of a majority of the directors  
5 to consider board business (other than matters that may be considered in executive  
6 session).<sup>38</sup>

7 The proposed law would change the threshold for a board meeting from a  
8 majority of the directors to a number of directors sufficient to establish a  
9 quorum.<sup>39</sup> This would reflect the fact that in some associations the quorum for a  
10 board meeting may not be a simple majority of the directors. As a matter of policy,  
11 the definition of “board meeting” should be based on the number of directors  
12 required to conduct board business.

13 **“Exclusive Use Common Area”**

14 The existing definition of “exclusive use common area” includes a reference to  
15 “telephone wiring.”<sup>40</sup> The proposed law would modernize the reference by making  
16 clear that (1) it applies to any communication wiring (e.g., television cable), and  
17 (2) it includes nonmetallic transmission media (e.g., fiber optic cable).<sup>41</sup> These  
18 changes would reflect changes occurring within the modern communications  
19 industry.

20 **“Person”**

21 The proposed law would add a definition of the term “person,” to avoid any  
22 uncertainty as to whether the term includes a legal entity such as a corporation.<sup>42</sup>

23 **CHAPTER 2. GOVERNING DOCUMENTS**

24 The proposed law would make various improvements to the law relating to an  
25 association’s governing documents, as described below.

26 **Correction of Statute Numbers Changed by Proposed Law**

27 Because the proposed law would comprehensively reorganize the Davis-Stirling  
28 Act, all of the existing code section numbers would be changed. Each substantive  
29 provision continued in the proposed law would have a new number.

30 In order to simplify the transition to the new numbering scheme, and reduce the  
31 costs associated with that transition, the proposed law includes a section that

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38. See Civ. Code § 1363.05(j).

39. See proposed Civ. Code § 4090.

40. See Civ. Code § 1351(i)(2).

41. See proposed Civ. Code § 4145.

42. See proposed Civ. Code § 4170.

1 provides a simplified procedure for correcting any cross-references to the Davis-  
2 Stirling Act in an association's governing documents, in order to reflect the new  
3 numbering of the proposed law. Such changes could be made by board resolution,  
4 without a vote of the membership. The amended documents could be recorded in  
5 amended form.<sup>43</sup>

6 **Document Authority**

7 The proposed law would provide statutory guidance on the relative authority of  
8 the most common types of governing documents. The declaration would be  
9 highest in authority, followed by the articles, bylaws, and operating rules.<sup>44</sup> This  
10 will help to resolve conflicts between documents, by providing a clear hierarchy of  
11 supremacy.

12 **Deletion of Unlawful Discriminatory Restriction**

13 Existing law requires that an association amend a governing document that  
14 contains an unlawful discriminatory restriction, in order to delete the unlawful  
15 restriction.<sup>45</sup>

16 If the governing document is in the public record (either a recorded declaration  
17 or articles of incorporation that have been filed with the Secretary of State), the  
18 proposed law would require that the unlawful restriction be removed from the  
19 public record by recording or filing the amended governing document.<sup>46</sup> This will  
20 further the purpose of the existing requirement.

21 **Deletion of Declarant Provisions**

22 Existing law provides a special procedure for amendment of the association's  
23 governing documents in order to delete obsolete construction and marketing  
24 provisions.<sup>47</sup> The procedure requires a vote of the property owners and specifies a  
25 quorum of more than 50 percent of the owners (excluding those who own more  
26 than two separate interests within the development).<sup>48</sup>

27 A quorum rule that is based on the number of owners, rather than the number of  
28 separate interests represented, could cause problems where separate interests are  
29 jointly owned. For example, in a 10-unit development where each unit is owned  
30 by a single person, the quorum under existing law would be 6 owners. However, if

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43. See proposed Civ. Code § 4230.

44. See proposed Civ. Code § 4200. That provision would not apply to a stock cooperative, because stock cooperatives can differ significantly from other types of CIDs with respect to their governing documents.

45. Civ. Code § 1352.5.

46. See proposed Civ. Code § 4225(c).

47. Civ. Code § 1355.5.

48. *Id.*

1 those 10 units were owned by married couples or domestic partners as community  
2 property, there would be 20 owners and the quorum would be 11.

3 The proposed law would provide that the quorum is based on 50 percent of the  
4 “voting power” in the association, rather than 50 percent of the owners.<sup>49</sup> This  
5 would be a more appropriate rule, because it would be based on whatever measure  
6 of voting power is used by each individual association. For example, if an  
7 association provides one vote per separate interest, then the quorum would be  
8 based on the number of separate interests. If the rule is one vote per owner, then  
9 the quorum would be based on the number of owners.

#### 10 **Content of Declaration**

11 Existing law specifies what information must be included in a CID’s recorded  
12 declaration.<sup>50</sup> The declaration may also include any other information that the  
13 “original signator of the declaration or the owners consider appropriate.”<sup>51</sup>

14 The proposed law would replace the phrase “original signator of the declaration”  
15 with the defined term “declarant.”<sup>52</sup> This change would permit a successor-in-  
16 interest to the original signator to add material to the declaration as that person  
17 deems appropriate. The Commission sees no policy reason to limit that power to  
18 the original declarant.

#### 19 **Amendment of Declaration**

20 Existing law provides similar but slightly different procedures for amendment of  
21 the declaration, depending on the purpose of the amendment.<sup>53</sup> The Commission  
22 found no policy justification for this procedural complexity.

23 The proposed law would provide a single procedure for amendment of the  
24 declaration, regardless of the purpose of the amendment.<sup>54</sup>

25 The proposed law would generalize an existing requirement that the members be  
26 provided with the text of a proposed declaration amendment, which currently only  
27 applies when amending a declaration that is silent as to whether it may be  
28 amended.<sup>55</sup> Under the proposed law the association would be required to provide  
29 the members with a copy of any proposed amendment of the declaration.<sup>56</sup>

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49. See proposed Civ. Code § 4230(d).

50. Civ. Code § 1353.

51. Civ. Code § 1353(b).

52. See proposed Civ. Code § 4250(b).

53. See Civ. Code §§ 1355(a) (general procedure), (b) (amendment of declaration that is silent as to whether it can be amended), 1357 (amendment to extend term of declaration with fixed term).

54. See proposed Civ. Code § 4270.

55. Civ. Code § 1355(b)(1).

56. See proposed Civ. Code § 5115(e).

1 **Amendment or Revocation of Condominium Plan**

2 Existing law specifies a number of persons who must sign and acknowledge a  
3 certificate authorizing the recordation of an original condominium plan.<sup>57</sup>

4 A condominium plan may be amended or revoked by recordation of an  
5 instrument executed “by all of the persons” whose signatures are required on the  
6 original certificate.<sup>58</sup> That language is somewhat ambiguous. It is not entirely clear  
7 whether an instrument amending or revoking a condominium plan must be  
8 executed by the *same individuals* who signed the original plan or by persons who  
9 stand in the *same relationship* to the condominium project as those who were  
10 required to sign the original plan.

11 For example, record owners of fee title must sign the original certificate. If the  
12 condominium plan is subsequently amended, must the amendment instrument be  
13 signed by the original owners, or by those who are owners at the time of the  
14 amendment?

15 The proposed law would clarify that the instrument must be executed by those  
16 persons who have the specified interests in the property at the time of the  
17 amendment or revocation.<sup>59</sup> As a matter of policy, it would not make sense to  
18 require the consent of those who formerly held interests in the property but no  
19 longer have any interest. Those persons should have no say in what happens to the  
20 condominium project after the termination of their interests in the property.

21 **CHAPTER 3. OWNERSHIP AND TRANSFER OF INTERESTS**

22 **Right of Access to Separate Interest**

23 Existing law prohibits an association (except as otherwise authorized by law)  
24 from denying an owner physical access to the owner’s separate interest.<sup>60</sup> The  
25 existing provision also appears to protect a non-owner occupant’s physical access  
26 to the separate interest occupied by that person. However, the provision could be  
27 clearer on that point.

28 The proposed law would revise the provision to unambiguously provide  
29 protection for both owners and occupants.<sup>61</sup>

30 **Grant of Exclusive Use**

31 With a number of exceptions, existing law requires the approval of members  
32 representing at least 67 percent of the association’s separate interests before the  
33 board may grant an individual member exclusive use of part of the common area.<sup>62</sup>

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57. Civ. Code § 1351(e)(3).

58. Civ. Code § 1351(e).

59. See proposed Civ. Code § 4295.

60. Civ. Code § 1361.5.

61. See proposed Civ. Code § 4510.

1 The proposed law would make a number of minor improvements to that  
2 provision, as explained below:<sup>63</sup>

- 3 (1) The application of the provision would be expanded to include a grant made  
4 by any authorized representative of the association, not just the board of  
5 directors. In some CIDs, an entity other than the board may be authorized to  
6 grant exclusive use of common area.
- 7 (2) An exception would be added for a grant that is necessary to accommodate a  
8 disability.
- 9 (3) An exception would be added for a grant that is required by law.
- 10 (4) An exception would be added for the assignment of a parking space, storage  
11 unit, or other amenity, that is designated in the declaration as exclusive use  
12 common area but is not assigned by the declaration to a specific separate  
13 interest.

#### 14 CHAPTER 4. PROPERTY USE AND MAINTENANCE

##### 15 **Use of Separate Interest Property**

16 Existing law includes a number of provisions that limit an association's ability  
17 to restrict specified uses of a separate interest. For example, Civil Code Section  
18 1353.5 protects the right to display the United States flag on separate interest  
19 property.

20 The proposed law would collect these provisions together and would add a new  
21 provision that cross-refers to other similar protections that exist outside of the  
22 Davis-Stirling Act.<sup>64</sup> The new provision would provide CID property owners with  
23 a more complete understanding of their property use rights.

##### 24 **Modification of Separate Interest Property**

25 Existing law includes a provision that guarantees the right of an owner in a  
26 condominium project to make changes to the owner's separate interest "unit,"  
27 within specified limitations.<sup>65</sup> Special rules are provided for a modification  
28 necessary to accommodate a disability.<sup>66</sup>

29 The Commission finds no good policy reason to limit the benefits of the existing  
30 provision to units within a condominium project. The proposed law would  
31 generalize the provision so that it applies to a separate interest in any type of  
32 CID.<sup>67</sup>

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62. Civ. Code § 1363.07.

63. See proposed Civ. Code § 4600.

64. See proposed Civ. Code § 4700.

65. See Civ. Code § 1360.

66. *Id.*

67. See proposed Civ. Code § 4760.

1 **Maintenance of Exclusive Use Common Area Communication Wiring**

2 Existing law guarantees a member’s access to telephone wiring in the common  
3 area for the purpose of maintaining the wiring to that member’s separate interest.<sup>68</sup>

4 The proposed law would modernize the provision by making clear that (1) any  
5 type of communication wiring is governed by the provision (not just “telephone”  
6 wiring) and (2) the term “wiring” is not limited to metallic media.<sup>69</sup>

7 **CHAPTER 5. ASSOCIATION GOVERNANCE**

8 The proposed law would include a chapter on the governance of an association  
9 by its board and members.<sup>70</sup> It would include provisions relating to board  
10 meetings, member meetings, member elections, record inspection, record keeping,  
11 annual reports, director conduct, managing agents, and government assistance. For  
12 the most part, those provisions would continue existing law. Any significant  
13 changes to existing law are discussed below.

14 **Board Meetings**

15 **Meeting with Fixed Time and Place**

16 Existing law requires notice of a board meeting, unless the time and place of the  
17 meeting is fixed by the association’s bylaws.<sup>71</sup> The proposed law would generalize  
18 that exception so that it applies when the time and place of the meeting is fixed in  
19 any type of governing document.<sup>72</sup> This would reflect the fact that documents  
20 other than the bylaws can be used to address such matters.

21 **Posted Notice of Board Meeting**

22 Existing law requires that notice of a board meeting be “posted” in a prominent  
23 place in the common area, and delivered by mail to any member who has  
24 requested mailed notice.<sup>73</sup> Some associations cannot comply with this requirement  
25 because they do not have common area that is appropriate for the posting of  
26 notices. The proposed law would delete the posting requirement and instead  
27 require “general delivery”<sup>74</sup> of board meeting notices.<sup>75</sup> This would increase  
28 flexibility by providing alternatives to posting (e.g., publication in a newsletter),  
29 without affecting a member’s right to receive mailed notices on request.

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68. See Civ. Code § 1364(f).

69. See proposed Civ. Code § 4790.

70. See proposed Civ. Code §§ 4800-5405.

71. See Civ. Code § 1363.05(f).

72. See proposed Civ. Code § 4920(a).

73. See Civ. Code § 1363.05(f).

74. See proposed Civ. Code § 4045.

75. See proposed Civ. Code § 4920.

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### Interested Director

2 Existing law provides that an association director is subject to an interested  
3 director disqualification provision that governs directors in for-profit  
4 corporations.<sup>76</sup>

5 The proposed law would continue that provision with two changes: (1) it would  
6 delete the existing reference to for-profit corporations law and instead refer to the  
7 equivalent provisions of nonprofit corporations law,<sup>77</sup> and (2) it would add an  
8 express list of prohibited conflicts, to provide clear guidance on common types of  
9 conflicts.<sup>78</sup> The proposed law would make clear that the list of prohibited conflicts  
10 is not intended to be exclusive.<sup>79</sup>

11

### Member Elections

12 Existing law provides a detailed procedure for conducting specified types of  
13 member elections in a common interest development.<sup>80</sup> The proposed law would  
14 continue that procedure<sup>81</sup> with the improvements discussed below.

#### 15 **Scope of Statutory Election Procedure**

16 Under existing law, the election procedure only applies to specified types of  
17 elections.<sup>82</sup> The proposed law would authorize an association to use the statutory  
18 election procedure for any type of member election.<sup>83</sup> This would allow an  
19 association to take advantage of the standardized election procedure, to the extent  
20 appropriate to its circumstances.

#### 21 **Text of Proposed Governing Document Amendment**

22 The proposed law would add a new requirement that an association provide  
23 members with the text of a proposed amendment of the governing documents,  
24 when holding an election to approve the proposed amendment.<sup>84</sup> This will ensure  
25 that the members have the information necessary to make an informed decision on  
26 a proposed governing document amendment.

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76. See Civ. Code §1365.6.

77. See proposed Civ. Code § 5350(a).

78. See proposed Civ. Code § 5350(b).

79. See proposed Civ. Code § 5350(c).

80. Civ. Code §§ 1363.03, 1363.04, 1363.09.

81. See proposed Civ. Code §§ 5100-5145.

82. Civ. Code § 1363.03(b).

83. A decision to use the statutory procedure in other types of elections would need to be expressed in an operating rule. See proposed Civ. Code § 5100(b).

84. See proposed Civ. Code § 5115(e).

1 **Notification of Election Results**

2 Existing law requires that the results of a member election be “publicized” in a  
3 “communication directed to all members.”<sup>85</sup> That ambiguous requirement would  
4 be replaced with a requirement that “general notice”<sup>86</sup> of the election results be  
5 provided.<sup>87</sup> This will eliminate any uncertainty as to what is required and will  
6 allow an association to use standardized notice procedures.

7 **Retention of Ballots**

8 Existing law requires that the election inspector maintain custody of ballots  
9 “until the time allowed by Section 7527 of the Corporations Code for challenging  
10 the election has expired...”<sup>88</sup> That time is nine months after the election.

11 If the purpose of that provision is to require retention of ballots during the time  
12 in which election results may be challenged in court, it is too short. The Davis-  
13 Stirling Act provides 12 months for judicial review of a member election.<sup>89</sup>

14 The proposed law would correct the apparent error in existing law, by requiring  
15 the retention of ballots for 12 months.<sup>90</sup>

16 **Campaign Communications**

17 Existing law restricts the use of association funds for campaign communications  
18 in connection with a pending board election.<sup>91</sup> Campaign communications are  
19 defined to include any communication that features the name or photograph of a  
20 candidate.<sup>92</sup> That provision appears to be overbroad, because it could prohibit the  
21 distribution of routine documents that happen to include the name of a candidate  
22 (e.g., meeting minutes).

23 The proposed law would address that problem by adding an exception for  
24 communications that are required by law.<sup>93</sup>

25 **Voting Rights**

26 The Davis-Stirling Act is silent on the number of votes that a member may cast  
27 if the member owns more than one separate interest or shares ownership of a  
28 separate interest with other members.

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85. Civ. Code §§ 1363.03(g).

86. See proposed Civ. Code § 4045.

87. See proposed Civ. Code § 5120(b).

88. Civ. Code § 1363.03(h).

89. Civ. Code § 1363.09.

90. See proposed Civ. Code § 5125.

91. Civ. Code §§ 1363.04.

92. *Id.*

93. See proposed Civ. Code § 5135(b)(2).

1 The proposed law includes default rules on those issues,<sup>94</sup> which are drawn from  
2 the Corporations Code<sup>95</sup> and the Department of Real Estate’s regulations.<sup>96</sup>

### 3 Association Records

4 Existing law guarantees a member’s right to inspect and copy specified types of  
5 association records.<sup>97</sup>

6 The proposed law would generally continue existing law on member record  
7 inspection rights, with the improvements discussed below.<sup>98</sup>

#### 8 **Scope of Inspection Right**

9 The proposed law would expand the scope of “association records” subject to  
10 member inspection to include the governing documents of the association.<sup>99</sup>

11 The proposed law would also clarify an existing ambiguity, by stating expressly  
12 that the term “association records” includes those records defined as “enhanced  
13 association records.”<sup>100</sup>

#### 14 **Duty to Retain Records**

15 Implicit in a member’s right to inspect association records for a specified period  
16 of time is the association’s duty to retain those records for the specified periods.

17 The proposed law would make that duty explicit, by requiring the retention of  
18 specified types of records for specified periods of time.<sup>101</sup>

19 The list of records that must be maintained would include all of the types of  
20 records that are subject to member inspection and other types of business records  
21 that should be maintained by any well-run nonprofit organization.

22 In developing the latter category, the Commission looked to common practice  
23 within the nonprofit sector. There is a wide range of advice available on the topic,  
24 including some that is specific to homeowner associations.<sup>102</sup> The proposed law is  
25 generally consistent with that body of advice.

26 Under the proposed law, certain types of records would be retained  
27 permanently.<sup>103</sup> All other records that an association is required to maintain would

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94. See proposed Civ. Code § 5140.

95. Corp. Code §§ 7312(d), 7611(a).

96. 10 Cal. Code Regs. § 2792.18.

97. See Civ. Code §§ 1363(f), 1365.2.

98. See proposed Civ. Code §§ 5200-5240.

99. See proposed Civ. Code § 5200(a)(11).

100. See proposed Civ. Code § 5200(a)(12).

101. See proposed Civ. Code §§ 5250 (duty to retain records), 5255 (retention periods).

102. See, e.g., Walter Grady, *Record Retention*, Echo Journal, March 2003.

103. See proposed Civ. Code § 5255(b).

1 be retained for at least four years.<sup>104</sup> That should satisfy retention requirements  
2 imposed by other law, most of which require that a document be preserved for  
3 three to four years. The four-year retention requirement would be a default rule  
4 that would be expressly subordinated to any more restrictive legal requirements  
5 that might apply. That subordination will put associations on notice that other  
6 binding requirements may exist, and will avoid any conflict between the new  
7 provision and any other legal requirements.

## 8 Annual Reports

9 Existing law requires that an association distribute specified information to its  
10 membership on an annual basis. This information includes:

- 11 (1) A pro forma operating budget that must be delivered from 30 to 90 days  
12 before the end of the fiscal year.<sup>105</sup> A number of other provisions require  
13 that specified information be distributed with the budget.<sup>106</sup>
- 14 (2) In an association with \$75,000 or more in annual gross income, a CPA  
15 review of the association's financial statement must be distributed, within  
16 120 days after the end of the fiscal year.<sup>107</sup>

17 The proposed law would organize that information into three annual reports,  
18 based on subject matter: (1) the annual budget report,<sup>108</sup> which would include both  
19 the budget and related financial disclosures, (2) the annual financial statement  
20 review, if any,<sup>109</sup> and (3) the annual policy statement, which would aggregate all  
21 other informational disclosures that an association is required to make each  
22 year.<sup>110</sup>

23 Existing law permits an association to send notice of the availability of the  
24 annual budget, rather than the budget itself. Members may receive the full  
25 document on request, at no cost.<sup>111</sup> The proposed law would preserve that option,  
26 and extend it to the annual policy statement as well.<sup>112</sup>

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104. See proposed Civ. Code § 5255(a).

105. Civ. Code § 1365(a).

106. See, e.g., Civ. Code §§ 1363.850 (notice of informal dispute resolution process), 1365(d) (assessment collection policy), 1365(e) (summary of insurance coverage), 1365.1 (assessment collection policy), 1365.2.5 (assessment and reserve summary), 1369.490 (notice of alternative dispute resolution requirements), 1378 (architectural review procedure).

107. Civ. Code § 1365(b).

108. See proposed Civ. Code § 5300.

109. See proposed Civ. Code § 5305.

110. See proposed Civ. Code § 5310.

111. See Civ. Code § 1365(d).

112. See proposed Civ. Code § 5320.

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## CHAPTER 6. FINANCES

An association is required to impose assessments sufficient to perform its obligations. However, an assessment may not exceed the amount required to accomplish the purpose for which it is assessed.<sup>113</sup>

### **Assessment Increase**

Under existing law, an association may not increase regular assessments unless it has either distributed a pro forma budget in compliance with Civil Code Section 1365(a) or obtained the approval of the members in a member election.<sup>114</sup>

In addition, the association must obtain the approval of the members before increasing regular assessments by more than 20% or imposing a special assessment that is more than 5% of the association's budgeted gross expenses for the fiscal year.<sup>115</sup>

The proposed law would continue those requirements, with three improvements:

- (1) The requirement that the association distribute a pro forma budget under Section 1365(a) in order to increase regular assessments without member approval would be broadened slightly. Under the proposed law, the association would instead be required to prepare and distribute the annual budget report under proposed Section 5300. That report would include some information that is not required under existing Section 1365(a).<sup>116</sup>
- (2) Existing law requires that the members' approval be obtained in an election conducted pursuant to specified provisions of the Corporations Code. Those provisions have been expressly superseded by the member election provisions in the Davis-Stirling Act.<sup>117</sup> The proposed law would remove the superseded reference to the Corporations Code election procedure.
- (3) Existing law provides that a quorum for an election to approve an assessment increase is 50% of the "owners" of the association. Reliance on the number of owners to establish the quorum could cause problems where a single person owns more than one separate interest, or where a single separate interest is owned by more than one person. In either case, the number of "owners" may not be proportional to the voting power represented by those owners. The proposed law would correct this problem by basing the quorum on the voting power of those participating in the election, rather than the number of owners.<sup>118</sup>

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113. See Civ. Code §§ 1366(a), 1366.1; proposed Civ. Code § 5600.

114. See Civ. Code § 1366(a).

115. See Civ. Code § 1366(b).

116. See Civ. Code § 1365(b) (summary of reserve funding plan), (f) (insurance coverage disclosures).

117. See Civ. Code § 1363.03(n).

118. See proposed Civ. Code § 5605(c).

1 **Protection of Essential Assessment Income from Creditors**

2 Under existing Civil Code Section 1366(c), assessment income that is necessary  
3 to pay for essential services is shielded from execution by a judgment creditor of  
4 the association. However, that protection does not apply to “any consensual  
5 pledges, liens, or encumbrances that have been approved by the owners of an  
6 association, constituting a quorum, casting a majority of the votes at a meeting....”

7 It is not clear from existing law whether the quorum for a member vote  
8 described in Section 1366(c) is subject to the special quorum rules stated in  
9 subdivisions (a) and (b) of that section.

10 The structure of Section 1366 suggests that those special quorum rules are  
11 intended to only apply to a vote that is described in subdivisions (a) and (b).  
12 However, the special quorum provisions state expressly that they apply to the  
13 section as a whole, which would arguably include the elections described in  
14 subdivision (c) (i.e., a member vote approving a consensual pledge, lien, or  
15 encumbrance).

16 The proposed law would make clear that the special quorum rules do not apply  
17 to the type of election described in subdivision (c).<sup>119</sup> Thus, the special creditor  
18 protection provided by that subdivision would not apply to any consensual pledge,  
19 lien, or encumbrance that the membership approves using whatever quorum rule  
20 governs the association generally.

21 **Assessment Payment and Collection Generally**

22 Assessment collection is governed by several complex and partially overlapping  
23 sections.<sup>120</sup>

24 The proposed law would regroup that material by subject matter, and present it  
25 as a series of relatively short sections that roughly track the order of the procedural  
26 steps involved in collecting an overdue assessment.<sup>121</sup>

27 Specific substantive improvements to existing law are discussed in detail below.

28 **Assessment Payment Priority**

29 Existing law provides that a member’s payment for assessments should be  
30 applied first to the assessments owed, before being applied to any collection costs,  
31 interest, or penalties.<sup>122</sup> Under the existing provision, it is not clear whether the  
32 payment priority rule is conditioned on the association having provided the  
33 member with a written notice of delinquency as required by Civil Code Section  
34 1367.1(a).

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119. See proposed Civ. Code § 5620.

120. See Civ. Code §§ 1365.1, 1366.2, 1366.2.7, 1367, 1367.1, 1367.4, 1367.5.

121. See proposed Civ. Code §§ 5650-5740.

122. See Civ. Code § 1367.1(b).

1 The proposed law would not continue the language giving rise to that  
2 problematic interpretation. The payment priority rule would apply in all cases,  
3 regardless of whether the member has received a notice of delinquency.<sup>123</sup>

#### 4 **Lien Release**

5 Under existing law, if it is discovered through alternative dispute resolution that  
6 the association has recorded an assessment lien in error, the association is required  
7 to release the lien and reverse all costs, fees, and interest associated with the  
8 error.<sup>124</sup>

9 There is no good policy reason to limit that rule to situations in which the error  
10 is discovered through alternative dispute resolution. The proposed law would  
11 continue the rule, but expand its application so that it applies whenever the  
12 association has recorded an assessment lien in error, without regard for how the  
13 error is discovered.<sup>125</sup>

#### 14 **Lien Enforcement Methods**

15 Existing Civil Code Section 1367.1(g) provides in part that, 30 days after  
16 recording a lien for overdue assessment debt, “the lien may be enforced in any  
17 manner permitted by law, including sale by the court, sale by the trustee  
18 designated in the notice of delinquent assessment, or sale by a trustee substituted  
19 pursuant to Section 2934a.” That rule is expressly subject to limitations expressed  
20 in Section 1367.1(g).

21 That caveat is potentially misleading. An association’s ability to foreclose on a  
22 lien is also significantly limited by other provisions of the Davis-Stirling Act,  
23 beyond the limitations stated in Section 1367.1(g).<sup>126</sup>

24 The proposed law would broaden the caveat, to encompass other existing  
25 limitations on an association’s authority to enforce a lien.<sup>127</sup>

#### 26 **Foreclosure Limitations**

27 Existing Civil Code Section 1367.4 prohibits foreclosure to enforce a lien for  
28 assessment debt that is less than \$1,800 in total or that is 12 months or less  
29 overdue.

30 Those limitations do not apply “to assessments owed by developers.”<sup>128</sup> That  
31 exception appears to be overbroad. While there is a policy argument to be made  
32 for exempting assessments owed by the developer of the CID to which the

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123. See proposed Civ. Code § 5655.

124. See Civ. Code § 1367.5.

125. See proposed Civ. Code § 5685.

126. See, e.g., Civ. Code § 1367.4(b) (time and amount limitations on nonjudicial foreclosure).

127. See proposed Civ. Code § 5700(a).

128. See Civ. Code § 1367.4(d).

1 assessments are owed, the existing language exempts any person who happens to  
2 be a developer.

3 The Commission did not see any policy justification for this treatment of  
4 developers as a class. For that reason, the proposed law would replace the existing  
5 exemption with an exemption for assessments owed by the “declarant” (i.e., the  
6 developer of the association to which the assessments are owed, or that person’s  
7 successor in interest).<sup>129</sup>

#### 8 **Property Damage Liability**

9 Existing Civil Code Section 1367.1(d) provides, in part, that an association  
10 member may be held liable for damage to the common area caused by the  
11 member’s “guests or tenants.”

12 The policy justification for that vicarious liability would seem to also justify  
13 vicarious liability for damage caused by an invitee (e.g., a child who is being cared  
14 for in a member’s home day care business). The proposed law would broaden the  
15 rule to include liability for damage caused by an invitee.<sup>130</sup>

#### 16 **Application Dates**

17 The existing assessment collection provisions have differing application dates:

- 18 • Civil Code Section 1367 applies to a lien created on or after January 1,  
19 1986, but before January 1, 2003.
- 20 • With one exception, Civil Code Section 1367.1 applies to a lien created on  
21 or after January 1, 2003. A requirement that the board make the decision to  
22 record a lien applies on or after January 1, 2006.
- 23 • Civil Code Section 1367.4 applies to a lien created on or after January 1,  
24 2006. However, Section 1367.1 is expressly “subordinate to” Section  
25 1367.4. Arguably, that means that Section 1367.4 also applies to any lien  
26 created on or after January 1, 2003.

27 The proposed law would restate those rules in simpler terms.<sup>131</sup>

## 28 CHAPTER 7. INSURANCE

29 The proposed law would contain a short chapter comprised of provisions  
30 relating to insurance and liability.<sup>132</sup> The proposed law would not make any  
31 substantive change in those provisions.

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129. See proposed Civ. Code § 5720(c)(3).

130. See proposed Civ. Code § 5725(a).

131. See proposed Civ. Code § 5740.

132. See proposed Civ. Code §§ 5800-5810.

1                   CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT

2       Existing law includes a number of provisions that relate to the enforcement of  
3 the governing documents and the resolution of disputes. Those provisions would  
4 be continued without substantive change,<sup>133</sup> except as discussed below.

5       **Schedule of Disciplinary Penalties**

6       If an association policy authorizes the imposition of a monetary penalty for a  
7 violation of the governing documents, existing law requires that the association  
8 adopt a schedule of monetary penalties and deliver it to the members.<sup>134</sup> If the  
9 penalty schedule is later amended, the amended penalty schedule must be  
10 delivered to the members.<sup>135</sup>

11       The proposed law would require that the schedule be included in the policy  
12 statement that is delivered to the members annually.<sup>136</sup> This would eliminate the  
13 need for a separate mailing and would remind members of the penalties for  
14 governing document violations on an annual basis.<sup>137</sup>

15       **Vicarious Liability for Violation of Governing Documents**

16       Existing Civil Code Section 1363(g) makes clear that a violation of the  
17 governing documents includes a violation by a member's guest or invitee.

18       The policy justification for that vicarious liability would seem to also justify a  
19 member's vicarious liability for a governing document violation by a tenant or  
20 other occupant of a separate interest. The proposed law would recognize that  
21 broader basis for vicarious liability.<sup>138</sup>

22       **Notice and Opportunity to be Heard**

23       Before imposing a penalty on a member, the association must provide the  
24 member with notice of the alleged violation and an opportunity to be heard by the  
25 board.<sup>139</sup>

26       The proposed law would broaden that due process requirement to also apply  
27 when an association seeks to recover damages from a member for damage to the  
28 common area.<sup>140</sup>

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133. See proposed Civ. Code §§ 5850-5980.

134. See Civ. Code § 1363(g).

135. *Id.*

136. See proposed Civ. Code § 5850.

137. See proposed Civ. Code § 5740.

138. See proposed Civ. Code § 5860.

139. See Civ. Code § 1363(h).

140. See proposed Civ. Code § 5855(a).

1 **Alternative Dispute Resolution**

2 Existing law requires that alternative dispute resolution (“ADR”) be offered  
3 before a civil action is filed by or against an association to enforce a provision of  
4 the governing documents, the Davis-Stirling Act, or a provision of the  
5 Corporations Code.<sup>141</sup>

6 The non-filing party is not required to accept the offer. However, in an action in  
7 which fees and costs may be awarded, the court may consider whether the refusal  
8 of ADR was reasonable, when determining the amount of the award.<sup>142</sup>

9 Under existing law, that rule only applies in an action to enforce the  
10 association’s governing documents. The proposed law would broaden the rule, to  
11 apply in any action in which fees and costs may be awarded.<sup>143</sup> That would further  
12 the policy purpose of the section, to encourage participation in ADR where it is  
13 reasonable to do so.

14 **Civil Action to Enforce Statutory CID Law**

15 There are a number of existing provisions that provide for a civil action to  
16 enforce a specific provision of the Davis-Stirling Act.<sup>144</sup>

17 Those provisions cover much, but not all of CID statutory law. That incomplete  
18 coverage may create an implication that judicial enforcement is unavailable except  
19 where it is specifically authorized. For example, the Davis-Stirling Act provides  
20 that an association is responsible for maintenance of the common area,<sup>145</sup> but there  
21 is no specific provision authorizing a civil action to enforce that obligation. It is  
22 therefore not clear whether such an action may be brought.

23 The Commission sees no policy reason to authorize judicial enforcement of the  
24 specific provisions listed above, while denying judicial enforcement of other  
25 important provisions of the Davis-Stirling Act (e.g., an owner’s right of access to a  
26 separate interest, rulemaking procedure, architectural review procedure, etc.). The  
27 proposed law would authorize a civil action to enforce any provision of the Davis-  
28 Stirling Act.<sup>146</sup>

29 **CHAPTER 9. CONSTRUCTION DEFECT LITIGATION**

30 Existing law includes fairly lengthy provisions setting out procedural  
31 prerequisites to an association filing a construction defect lawsuit against a

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141. See Civ. Code §§ 1369.510-1369.590.

142. See Civ. Code § 1369.580.

143. See proposed Civ. Code § 5960.

144. See, e.g., §§ 1353.5 (display of U.S. flag), 1363.09 (election and board meeting), 1365.2(f) (record inspection), 1368(d) (seller disclosure); Corp. Code §§ 7510(c)-(d) (member meeting), 7515, 8323 (annual report), 8336 (record inspection).

145. Civ. Code § 1364(a).

146. See proposed Civ. Code § 5980.

1 developer or builder.<sup>147</sup> The proposed law would leave those provisions unchanged  
2 to the maximum extent possible. The section numbers would change and cross-  
3 references would be updated, but no other changes would be made.<sup>148</sup>

4 DEFERRED OPERATION

5 The proposed law would be given a one year deferred operative date. That  
6 would give practitioners time to adjust to the new organization of the law. It would  
7 also provide an opportunity for a follow-up bill to coordinate the proposed law  
8 with any changes to the law that are made in the same year that the proposed law  
9 is enacted.

10 CONFORMING REVISIONS

11 The proposed law would change the numbering of every provision of the Davis-  
12 Stirling Act. If the proposed law is enacted, all existing statutory references to  
13 provisions of the Davis-Stirling Act would need to be corrected to use the new  
14 section numbers.

15 The “Conforming Revisions” portion of the proposed law includes the technical  
16 amendments necessary to correct those cross-references.

17 REQUEST FOR COMMENT

18 The Commission requests that interested persons and groups carefully review  
19 the proposed legislation and submit comments on the merits of the proposed  
20 organization, nonsubstantive clarifications, and substantive improvements.

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147. Civ. Code §§ 1375-1375.1.

148. See proposed Civ. Code §§ 6000-6150.