Study H-856 August 19, 2010

First Supplement to Memorandum 2010-37

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

The staff received an email from Duncan McPherson (attached), commenting on Memorandum 2010-37.

In that memorandum, the staff raised the issue of whether the word "nonresidential" is the best adjective to use in describing a common interest development ("CID") that would be governed by the proposed law (i.e., a CID that is limited to commercial or industrial uses). See Memorandum 2010-37, p. 8.

That issue was prompted by a letter from an owner of an interest in "R-Ranch," a property development used solely for recreational purposes. Such a development would appear to be "nonresidential," despite the fact that it is not limited to commercial or industrial uses.

Mr. McPherson writes to explain that R-Ranch is not a CID at all. Ownership of the entire development is held in undivided shares. No owner has a separate interest. See Exhibit.

This new information does not change the theoretical problem described in Memorandum 2010-37. There could be CIDs that are "nonresidential," but are also not industrial or commercial. For example, if the owners of R-Ranch each owned a separate interest lot in the development, with the remainder owned as common area, it would be a CID.

However, Mr. McPherson's comment does seem to dispose of the only known example of this problem.

Respectfully submitted,

Brian Hebert
Executive Secretary

EMAIL FROM DUNCAN MCPHERSON
(8/17/10)

Steve in reading through this memorandum I noticed on page 8 the discussion of R-Ranch. R-Ranch is a client of this office and had been mischaracterized as a CID in the past by a number of people. R-Ranch is an undivided ownership project with each owner owning an undivided 1/2500 interest in the property and having a membership in the Association. The property is used for recreational purposes. It is not a CID for it has no "separate interests" as required by the DSA definitions, since the owners have no designated separate lot or space within the project. There are places on site for camping and parking of recreational vehicles but no one has the right to any separate space. This is one of the many issues with the existing definitions which need to be examined. However one reason this has confused people is that for DRE purposes undivided ownership subdivisions are treated as CIDs for the purpose of the type of filing required and the type of public report required, see Business & Professions Code Section 11000.1. Thus such a subdivision requires a public report unless exempted. The language exempting commercial and industrial subdivision contained in Section 11000.3 does not fit the R-Ranch situation so the public report requirement applies even though this project is not the typical "residential" subdivision. Until 11000.3 was enacted the DRE had technical jurisdiction over commercial and industrial subdivisions as well as residential although they normally waived their jurisdiction (a practice that later turned out not to be authorized by law) for anything other than residential subdivisions. There are evidently four or five other R-Ranch project that were set up by the same developer in other parts of Northern California and we understand they have similar documentation. The R-Ranch discussion however raises the point that there are many projects that are not subject to the DSA and the actual reach of the present CID definitions contained in the DSA.

Duncan
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