

## Memorandum 2013-20

**Commercial and Industrial Subdivisions (Staff Draft Recommendation)**

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At its August 2011 meeting, the Commission began a study of the scope of application of Business and Professions Code Section 11010.3 and Civil Code Section 1373. Those provisions exempt commercial and industrial subdivisions from the Subdivided Lands Act (Bus. & Prof. Code §§ 11000-11200) and from some provisions of the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1379). The main thrust of the study was to consider whether the existing exemptions should be revised to (1) clarify the meaning of “commercial” in some circumstances, and (2) exempt any development that is entirely “nonresidential” (rather than commercial or industrial).

At its February 2013 meeting, the Commission decided to drop the second element from the proposed law and instructed the staff to prepare a new draft recommendation that contains only the first element (along with a minor technical revision that was described on pages 22-23 of Memorandum 2013-7). Minutes (Feb. 2013), p. 4.

The requested staff draft is attached for the Commission’s review. The Commission should review the attached draft and decide whether to approve it as a final recommendation, for printing and submission to the Legislature.

## DISCUSSION

The recast proposed legislation includes new language. The Commission and interested members of the public should review that language carefully.

For the most part, the revised language simply implements the Commission’s previous policy decisions. However, there is one change that might warrant special attention and discussion.

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The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

In drafting the revisions to Business and Professions Code Section 11010.3, the staff made minor adjustments to the language, to make that section more closely track the language used in the parallel provision of the Davis-Stirling Act (Civ. Code § 4202). Those changes are intended to be nonsubstantive.

But consider the following proposed revision (shown without the other proposed revisions for the sake of clarity):

11010.3. The provisions of this chapter shall not apply to the proposed sale or lease of lots or other interests in a subdivision ~~in which lots or other interests are~~ (a) that is limited to industrial or commercial uses by zoning or (b) limited to industrial or commercial uses by a declaration of covenants, conditions, and restrictions, which declaration has been recorded in the official records of the county or counties in which the subdivision is located.

The staff's understanding is that Section 11010.3 and Civil Code Section 4202 are intended to apply only where a development is *entirely* limited to commercial or industrial uses (i.e., they do not apply to mixed-use subdivisions). However, it seems possible that the language shown in strikeout above could be read to mean that the exemption applies if *any* lots or other interests are limited to commercial or industrial uses (i.e., it does apply to mixed-use subdivisions).

The staff believes that the latter reading of the section would be contrary to legislative intent and established practice. If so, then the revision shown above would have the added benefit of eliminating potentially misleading language. But if the staff is incorrect, and Section 11010.3 is intended to apply to mixed-use subdivisions, then the revision shown above would be an inappropriate substantive change.

**The staff invites public comment on this issue.** In addition, we will contact the staff at the Department of Real Estate to request informal guidance regarding their existing practices. If such guidance is available, it will be reported orally at the April 2013 meeting.

#### CONCLUSION

**Does the Commission approve the attached draft as a final recommendation, for printing and submission to the Legislature, with or without changes?**

If the recommendation is approved, the staff will investigate whether the proposed law can be added to SB 752 (Roth), which would implement a related

Commission recommendation. See *Commercial and Industrial Common Interest Developments*, 42 Cal. L. Revision Comm'n Reports 1 (2012).

Respectfully submitted,

Brian Hebert  
Executive Director

#H-858

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**STAFF DRAFT**

RECOMMENDATION

Commercial and Industrial Subdivisions

April 2013

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
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## SUMMARY OF RECOMMENDATION

Business and Professions Code Section 11010.3 exempts “commercial” and “industrial” subdivisions — i.e., subdivisions that are limited to commercial or industrial uses by zoning or a recorded declaration — from the requirements of the Subdivided Lands Act. Similarly, Civil Code Section 1373 exempts commercial and industrial subdivisions from specified provisions of the Davis-Stirling Common Interest Development Act.

The Commission recommends that the exemption provisions be revised to make both of the following improvements:

- (1) Make clear that the operation of a business is a “commercial” use, even if the business provides facilities for an overnight stay by its customers, employees, or agents.
- (2) Provide that the exemptions apply when *any* law restricts a development to commercial and industrial uses. The exemptions would not be limited to developments restricted by a “zoning” law.

The Commission also recommends a minor technical revision to correct erroneous language in a statutory notice provided in the Subdivided Lands Act.

This recommendation was prepared pursuant to Resolution Chapter 108 of the Statutes of 2012.



## COMMERCIAL AND INDUSTRIAL SUBDIVISIONS

1 Business and Professions Code Section 11010.3 exempts “commercial” and  
2 “industrial” subdivisions — i.e., subdivisions that are limited to commercial or  
3 industrial uses by zoning or a recorded declaration — from the requirements of the  
4 Subdivided Lands Act.<sup>1</sup> Similarly, Civil Code Section 1373 exempts commercial  
5 and industrial subdivisions from specified provisions of the Davis-Stirling  
6 Common Interest Development Act (hereafter “Davis-Stirling Act”).<sup>2</sup>

7 The Commission sees two problems with the existing scope of the exemption  
8 provisions:

- 9 (1) While it is clear that the exemptions intend to treat “commercial”  
10 developments differently from residential developments, there is no  
11 governing definition of “commercial use.” This creates a potential  
12 ambiguity as to whether “commercial use” includes the operation of a  
13 business that provides its clients, employees, or agents with facilities for an  
14 overnight stay (e.g., a hotel, skilled nursing facility, or business that  
15 provides housing for a security guard or caretaker).
- 16 (2) The existing exemptions apply where “zoning” laws restrict a development  
17 to commercial or industrial use, but do not apply when other types of laws  
18 impose such restrictions.

19 The Commission recommends that those problems be addressed, consistent with  
20 the Legislature’s intent that business property owners be regulated differently than  
21 residential property owners. The Commission’s recommendations are explained  
22 below.

## SUBDIVIDED LANDS ACT

### **Purpose and Effect of the Subdivided Lands Act**

24 The Subdivided Lands Act regulates the sale or lease of lots or parcels within a  
25 “subdivision” or “subdivided lands,”<sup>3</sup> in order to protect consumers against “fraud  
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1. Bus. & Prof. Code §§ 11000-11200.

2. Civ. Code §§ 1350-1378. (On January 1, 2014, Civ. Code §§ 1350-1378 will be repealed and continued as Civ. Code §§ 4000-6150. See 2012 Cal. Stat. ch. 180.)

3. As a general rule, the synonymous terms “subdivision” and “subdivided lands” mean “improved or unimproved land or lands, wherever situated within California, divided or proposed to be divided for the purpose of sale or lease or financing, whether immediate or future, into five or more lots or parcels.” Bus. & Prof. Code § 11000(a). Common interest developments are expressly included in the definition of “subdivision” or “subdivided lands” (provided that they contain five or more separate interests). See Bus. & Prof. Code § 11004.5.

1 and sharp practices” by subdividers.<sup>4</sup> The Act achieves its purpose by requiring  
2 that a subdivider, before selling or leasing any lots within a regulated subdivision,  
3 obtain a “public report” from the Real Estate Commissioner.

4 On applying for a public report, a subdivider must provide a wide range of  
5 detailed information about the subdivision, including information about the status  
6 of title, the proposed terms of sale, access to public utilities, any restrictions on use  
7 or occupancy, any lien that may exist on the property, any existing or proposed  
8 indebtedness incurred for the construction of promised facilities, the location of  
9 public schools, the presence of nearby airports, and specified geological and soil  
10 conditions.<sup>5</sup>

11 A subdivider must also demonstrate compliance with a number of substantive  
12 requirements, including requirements intended to ensure that the subdivider will  
13 deliver the property in the promised condition, for the promised price, with  
14 protection against blanket encumbrances.<sup>6</sup>

15 If the subdivision is also a common interest development, the subdivider must  
16 demonstrate that reasonable arrangements have been made for completion of the  
17 project, transfer of ownership and control, and ongoing operation and  
18 maintenance.<sup>7</sup> The subdivider must also submit a draft declaration of covenants,  
19 conditions, and restrictions that makes reasonable arrangements on a number of  
20 specified operational issues.<sup>8</sup>

21 On receipt of a complete application for a public report, the Real Estate  
22 Commissioner must review the substance of the application and, unless there are  
23 grounds for denial, issue a public report.<sup>9</sup> The subdivider is then free to sell or  
24 lease lots in the subdivision.

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4. In re Sidebotham, 12 Cal. 2d 434, 436, 85 P.2d 453 (1938) (“The object of the present law, prevention of fraud and sharp practices in a type of real estate transaction peculiarly open to such abuses, is obviously legitimate; and the method, involving investigation and disclosure of certain essential facts, and a protection for the innocent purchaser against loss of his land by foreclosure of the underlying mortgage, is perfectly reasonable.”). See also Property Owners of Whispering Palms, Inc. v. Court of Appeal, 132 Cal. App. 4th 666, 33 Cal. Rptr. 3d 845 (2005) (“The Act is a consumer protection statute intended primarily to prevent ‘fraud and sharp practices’ by requiring disclosure of all relevant information to potential purchasers and lessees....”); Westbrook v. Summerfield, 154 Cal. App. 2d 761, 766, 316 P.2d 691 (1957) (“purpose of Subdivided Lands Act is to protect individual members of the public who purchase lots or homes from subdividers and to make sure that full information will be given to all purchasers concerning public utility functions and other essential facts with reference to the land.”).

5. Bus. & Prof. Code § 11010(b). See also Bus. & Prof. Code § 11010.05 (special notice for senior citizen housing development); 10 Cal. Code Regs. §§ 2792 (standard subdivision), 2792.1 (common interest development).

6. Bus. & Prof. Code §§ 11013-11013.4. See generally, Miller, Starr & Regalia, California Real Estate *Subdivision Offerings, Sales, and Leasing* § 25C:33 (2007 update).

7. Bus. & Prof. Code § 11018.5.

8. Bus. & Prof. Code § 11018.5(e); 10 Cal. Code Regs. §§ 2792.4(b), 2792.15-2792.21, 2792.23-2792.24, 2792.26-2792.28.

9. Bus. & Prof. Code § 11018.

1 Grounds for denial of a report include failure to comply with the Subdivided  
2 Lands Act; misrepresentation, deceit, or fraud; and the inability of the subdivider  
3 to meet a number of substantive requirements relating to transfer of title and the  
4 condition of the property.<sup>10</sup>

5 The subdivider must provide a copy of the public report to a prospective  
6 purchaser.<sup>11</sup> The public report must also be made available for public inspection.<sup>12</sup>

7 **Purpose and Effect of Business and Professions Code Section 11010.3**

8 Business and Professions Code Section 11010.3 provides a complete exemption  
9 from the Subdivided Lands Act for a subdivision that is restricted to “commercial”  
10 or “industrial” uses by zoning or by a recorded declaration of covenants,  
11 conditions, and restrictions.

12 The original version of the exemption was enacted in 1969. At that time, it only  
13 applied to “expressly zoned industrial subdivisions which are limited in use to  
14 industrial purposes” and “commercial leases of parcels in a shopping center.”<sup>13</sup>

15 The author of the bill enacting that exemption explained that the Subdivided  
16 Lands Act had only been intended to apply to residential subdivisions:

17 [The] Subdivided Lands Act was placed there when only residential  
18 subdivisions were conceived and used in California. It is only in the past 20 years  
19 that industrial subdivisions have spread all over the State.<sup>14</sup>

20 Once it became apparent that the Subdivided Lands Act applied to commercial and  
21 industrial subdivisions, the exemption was enacted to eliminate that application.

22 As the legislative history explained, purchasers of property in commercial and  
23 industrial property subdivisions do not require the protections that were provided  
24 by the Subdivided Lands Act,<sup>15</sup> in part because they are presumed to be more  
25 sophisticated than residential property purchasers.<sup>16</sup> Furthermore, there are  
26 practical differences between nonresidential and residential subdivisions that make

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10. *Id.*

11. Bus. & Prof. Code § 11018.1.

12. *Id.*

13. See 1969 Cal. Stat. ch. 373.

14. Letter from Assembly Member Hayes to Governor Reagan (July 27, 1969) (attached to Commission Staff Memorandum 2011-29 (July 13, 2011), at Exhibit p. 1). The Department of Finance expressed a similar view in an enrolled bill report, noting that the Subdivided Lands Act had been “designed primarily for residential subdivisions.” Department of Finance, Enrolled Bill Report on AB 63 (Hayes) (attached to Commission Staff Memorandum 2011-29 (July 13, 2011), at Exhibit p. 4).

15. Department of Finance, Enrolled Bill Report on AB 63 (Hayes) (attached to Commission Staff Memorandum 2011-29 (July 13, 2011), at Exhibit p. 4).

16. Letter from California Real Estate Association to Governor Reagan (July 27, 1969) (attached to Commission Staff Memorandum 2011-29 (July 13, 2011), at Exhibit p. 6).

1 it difficult or unhelpful for a commercial or industrial subdivider to comply with  
2 the Subdivided Lands Act.<sup>17</sup>

3 The Legislature has amended the exemption provision twice to broaden its  
4 scope. In 1974, the provision was amended to replace the narrow category of  
5 “shopping centers,” with the broader “commercial use” category.<sup>18</sup> In 2000, the  
6 amendment was broadened again, to include any subdivision that is limited to  
7 commercial or industrial use by a recorded declaration (in addition to any  
8 subdivision that is restricted to such uses by zoning).<sup>19</sup>

9                                   DAVIS-STIRLING COMMON INTEREST  
10                                   DEVELOPMENT ACT

11 **Purpose and Effect of the Davis-Stirling Common Interest Development Act**

12 The Davis-Stirling Act was enacted in 1985,<sup>20</sup> to consolidate and generalize the  
13 law that governed condominiums, so that it would also apply to other types of  
14 “common interest developments”<sup>21</sup> — i.e., planned developments, community  
15 apartment projects, and stock cooperatives.<sup>22</sup>

16 At the time of enactment, the Davis-Stirling Act was relatively modest in scope.  
17 It consisted of only 23 sections, most of which were enabling provisions,  
18 authorizing and defining the common interest development property ownership  
19 form.<sup>23</sup> Only a few provisions regulated the operation of a common interest  
20 development’s managing association.<sup>24</sup>

21 The Davis-Stirling Act has been amended numerous times since its original  
22 enactment and has more than tripled in size.<sup>25</sup> While the original enabling  
23 provisions remain, most of the statute is now regulatory in character, with

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17. For example, a commercial developer may defer making many infrastructure decisions until after lots have been sold, so that the infrastructure can be better tailored to the needs of the purchasers. This makes it difficult to provide the Real Estate Commissioner with information about those improvements prior to the sale of the lots. *Id.* at Exhibit pp. 5-6. Department of Finance, Enrolled Bill Report on AB 63 (Hayes) (attached to Commission Staff Memorandum 2011-29 (July 13, 2011), at Exhibit p. 3).

18. 1974 Cal. Stat. ch. 606.

19. 2000 Cal. Stat. ch. 279.

20. 1985 Cal. Stat. ch. 874.

21. In general, a “common interest development” is a real property development in which ownership of a separate interest is coupled with an interest in common area property. See Civ. Code § 1351(b), (d), (f), (k), (l), (m).

22. Civ. Code § 1351(c).

23. See generally 1985 Cal. Stat. ch. 874.

24. See former Sections 1363 (existence, powers, and duties of managing association), 1365 (financial statements of association), 1366-1367 (assessments); 1985 Cal. Stat. ch. 874.

25. The Act is now comprised of 94 code sections, some of them many pages in length. See Civ. Code §§ 1350-1378.

1 numerous provisions imposing detailed mandatory operational procedures for  
2 rulemaking,<sup>26</sup> board meetings,<sup>27</sup> dispute resolution,<sup>28</sup> member elections,<sup>29</sup> record  
3 inspection,<sup>30</sup> accounting and budgeting,<sup>31</sup> and the imposition and collection of  
4 assessments.<sup>32</sup>

5 **Purpose and Effect of Civil Code Section 1373**

6 Civil Code Section 1373 exempts commercial and industrial common interest  
7 developments from specified provisions of the Davis-Stirling Act. The section was  
8 enacted in 1988, shortly after the enactment of the original Davis-Stirling Act.<sup>33</sup>

9 The legislative history of Section 1373 suggests that the Legislature had not  
10 originally intended for the Davis-Stirling Act to have any application to  
11 nonresidential common interest developments.<sup>34</sup>

12 Two years after the Davis-Stirling Act was enacted, when it became apparent  
13 that the Act also applied to commercial and industrial CIDs, a bill was introduced  
14 to entirely exempt such developments from the Davis-Stirling Act.<sup>35</sup> However,  
15 persons representing commercial property owners objected to that approach,  
16 noting that some provisions of the Act were beneficial for all CIDs, regardless of  
17 type.<sup>36</sup> The bill was amended to instead exempt commercial and industrial CIDS

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26. Civ. Code §§ 1357.100-1357.150.

27. Civ. Code §§ 1363.05, 1363.09.

28. Civ. Code §§ 1363.810-1363.850, 1369.510-1369.590, 1375-1375.1.

29. Civ. Code §§ 1363.03-1363.04, 1363.09.

30. Civ. Code § 1365.2.

31. Civ. Code §§ 1365, 1365.2.5, 1365.3-1365.5.

32. Civ. Code §§ 1365.1, 1366.2-1367.6.

33. 1988 Cal. Stat. ch. 123. Note that Civil Code Section 1373 was given the same scope of application as the exemption in Business and Professions Code Section 11010.3. *Compare* 1988 Cal. Stat. ch. 123 *with* 1980 Cal. Stat. ch. 1336.

34. See letter from Jerold L. Miles to Michael Krisman (Sept. 16, 1986) (on file with Commission) (“In a recent conversation between my partner Bob Thomson and Assemblyman Davis, Assemblyman Davis assured Mr. Thomson that the act was intended to apply only to residential projects.”); Office of Local Government Affairs, Enrolled Bill Report on AB 2484 (May 23, 1988) (on file with Commission) (“According to the consultant for the Assembly Housing Committee, the Davis-Stirling Act was enacted to benefit residential common interest developments. However, the language of the Davis-Stirling Act *inadvertently* included commercial and industrial developments.”) (emphasis added).

35. AB 2484 (Hauser) (1987).

36. See, e.g., letter from Jeffrey G. Wagner to Assembly Member Daniel Hauser (June 12, 1987) (attached to Commission Staff Memorandum 2008-63 (Dec. 2, 2008), at Exhibit pp. 1-2); letter from F. Scott Jackson to Assembly Member Hauser (June 29, 1987) (on file with Commission); letter from Donna L. May to Michael Krisman (May 7, 1987) (on file with Commission).

1 from those provisions of the Act that are beneficial to residential property owners  
2 but unnecessary and burdensome for commercial or industrial property owners.<sup>37</sup>

3 Civil Code Section 1373 was enacted in that form.<sup>38</sup> In effect, the section  
4 preserved the application of the Davis-Stirling Act’s foundational provisions  
5 (those that define the basic property ownership and governance structure for  
6 CIDs), while exempting commercial and industrial CIDs from the act’s  
7 operational regulations (those that impose mandatory procedures for the operation  
8 of a CID’s governing association).<sup>39</sup>

9 A committee analysis of the bill that added Section 1373 identified the following  
10 rationale for the exemption of commercial and industrial common interest  
11 developments from the operational regulations of the Davis-Stirling Act:

12 1. Commercial and industrial common interest developments are business  
13 endeavors in which the parties engage the professional services of attorneys,  
14 accountants, management companies, and developers. Unlike groups of neighbors  
15 providing for the governance of their living conditions, these business people are  
16 well informed and governed by other provisions of commercial law.

17 2. The operational needs of commercial and industrial common interest  
18 developments are different than those of a residential association, e.g., “An  
19 individual business owner’s assessment may increase disproportionately, but  
20 fairly, in a given assessment period based on business expansion, change of use,  
21 or other negotiated factors, such as an extrahazardous use which raises insurance  
22 premiums.”

23 3. Business parks often add amenities and new facilities as the park is  
24 developed. Increased assessments are needed in a timely manner to pay for  
25 improvements. Unlike residential owners, business owners pass these increased  
26 costs on to their customers.

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37. See Civ. Code § 1373(b) (“The Legislature finds that the [provisions declared inapplicable to commercial or industrial CIDs] may be appropriate to protect purchasers in residential common interest developments, however, the provisions are not necessary to protect purchasers in commercial or industrial developments since the application of those provisions results in unnecessary burdens and costs for these types of developments.”). See also Assembly Floor Analysis of AB 2484 (Jan. 19, 1988), p. 1 (specified provisions of Davis-Stirling Act were “enacted to benefit residential common interest developments”); Assembly Committee on Housing and Community Development Analysis of AB 2484 (Jan. 11, 1988), p. 1 (specified provisions of Davis-Stirling Act were “enacted primarily to regulate and benefit residential common interest developments”); Senate Committee on Housing and Urban Affairs Analysis of AB 2484 (May 12, 1987), p. 1 (specified provisions of Davis-Stirling Act were “designed to protect individuals in residential common interest developments”); Committee Statement of Assembly Member Hauser on AB 2484 (on file with Commission) (problems to be solved by Davis-Stirling Act “revolved around residential subdivisions”).

38. 1988 Cal. Stat. ch. 123.

39. For further discussion of the distinction between foundational and operational provisions of the Davis-Stirling Act, see *Commercial and Industrial Common Interest Developments*, 42 California L. Revision Comm’n Reports 1 (2012).

1           4. Regulatory requirements designed to protect individuals in residential  
2           developments are inappropriate in business developments, interfere with  
3           commerce, and increase the costs of doing business.<sup>40</sup>

4           In addition, express legislative findings were included in Section 1373(b),  
5           declaring:

6           The Legislature finds that the [provisions declared inapplicable to commercial  
7           and industrial CIDs] are appropriate to protect purchasers in residential common  
8           interest developments, however, the provisions may not be necessary to protect  
9           purchasers in commercial or industrial developments since the application of  
10          those provisions could result in unnecessary burdens and costs for these types of  
11          developments.

12          Those rationales were based in part on the assumption that business property  
13          owners generally have greater sophistication than residential property owners and  
14          greater access to professional resources to aid them in purchasing or managing  
15          business property. While the assumption of greater sophistication and resources is  
16          likely to be true as a general proposition, it will not be true in every case. Some  
17          business owners will be less sophisticated, and some residential property owners  
18          will be more sophisticated. However, there is good reason to believe that a typical  
19          business owner who purchases real property for the operation of a business is a  
20          sophisticated actor.<sup>41</sup>

21          Section 1373 has only been amended three times by the Legislature. The first  
22          two amendments were made in connection with Law Revision Commission  
23          recommendations, in order to exempt commercial and industrial common interest

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40. Senate Rules Committee Analysis of AB 2484 (Hauser) (May 18, 1988), pp. 2-3. See also Assembly Floor Analysis of AB 2484 (Jan. 19, 1988) (on file with Commission); Assembly Committee on Housing and Community Development Analysis of AB 2484 (Jan. 11, 1988) (on file with Commission); Senate Committee on Housing and Urban Affairs Analysis of AB 2484 (May 12, 1987) (on file with Commission); Committee Statement of Assembly Member Hauser on AB 2484 (on file with Commission).

41. As the California Association of Community Managers observes, in a letter to the Commission:

The following two demographic facts differentiate the purchaser of a commercial building or unit from the purchaser of a residence:

(1) Approximately 90% of the owners who purchase buildings or commercial units in the associations own them as a corporation, LLC, trust or partnership. Almost all of these, whether they are owned as noted above or as individuals/joint tenants, own and operate an incorporated business within the building or unit. These parties are sophisticated. They have hired legal counsel to form their legal entities and have the legal and financial resources to hire legal counsel when they believe it appropriate to protect their interests.

(2) The typical purchase price, represented as the middle 70% of the building or units sold today, varies between \$1,000,000 - \$4,000,000. The purchase and sale of these buildings and units are typically facilitated by one or more attorneys, who are obligated to protect the interests of their clients through the diligence process. In summary, these are parties who have the sophistication to manage businesses, take advantage of legal and tax opportunities presented to such businesses and to purchase multi-million dollar buildings for the tax and estate benefits provided thereby.

See Commission Staff Memorandum 2008-63 (Dec. 2, 2008), at Exhibit p. 4.

1 developments from new regulatory provisions<sup>42</sup> that the Commission had  
2 recommended.<sup>43</sup> The Commission recognized that its recommendations had been  
3 developed to benefit residential property owners, without any separate  
4 consideration of their effect on business property owners. Rather than  
5 inadvertently impose inappropriate regulatory burdens on commercial or industrial  
6 property owners, the existing exemption was expanded to include the new  
7 reforms.

8 The third amendment was made in 2011, to exempt commercial and industrial  
9 common interest developments from a new provision<sup>44</sup> that protects an owner's  
10 existing right to lease separate interest property.<sup>45</sup>

## 11 RECOMMENDATIONS

12 The Commission recommends that the exemptions for commercial and  
13 industrial developments be revised as discussed below:

- 14 (1) The existing exemptions apply to a subdivision that is limited to commercial  
15 use. Because “commercial use” is not defined, there could be some  
16 uncertainty about the status of a hotel, skilled nursing facility, apartment  
17 complex, or other business that provides overnight stay facilities for its  
18 customers, employees, or agents. The Commission recommends that the  
19 exemptions be revised to make clear that the operation of such a business is  
20 a commercial use, rather than a residential use.
- 21 (2) The existing exemptions apply to a subdivision that is limited to commercial  
22 or industrial uses by “zoning.” The Commission sees no good policy reason  
23 to limit the exemptions in that way and recommends that the exemption  
24 provisions be broadened to encompass any law that restricts property use.

25 The Commission also recommends a technical revision to a statutory notice  
26 included in the Subdivided Lands Act. Those recommendations are discussed  
27 more fully below.

### 28 **Business that Provides Overnight Stay Facilities as “Commercial Use”**

29 Some businesses provide overnight stay facilities for their customers (e.g, a  
30 hotel, inpatient medical facility, or apartment complex). Other businesses may  
31 provide overnight stay facilities for their employees or agents (e.g., providing an  
32 onsite apartment for a caretaker or security guard).

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42. See 2003 Cal. Stat. ch. 557 (exemption from rulemaking procedures); 2004 Cal. Stat. ch. 356 (exemption from architectural decisionmaking procedure).

43. See *2003-2004 Annual Report*, 33 Cal. L. Revision Comm'n Reports 569, 645-47 (2003); *Common Interest Development Law: Architectural Review and Decisionmaking*, 34 Cal. L. Revision Comm'n Reports 107 (2004).

44. Civ. Code § 1360.2.

45. 2011 Cal. Stat. ch. 62.

1 From the perspective of the property owner, these are plainly commercial uses  
2 of the property. The owner’s primary reason for purchasing the property is to  
3 operate a business. The owner is reasonably presumed to be more sophisticated  
4 and have greater access to professional resources than a typical homeowner.  
5 Therefore, the existing policy rationale for exempting commercial property from  
6 the Subdivided Lands Act and the operational provisions of the Davis-Stirling Act  
7 appears to be fully applicable to those types of business uses.

8 While it is true that the Subdivided Lands Act and the operational provisions of  
9 the Davis-Stirling Act are also intended to promote the quality of living conditions  
10 within a subdivision, they do so only with respect to property *owners*. Neither  
11 statute confers any meaningful benefit on an owner’s customers, employees, or  
12 agents. The Subdivided Lands Act regulates the sales transaction between the  
13 subdivider and the purchaser of a lot or parcel. It has no effect on the purchaser’s  
14 future customers, employees, or agents. Similarly, the Davis-Stirling Act confers a  
15 host of rights and obligations on property owners, but has almost no direct effect  
16 on the owner’s customers, employees, or agents.<sup>46</sup>

17 For those reasons, the Commission recommends that the exemptions be revised  
18 to make clear that the operation of a business that provides facilities for overnight  
19 stays for its customers, employees, or agents is a commercial use of property.<sup>47</sup>  
20 This would be consistent with the established policy of the Legislature to avoid  
21 unintended regulation of business property owners.

## 22 **Non-Zoning Restrictions on Property Use**

23 The existing exemptions apply to a subdivision that is limited to commercial or  
24 industrial uses by “zoning.” However, there are other sources of law that can  
25 restrict or prohibit residential use of property. For example, the law restricts  
26 residential use of property that is on the “border-zone” of hazardous  
27 contamination.<sup>48</sup>

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46. There are only two provisions of the Davis-Stirling Act that confer a direct benefit on non-owner occupants of separate interest property, but neither of those provisions is included within the scope of the exemption provided by Civil Code Section 1373. They are therefore irrelevant in determining whether other provisions of the Davis-Stirling Act (which do not directly benefit non-owner occupants) should apply to a commercial development in which a business provides facilities for overnight stays. See Civ. Code §§ 1361.5 (occupant guaranteed egress), 1364(d)(2) (warning to occupant before being relocated for termite abatement).

47. See proposed Bus. & Prof. Code § 11002(b)(1); Civ. Code § 4203(b)(1). Note that these provisions only apply to a lot that is divided into three or more separate apartments. This is intended to avoid the misapplication of the provisions to owner-occupied residences that have a single associated “in-law cottage” or “granny flat.”

48. See, e.g., Health & Safety Code § 25232(b). See also Health & Safety Code § 25117.4 (“border-zone property” defined).

1 There is no good policy reason for limiting the existing exemptions to  
2 subdivisions that are restricted by zoning. The key policy consideration is the  
3 *effect* of the restriction, not its form.

4 For that reason, the Commission recommends that the existing exemptions be  
5 revised to make clear that they include a development that is restricted to specified  
6 uses by any law, not just a zoning law.<sup>49</sup>

7 **Technical Revision**

8 The Subdivided Lands Act specifies the content of the “notice of intention”  
9 prepared by a subdivider as part of the public report process.<sup>50</sup> The existing  
10 statutory notice contains plainly erroneous language. The Commission  
11 recommends that the error be corrected, by drawing language from a parallel  
12 notice in the Davis-Stirling Act.<sup>51</sup>

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49. See proposed Bus. & Prof. Code § 11002; Civ. Code § 4203.

50. See Bus. & Prof. Code § 11010.

51. Civ. Code § 4255(a).

PROPOSED LEGISLATION

1 **Bus. & Prof. Code § 11010 (amended). Notice of intention**

2 SECTION 1. Section 11010 of the Business and Professions Code is amended to  
3 read:

4 11010. (a) Except as otherwise provided pursuant to subdivision (c) or  
5 elsewhere in this chapter, any person who intends to offer subdivided lands within  
6 this state for sale or lease shall file with the Department of Real Estate an  
7 application for a public report consisting of a notice of intention and a completed  
8 questionnaire on a form prepared by the department.

9 (b) The notice of intention shall contain the following information about the  
10 subdivided lands and the proposed offering:

11 (1) The name and address of the owner.

12 (2) The name and address of the subdivider.

13 (3) The legal description and area of lands.

14 (4) A true statement of the condition of the title to the land, particularly  
15 including all encumbrances thereon.

16 (5) A true statement of the terms and conditions on which it is intended to  
17 dispose of the land, together with copies of any contracts intended to be used.

18 (6) A true statement of the provisions, if any, that have been made for public  
19 utilities in the proposed subdivision, including water, electricity, gas, telephone,  
20 and sewerage facilities. For subdivided lands that were subject to the imposition of  
21 a condition pursuant to subdivision (b) of Section 66473.7 of the Government  
22 Code, the true statement of the provisions made for water shall be satisfied by  
23 submitting a copy of the written verification of the available water supply obtained  
24 pursuant to Section 66473.7 of the Government Code.

25 (7) A true statement of the use or uses for which the proposed subdivision will  
26 be offered.

27 (8) A true statement of the provisions, if any, limiting the use or occupancy of  
28 the parcels in the subdivision.

29 (9) A true statement of the amount of indebtedness that is a lien upon the  
30 subdivision or any part thereof, and that was incurred to pay for the construction  
31 of any onsite or offsite improvement, or any community or recreational facility.

32 (10) A true statement or reasonable estimate, if applicable, of the amount of any  
33 indebtedness ~~which~~ that has been or is proposed to be incurred by an existing or  
34 proposed special district, entity, taxing area, assessment district, or community  
35 facilities district within the boundaries of which, the subdivision, or any part  
36 thereof, is located, and that is to pay for the construction or installation of any  
37 improvement or to furnish community or recreational facilities to that subdivision,  
38 and which amounts are to be obtained by ad valorem tax or assessment, or by a  
39 special assessment or tax upon the subdivision, or any part thereof.

40 (11) A notice pursuant to Section 1102.6c of the Civil Code.

1 (12) (A) As to each school district serving the subdivision, a statement from the  
2 appropriate district that indicates the location of each high school, junior high  
3 school, and elementary school serving the subdivision, or documentation that a  
4 statement to that effect has been requested from the appropriate school district.

5 (B) In the event that, as of the date the notice of intention and application for  
6 issuance of a public report are otherwise deemed to be qualitatively and  
7 substantially complete pursuant to Section 11010.2, the statement described in  
8 subparagraph (A) has not been provided by any school district serving the  
9 subdivision, the person who filed the notice of intention and application for  
10 issuance of a public report shall immediately provide the department with the  
11 name, address, and telephone number of that district.

12 (13) (A) The location of all existing airports, and of all proposed airports shown  
13 on the general plan of any city or county, located within two statute miles of the  
14 subdivision. If the property is located within an airport influence area, the  
15 following statement shall be included in the notice of intention:

16 NOTICE OF AIRPORT IN VICINITY

17 This property is presently located in the vicinity of an airport,  
18 within what is known as an airport influence area. For that reason,  
19 the property may be subject to some of the annoyances or  
20 inconveniences associated with proximity to airport operations (for  
21 example: noise, vibration, or odors). Individual sensitivities to those  
22 annoyances can vary from person to person. You may wish to  
23 consider what airport annoyances, if any, are associated with the  
24 property before you complete your purchase and determine whether  
25 they are acceptable to you.

26 (B) For purposes of this section, an “airport influence area,” also known as an  
27 “airport referral area,” is the area in which current or future airport-related noise,  
28 overflight, safety, or airspace protection factors may significantly affect land uses  
29 or necessitate restrictions on those uses as determined by an airport land use  
30 commission.

31 (14) A true statement, if applicable, referencing any soils or geologic report or  
32 soils and geologic reports that have been prepared specifically for the subdivision.

33 (15) A true statement of whether or not fill is used, or is proposed to be used, in  
34 the subdivision and a statement giving the name and the location of the public  
35 agency where information concerning soil conditions in the subdivision is  
36 available.

37 (16) On or after July 1, 2005, as to property located within the jurisdiction of the  
38 San Francisco Bay Conservation and Development Commission, a statement that  
39 the property is so located and the following notice:

1 NOTICE OF SAN FRANCISCO BAY CONSERVATION AND  
2 DEVELOPMENT COMMISSION JURISDICTION

3 This property is located within the jurisdiction of the San  
4 Francisco Bay Conservation and Development Commission. Use  
5 and development of property within the commission’s jurisdiction  
6 may be subject to special regulations, restrictions, and permit  
7 requirements. You may wish to investigate and determine whether  
8 they are acceptable to you and your intended use of the property  
9 before you complete your transaction.

10 (17) If the property is presently located within one mile of a parcel of real  
11 property designated as “Prime Farmland,” “Farmland of Statewide Importance,”  
12 “Unique Farmland,” “Farmland of Local Importance,” or “Grazing Land” on the  
13 most current “Important Farmland Map” issued by the California Department of  
14 Conservation, Division of Land Resource Protection, utilizing solely the county-  
15 level GIS map data, if any, available on the Farmland Mapping and Monitoring  
16 Program Website. If the residential property is within one mile of a designated  
17 farmland area, the report shall contain the following notice:

18 NOTICE OF RIGHT TO FARM

19 This property is located within one mile of a farm or ranch land  
20 designated on the current county-level GIS “Important Farmland  
21 Map,” issued by the California Department of Conservation,  
22 Division of Land Resource Protection. Accordingly, the property  
23 may be subject to inconveniences or discomforts resulting from  
24 agricultural operations that are a normal and necessary aspect of  
25 living in a community with a strong rural character and a healthy  
26 agricultural sector. Customary agricultural practices in farm  
27 operations may include, but are not limited to, noise, odors, dust,  
28 light, insects, the operation of pumps and machinery, the storage and  
29 disposal of manure, bee pollination, and the ground or aerial  
30 application of fertilizers, pesticides, and herbicides. These  
31 agricultural practices may occur at any time during the 24-hour day.  
32 Individual sensitivities to those practices can vary from person to  
33 person. You may wish to consider the impacts of such agricultural  
34 practices before you complete your purchase. Please be advised that  
35 you may be barred from obtaining legal remedies against agricultural  
36 practices conducted in a manner consistent with proper and accepted  
37 customs and standards pursuant to Section 3482.5 of the Civil Code  
38 or any pertinent local ordinance.

39 (18) Any other information that the owner, his or her agent, or the subdivider  
40 may desire to present.

1 (c) The commissioner may, by regulation, or on the basis of the particular  
2 circumstances of a proposed offering, waive the requirement of the submission of  
3 a completed questionnaire if the commissioner determines that prospective  
4 purchasers or lessees of the subdivision interests to be offered will be adequately  
5 protected through the issuance of a public report based solely upon information  
6 contained in the notice of intention.

7 **Comment.** Paragraph (b)(13) of Section 11010 is amended to correct a technical drafting error.  
8 *Cf.* Civil Code § 4255(a). Paragraph (b)(10) is amended for stylistic purposes.

9 **Bus. & Prof. Code § 11010.3 (amended). Exemption of nonresidential subdivision**

10 SEC. 2. Section 11010.3 of the Business and Professions Code is amended to  
11 read:

12 11010.3. (a) The provisions of this chapter shall not apply to the proposed sale  
13 or lease of lots or other interests in a subdivision ~~in which lots or other interests~~  
14 ~~are (a) that is limited to industrial or commercial uses by zoning law or (b) limited~~  
15 ~~to industrial or commercial uses by a declaration of covenants, conditions, and~~  
16 ~~restrictions, which declaration that has been recorded in the official records of the~~  
17 county or counties in which the subdivision is located.

18 (b) For the purposes of this section, “commercial use” includes, but is not  
19 limited to, the operation of a business that provides facilities for the overnight stay  
20 of its customers, employees, or agents.

21 **Comment.** Subdivision (a) of Section 11010.3 is amended to make clear that the section  
22 applies when any law, not just a zoning law, limits a subdivision to commercial or industrial uses.  
23 See, e.g., Health & Safety Code § 25232(b) (restricting residential use of property that is on the  
24 “border-zone” of hazardous contamination). See also Health & Safety Code § 25117.4 (“border-  
25 zone property” defined). Subdivision (a) is also amended to improve its consistency with parallel  
26 language in Civil Code Section 4202.

27 Subdivision (b) is new. It is added to make clear that the operation of a business that provides  
28 facilities for overnight stays by its customers, employees, or agents is a commercial use. For  
29 example, under this provision the operation of a hotel, inpatient medical facility, or apartment  
30 complex is a commercial use. Similarly, the operation of a business that provides overnight living  
31 space to its employees and agents is a commercial use.

32 **Civ. Code § 4202 (amended). Nonresidential common interest development exemptions**

33 SEC. 3. Section 4202 of the Civil Code is amended to read:

34 4202. (a) The following provisions do not apply to a commercial or industrial  
35 common interest development ~~that is limited to industrial or commercial uses by~~  
36 ~~zoning or by a declaration of covenants, conditions, and restrictions that has been~~  
37 ~~recorded in the official records of each county in which the common interest~~  
38 ~~development is located:~~

39 (1) Section 4275.

40 (2) Article 5 (commencing with Section 4340) of Chapter 3.

41 (3) Article 2 (commencing with Section 4525), and Article 3 (commencing with  
42 Section 4575), of Chapter 4.

43 (4) Section 4600.

1 (5) Section 4740.

2 (6) Section 4765.

3 (7) Sections 5300, 5305, 5565, and 5810, and paragraph (7) of subdivision (a) of  
4 Section 5310.

5 (8) Sections 5500 through 5560, inclusive.

6 (9) Subdivision (b) of Section 5600.

7 (10) Subdivision (b) of Section 5605.

8 (b) The Legislature finds that the provisions listed in subdivision (a) are  
9 appropriate to protect purchasers in residential common interest developments,  
10 however, the provisions may not be necessary to protect purchasers in commercial  
11 or industrial developments since the application of those provisions could result in  
12 unnecessary burdens and costs for these types of developments.

13 (c) For the purposes of this section:

14 (1) “Commercial or industrial common interest development” means a common  
15 interest development that is limited to industrial or commercial uses by law or by a  
16 declaration of covenants, conditions, and restrictions that has been recorded in the  
17 official records of each county in which the common interest development is  
18 located.

19 (2) “Commercial use” includes, but is not limited to, the operation of a business  
20 that provides facilities for the overnight stay of its customers, employees, or  
21 agents.

22 **Comment.** Section 4202 is amended to make clear that the section applies when any law, not  
23 just a zoning law, limits a subdivision to commercial or industrial uses. See, e.g., Health & Safety  
24 Code § 25232(b) (restricting residential use of property that is on the “border-zone” of hazardous  
25 contamination). See also Health & Safety Code § 25117.4 (“border-zone property” defined).

26 Paragraph (c)(2) is new. It is added to make clear that the operation of a business that provides  
27 facilities for overnight stays by its customers, employees, or agents is a commercial use. For  
28 example, under this provision the operation of a hotel, inpatient medical facility, or apartment  
29 complex is a commercial use. Similarly, the operation of a business that provides overnight living  
30 space to its employees and agents is a commercial use.