

Memorandum 2013-22

2013 Legislative Program (Status Report)

The attached table summarizes the status of the Commission's¹ 2013 legislative program. The staff will supplement that information orally, if necessary, at the upcoming meeting.

A few minor issues relating to the status of the pending legislation are discussed below.

DEADLY WEAPONS CLEAN-UP

Assembly Bill 383 (Wagner) (this year's "Maintenance of the Codes" bill) has been amended to include the remaining deadly weapons clean-up legislation. We are grateful to Assembly Member Wagner and the Office of Legislative Counsel for taking that step.

STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW
(CLEAN-UP LEGISLATION)

Senate Bill 745 (Senate Committee on Transportation and Housing) would implement the Commission's recommendation on *Statutory Clarification and Simplification of CID Law: Clean-Up Legislation*.²

In addition, the staff has requested that SB 745 be amended to include amendments proposed in the Commission's recommendation on *Statutory Clarification and Simplification of CID Law: Further Clean-Up Legislation*.³

Finally, it seems likely that SB 745 will be amended to address some or all of the additional clean-up amendments discussed in Memorandum 2013-23.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

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.

2. 42 Cal. L. Revision Comm'n Reports 307 (2012).

3. 43 Cal. L. Revision Comm'n Reports ___ (2013).

COMMERCIAL AND INDUSTRIAL CIDS

Senate Bill 752 (Roth) would implement the Commission's recommendation on *Commercial and Industrial Common Interest Developments*.⁴ The bill would create a separate statute to govern such common interest developments ("CIDs"), with the existing Davis-Stirling Common Interest Development Act continuing to apply to residential CIDs. The new statute on commercial and industrial CIDs would not include many of the existing provisions that prescribe procedures for association governance.

Possible amendments to SB 752 are discussed below.

Coordination with Commercial and Industrial Subdivisions Recommendation

At its April 2013 meeting, the Commission approved a recommendation on *Commercial and Industrial Subdivisions* (April 2013). The reforms proposed in that recommendation would make minor improvements to the scope of application of the exemptions governing commercial and industrial CIDs and subdivisions.

Because of the close relationship between that recommendation and the law proposed in SB 752, the staff requested that SB 752 be amended to include the reforms proposed in *Commercial and Industrial Subdivisions*.

Coordination With CID Clean-Up Recommendation

As discussed above, SB 745 would implement a number of minor clean-up amendments in the existing Davis-Stirling Act.

Because the Commission is trying to maintain parallelism between provisions that would be common to both the commercial and residential CID statutes, it would make sense to amend SB 752 to conform to any changes made in SB 745.

However, until the Commission makes decisions on the matters discussed in Memorandum 2013-23, we will not know what changes will be recommended by the Commission. Moreover, until the Commission's decisions are communicated to legislative staff, we will not know for sure which of the recommended amendments can be included in SB 745.

It is therefore still too early to conform SB 752 to the changes made in SB 745.

Instead, the staff recommends that we wait until the content of SB 745 is known with greater certainty and then ask that SB 752 be conformed. In doing so, the staff would use amendment and Comment language paralleling, as closely as

4. 42 Cal. L. Revision Comm'n Reports 1 (2012).

possible, whatever language the Commission approves when considering Memorandum 2013-23.

Is that approach acceptable?

Amendments Requested by Community Associations Institute

The Community Associations Institute - California Legislative Action Committee (“CAI-CLAC”) contacted Senator Roth to request amendments to SB 752. After informal discussions between CAI-CLAC, the Senator’s staff, and Commission staff, the concerns raised by CAI-CLAC were boiled down to two possible amendments. They are discussed below.

In reviewing the proposed amendments, the Commission need not decide whether the amendments represent good policy. These are not the Commission’s proposals and it will be up to Senator Roth to decide whether to accept them. Rather, the Commission’s concern is whether the proposed amendments would be fundamentally incompatible with part or all of the Commission’s recommendation (in which case the Commission would need to decide whether the amended bill would still implement the Commission’s recommendation).

If Senator Roth decides to accept CAI-CLAC’s amendments, it is likely that the Commission will need to revise its Comments for the amended sections. That issue would be raised in a future memorandum, once the exact language of any amendment is known.

Designated Notice Recipient

Proposed Section 6512 specifies how a statutory notice to an association is delivered:

6512. (a) If a provision of this act requires that a document be delivered to an association, the document shall be delivered to the president or secretary of the association.

(b) A document delivered pursuant to this section may be delivered by any of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier.

(2) By email, facsimile, or other electronic means, if the association has assented to that method of delivery.

(3) By personal delivery, if the association has assented to that method of delivery. If the association accepts a document by personal delivery it shall provide a written receipt acknowledging delivery of the document.

That provision generally parallels existing Section 4035. However, there is one difference that is relevant here. Section 4035 allows an association to designate a person to serve as the recipient for such notices. If the designation is made (in the association's "annual policy statement"), all notices are delivered to the designee rather than to the president or secretary.

Because the Commission's recommendation would not require commercial or industrial CIDs to prepare an annual policy statement, the option of designating a recipient was also not continued.

CAI-CLAC is suggesting that proposed Section 6512 be amended to restore the option of designating a notice recipient other than the president or secretary of the association. They believe that this would be consistent with the common practice of designating a property manager as the recipient of notices to an association. That issue could be addressed with language along the following lines:

6512. (a) If a provision of this act requires that a document be delivered to an association, the document shall be delivered to the person designated to receive documents on behalf of the association, in a written notice delivered by the association to members by individual delivery. If notice of this designation has not been given, the document shall be delivered to the president or secretary of the association.

...

Under that language, the designation of a notice recipient would be *optional*. So the change would increase operational flexibility, without imposing any new burdens on business associations.

Does the Commission believe that such a change, in general concept, would be compatible with its recommendation?

Amendment of Condominium Plan

Under existing law, when a condominium plan is first recorded, it must be accompanied by a certificate that is signed by persons holding specified property interests in the condominium project. See Section 4290; proposed Section 6626.

In order to *amend* a condominium plan, the amended plan must be signed and acknowledged by the same range of interest holders. See Section 4295; proposed Section 6628.

CAI-CLAC believes that the latter requirement can be problematic in a commercial or industrial CID. They explain that in a business CID it is common

for the boundaries between units to change over time, as adjacent unit owners expand or contract (through the sale of space between neighboring owners).

A change to unit boundaries typically requires an amendment to the condominium plan, which in turn requires obtaining the approval and signatures of all of the specified property interest holders (including those whose units are not directly affected). In CAI-CLAC's view, it would be good policy to allow an amendment to proceed with only the signatures of those owners whose unit boundaries are affected.

This issue could be addressed with an amendment along the following lines:

6628. (a) A condominium plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the persons who, at the time of amendment or revocation, are persons whose signatures are required under Section 6626.

(b) Notwithstanding subdivision (a), a condominium plan may be amended to revise the description of one or more separate interests by a recorded instrument that is acknowledged and signed by all persons having a property interest in a separate interest whose description would be revised. For purposes of this subdivision, "property interest" means any interest described in subdivision (a) of Section 6626.

On its face, this seems to make sense. However, without study and public input we cannot know whether the proposed approach would have any problematic effects.

Does the Commission believe that the proposed change, in general concept, would be compatible with its recommendation?

Respectfully submitted,

Brian Hebert
Executive Director

Status of 2013 Commission Legislative Program

As of June 5, 2013

		AB 567	AB 383	SB 745	SB 752						
	Introduced Last Amended	2/20/13	2/14/13	2/22/13	2/22/13						
		—	5/28/13	4/15/13	4/18/13						
First House	Policy Committee	4/2/13	4/2/13	4/23/13	4/16/13						
	Second Committee	—	—		5/7/13						
	Passed House	4/8/13	4/8/13	5/2/13	5/16/13						
Second House	Policy Committee	6/4/13		6/19/13							
	Second Committee	—	—								
	Passed House										
Concurrence											
Governor	Received										
	Approved										
Secretary of State	Date										
	Chapter #										

Bill List: AB 567 (Wagner): Exemptions from Enforcement of Money Judgments
 AB 383 (Wagner): Maintenance of the Codes (includes Deadly Weapons Clean-Up)
 SB 745 (Committee on Transportation and Housing) CID Cleanup
 SB 752 (Roth) Commercial and Industrial CIDs

KEY

Italics: Future or speculative
 “—”: Not applicable
 *: Double referral, not fiscal
 [date]: Deadline