

Memorandum 2014-9

Common Interest Development Law (Public Comment)

The Legislature recently enacted legislation to implement two major Commission¹ recommendations on common interest development law. The first reorganized and restated the Davis-Stirling Common Interest Development Act.² The second created a separate streamlined statute for exclusively commercial and industrial CIDs.³

This memorandum presents public comment on those enactments.

PRAISE FOR THE NEW COMMERCIAL AND INDUSTRIAL CID STATUTE

Craig Stevens has written the Governor and the Commission, on behalf of a coalition of commercial CID groups and professionals, to express their appreciation of the new commercial and industrial CID statute and to praise the Commission's efforts in developing the new law:

On behalf of "The Stakeholders Group" and the thousands of commercial land, building and condominium owners we represent (and the tens of thousands of other owners throughout California in Commercial Common Interest Developments), I have been empowered to say "thank you" for your 6.5 years of hard work meeting, researching, analyzing, simplifying and recommending approval of SB 752 to the legislature.

You have cleaned up ineffective and burdensome law, allowing these interested parties and all others involved, to more efficiently operate these Commercial Common Interest Developments. Owners have been emailing me their "thanks" for the efforts

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. See *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010); 2012 Cal. Stat. chs. 180 & 181.

3. See *Commercial and Industrial Common Interest Developments*, 42 Cal. L. Revision Comm'n Reports 1 (2012); 2013 Cal. Stat. ch. 605.

expended and the future benefits to be derived starting January 1, 2014. So ... "THANK YOU"!⁴

The staff appreciates the kind words and is pleased to hear that affected property owners welcome the change in the law.

CRITICISM OF THE RECODIFIED RESIDENTIAL CID STATUTE

On December 29, 2013, the Los Angeles Times printed an opinion column criticizing the Commission-recommended reorganization and clean-up of the Davis-Stirling Common Interest Development Act.⁵ The principal author of the article is Donie Vanitzian, a frequent critic of the Commission's work on CID law. In order to avoid any possible issues relating to the reproduction of copyrighted material, the article has not been attached. However, it is freely accessible online.⁶

On reading the article, the staff had significant concerns about its accuracy. Given the stature of the Los Angeles Times as a credible source of information, the staff was inclined to pursue some sort of correction of the record. After consulting with the Commission's Chair and Vice-Chair to make sure they had no objection to such action, the Executive Director contacted an editor at the Times.

The staff pointed out two serious defects in the article: erroneous factual claims and reliance on references to anonymous authority. Those defects, and the staff's efforts to correct the record, are discussed further below.

Erroneous Factual Claims

The article claims that the proposed law would have the following effects:

- Create "inconsistencies" in the law.
- Make it "difficult for owners to pursue small claims actions effectively."
- Shift burdens from associations to individual homeowners.

The article does not cite any examples in support of those claims. The staff is not aware of anything in the proposed law that would have the claimed effects.

4. See Exhibit p. 1.

5. D. Vanitzian & Z. Levine, *Attempt to Simplify California Condo Laws Ends in Confusion*, *Los Angeles Times* (Dec. 29, 2013).

6. <<http://articles.latimes.com/2013/dec/29/business/la-fi-associations-20131229>>.

References to Anonymous Authority

In criticizing the Commission and its work, the article relies on references to anonymous authority:

Some scholars have criticized the commission for undertaking this massive reorganization, calling it a disorganized mess resulting in the disruption of entire sections of code the public has come to rely upon over time. The rewrite should not have been allowed, critics say.

The rewrite is not without its defenders, most notably lawyers representing homeowner associations who are excited about the unnecessary confusion. Others have referred to it as a pedestrian approach and sloppy analysis that could predictably result in serious consequences, if not countless dollars needlessly spent by associations and their titleholders. Still others refer to it as the attorneys full employment act.

The staff has found no evidence of such criticism, with one exception — the references to “disruption of entire sections of code,” and “a pedestrian approach and sloppy analysis that could predictably result in serious consequences, if not countless dollars needlessly spent by associations and their titleholders,” and “attorneys full employment act” are drawn almost verbatim from letters that Ms. Vanitzian sent to the Commission.⁷

Staff Response

The staff requested that the Times issue a correction of the factual errors in the article. The staff also submitted a brief response article to set the record straight and requested that it be published.

The Times decided against making any corrections, because it considers the disputed claims to be expressions of “opinion,” rather than statements of fact.

We are still waiting for the Times’ decision on whether to publish the response submitted by the staff. We will update this memorandum orally if a decision is made before the Commission’s February meeting.

Respectfully submitted,

Brian Hebert
Executive Director

7. See, e.g., Fourth Supplement to Memorandum 2008-12, Exhibit p. 14 (“Responsible for wholesale disruption of entire sections of code, the California Law Revision Commission’s pedestrian approach and sloppy analysis, has resulted in serious consequences, if not countless dollars needlessly spent by consumers throughout this state.”).



Brian -
Yup!!
[Signature]

December 18, 2013

The Honorable Edmund G. Brown
Governor of the State of California
Attn: Camille Wagner
State Capitol, First Floor
Sacramento, CA 95814

Commissioners- California Law Revision Commission

Re: Thanks and compliments

Dear Governor Brown and CLRC Commissioners,

On behalf of "The Stakeholders Group" and the thousands of commercial land, building and condominium owners we represent (and the tens of thousands of other owners throughout California in Commercial Common Interest Developments), I have been empowered to say "thank you" for your 6.5 years of hard work meeting, researching, analyzing, simplifying and recommending approval of SB 752 to the legislature.

You have cleaned up ineffective and burdensome law, allowing these interested parties and all other involved, to more efficiently operate these Commercial Common Interest Developments. Owners have been emailing me their "thanks" for the efforts expended and the future benefits to be derived starting January 1, 2014. So...."THANK YOU"!

Specifically, The Stakeholders would like to call to your attention, the highly attentive, detailed oriented, dedicated, hard working and very smart legal minds of Brian Hebert, Executive Director of the CLRC and Steve Cohen, Staff Counsel of the CLRC. In addition to all of the other projects they handle, both Brian and Steve engaged early on and shepherded this project through for 6.5 years. They cross referenced the commercial project and coordinated it with the residential HOA Davis-Stirling Act re-write (Act 1 & 2), helped it survive budget cuts, adeptly juggled Governor changes, advised and counseled us, and the CLRC Commissioners and Senator Roth's team etc.

Since we cannot thank them with a proper gift of champagne or anything else (I tried and they refused, citing state law), we would ask that Governor Brown and the CLRC Commissioners make some sort of public comment to recognize their contributions to the citizens of California, send them a personal note and include appropriate comments in their personnel files. They both deserve major "atta boys". Without Brian and Steve, this very beneficial law clean-up project would never have made it to, let alone over, the goal line.

EX 1

The Stakeholders are very appreciative of their professionalism, dedication and hard work on this project. They were very enjoyable to work with over the years.

With appreciation and thanks to all,



Craig T. Stevens
Co-Founder
Mar West Real Estate, Inc.
On behalf of The Stakeholders Group

The Stakeholders Group:

Duncan Mc Pherson- Partner, Neumiller & Beardslee
Jeffrey Wagner- Partner, Miller, Starr & Regalia
Peter Saputo- Partner, Little & Saputo
F. Scott Jackson- Partner, Jackson, DeMarco, Tidus & Peckenpaugh
Mark Guithues- Partner, Community Legal Advisors
Brent Kocal- President, Kocal Properties, Inc.
Karen Conlon- President, California Association of Community Managers(CACM)
Jennifer Wada- Partner, The Wada Group
Rex Hime- President & CEO- California Business Properties Association (CBPA)
Skip Daum- The Community Associations Institute (CAI)
Numerous other law firms, property management firms, brokerage firms
Thousands of land parcel, commercial building and condominium owners