

Second Supplement to Memorandum 2020-49

**Emergency-Related Reforms:
Common Interest Development Meetings
(Public Comment)**

The Commission¹ has received one more communication relating to its emergency-related work on common interest development law. It is attached as an Exhibit.

Respectfully submitted,

Brian Hebert
Executive Director

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.

LINDA BROWN
(9/9/20)

Dear Mr. Hebert, Chair King, and Members of the California Law Revision Commission (CLRC).

Thank you again for making your hearings on possible revisions to common interest development (CID) law accessible to the public via Zoom. I appreciate the opportunity to easily observe the meetings without the lost time (4-6 hours) and cost of driving to a meeting.

Here are my recommendations in advance of Thursday's, September 10 meeting regarding emergency reforms (Study X-100. I have not yet received and read the three Memorandums mentioned on the tentative agenda.

Please do everything you can to:

1) **Ensure** CID unit owners are:

- notified of all association board of director (BOD) meetings by a variety of methods-association website,
via e-mail, and, upon request, by regular mail and fax,
- allowed to speak for more than one minute, which is often necessary for a complex problem, and
- given technical assistance in advance, 10-minutes in advance of the meeting start-time, and
during the meetings.

2) **Require recordings**, preferably audio/visual.

3) **Ensure easy and prompt access to recorded meetings** after BOD meetings via the Internet or upon request for a printed or faxed copy.

4) **Require** accurate, complete, and timely (ACT) BOD minutes are released promptly.

5) **Require** association board of director meeting minutes be:

- signed and dated on at least the last page and initialed and dated on all other pages,
- reveal how each BOD member voted, and
- made available to all CID "members" in draft and approved forms.

Note: I believe there is a law that already specifies a time frame for release of BOD minutes. If so, what is the cite and the requirement? If not, draft and final meeting minutes need to be released within 24-36 hours and via the methods listed above.

6) **Hold association property management firms hired by a CID association and individual property managers equally responsible** with association BODs or complying recommendations 1-5 above.

7) **Create a non-court method for ensuring compliance UPON COMPLAINT.** For example, property managers (PM) could be required to report non-compliance to all association members.

A formal complaint could be made to a designated agency and better yet to a nonprofit like S.E.E.D.S. www.seedscre.org, where retired judges, mediators, communication consultants and/or others trained in CID law and best business practices could help resolve problems without the delays and costs associated with agency oversight and court processes.

8) **Require release of all supporting documents** that the BOD receives to all association members when the agenda is released via electronic method and posted on-site.

Summary

CID association board meetings and decisions are important. Equally important are the needs of all the CID association "members" who are affected by BOD decisions to be fully informed and have access to all the supporting documents and to the deliberations, either in real time or after the fact.

Members also need access to draft and approved BOD minutes within hours--not months or years

While technology makes access easy for those who are comfortable with technology, the reality is that a certain percentage of owners are not comfortable or are incapable of using technology. Sometimes technology fails to transmit.

Recognition of the wide-variety of skill-level and comfort with use must be accompanied by accommodation.

A few, not all, examples of why the law must be changed to include these requirements can be found below.

Making these recommendations a part of the law are necessary in an emergency as well as in all times.

Thank you for considering my comments and recommendations. Please let me know if you have any questions or if I can help develop the resources I recommend. I look forward to seeing you Thursday.

Linda Brown
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I have owned a condominium in a three-building, 60-unit complex SF since 1977. While the apartment-to-condo conversion CID that is governed by a homeowners association (HOA) currently has a responsible property manager, this has not always been the case.

Here are examples of the realities in CID ownership that have cost all 60 homeowners and some additional family members way too much in terms of lost family and work time and lost savings over the years because of deficiencies with CID laws.

BOD Minutes

1) During a particular contentious time, supposedly approved, yet unsigned and minutes were released months after the fact.

Later, when these minutes were requested again and more delays took place. The second released version had a different font style and size. Close scrutiny showed words were changed in the document.

As 25% of the units had leaks, this delay and what may have been a deliberate attempt to hide relative information that led to lawsuits, more delays associated with lawsuits, and on-site owners displaced from their homes.

Are such realities the intent of the Davis-Stirling Act or simply "collateral damage"?

2) What good are minutes in terms of information for members if the text is incomplete or inaccurate or supporting documents are not available?

What are members to do if they are unable to attend the meetings--a reality with "members" working around the world, unavailable for whatever reason, and/or using their unit as a second home or renting it out to others?

3) What good are minutes in terms of elections if "members" who are unable to attend the meeting cannot determine how each BOD member voted?

4) CID unit owners should not have to wait a year or more to receive the draft annual meeting minutes and another year for the approved ones.

Property Management Firms/Property Managers (PM) must share responsibilities with association BODs

1) Even though the property manager's contract required the PM to keep accurate records, one PM could not even keep the homeowners association (HOA) member list up-to-date.

2) When records from this same PM were turned over to a new property management firm, most were in disarray. It took the new (current) PM three months to find the documents for early \$1,000,000 in reserves. Unit owners had

to pay for the additional time the new PM spent on reconciling and finding some (but not all) records. Volunteers had to spend even more of their "free time" to help resolve the impasse.

3) Documentation supporting a significant insurance charge were missing. A complaint to the the CA Department of Insurance was an exercise in futility. Due to costs, the HOA's attorney recommended not pursuing legal action...so the problems continue for whatever association buys insurance through his broker in the future.

4) Even though HOA records are supposed to be "open to inspection" by HOA members, the PM firm did not make them available. On several occasion, I had to take time off from work to go to the PM's office. Once there, the vice--president of the PM firm first tried to give me a computer recap of expenses--not the approved invoice with supporting documents that I had clearly told him in advance I wished to inspect.

His excuse" "Oh, they are in another [off-site] location."

Since the PM's contract was with the HOA, I had no standing to pursue a claim. I could only file a claim with the HOA and then file a lawsuit against the HOA.

Do elected officials realize that homeowners who buy a CID home (and support dense housing) face these untenable choices? Do they care?

5) Signing and /or initializing and dating each page of approved minutes is a best business practices. Good companies do so.

6) Good copies are also transparent from the get-go. It should not take unit owners months to get copies of approved minutes and they should not have to wonder if they have the actual approved minutes.

7) I believe that current law requires the association BOD--likely a treasurer to oversee the PM and check invoices.

The reality is that all too many volunteer BOD members cannot even balance their own personal check book. Few have work experience negotiating commercial contracts and administering or overseeing) contracts.

Most BOD members have jobs and family commitments. Few have the discretionary time to look for a new property manager during work hours or deal with the cumbersome small claims court, let alone a Superior Court.

8) Full and prompt disclosure to all "members" of a "mutual-benefit corporation" will help solve some of the problems as will education and training, which will be addressed later.