

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Common Interest Development Law: Architectural Review and Decisionmaking

November 2003

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **January 20, 2004.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

The governing documents of many common interest developments require approval of the community association before a homeowner can make a physical change to the homeowner's property. The Law Revision Commission recommends that such decisions be subject to the following requirements:

- (1) The decision must be made in good faith and may not be unreasonable, arbitrary, or capricious.
- (2) The procedure used for making the decision must be fair, reasonable, and expeditious.
- (3) A decision disapproving a proposed change must be in writing and must include an explanation of the association's reason for disapproval.
- (4) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors at an open meeting of the board.

This recommendation was prepared pursuant to Resolution Chapter 92 of the Statutes of 2003.

COMMON INTEREST DEVELOPMENT LAW:
ARCHITECTURAL REVIEW AND DECISIONMAKING

1 The governing documents of many common interest developments require
2 approval of the community association before a homeowner can make a physical
3 change to the homeowner’s separate interest property.¹ For example, a homeowner
4 might be required to obtain association approval before adding a room, choosing a
5 color of exterior paint, or planting flowers in a front yard. There is no statutory
6 procedure for making such a decision.

7 Existing case law requires that a decision regarding a proposed change to a
8 homeowner’s separate interest property be made in good faith, pursuant to a fair
9 and reasonable procedure.² The Commission recommends that this requirement be
10 codified. This will serve to educate homeowners and association officials of their
11 rights and duties with respect to the decisionmaking process.

12 The proposed law would also require that a disapproval decision be in writing,
13 with an explanation of the association’s reason for disapproving the proposed
14 change. A homeowner whose proposed change is disapproved would have the
15 right to seek reconsideration of the disapproval decision at an open meeting of the
16 board of directors. These requirements would substantially improve the fairness of
17 the process, without imposing significant costs on the association.

1. See Civ. Code § 1351(*l*) (“separate interest” defined). In some cases, the association’s declaration may also permit changes to the common area. See Civ. Code §§ 1351(*b*) (“common area” defined), 1351(*h*) (“declaration” defined).

2. See *Ironwood Owners Ass’n IX v. Solomon*, 178 Cal. App. 3d 766, 772, 224 Cal. Rptr. 18 (1986) (“When a homeowners’ association seeks to enforce the provisions of its CCRs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious.”).

PROPOSED LEGISLATION

1 **Civ. Code § 1378 (added). Procedure for decision on proposed physical change to property**

2 SEC. ____ . Section 1378 is added to the Civil Code, to read:

3 1378. (a) If an association's governing documents require association approval
4 before an owner of a separate interest may make a physical change to the owner's
5 separate interest or to the common area, the association shall satisfy the following
6 requirements:

7 (1) The association shall provide a fair, reasonable, and expeditious procedure
8 for making its decision. The procedure shall be included in the association's
9 governing documents.

10 (2) A decision on a proposed change shall be made in good faith and shall not be
11 unreasonable, arbitrary, or capricious.

12 (3) A decision on a proposed change shall be in writing. If a proposed change is
13 disapproved, the written decision shall include both an explanation of why the
14 proposed change is disapproved and a description of the procedure for
15 reconsideration of the decision by the board of directors.

16 (4) If a proposed change is disapproved, the applicant is entitled to
17 reconsideration by the board of directors at an open meeting of the board.

18 (b) Nothing in this section authorizes a physical change to the common area in a
19 manner that is inconsistent with an association's governing documents or
20 governing law.

21 **Comment.** Section 1378 is new. Paragraphs (1) and (2) of subdivision (a) are consistent with
22 case law. See *Ironwood Owners Ass'n IX v. Solomon*, 178 Cal. App. 3d 766, 772, 224 Cal. Rptr.
23 18 (1986) ("When a homeowners' association seeks to enforce the provisions of its CCRs to
24 compel an act by one of its member owners, it is incumbent upon it to show that it has followed
25 its own standards and procedures prior to pursuing such a remedy, that those procedures were fair
26 and reasonable and that its substantive decision was made in good faith, and is reasonable, not
27 arbitrary or capricious."). Physical changes that might be subject to association approval
28 requirements include additions or renovations, landscaping, choice of exterior paint colors or
29 roofing materials, and other such changes to the structure or appearance of the property.

30 Subdivision (a)(4) provides an applicant with the option to seek reconsideration of a
31 disapproval decision, at an open meeting of the board of directors. An applicant preserves other
32 remedies whether or not the applicant seeks reconsideration.

33 Subdivision (b) makes clear that this section does not authorize physical change to the common
34 area in a manner that is inconsistent with an association's governing documents or the governing
35 law. In many associations the governing documents require a vote of the membership to approve
36 a change to the common area. See, e.g., *Posey v. Leavitt*, 229 Cal. App. 3d 1236, 280 Cal. Rptr.
37 568 (1991). In other associations, the governing documents may permit changes to certain
38 features of the common areas (such as common walls, ceilings, or floors) with the approval of the
39 association. In all cases, the requirements of the governing documents control.

CONFORMING REVISION

1 **Civ. Code § 1373 (amended). Nonresidential developments**

2 SEC. ____ . Section 1373 of the Civil Code is amended to read:

3 1373. (a) The following provisions do not apply to a common interest
4 development that is limited to industrial or commercial uses by zoning or by its
5 declaration:

6 (1) Section 1356.

7 (2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of Part
8 4 of Division 2.

9 (3) Subdivision (b) of Section 1363.

10 (4) Section 1365.

11 (5) Section 1365.5.

12 (6) Subdivision (b) of Section 1366.

13 (7) Section 1366.1.

14 (8) Section 1368.

15 (9) Section 1378.

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

21 **Comment.** Section 1373 is amended to exempt a nonresidential common interest development
22 from the statutory provision governing review of a proposed physical change to property within
23 the development. Nothing in this section affects the application of a common law requirement
24 governing association review of a proposed property change. An industrial or commercial
25 common interest development that is subject to such a requirement remains subject to the
26 requirement.