

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Commercial and Industrial Subdivisions

April 2013

(with revisions approved in June 2013)

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
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NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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June 13, 2013

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

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.

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

Respectfully submitted,

Xochitl Carrion
Chairperson

COMMERCIAL AND INDUSTRIAL SUBDIVISIONS

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.¹ Similarly, Civil Code Section 1373 exempts commercial and industrial subdivisions from specified provisions of the Davis-Stirling Common Interest Development Act (hereafter “Davis-Stirling Act”).²

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

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

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

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.)

SUBDIVIDED LANDS ACT

Purpose and Effect of the Subdivided Lands Act

The Subdivided Lands Act regulates the sale or lease of lots or parcels within a “subdivision” or “subdivided lands,”³ in order to protect consumers against “fraud and sharp practices” by subdividers.⁴ The Act achieves its purpose by requiring that a subdivider, before selling or leasing any lots within a regulated subdivision, obtain a “public report” from the Real Estate Commissioner.

On applying for a public report, a subdivider must provide a wide range of detailed information about the subdivision, including information about the status of title, the proposed terms of sale, access to public utilities, any restrictions on use or occupancy, any lien that may exist on the property, any existing or proposed indebtedness incurred for the construction of promised facilities,

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.

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.”).

the location of public schools, the presence of nearby airports, and specified geological and soil conditions.⁵

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

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

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

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

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.

10. *Id.*

The subdivider must provide a copy of the public report to a prospective purchaser.¹¹ The public report must also be made available for public inspection.¹²

Purpose and Effect of Business and Professions Code Section 11010.3

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

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

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

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

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

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).

As the legislative history explained, purchasers of property in commercial and industrial property subdivisions do not require the protections that were provided by the Subdivided Lands Act,¹⁵ in part because they are presumed to be more sophisticated than residential property purchasers.¹⁶ Furthermore, there are practical differences between nonresidential and residential subdivisions that make it difficult or unhelpful for a commercial or industrial subdivider to comply with the Subdivided Lands Act.¹⁷

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

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).

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.

DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT

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

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

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

The Davis-Stirling Act has been amended numerous times since its original enactment and has more than tripled in size.²⁵ While the original enabling provisions remain, most of the statute is now regulatory in character, with numerous provisions imposing detailed mandatory operational procedures for rulemaking,²⁶ board meetings,²⁷ dispute resolution,²⁸ member elections,²⁹ record

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.

26. Civ. Code §§ 1357.100-1357.150.

27. Civ. Code §§ 1363.05, 1363.09.

inspection,³⁰ accounting and budgeting,³¹ and the imposition and collection of assessments.³²

Purpose and Effect of Civil Code Section 1373

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

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

Two years after the Davis-Stirling Act was enacted, when it became apparent that the Act also applied to commercial and industrial CIDs, a bill was introduced to entirely exempt such developments from the Davis-Stirling Act.³⁵ However, persons representing commercial property owners objected to that

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).

approach, noting that some provisions of the Act were beneficial for all CIDs, regardless of type.³⁶ The bill was amended to instead exempt commercial and industrial CIDs from those provisions of the Act that are beneficial to residential property owners but unnecessary and burdensome for commercial or industrial property owners.³⁷

Civil Code Section 1373 was enacted in that form.³⁸ In effect, the section preserved the application of the Davis-Stirling Act's foundational provisions (those that define the basic property ownership and governance structure for CIDs), while exempting commercial and industrial CIDs from the act's operational

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).

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.

regulations (those that impose mandatory procedures for the operation of a CID's governing association).³⁹

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

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

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

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

4. Regulatory requirements designed to protect individuals in residential developments are inappropriate in business developments, interfere with commerce, and increase the costs of doing business.⁴⁰

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

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);

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

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

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

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

Section 1373 has only been amended three times by the Legislature. The first two amendments were made in connection with Law Revision Commission recommendations, in order to exempt commercial and industrial common interest developments from new regulatory provisions⁴² that the Commission had recommended.⁴³ The Commission recognized that its recommendations had been developed to benefit residential property owners, without any separate consideration of their effect on business property owners. Rather than inadvertently impose inappropriate regulatory burdens on commercial or industrial property owners, the existing exemption was expanded to include the new reforms.

The third amendment was made in 2011, to exempt commercial and industrial common interest developments from a new provision⁴⁴ that protects an owner's existing right to lease separate interest property.⁴⁵

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.

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.

RECOMMENDATIONS

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

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

Business that Provides Overnight Stay Facilities as “Commercial Use”

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

From the perspective of the property owner, these are plainly commercial uses of the property. The owner’s primary reason for purchasing the property is to operate a business. The owner is reasonably presumed to be more sophisticated and have greater access to professional resources than a typical homeowner. Therefore, the existing policy rationale for exempting commercial property from the Subdivided Lands Act and the operational

provisions of the Davis-Stirling Act appears to be fully applicable to those types of business uses.

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

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

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."

Non-Zoning Restrictions on Property Use

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

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

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

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

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

PROPOSED LEGISLATION

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

SECTION 1. Section 11010.3 of the Business and Professions Code is amended to read:

11010.3. ~~(a) The provisions of this~~ 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 law or ~~(b) limited to industrial or commercial uses~~ by a declaration of covenants, conditions, and restrictions, ~~which declaration~~ that has been recorded in the official records of the county or counties in which the subdivision is located.

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

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

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

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

SEC. 2. Section 4202 of the Civil Code is amended to read:

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

- (1) Section 4275.
- (2) Article 5 (commencing with Section 4340) of Chapter 3.
- (3) Article 2 (commencing with Section 4525), and Article 3 (commencing with Section 4575), of Chapter 4.
- (4) Section 4600.
- (5) Section 4740.
- (6) Section 4765.
- (7) Sections 5300, 5305, 5565, and 5810, and paragraph (7) of subdivision (a) of Section 5310.
- (8) Sections 5500 through 5560, inclusive.
- (9) Subdivision (b) of Section 5600.
- (10) Subdivision (b) of Section 5605.

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

(c) For the purposes of this section:

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

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

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

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