STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

PREPRINT RECOMMENDATION

Common Interest Development Law: Architectural Review and Decisionmaking

February 2004

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

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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February 6, 2004

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

In many homeowner associations approval is required before a physical change can be made to a homeowner's property. The Law Revision Commission recommends that the decisionmaking process be subject to the following requirements:

(1) The procedure used for making the decision must be fair, reasonable, and expeditious.

(2) The decision must be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) A decision disapproving a proposed change must be in writing and must include an explanation of the association's reason for disapproval.

(4) 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.

Respectfully submitted,

Frank Kaplan
Chairperson

COMMON INTEREST DEVELOPMENT LAW: ARCHITECTURAL REVIEW AND DECISIONMAKING

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 separate interest property.[1] For example, a homeowner might be required to obtain association approval before adding a room, choosing a color of exterior paint, or planting flowers in a front yard. There is no statutory procedure for making such a decision.

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

The proposed law would also require that a disapproval decision be in writing, with an explanation of the association's reason for disapproving the proposed change. A homeowner whose proposed change is disapproved would have the right to seek reconsideration of the disapproval decision at an open meeting of the board of directors. These

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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.").

requirements would improve the fairness of the process, without imposing significant costs on the association.

PROPOSED LEGISLATION

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

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

1378. (a) This section applies if an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

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

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

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

(4) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors of the association that made the decision, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board of directors at an open meeting of the board.

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

Comment. Section 1378 is new. Paragraphs (1) and (2) of subdivision (a) are consistent with case law. 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.”). Nothing in this section is intended to shift the existing burden of proof as to the validity of an association’s governing documents.

Physical changes that might be subject to association approval requirements include additions or renovations, landscaping, choice of exterior paint colors, coverings, or roofing materials, changes to windows and balconies, and other such changes to the structure or appearance of the property.

Subdivision (a)(4) provides an applicant with the option to seek reconsideration of a disapproval decision, at an open meeting of the board of directors. Nothing in this subdivision is intended to imply that a board meeting required under another provision is not open. See Section 1363.05 (Common Interest Development Open Meeting Act). An applicant preserves other remedies whether or not the applicant seeks reconsideration. The right of reconsideration by the board only applies if the initial decision is made by an entity other than the board of directors.

The requirements of this section apply regardless of any contrary provision in an association’s governing documents. Nothing in this section affects the limitation on director liability provided in Section 1367.5 or in Corporations Code Section 7231.

Subdivision (b) makes clear that this section does not authorize physical change to the common area in a manner that is inconsistent with an association’s governing documents or the governing law. In many associations the governing documents require a vote of the membership to approve a change to the common area. See, e.g., Posey v. Leavitt, 229 Cal. App. 3d 1236, 280 Cal. Rptr. 568 (1991). In other associations, the governing documents may permit changes to certain features of the common areas (such as common walls, ceilings, floors, and exclusive use common areas) with the approval of the association. See Civ. Code § 1351(i) (“exclusive use common area” defined). In all cases, the requirements of the governing documents control.

Nothing in this section prevents an association from adopting an operating rule, consistent with its governing documents, that provides for automatic approval of a specifically identified type of physical change.

CONFORMING REVISION

Civ. Code § 1373 (amended). Nonresidential developments

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

1373. (a) The following provisions do not apply to a common interest development ~~that is limited to industrial or commercial uses by zoning or by its declaration~~ in which lots or other interests are limited to industrial or commercial uses by zoning or are limited to industrial or commercial uses 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 1356.

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

(3) Subdivision (b) of Section 1363.

(4) Section 1365.

(5) Section 1365.5.

(6) Subdivision (b) of Section 1366.

(7) Section 1366.1.

(8) Section 1368.

(9) Section 1378.

(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.

Comment. The introductory clause of subdivision (a) of Section 1373 is amended to more closely parallel the language used in Business and Professions Code Section 11010.3 (exemption of nonresidential

subdivision from laws governing subdivided land). This is a nonsubstantive change.

Subdivision (a)(9) is added to exempt a nonresidential common interest development from the statutory provision governing review of a proposed physical change to property within the development. Nothing in this section affects the application of a common law requirement governing association review of a proposed property change. An industrial or commercial common interest development that is subject to such a requirement remains subject to the requirement.