

Memorandum 2005-3

Common Interest Development Law: Catalog of Issues

When the Commission first began its study of common interest development law, it decided to put a priority on improving nonjudicial approaches to resolving CID disputes. Commission recommended changes have been enacted to provide procedures for association rulemaking (2003 Cal. Stat. ch. 557) and architectural review decisionmaking (2004 Cal. Stat. ch. 346), and to improve procedures for use of ADR in resolving CID disputes (2004 Cal. Stat. ch. 754). We are currently considering whether to recommend state administrative assistance in educating CID homeowners and resolving CID disputes. See Staff Memorandum 2005-10 (Mar. 2, 2005) (available at www.clrc.ca.gov).

The purpose of this memorandum is to provide a basis for deciding which CID issues to study next. As an aid to making that decision, a catalog of issues that have been raised with the Commission is attached as an exhibit. As noted on the Exhibit, the list is not intended as an endorsement of any of the ideas listed, most of which have not been analyzed by the Commission.

In making its decision, the Commission should keep in mind the direction we have been given by the Legislature, to study:

Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to formation and management of these developments and transaction of real property interests located within them, and to determine to what extent they should be subject to regulation.

2003 Cal. Stat. res. ch. 92. The Commission decided not to study issues relating to construction defect litigation.

In considering what to study next, it is helpful to divide the issues into two general types: (1) issues relating to clarification and simplification of the law, and (2) issues relating to substantive rights and duties.

If the Commission decides to pursue substantive reform before working on a technical overhaul of the law, it would probably make sense to put a priority on those issues that seem to be of greatest interest to members of the public. The single most pressing topic seems to be reform of the law governing collection of assessments (especially the use of nonjudicial foreclosure). Another area that is repeatedly cited as needing attention is the establishment of some sort of “homeowner bill of rights.” These three topics, simplification of the law, assessment collection, and fundamental homeowner rights, are discussed below.

Clarification and Simplification of Existing Law

Numerous commentators have noted that the Davis-Stirling Common Interest Development Act is confusing and poorly organized. This makes it difficult for homeowners and association board members to understand and apply the law. Comments have repeatedly pointed out how misunderstanding of the law can lead to problems. There has been a general plea for simplification of the law.

Simplification could be achieved by reorganizing provisions to provide a more intuitive structure to the law, by rewriting confusing provisions to state the substance of those provisions in simpler and more direct language, and by standardizing procedures where there is no compelling need for variation.

Simplification can help to reduce association operating costs. For example, if all notice requirements could be standardized as to timing and method of delivery, less time and effort would be involved in determining what’s required when sending notices. Other minor substantive improvements could also be made in the course of clarification and simplification of the law.

Another problem results from the fact that associations are governed by more than one body of law. The two main sources of controlling law are the Davis-Stirling Act and the Nonprofit Mutual Benefit Corporation Law. A lack of careful coordination between these laws can lead to confusion as to which law governs a particular issue. Simplification efforts could help to reduce this problem by providing clear guidance where there may be confusion over which law controls.

Simplification and clarification of the law would be a fruitful area for Commission study. It is the sort of task for which the Commission is well qualified. It is unlikely to be undertaken by anyone else.

Assessment Collection Procedures

Recent press reports on the use of nonjudicial foreclosure to collect relatively small amounts of overdue assessments (e.g., \$120) have generated considerable interest in the possible reform of CID assessment collection procedures.

In 2004, the Legislature passed AB 2598 (Steinberg), which would have barred use of nonjudicial foreclosure to collect assessments under \$2,500 and imposed other procedural limitations on the use of liens and foreclosure to collect assessments.

The bill was vetoed by Governor Schwarzenegger. The September 29, 2004, veto message read in part:

I recognize that additional clarification in the foreclosure statutes is necessary. However, this change should be made incrementally working together with all impacted parties. Therefore, I am directing the State and Consumer Services and the Business, Transportation and Housing Agencies to work with all of the interested stakeholders to develop and ensure that the process for collecting CID homeowners assessments is refined so that all homeowners are treated equitably and foreclosure only occurs after every reasonable alternative is exhausted.

New legislation to reform assessment collection procedure has been introduced this year as SB 137 (Ducheny). It too would substantially restrict use of nonjudicial foreclosure to collect overdue assessments of less than \$2,500.

The staff understands that a number of meetings have been held to discuss assessment collection reform. These meetings have been attended by legislative staff, interest group representatives, and employees of the agencies named by the Governor.

While the Commission could contribute to this ongoing examination of collection procedures, it is not crucial that we do so. The reform will proceed without the Commission's participation and will probably bear fruit before the Commission could complete its work on the subject.

"Bill of Rights"

We have received a number of comments suggesting that the law should set out a clear and coherent statement of the fundamental rights of CID homeowners. In one sense, this is a specific example of the general problem of lack of clarity in the law. Many of the rights that would be included in a bill of rights already exist, but are not known or understood by all homeowners. For

that reason, simplification and clarification of the law would achieve some of the benefits sought through enactment of a “bill of rights.”

However, a bill of rights would probably go beyond the substantive rights that are currently provided in the law. What might those additional rights be?

We would probably be urged to look to the United States Bill of Rights for source material. For example the First Amendment of the U.S. Constitution prevents governmental establishment of religion and protects the free exercise of religion. It prohibits the abridging of freedom of speech or of the press. It guarantees the right of the people to peaceably assemble and petition the government for a redress of grievances.

How would these rights apply in a CID context, where the governing body is a private association rather than the state? Presumably, an association would not be allowed to overtly discriminate on the basis of religious faith or the content of speech. Could an association’s architectural standards be applied so as to prevent a religious display on a homeowner’s property? Could a CID prohibit door-to-door solicitation, including religious or political solicitation? How would these rights relate to existing nondiscrimination law? How would they relate to the existing associational rights of private organizations? An attempt to apply constitutional principles to a private association could be very complicated.

There will also be suggestions for homeowner rights that do not depend on the U.S. Bill of Rights. For example, some of the homeowner rights proposed by the Common Interest Development Bill of Rights Coalition have little to do with constitutionally protected rights. For example, their Bill of Rights would prohibit nonjudicial foreclosure to collect assessments, guarantee that the “makeup of the board shall reflect the makeup of the association membership”, prohibit treating residents differently based on their age (even though some associations are age-restricted), prohibit non-remedial fines, and require secret ballots. See Exhibit p. 11. Once the door is opened to such wide ranging substantive issues it would be difficult to draw a line between what matters should be included in a Bill of Rights and what should be studied separately as just another substantive issue.

The Commission should eventually study the issue of fundamental homeowner rights, but the topic will be hard to keep within manageable limits and will probably involve many subtle and weighty policy issues.

Recommendation

The staff recommends that the Commission work on clarification and simplification of the law next. It would make the law significantly easier to work with, which is very important given the large number of lay people who must understand and apply the law. It would also establish a solid foundation for later reforms.

Assessment collection issues are important, but those issues are currently being studied by a broad-based working group, with the goal of promoting legislation this year. We should not duplicate or undermine their efforts.

The Commission should eventually study the concept of a Homeowner Bill of Rights, but it would probably make sense to wait until after the governing law has been clarified. Some perceived substantive problems could be addressed simply by making the law more understandable.

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

Exhibit

CATALOG OF CID ISSUES

This exhibit provides a list of CID-related issues that have been presented to the Commission, organized by subject. Most entries include a citation to one or more sources of the issue, in order to provide background. If there is no source cited, the issue arose as a result of staff research or informal communications.

The Commission reports and memorandums cited below are available at www.clrc.ca.gov. Professor French's background study, *Scope of Study of Laws Affecting Common Interest Developments* (November 2000), is cited hereafter as "Background Study." Correspondence to the Commission that is not included as an exhibit to a memorandum is on file with the Commission.

This list exists for informational purposes only and is not intended as an endorsement of any of the proposals listed below. Most of the proposals listed have not yet been analyzed by the Commission. Suggestions that specific interest groups be singled out for special statutory treatment are not included in this catalog.

If any person knows of an issue that was brought to the Commission's attention but was inadvertently omitted from the list, please inform the staff and it will be added.

CLARIFICATION AND REORGANIZATION OF EXISTING LAW

- **The Davis-Stirling Common Interest Development Act.** Should the organization and clarity of the Davis-Stirling Act be improved? Background Study at 3-4; Memo 2001-19, Exhibit at 70. Note that our resolution of authority specifically requires, among other things, that we study whether "the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes...." 2003 Cal. Stat. res. ch. 92.

As a first step toward improving the organization of the Davis-Stirling Act, the Commission recommended the addition of article and chapter headings to the Act. See *Organization of Davis-Stirling Common Interest Development Act*, 33 Cal. L. Revision Comm'n Reports 1 (2003). The recommendation was enacted into law. See 2003 Cal. Stat. ch. 557.

Some specific issues requiring clarification are listed below:

- The meaning of the terms "board," "member," and "owner" as used in the Davis-Stirling Act and elsewhere. Can "member" include a person who resides in a separate interest home but does not own a separate interest within the CID? Letter from Charlene Henley, 12/17/02.

- Should the procedures and time frames for providing notice to members be standardized and simplified? Memo 2001-19, Exhibit at 88; First Supp. to Memo 2001-19, Exhibit at 7; Letter from Curtis Sproul, 4/1/02.
- Should the relationship between subdivisions (a) and (b) of Civil Code Section 1355 be clarified? Email from Hank Lawrence, 7/24/01.
- **Integration of controlling law.** In addition to the Davis-Stirling Act, CIDs are governed by the Nonprofit Mutual Benefit Corporation Law and other miscellaneous provisions of law. Should the various sources of CID law be better integrated or consolidated to avoid complexity and confusion about which law controls? Memorandum 2001-19 at 9-10, Exhibit at 87. Specific issues include:
 - Correct obsolete cross-references to former Business and Professions Code Section 11003.1. Email from James Lingl, 8/30/2000.
 - The Davis-Stirling Act provides for expedited “emergency meeting procedures.” What is the relationship between these procedures and meeting procedures provided in the Corporations Code? Memo 2001-19, Exhibit at 88.
 - To what extent does or should the law preempt an inconsistent provision of an association’s governing documents. Minutes of September 27, 2004, Commission Meeting.
- **Uniform Common Interest Ownership Act (UCIOA).** The Commission considered whether existing law should be replaced, either entirely or in significant part, with UCIOA. See Memorandum 2003-37 and its First Supplement. The Commission decided against recommending enactment of UCIOA as a whole, but will look to that Act as a source of language and ideas. Minutes of November 2003, Commission Meeting.

HOMEOWNER RIGHTS

- **“Homeowners Bill of Rights”** Should the law include a clear and coherent statement of the rights of CID homeowners? See Memorandum 2001-19 at 10-12; First Supp. to Memo 2001-63; Letter from Curtis Sproul, 4/1/02; Letter from Samuel L. Dolnick, 1/31/03; Memo 2005-02, Exhibit at 34.
- **Equal protection:**
 - Should the law expressly prohibit selective enforcement of association restrictions? Second Supp. to Memo 2001-19, Exhibit at 29-30.
 - Should the law expressly guarantee equal access to common facilities? Memo 2001-19, Exhibit at 79
- **Freedom of expression:**
 - To what extent should an association’s newsletter be required to serve as a forum for homeowner expression? Memo 2001-19, Exhibit at 9.

- Can an association's governing documents prohibit homeowners from communicating with other homeowners regarding association-related issues under a general prohibition on solicitation? Letter from Steve Woods, 7/13/01.
- **Privacy.** Should an association have the right to inspect the interior of a homeowner's garage in order to ensure compliance with a restriction requiring that garages be kept clear enough to hold the number of cars for which they were designed. Letter from Rachel Gross, 3/9/2000.
- **Procedural fairness.** Existing law permits an association to impose penalties for noncompliance with CC&Rs. This raises a number of issues relating to the fairness of the disciplinary process:
 - Should association enforcement be eliminated or limited? Memo 2001-19, Exhibit at 15.
 - Should an association's enforcement functions be institutionally separated from its quasi-legislative and quasi-adjudicative functions? First Supp. to Memo 2001-19, Exhibit at 12.
 - Should notice of noncompliance be a recordable document (as a deterrent to noncompliance)? First Supp. to Memo 2001-19, Exhibit at 7.
 - When should an association be authorized to suspend a member's voting privileges? Email from Steve Stapleton, 9/27/04.
 - If an owner is penalized for tenant misconduct, owner should be provided with detailed information about the offense. *Id.*
 - Should a member be guaranteed a right to be represented by counsel at an association disciplinary proceeding? Email from William Collette, 5/12/04.

PROPERTY USE RESTRICTIONS

- **Architectural review.** Many CIDs require that a homeowner receive association approval before making a physical change to separate interest property. Commentators have raised the following issues:
 - If a disapproval decision is based on a legal issue, should the association be required to state the legal authority on which it bases its decision. Third Supp. to Memo 2004-20.
 - Should an association's discretion in applying broadly stated architectural restrictions be construed narrowly? Memo 2004-49.
 - Should an association be able to impose a use restriction that local government is prohibited from imposing? See, e.g., Gov't Code § 65852.2 (limitation on ability to restrict construction of second units on residential property).
- **Satellite antenna.** Should Civil Code Section 1376 be amended to reflect recent rulings by the FCC ruling? First Supp. to Memo 2001-19, Exhibit at 8.

- **Senior community certification.** Should senior communities be able to seek periodic re-certification from the state in order to avoid disputes about whether the community has maintained its status as a senior-restricted community? First Supp. to Memo 2001-19, Exhibit at 8, 14-20.
- **Changes to common area required to address exigent circumstances.** Should the law provide greater flexibility for changes to common area that are necessitated by structural obsolescence or disaster? J. Wagner, *Condominium Common Area: Property Unreasonably Restrained?*, 5 John F. Kennedy U. L. Rev. 29 (1993).
- **Exclusive use common area.**
 - Does a homeowner's statutory duty to "maintain" exclusive use common area include a duty to repair and replace, or does it simply require that the area be kept clean and orderly. Email from Al De Camara, 11/29/2000.
 - Is the definition of exclusive use common area ambiguous with respect to whether the declaration must specify which areas are exclusive use common area? Email from Lester Thompson 1/10/01.
- **Pet restriction override.** Does the override on pet restrictions take effect if any part of an association's governing documents are revised, or is it only triggered if the document that contains the restriction is revised? Ruth Watson, phone call, 1/7/05.

GOVERNING ASSOCIATION

- **Open meetings.** Existing law requires that board meetings be open to homeowners and that homeowners be permitted to speak. Civ. Code § 1363.05. Commentators have raised the following issues regarding meeting procedures:
 - Certain topics may be discussed in a closed executive session. Should the scope of the executive session exception be clarified or changed? Memo 2001-19, Exhibit at 2, 88.
 - Should the law guarantee that a homeowner may record association board meetings (other than those that take place in executive session)? Email from Richard Lavelle, 12/23/03.
 - Should the content of meeting Minutes be statutorily specified, to ensure that events at meetings are more clearly documented? Memo 2005-02, Exhibit at 74; Memo 2005-10, Exhibit at 35.
- **Access to records:**
 - Should the rules governing homeowner access to association records be reformed to provide broader access to association records, clarify the scope of required access, and better protect individual privacy?
 - Should the law limit the fees an association may charge to provide access to records? First Supp. to Memo 2001-19, Exhibit at 7; Letter from Nancy Levy, 12/16/2003.

- **Election procedures:**
 - Should votes be conducted by secret ballot? Memo 2001-19, Exhibit at 78.
 - Should there be term limits? *Id.*
 - Should voting by electronic mail be expressly authorized? *Id.* (This question may be moot. See 2004 Cal. Stat. ch. 254, § 26, which authorizes electronic voting in mutual benefit corporations.)
 - Should the law expressly require that vote tallies be disclosed to homeowners. First Supp. to Memo 2001-19, Exhibit at 9.
 - Should an association be subject to the same election laws that govern governmental entities? Second Supp. to Memo 2001-19 Exhibit at 20.
 - Should the rules governing written ballots and proxy ballots be clarified or substantively reformed? Email from Eileen Findlay, 4/3/03.
 - Should elections be subject to third party supervision? Email from Mel Klein, 2/19/04.
 - If an association's governing documents place the power to nominate candidates for the board into the hands of a committee of the current board, there is a risk that the current board will manipulate the process to perpetuate its control. Should the nomination process be regulated to ensure direct member participation? Email from James Robertson, 12/2/03.
 - What should be the result if a quorum is not achieved in voting for directors? Should the current directors hold over, even if other candidates received more votes? Email from Ian Engh, 4/15/04.
 - To what extent should an association board be permitted to use association funds to influence the outcome of an election (e.g., by distributing a printed endorsement of a candidate). Letter from Joe Weiner, 5/24/04.
 - Should the law require that all board positions terminate on the same schedule (rather than being staggered) and that cumulative voting be used, in order to provide for proportional representation of minority candidates? Letter from Fred Flam, 4/25/02.
 - Should the procedure for recall of a director be revised to provide for recall of fewer than all directors when an association uses cumulative voting to elect its directors? See Corp. Code § 7222. Email from James Lingl, 6/20/01.
- **Contracting procedures.** Should contracting procedures be specified by law, in order to reduce the risk of favoritism and self-dealing? Memo 2001-19, Exhibit at 78. Should competitive bids be required?
- **Self-Dealing.** Should a director or officer be allowed to approve a contract affecting that person's own economic interests? For example, can an association contract with a management company owned by a director? Should a director be able to vote to approve a measure that would confer a unique benefit on his or her separate interest? Email from James Robertson, 9/14/04; email from Susan Jolivette-Gauthier, 9/7/04. To what extent are these issues governed by the Corporations Code?

- **Manager licensing.** Should property management be a licensed profession, subject to state regulation? Memo 2004-19, Exhibit at 69.
- **Training requirements.** Should directors be required to complete training in basic management responsibilities? Email from Kris Ecklund, 7/14/01.

GOVERNING DOCUMENTS

- **Automatic renewal.** Should governing documents that expire by their own terms be subject to automatic renewal? First Supp. to Memo 2001-19, Exhibit at 7.
- **Department of Real Estate Approval.** The DRE is required to approve the original set of governing documents. Should DRE approval be required for amendments? Should DRE approval be required if an existing development that is not a CID takes steps to become a CID (e.g., by acquiring common property and recording a declaration)? Letter from Frances Ruby, 7/21/03.
- **Simplify amendment process.** Should the process for making clarifying or technical amendments to governing documents be simplified? Email from Lynn Lombard, 9/28/04. Should supermajority requirements for amendment of governing documents be eliminated? See Memo 2001-19 at 16 (amendment of condominium plan under Civ. Code § 1351(e)); First Supp. to Memo 2001-19 at 2-3 (supermajority requirement provided in CC&Rs).
- **Deletion of developer provisions.** Civil Code Section 1355.5 provides a simplified procedure for the deletion of specified obsolete provisions of the governing documents relating to construction and marketing. This process could be further simplified by deleting the requirement for member approval. Letter from Curtis Sproul, 4/1/02.
- **Model documents.** Should the state provide a model declaration and by-laws, to simplify modernization of obsolete governing documents? Email from Kris Ecklund, 7/14/01.
- **Insurance requirements.** Do governing documents that are based on existing DRE regulations require that an association maintain insurance of a type that is no longer readily available? Minutes of May 18, 2001, Commission Meeting.
- **Developer representations.** Is an association bound by representations made by the developer in the sale of separate units? For example, if a lot is sold as a “view lot” is the association required to regulate other owners in order to preserve the promised view? Telephone inquiry, 10/2/03.

FINANCIAL ISSUES

- **Reserve funds.** Existing law requires that associations maintain common areas. An association's annual operating budget must include a description of the process used to calculate and maintain a reserve fund adequate to defray future capital repair and replacement costs. Civ. Code § 1365(a)(3). Under specified circumstances, an association must prepare a study of reserve account requirements, every three years. Civ. Code § 1365.5(e). Reserve requirements prompted several suggestions, which will need to be analyzed in light of recent changes made by AB 2718 (Laird) (2004 Cal. Stat. ch. 766):
 - Should the reserve study requirements be clarified or otherwise reformed? Should financial status information be included with the biennial filing with the Secretary of State (to provide an accessible public record). Letter from Bruce Osterberg, 10/15/2003.
 - Should an association be able to shift responsibility for unfunded replacement obligations to the homeowners individually? Email from Steve Stapleton, 9/27/04; Email from Sharon Stephens 7/2/03.
 - Some associations may be under political pressure to keep assessments low, which can interfere with the proper funding of reserves. Memo 2001-19, Exhibit at 11. Should adequate funding of reserves be required by law? Email from Keith Honda, 7/17/2000.
- **Review of financial statement.** Existing law requires a review of an association's annual financial statement if its gross annual income exceeds \$75,000. Civ. Code § 1365(b). Should a formal audit be required instead, to insure a more stringent examination? First Supp. to Memo 2004-20, Exhibit at 5-6. Should a state audit be triggered in some circumstances? Letter from Bruce Osterberg, 1/10/05.
- **Assessment collection.** Commentators have raised the following issues relating to assessment collection:
 - Should the use of nonjudicial foreclosure to collect overdue assessments be restricted or eliminated? Memo 2001-19, Exhibit at 78; Second Supp. to Memo 2001-19, Exhibit at 22.
 - Should assessment collection costs be capped or otherwise regulated? Letter from Curtis Sproul, 4/1/02.
 - Should a lien for overdue assessments be given priority over other encumbrances? First Supp. to Memo 2001-19, Exhibit at 7; Email from Clifford J. Treese, 9/20/04.
 - If an assessment is overdue on property that is being leased, should the association be able to require that the tenant pay rent to the association to satisfy the overdue amount? *Id.*
 - Should forcible detainer laws be extended to allow an association to evict homeowners for nonpayment of assessments? Email from Clifford J. Treese, 9/20/04.

- Should an assessment lien be collectible only at the time that a home is sold? Email from Clifford J. Treese, 9/20/04.
- Can an association record a blanket lien against each property within a CID for *future* assessments, before they come due? To what effect? Telephone call from Donie Vanitzian, 9/16/04.
- **Assessment parity.** Should the law permit the imposition of unequal assessments based on specified characteristics of the separate interests (e.g., higher road maintenance assessment for units at end of road; higher utility assessments for larger units, etc.). See, e.g. Memo 2001-19 at 14.
- **Tax reform.** Should tax law be revised to provide favorable rules for homeowners associations, to shelter investment income and provide incentives to maintain a certain ration of low income housing units? Email from Clifford J. Treese, 9/20/04.

REQUIRED DISCLOSURES

- **Financial status.** Should a seller of a CID property be required to disclose information about the financial health of the association, including information on the funding of reserves and the rate of delinquency on assessments? Memo 2001-19 at 14-15, Exhibit at 53.
- **Real estate listings.** Should the law require that real estate listings clearly indicate whether a property is part of a CID? Memo 2001-19, Exhibit at 14.
- **Developer documents.** Should a developer be required to provide an association copies of construction plans and related documents? First Supp. to Memo 2001-19, Exhibit at 9.
- **Right of rescission.** Should a potential purchaser of a CID have a right to examine the governing documents in advance of closing the sale, with a right to rescind without penalty during the period of examination? Memo 2001-19, Exhibit at 5.
- **Performance benchmarks.** Should financial reporting requirements be supplemented with information describing association activities and outcomes in providing core services to its members? Core services would include such things as asset and revenue management, compliance with governing documents, board of director activity, communications and community relations. Email from Clifford J. Treese, 9/20/04.

LIABILITY

- **Member volunteers.** Concerns about liability may lead an association to require that maintenance work be performed exclusively by professionals, even where work could be competently done by homeowner volunteers. Should the law be revised to make

clear that an association does not increase its potential liability by involving homeowner volunteers in maintenance activity? Memo 2001-19, Exhibit at 96

- **Action against volunteer director or officer.** Code of Civil Procedure Section 425.15 requires court approval before a complaint may be filed against a volunteer director of a nonprofit corporation that is exempt from federal income tax, for a negligent act or omission in the course of his or her duties. The person seeking to file the complaint bears the burden of establishing “evidence that substantiates the claim.” This pre-filing burden helps to deter frivolous claims against volunteer directors. Should this provision apply to a director or officer of a homeowners association, regardless of whether the association is tax exempt? First Supp. to Memo 2001-19, Exhibit at 20.
- **Liability for association debt.** What should be the result if association liability on a judgment exceeds its insurance coverage and available reserves. Should the debt be satisfied by execution on future assessments as they come due and are collected? Existing Civ. Code § 1366(c) exempts assessments necessary to pay for “essential services” from execution by a judgment creditor. Letter and email from James Lingl, 10/31/01.

SCOPE OF APPLICATION OF EXISTING LAW

- **Development without common area.** The Davis-Stirling Act only applies to an association that has common area. A development may be subject to CC&Rs even if it does not have common area. Would it be beneficial to impose some or all of the provisions of the Davis-Stirling Act on such communities, or allow them to opt in? Background Study at 5; Memo 2001-19, Exhibit at 90; Second Supp. to Memo 2001-19, Exhibit at 19-20; Letter from Curtis Sproul, 4/1/02; Letter from Janelle Dalton, 1/28/03. Problems posed by enforcement of senior-only restrictions may present a special case justifying application of the Act to a development without common area. First Supp. to Memo 2001-19, Exhibit at 14-20.
- **Private roads.** Does or should the Davis-Stirling Act apply to the owners of a private right-of-way who share an obligation to maintain that right-of-way under Civil Code Section 845? Memorandum 2001-19 at 14; First Supp. to Memo 2001-19, Exhibit at 1-5.
- **Associations in existence prior to enactment.** Should the law be revised to make clear that the Davis-Stirling Act applies to associations created before its enactment. First Supp. to Memo 2001-19, Exhibit at 7.
- **Mutual water company.** To what extent does or should CID law apply to a mutual water company or other similar entity? Minutes of February 2001, Commission Meeting.

- **Multiple associations.** Are there any problems with the application of existing law to a master association (combining two or more community associations) or sub-association (comprised of fewer than all of the members of a community association)?

MISCELLANEOUS

- **Pest control.** Should pest control in common walls, floors, and ceilings be an association responsibility, notwithstanding any contrary provision of the association's governing documents? Letter from Arthur Schmid, 12/5/01.
- **Parking enforcement.** Should homeowners associations have authority to use the "Denver Boot" to immobilize illegally parked cars? First Supp. to Memo 2001-19, Exhibit at 8
- **Compensation for service.** Should board members have some part of their dues waived to create an economic incentive to service on the board? Letter from Bruce Osterberg, 1/01/05.
- **Detailed requirements.** Some suggestions would involve a very high degree of legislative control over association practices, many of which would impose significant costs (e.g., require access to community buildings and parking lots after 5:30 p.m. weekdays may not be within 100' of residences, require that associations form "legislative committees" to monitor CID legislation, require that associations provide legal research tools to members at all board meetings, etc.). See e.g., letter from Kathleen Willoughby, Memo 20025-02, Exhibit at 74-81.

CID HOMEOWNER BILL OF RIGHTS

On September 25th we will celebrate the 210th anniversary of the ratification of the federal Bill of Rights. To honor this occasion, we the undersigned have ratified ten resolutions comprising a Common Interest Development Homeowner Bill of Rights. Modeled on the Preamble and the Amendments to the U.S. Constitution, this document is meant to inspire public confidence in the concept of the CID, to ensure that this local government institution pursues benevolent goals, and to prevent abuses of power. Any changes to California law governing CIDS must conform to these inviolable principles. We resolve ***THAT***,

I ***Since*** living in a common interest development (CID) requires an individual citizen to enter into a contract with a governing association, the prospective homeowner must give written informed consent to the terms of the association's rules and governing documents, but most especially to the Codes, Covenants, and Restrictions (CC&Rs) ten days before close of escrow. The governing documents comprise the contract between the association and the buyer.

II ***No*** CID board shall abridge a citizen's freedom of speech or of the press either through direct order or through intimidation or any kind of public abuse; that no board shall abridge the right of homeowner citizens to assemble peaceably or to petition the board for a speedy redress of grievances. No CID board shall abridge freedom of religion.

III ***Boards*** give a full, true and accurate accounting in writing of all association actions. No actions shall be taken in secret.

IV ***Homeowner citizens*** shall be entitled to speedy access to all association records, particularly to financial records, contracts, and records of governance at any time without exception.

V ***Homeowner citizens*** shall not be deprived of liberty or property, without speedy due process of law. Nor shall private property be taken without just compensation, specifically, there shall be no non-judicial foreclosure.

VI ***Homeowner citizens*** shall have the absolute right to vote on any changes to the terms of the original contract, i.e. changes in rules and amendments to governing documents or fines they are expected to pay. No fine shall exceed the true costs of the remedy.

VII ***If accused*** of violating rules, homeowner citizens are entitled to a speedy and public hearing by an impartial body not selected by the board; the impartial body shall determine the guilt or innocence of the accused and determine what fines, if any, be imposed; that the accused be informed of the nature and cause of the accusation; be confronted with witnesses; and have a compulsory process for obtaining witnesses, records, and advocates. Use of this system does not cancel a citizen's rights of appeal in the courts.

VIII ***Residents*** shall be treated equally, and not in an arbitrary fashion, without reference to age, race, gender, cultural lifestyle, sexual orientation, national origin, marital status, disability or familial status as established by both state and federal laws and regulations.

IX ***Rules*** enacted by a CID association and amendments to its governing documents must conform to all state and federal fair housing and health, safety and welfare laws.

X ***Elections*** shall be in the hands of the homeowner citizens, not the CID board: ballots shall be secret; no homeowner citizen shall be denied the right to vote for failure to pay any fine or tax, including assessments; directors shall serve no more than two terms and be held accountable for their decisions; the makeup of the board shall reflect the makeup of the association membership. ***September 21, 2001/ Congress of California Seniors, Older Women's League, Sentinel Fair Housing, Consumers Union, Gray Panthers, Charles Egan Goff.***