

Date of Hearing: April 6, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 805 (Torres) – As Introduced: February 17, 2011

SUBJECT: Common interest developments

SUMMARY: Revises and recasts the Davis Stirling Common Interest Development (CID) Act (Act) which governs common interest developments (CID). Specifically, this bill:

- 1) Groups related provisions together in a logical order.
- 2) Clarifies sections that are unclear or confusing.
- 3) Divides sections that are long into more readable, shorter sections.
- 4) Adds a requirement that a homeowners association (HOA) provide members with the text of a proposed amendment to the governing documents before holding an election to approve the proposed amendment.
- 5) Permits a successor-in-interest, to the original signator of a recorded declaration, to add material to the declaration as that person deems appropriate.
- 6) Harmonizes the procedure for amending a declaration to allow for a person other than a member of the HOA to approve an amendment (i.e. a community manager) and clarifies that a declaration can only be amended through the procedure provided by the declaration.
- 7) Requires in a case in which a court determines the validity of an election to approve the amendment of a declaration the court must find that the election complied with the provisions of the Act and any other applicable law, in addition to the governing documents.
- 8) Clarifies that an amendment to a condominium plan may be executed by the current specified interests in the property at the time of the amendment.
- 9) Replaces outdated references to the Corporations Code with equivalent provisions in the Act.
- 10) Clarifies that a non-owner occupant has the same protections as an owner to have physical access to their separate interest.
- 11) Combines all of the provisions that limit an HOA's ability to restrict certain specified uses of a separate interest into one section and adds cross references to other similar protections that are outside of the Act.
- 12) Generalizes the protections provided to owners of condominiums with disabilities to all types of CIDs.

- 13) Adds some minor exceptions to the law that requires the approval of at least 67% of the HOA to grant an individual member a right of exclusive use of the part of the common area.
- 14) Requires all HOAs to provide an advance notice of a board meeting, including an agenda regardless of whether the governing documents provide for a fixed meeting place and time.
- 15) Applies the rules governing board meetings to any meeting in which there are enough board members to establish a quorum.
- 16) Delete the requirement to post a notice of a board meeting in a prominent area and instead require "general delivery" as defined, of the notice which would include mailed notice if requested by a member.
- 17) Clarifies the requirements for board members to disqualify themselves from decisions in which they may have self-interest.
- 18) Allows an HOA to extend the standardized procedures for elections to those for which it is not applied to now.
- 19) Clarifies that election ballots must be retained for 12-months by the HOA in case of a challenge.
- 20) Adds governing documents to the list of HOA records that a member can request to inspect.
- 21) Organizes all annual reporting requirements of a CID in one section and requires the HOA to distribute the documents in the form of three annual reports.
- 22) Standardizes delivery requirements for notices.
- 23) Provides that, where there are inconsistencies in certain cases, the Act has supremacy over the Corporations Code.
- 24) Requires that an HOA include a schedule of monetary penalties for the violation of governing documents in the policy statement that is delivered to members annually.
- 25) Requires an HOA to notify and give a member an opportunity to respond if it plans to impose a monetary charge to reimburse the HOA for costs incurred in repairing damage to a common area or facility cause by the member of the member's guest or tenant.
- 26) Allows the court to determine whether a refusal to participate in alternative dispute resolution (ADR) was reasonable in any action in which fees and costs may be awarded, not just an action to enforce the HOAs governing documents.
- 27) Exempts entirely commercial and industrial CIDs from certain provisions of the Act including elections procedures and certain assessment setting provisions.
- 28) Deletes erroneous cross-references
- 29) Becomes operative January 1, 2014.

EXISTING LAW: The Act provides the rules and regulations within which a HOA may operate in a CID (Civil Code Sections 1350 - 1376).

FISCAL EFFECT: None.

COMMENTS:

Background:

There are over 49,000 CIDs in the state that range in size from three to 27,000 units. CIDs make up over 4.9 million housing units which represents approximately one quarter of the state's housing stock. CIDs include condominiums, community apartment projects, and housing cooperatives and planned unit developments. They are characterized by a separate ownership of dwelling space coupled with an undivided interest in a common property, restricted by covenants and conditions that limit the use of common area, and the separate ownership interests and the management of common property and enforcement of restrictions by a HOA. CIDs are governed by the Act as well as the governing documents of the association including bylaws, declaration, and operating rules. CIDs are run by volunteer board of directors (boards) who may have little or no experience managing real property or governing a nonprofit association and must interpret the complex laws regulating CIDs. Boards must not only interpret the law but enforce the restrictions and rules imposed by the governing documents and state law.

In addition to interpreting a HOAs individual governing documents, boards and homeowners must also follow the state law governing CIDs found in the Act. The governing law has two main sources, the Corporations Code and the Act. If an HOA is incorporated it is typically governed by the Nonprofit Mutual Benefit Corporation Law. An unincorporated homeowner association is subject to both the general law and on unincorporated associations, and specific provisions of the Nonprofit Mutual Benefit Corporations Code.

Although some medium and large CIDS employ community managers who are responsible for handling the day-to-day operations of the HOA many smaller CIDs are self-managed. According to the 2005 California Community Associations Statistics Report prepared by Levy & Company, CPAs more than two-thirds of CIDs are 50 units or less.

Purpose of the bill

After a four years of study and public input, the California Law Revision Commission (Commission) has recommended that the Act be repealed and replaced with a new statute which continues the substance of existing law in a more user-friendly form. AB 805 would repeal the Act and replace it with a new statute that is intended to be more logical, organized and easier for homeowners and volunteer board members to navigate.

According to the Commission, the new statute would provide guidance on two fundamental aspects of CID governance that are not clearly addressed in the existing statute: the general supremacy of the law over a CID's governing documents and the relative authority of different types of governing documents. This guidance will help to avoid disputes that might arise if a HOA's governing documents are inconsistent with the law or with each other.

The revised version of the Act would be grouped in a logical order and would make relevant law easier to find and provide a logical approach to making future changes to law. Additional benefits include: creating consistent terminology throughout, restating excessively long and complex sections into simpler and shorter sections, standardization some governing procedures and finally, some substantive improvements would be made.

Minor Substantive Changes:

Although for the most part, AB 806 is technical and nonsubstantive, it does make some minor substantive changes to CID law. The minor substantive changes represent areas of existing law where the Commission identified flaws that with minor changes could make the Act more consistent and clear.

Companion bill: AB 805 is double-joined with AB 806 (Torres). AB 806 deletes the cross-reference in existing law to the existing code section in the Act and replaces them with the new code sections in AB 805.

Double referred: The Assembly Committee on Rules referred AB 805 to the Committee on Housing and Community Development and Judiciary. If AB 805 passes this committee, the bill must be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

Community Association Institute (CAI)

Opposition

None on file.

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