

# COMMON INTEREST DEVELOPMENTS

"Subordination of individual property rights to the collective judgment of the owners' association, together with restrictions on the use of real property, comprise the chief attributes of owning property in a common interest development."

California Supreme Court, September 2, 1994  
Nahrstedt v. Lakeside Village Condominium Association

A common interest development (CID) combines a separate interest in the ownership of a unit with a combined interest in the ownership of the common area. The owners of the separate interests are members of an association created for the purpose of managing the CID. The board of directors of the association is responsible for the day-to-day management and operation of the CID. One quarter of the state's housing stock are CIDs and 40% of new single-family home sales are CIDs.

Under California law, the Davis-Stirling Act (Act) governs CIDs including community apartment projects, condominium projects, planned developments, and stock cooperatives. The Act provides for association voting requirements, access to records, levying of assessments, conduct of meetings, and liability of officers and directors.

The Department of Real Estate is the governmental entity responsible for approving, with limited exceptions, the public report required before a CID can be established. It is estimated that there are over 36,000 CID associations.

The California Law Revision Commission (CLRC) created in 1953 is responsible for the continuing substantive review of California statutory and decisional law. CLRC is currently studying common interest development law to set a clear, consistent, and unified policy with regard to the formation and management of common interest developments and the transaction of real property interests located within them. Through a multi-year project CLRC, seeks to clarify the law and eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, and determine to what extent common interest housing developments should be subject to regulation.

The most important legislative issues surrounding CIDs continue to be:

- Disclosure of information to a prospective buyer of a unit located in a CID, especially about the potential for increases in assessments and other financial matters relating to the maintenance of the property.
- Ongoing disclosure to homeowners about issues relating to any construction defects, litigation arising out of defects, or increases in assessments that affect homeowners.
- The rights and privileges of individual homeowners within a CID when they conflict with the association's rules or covenants, conditions, and restrictions (CC&R).
- The process of non-judicial foreclosure by the association due to unpaid assessments.

## **Major legislation**

### **AB 104 (Lowenthal) Chapter 375, Statutes of 2003:**

- Requires all homeowner associations to make accounting books, records, and minutes of proceedings available for inspection and copying by association members.
- Provides for a civil penalty of \$500 and reasonable costs and expenses including reasonable attorney's fees for each violation.

### **AB 1086 (Laird) Chapter 393, Statutes of 2003:**

- Prohibits a community service organization or similar entity from imposing any assessment or fee in connection with the transfer of title to an individual interest in a common interest development.

### **AB 1836 (Harman) Chapter 754, Statutes of 2004:**

- Reorganizes the alternative dispute resolution processes and procedures contained in the Davis-Stirling Common Interest Development Act.
- Expands the scope of the disputes to which alternative dispute resolution processes and procedures must or can be applied within common interest developments.
- Establishes a two-tier process to address disputes prior to a party pursuing enforcement through the courts:
  - 1) Informal meet and confer process to encourage personal communication between the homeowner and the board.
  - 2) Reform and strengthen the existing process for alternative dispute resolution specifically to those actions seeking to enforce the Davis-Stirling Act.

### **AB 2175 (Canciamilla) Failed passage in the Assembly Committee on Housing and Community Development:**

- Would have required local governments to allow owners of residential property to subdivide their property into a common interest development if they so choose.

### **AB 2718 (Laird) Chapter 766, Statutes of 2004:**

- Requires homeowner associations to provide their members a user-friendly summary statement that will clarify current and future assessments, the current amount of reserve funds, and future assessments that would be required for repairs and replacements that are the financial responsibility of the homeowners association.

## **SB 1682 (Ducheny) Died on the Assembly Floor:**

- Would have established a two-tiered system for collection of delinquent assessments and provided that assessments become delinquent 15 days after they are due, unless the governing documents provided for a longer time.
- Would have allowed an owner to dispute an assessment by submitting a written request to the association for dispute resolution.
- Would have created a right of redemption from a nonjudicial foreclosure by an association within 90 days after the sale.
- Would have permitted separate interest owners also to display noncommercial signs, posters, flags or banners within the owners' exclusive use common area.
- Would have expanded the categories of documents a member may inspect and copy to include all association records, including, but not limited to, accounting books and records, agendas and minutes of meetings of the governing board of the association and agendas and minutes of meetings of association committees.
- Mirrored AB 2598 (Steinberg) and vetoed by the Governor:

**Governor Schwarzenegger's veto message:** "This bill makes sweeping changes to the laws that govern Common Interest Developments (CID) and the foreclosure process for failure to pay delinquent homeowners assessments.

While the intent of this legislation is laudable and intended to protect homeowners from being foreclosed upon for small sums of delinquent assessments, this bill is overly broad and could negatively impact all homeowners living in CIDs.

This bill could unfairly result in increased assessments for other homeowners who pay their assessments in a timely manner and may delay the transfer of real property in CIDs due to the lien procedures set forth in the bill.

Foreclosure should be the last course of action taken against a homeowner. If there were more open discussion between homeowners and their associations, many conflicts could be resolved. That is why I recently signed into law AB 1836 (Chapter 754, 2004) and AB 2718 (Chapter 766, 2004). These bills establish methods to encourage more disclosure and better communication between homeowners and their associations.

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."

## **Other legislation**

**AB 210 (Nation) Died in the Assembly Committee on Housing and Community Development:**

- Would have banned smoking of tobacco in any common area in a common interest development and multifamily residential housing.

**AB 224 (Kehoe) Chapter 318, Statutes of 2004:**

- Prohibits common interest development homeowner associations from requiring a homeowner to install or repair a roof in violation of existing Health and Safety Code provisions relating to very high fire hazard severity zones.

**AB 512 (Bates) Chapter 557, Statutes of 2003:**

- Provides procedural guidelines for adopting and revising common interest development association operating rules.

**AB 1525 (Longville) Chapter 774, Statutes of 2003:**

- Forbids the governing documents of a common interest development from prohibiting the posting or displaying of non-commercial signs on or in a homeowner's separate interest.

**AB 2376 (Bates) Chapter 346, Statutes of 2004:**

- Requires a homeowner association to provide a fair and reasonable process for reviewing a request by a homeowner for a physical alteration to their unit or common area and to require the association to comply with the Fair Employment and Housing Act.

**AB 2610 (Strickland) Died in the Assembly Committee on Judiciary:**

- Would have amended the definition of an "emergency situation" by which a court may order a homeowners association to make a special assessment.
- Would have provided that a homeowners association may dissolve and establish a new organization without carrying the same financial liabilities as the original organization.

**SB 1581 (Battin) Died in the Assembly Committee on Judiciary:**

- Would have required elections for assessments, selection of association board members, and amendments to governing documents, within a common interest development by secret ballot.