

Date of Hearing: April 6, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 806 (Torres) – As Introduced: February 17, 2011

SUBJECT: Common interest developments.

SUMMARY: Makes conforming changes to AB 805 (Torres) to deletes the cross-reference in existing law to the existing code section in the Davis Stirling Common Interest Development Act (the Act) and replaces them with the new code sections in AB 805. Specifically, this bill:

- 1) Makes conforming changes to AB 805 (Torres) to 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.
- 2) Contingent upon enactment of AB 805 (Torres).
- 3) Becomes operative January 1, 2014.

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

FISCAL EFFECT: None.

COMMENTS: AB 805 is the companion bill to AB 806 (Torres). AB 805 revises and recasts the Act which governs common interest developments to make it more organized and user-friendly for CID homeowners. AB 806 deletes all of the existing cross-references to the Act in other code sections and replaces them with the new code sections created by AB 805.

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. Under the current scheme, a CID homeowner must read both sources of law together and resolve any inconsistencies to determine what law applies in a particular situation.

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 Davis Stirling 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. AB 806 is the clean-up bill for AB 805 and is contingent upon the enactment of AB 805 (Torres).

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.

Double referred: The Assembly Committee on Rules referred AB 806 to the Committee on Housing and Community Development and Judiciary. If AB 806 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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