

Date of Hearing: June 19, 2013

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Ed Chau, Chair

SB 752 (Roth) – As Amended: April 18, 2013

SENATE VOTE: 37-0

SUBJECT: Commercial and industrial common interest developments

SUMMARY: Establishes the Commercial and Industrial Common Interest Development (CID) Act to govern the regulation of commercial and industrial CIDs within the Davis Stirling Common Interest Development Act. Specifically, this bill:

- 1) Makes the Davis Stirling Common Interest Development Act inapplicable to commercial and industrial CIDs and creates a new Commercial and Industrial Common Interest Development Act.
- 2) Carries over the provisions of the Davis Stirling Act to the Commercial and Industrial Common Interest Development Act except for the following provisions from which the bill exempts commercial and industrial CIDs:
 - a) Declaration requirements related to location of the property in an airport influence area or in the jurisdiction of the San Francisco Bay Conservation and Development Commission.
 - b) The requirement that the association allow for at least one type of fire retardant roof covering material that meets legal requirements in a very high fire severity zone.
 - c) Award of reasonable attorney's fees and costs to the prevailing party in an action to enforce the governing documents.
 - d) The authority for the association to petition the court for an order reducing the percentage of the affirmative votes necessary for an amendment of the declaration.
 - e) Provisions regulating changes to the association's operating rules.
 - f) Owner protections against association policies prohibiting rental of units.
 - g) The requirement for the association to prepare and disclose a budget.
 - h) The requirement to conduct association meetings with a recognized parliamentary procedure.
 - i) Member rights of access to association records.
 - j) Rules regarding member discipline.
 - k) The right of owners in a joint association to attend meetings and access records of the joint association.

- l) The requirement for the association to provide a document disclosure index.
- m) Rules related to campaigns, elections, and open meetings.
- n) The requirement that members owning at least 67% of the separate interests approve granting exclusive use of any portion of the common area to an individual owner.
- o) Disclosure requirements relating to the qualifications of association managers and requirements relating to how managers handle association funds.
- p) The requirement for the association to adopt a fair, reasonable, and expeditious procedure for resolving disputes.
- q) The requirements that the association provide budgets and insurance coverage information, disclose reserves and reserve deficits, and conduct reserve studies that account for future repair needs.
- r) The requirement for the association annually to disclose its policies and practices in enforcing lien rights or other legal remedies for assessment defaults.
- s) Requirements relating to how the board reviews financial statements and makes transfers and payments out of reserves.
- t) Limits on assessment increases without a vote of the membership.
- u) Limits on late charges and interest charges on delinquent assessments.
- v) The prohibition against an association imposing assessments that exceeds the amount necessary to defray costs.
- w) The prohibition on levying assessments based on the taxable value of the separate interests.
- x) The right of owners to request dispute resolution and to request a payment plan for delinquent assessments.
- y) An owner's right to pay delinquent assessments under protest.
- z) The requirement for the association to credit any payments first towards delinquent assessments and only thereafter to the fees and costs of collection, attorney's fees, late charges, or interest.
- aa) The requirement for the association to send notices regarding delinquent assessments to a second address provided by an owner.
- bb) Prohibitions on the use of foreclosure for delinquent assessments that are less than 12 months delinquent and less than \$1800, as well as the conditions on the use of foreclosure for greater or older delinquent assessments, including an owner's right of redemption.

- cc) The requirement for a selling owner to provide a buyer with various association documents and for the association to provide those documents upon request.
 - dd) The prohibition on the association charging fees in connection with a transfer of title.
 - ee) The requirement that a party engage in alternative dispute resolution before filing an enforcement action in court.
 - ff) Rules relating to association approval of architectural changes.
 - gg) The requirement to register with the Secretary of State and pay a \$30 fee.
- 3) Prohibits new owners in commercial and industrial CIDs from keeping at least one pet subject to reasonable rules and regulations but grandfather's those owners who had pet's prior to January 1, 2014.
 - 4) Allows an association to amend its governing documents without the approval of owners solely to correct any cross-references to the Davis Stirling Act.
 - 5) States that the new act shall not invalidate a document, other than a governing document, or action taken before January 1, 2014, if the document or action was proper under the law governing CIDs at the time the document was prepared or the action taken.
 - 6) Updates numerous cross-references to the Davis Stirling Act in other codes.

EXISTING LAW

- 1) Specifies that select provisions of the Davis Stirling Common Interest Development Act do not apply to commercial and industrial CIDs (Civil Code Section 1373).
- 2) Establishes the Davis Stirling Act which authorizes, defines, and regulates CIDs (Civil Code Section 1350 et. al.).

FISCAL EFFECT: None.

COMMENTS:

CIDs are characterized by a separate ownership of dwelling space coupled with shared interest in a common area. They are 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 homeowners association. The Davis Stirling Act is the state law that authorizes the creation of CIDs and defines and regulates their activities. CIDs can be either residential, commercial, or industrial. This bill would create a separate statutory framework for commercial and industrial CIDs and largely apply only the foundational provisions of the Davis Stirling Act with a limited application of key operational provisions.

The sponsor of this bill, the California Law Revision Commission (CLRC), reviewed the legislative history of the Davis Stirling Act and determined that the intent of the legislature was to apply only certain provisions of the Davis Stirling Act to commercial and industrial CIDs. The

history of the Davis Stirling Act supports the view that the Legislature viewed commercial and industrial CID owners as more sophisticated and better able to protect their interests than residential owners. Two years after the Davis Stirling Act was adopted Civil Code Section 1373 was created to exempt commercial and industrial CIDs from provisions of the Davis Stirling Act that were seen as unnecessarily burdensome and costly. However, as the Davis Stirling Act was amended over the years and expanded to triple its original size, the distinction between residential and commercial and industrial CIDs was not maintained.

The CLRC is tasked with studying CIDS and recommending reforms to improve their governance. Based on the legislative history of commercial and industrial CIDs the CLRC made the following three recommendations which are embodied in SB 752:

- The law governing commercial and industrial CIDs should be separated from the law governing residential CIDs. This will prevent any new laws enacted to benefit residential owners from being inadvertently applied to commercial and industrial developments.
- The existing foundational provisions of the Davis Stirling Act should continue to apply to commercial and industrial CIDs. These provisions are necessary for any CID, regardless of type.
- Most of the existing operational provisions of the Davis Stirling Act should be made inapplicable to commercial and industrial CIDs. These provisions are not strictly necessary for all CIDs. They appear to have been added to the Davis Stirling Act to benefit residential property owners, without separate consideration of their effect on commercial or industrial property owners.

SB 752 would create a separate act governing commercial and industrial CIDs, known as the Commercial and Industrial Common Interest Development Act. The proposed Act would apply only to commercial or industrial CIDs and would have no effect on residential or mixed use CIDs which would continue to be governed by the existing Davis Stirling Act. The new Act would continue all of the foundational provisions of the Davis Stirling Act or those provisions that authorized and define the property ownership form of CIDs. Those provisions are needed by all CIDS regardless of type. For the most part the new Act would not continue the operation provision of the Davis Stirling Act or those regulatory provisions that impose mandates or restrictions relating to CID governance.

As part of the process of preparing their recommendation, the CLRC held public meetings and received comments which they responded to via amendments. As a result, there is no opposition to this measure.

Double referred: If SB 752 passes this committee, the bill will be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

California Law Revision Commission (sponsor)
California Association of Community Managers
California Business Properties Association
Mar West Real Estate Inc., Tustin

Opposition

None

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