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**ARTICLE****DAVIS-STIRLING COMMON INTEREST  
DEVELOPMENT ACT RECAST**

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**I. INTRODUCTION**

After years of legislative tinkering, the Davis-Stirling Common Interest Development Act, which regulates common interest developments such as condominiums, finally underwent a long-awaited restructuring. For the most part, Assembly Bill 805 recasts the Act, making it more organized and user-friendly. However, as detailed below, some substantive, albeit noncontroversial, changes have been made. For ease of transition, the amendments take effect January 1, 2014.<sup>2</sup> In concert with the enactment of AB 805, the legislature also enacted AB 806, which will update cross references in other statutes as a result of the renumbering of the Act. This article gives a brief overview of the Act, examines the amendments made as a result of AB 805, and discusses additional proposed amendments.

**II. DAVIS-STIRLING ACT—A BRIEF OVERVIEW**

As its name implies, the Davis-Stirling Common Interest Development Act, which was first adopted in 1986,<sup>3</sup> governs common interest developments in California—most notably condominiums.<sup>4</sup> Common

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interest developments are also governed by an association run by volunteer directors, whose actions and authority are intimately tied to the Act. Some may argue that from its inception, the Act, which encompasses numerous topics (e.g., ownership rights and interests, governing documents, meetings, and operations), has been confusing and difficult to navigate.<sup>5</sup> There have been attempted fixes, but more than cosmetic changes were required. The California Law Revision Commission heeded the call, and embarked on a multi-year journey to recast the Act, culminating in AB 805 and AB 806.

### III. ASSEMBLY BILL 805

#### A. Restructuring of the Act

**Renumbering:** The Act, currently found in Civil Code sections 1350 to 1378, has been re-enacted with a whole new numbering system, which allows for greater organization and room for future expansion. Effective January 1, 2014, the Act will be found at Civil Code sections 4000 to 6150, consisting of the following chapters:

- Chapter 1, General Provisions,<sup>6</sup>
- Chapter 2, Application of the Act,<sup>7</sup>
- Chapter 3, Governing Documents,<sup>8</sup>
- Chapter 4, Ownership and Transfer of Interests,<sup>9</sup>
- Chapter 5, Property Use and Maintenance,<sup>10</sup>
- Chapter 6, Association Governance,<sup>11</sup>
- Chapter 7, Finances,<sup>12</sup>
- Chapter 8, Assessments and Assessment Collection,<sup>13</sup>
- Chapter 9, Insurance and Liability,<sup>14</sup>
- Chapter 10, Dispute Resolution and Enforcement,<sup>15</sup> *and*
- Chapter 11, Construction Defect Litigation.<sup>16</sup>

The reorganization groups related provisions together, and, as detailed below, clarifies certain sections without changing substantive effect. It also divides longer sections into shorter sections and standardizes terminology. For example, Civil Code section 1351, which currently houses the building block definitions for the Act, will be split, with each definition entitled to its own section.<sup>17</sup> New defined terms include, among others, “Board,”<sup>18</sup> “Director,”<sup>19</sup> “Member,”<sup>20</sup> and “Person.”<sup>21</sup> Other sections have been similarly divided,<sup>22</sup> and additional terms, such as “annual budget report” and “annual policy statement” added.<sup>23</sup>

## B. Tools For the Transition

AB 805 also includes the tools to effectuate the transition and minimize uncertainty during this interim period before the January 1, 2014 effective date. For example, the association's board is authorized to adopt a resolution without member approval in order to correct cross references in governing documents as a result of the enactment of AB 805.<sup>24</sup> The declaration can be restated in corrected form, but only if the board resolution authorizing the corrections is also recorded.<sup>25</sup> In order to mitigate perceived uncertainty for actions taken before 2014, a provision of AB 805 provides that, subject to an exception pertaining to governing documents, "[n]othing in the act that added this part shall be construed to invalidate a document prepared or action taken before January 1, 2014, if the document or action was proper under the law governing common interest developments at the time the document was prepared or the action was taken."<sup>26</sup>

## C. Substantive Changes to the Act

The substantive changes made by AB 805 include the following:

- (1) Provides guidance on the supremacy of the law over a common interest development's governing documents, and the relative authority of different types of governing documents.<sup>27</sup>
- (2) Establishes a single procedure for amendment of a common interest declaration.
- (3) Guarantees the right of an owner of a separate interest to make changes in that separate interest, as specified, in a common interest development other than a condominium project, in which that right currently exists.
- (4) Establishes an express list of conflicts of interest that may disqualify members of a board of directors of an association that manages a common interest development from voting on certain matters.
- (5) Makes detailed revisions in provisions related to elections and voting.
- (6) Establishes standards for the retention of records.
- (7) Broadens the requirement that liens recorded by the association in error be released.<sup>28</sup>

## IV. PROPOSED ADDITIONAL AMENDMENTS

Assembly Bill 805 is certainly not the last pronouncement of the laws governing common interest developments, especially with only the non-controversial changes tackled. The Law Revision Commission has already explored modifying the Act regarding non-residential common interest developments.<sup>29</sup> Recommendations include a separation of the law governing commercial and industrial common interest developments from those governing residential common interest developments. The core foundational provisions of the Act would continue to apply, but most of the existing operational provisions would not.<sup>30</sup> At some point, there may also be an attempt to modify the Act to accommodate small common interest developments. As evidenced by the history of the Act, the only constant is the continuing evolution of this body of law.

### NOTES

1. See Section 3 of AB 805 (Ch. 180).  
See also, Civ. Code, §4010, providing that “[n]othing in the act that added this part shall be construed to invalidate a document prepared or action taken before January 1, 2014, if the document or action was proper under the law governing common interest developments at the time the document was prepared or the action was taken. For purposes of this section, ‘document’ does not include a governing document.”  
See also Civ. Code, §4235, authorizing the board to adopt a resolution without member approval in order to correct cross-references as a result of the enactment of AB 805.
2. Stats. 1985, c. 874, §14.
3. Other covered common interest development types include stock cooperatives, planned developments, and community apartment projects.
4. *Comment:* Industrial and commercial common interest developments are expressly exempted from select provisions of the Act, with the legislature having determined that they do not need as much regulation as residential common interest developments.
5. Civ. Code, §§4000 to 4190.
6. Civ. Code, §§4200 to 4202.
7. Civ. Code, §§4205 to 4370.  
*Comment:* Article 1 in chapter 3 pertains to general provisions (§§4205 to 4235), Article 2 addresses the Declaration (§§4250 to 4275), Article 3 pertains to articles of incorporation (§4280), Article 4 pertains to the condominium plan (§§4285 to 4295), and Article 5 pertains to Operating Rules (§§4340 to 4370).
8. Civ. Code, §§4500 to 4650.  
*Comment:* Article 1 in chapter 4 pertains to ownership rights and interests (§§4500 to 4510), Article 2 pertains to transfer disclosure (§§4525 to 4545), Article 3 pertains to transfer fees (§§4575 to 4580), Article 4 pertains to restrictions on transfer (§§4600 to 4615), Article 5 pertains to transfer of separate interest (§§4625 to 4650).
9. Civ. Code, §§4700 to 4790.  
*Comment:* Article 1 in chapter 5 pertains to protected uses (§§4700 to 4745), Article 2 pertains to modification of separate interest (§§4760 to 4765), Article 3 pertains to maintenance (§§4775 to 4790).
10. Civ. Code, §§4800 to 5405.

*Comment:* Article 1 in chapter 6 pertains to association existence and powers (§§4800 to 4820, Article 2 pertains to board meetings (§§4900 to 4955), Article 3 pertains to member meetings (§5000), Article 4 pertains to member elections (§§5100 to 5145), and Article 5 pertains to record inspection (§5200 to 5240), Article 6 pertains to Recordkeeping (§5260), Article 7 pertains to Annual Reports (§§5300 to 5320), Article 8 pertains to Conflict of Interest (§5350), Article 9 pertains to Managing Agent (§5375 to 5385), Article 10 pertains to Government Assistance (§§5400 to 5405).

11. Civ. Code, §§5500 to 5580.

*Comment:* Article 1 in chapter 7 pertains to Accounting (§5500), Article 2 pertains to Use of Reserve Funds (§§5510 to 5520), Article 3 pertains to reserve planning (§§5550 to 5580).

12. Civ. Code, §§5600 to 5740.

*Comment:* Article 1 in chapter 8 pertains to Establishment and Imposition of Assessments (§§5600 to 5625), Article 2 pertains to Assessment Payment and Delinquency (§§5650 to 5690), Article 3 pertains to Assessment Collection (§§5700 to 5740).

13. Civ. Code, §§5800 to 5810.

14. Civ. Code, §§5850 to 5985.

*Comment:* Article 1 in chapter 10 pertains to Discipline and Cost Reimbursement (§§5850 to 5865), Article 2 pertains to Internal Dispute Resolution (§§5900 to 5920), Article 3 pertains to Alternative Dispute Resolution Prerequisite Civil Action (§§5925 to 5956), Article 4 pertains to Civil Actions (§§5975 to 5985).

15. Civ. Code, §§6000 to 6150.

16. See, for example, Civ. Code, §4095 (formerly §1351, subd. (b)) defining “common area,” Civ. Code, §4100 (formerly §1351, subd. (c)) defining “common interest development,” Civ. Code, §4105 (formerly §1351, subd. (c)) defining “community apartment project,” Civ. Code, §4110 (formerly §1351, subd. (d)) defining “community service organization or similar entity,” Civ. Code, §4120 (formerly §1351, subd. (e)) defining “condominium plan,” Civ. Code, §4125 (formerly §1351, subd. (f)) defining “condominium project,” Civ. Code, §4130 (formerly §1351, subd. (g)) defining “declarant,” Civ. Code, §4135 (formerly §1351, subd. (h)) defining “declaration,” Civ. Code, §4145 (formerly §1351, subd. (i)) defining “exclusive use common area,” Civ. Code, §4175 (formerly §1351, subd. (k)) defining “planned development, Civ. Code, §4185 (formerly §1351, subd. (l)) defining “separate interest,” Civ. Code, §4190 (formerly §1351, subd. (m)) defining “stock cooperative.”

17. Civ. Code, §4085, defining “Board” as the board of directors of the association.

18. Civ. Code, §4140, defining “Director” as a natural person who serves on the board.

19. Civ. Code, §1160, defining “Member” as the owner of a separate interest.

20. Civ. Code, §4170, defining “Person” as a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity.

21. See, for example, current Civ. Code, §1365.5, with definitions of “reserve accounts,” and “reserve account requirements” to be found in Civ. Code, §4177 and Civ. Code, §4178, respectively.

22. See Civ. Code, §§4076, 4078.

23. Civ. Code, §4235.

24. Civ. Code, §4235.

25. Civ. Code, §4010.

26. Civ. Code, §4205. Providing as follows: (a) To the extent of any inconsistency between the governing documents and the law, the law controls. (b) To the extent of any inconsistency between the articles of incorporation and the declaration, the declaration controls. (c) To the extent of any inconsistency between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration control. (d) To the extent of any inconsistency between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration control.

- 27. See Civ. Code, §§5685, 5730. As relevant to this issue, the required notice provides that “[i]f a lien is recorded against an owner’s property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard.”
- 28. [www.CLRC.ca.gov](http://www.CLRC.ca.gov).
- 29. See <http://www.clrc.ca.gov/pub/Printed-Reports/Pub237-H856.pdf>.

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