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SIMPLIFYING THE DAVIS-STIRLING ACT: PROGRESS REPORT

by Gary Kessler, Esq.

In 2005, the California Law Revision Commission began a study focusing on “reorganizing and simplifying CID law in order to make it easier to understand and use.” It was contemplated that some minor substantive improvements would necessarily be included in the new law, but the Commission made a conscious decision to exclude any major substantive changes that could draw significant opposition.

During the intervening five years, the Commission went through a long, tortuous and exhaustive process toward its laudable goal of a simplified Davis-Stirling Act. It is now beginning what will (hopefully) be the final phase of that complicated legislative trek, which will (hopefully) culminate in the final enactment of a reorganized Davis-Stirling Act within the next two years.

It certainly has not been easy getting to this point, and many minefields still remain.

Between 2005 and 2007, the Commission received a multitude of comments from various groups and individuals about proposed changes to the existing law. Memos were written by the Commission’s staff analyzing the issues, drafts of proposed statutory

language were circulated to interested persons, and the full Commission held hearings to discuss the staff proposals. Finally, in 2007, the Commission approved a final recommendation, and in 2008 implementing legislation (AB 1921) to revise the Act was introduced by Assemblywoman Lori Saldana.

After AB 1921 was introduced, a number of comments were received by the Commission and the Assembly Committee. Amendments were made to the bill, and eventually it was passed by the Assembly. However, when the complex and lengthy bill finally reached the Senate, there was an insufficient amount of time left in the legislative session to analyze, amend and vote on it. Additionally, significant legal arguments in opposition to portions of the bill were raised by CID attorneys. All of this caused the bill to be withdrawn from consideration so that the Commission could have sufficient time to consider all of the comments, arguments and objections, hold new hearings, and prepare a revised draft of the proposed law.

Therefore, beginning in 2009 a new round of analysis, Commission staff memoranda and public hearings began. In February, 2010 the Commission staff issued its revised tentative recommendation for replacing the existing Act with new provisions which would

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“continue the substance of existing law in a more user-friendly form.” The public comment period ended on July 1, 2010, and the Commission is currently in the process of holding hearings and finalizing the version of the tentative recommendations which will be sent to the legislature in early 2011.

A bill embodying the Commission’s final recommendations will be introduced in the legislature sometime during the first half of 2011. It will be a two-year bill which, if all goes well, should be passed by the legislature and signed by the governor in 2012, with an effective date of January 1, 2013.

What will be contained in the final version of the new law? We do not know for sure due to the inherent unpredictability of the legislative process. One never knows what will happen to a bill between the time it is first introduced and the time it is enacted. Moreover, as of today, the Commission has not even finalized its recommendations, and a bill has not yet been introduced.

Nevertheless, the current organization of the proposed law is likely to survive the legislative process. In this regard, it is virtually certain that the entire Davis-Stirling Act will be completely renumbered. Although the current Act begins with *Civil Code* section 1350, the new law will start at *Civil Code* section 4000.

Additionally, a frequent criticism of the present Act has been that the overall structure is disorganized and sections dealing with similar topics are sometimes widely dispersed between different chapters. Therefore, the proposed law will be reorganized in a more logical manner and related provisions will be grouped together. The ten new chapters of the Act will be: 1. General Provisions; 2. Application of Act; 3. Governing Documents; 4. Ownership and Transfer of Interests; 5. Property Use and Maintenance; 6. Association Governance; 7. Finances; 8. Insurance and Liability; 9. Dispute Resolution and Enforcement; and 10. Construction Defect Litigation.

Although there is much that we do not know about the final text of the Act, one thing is certain: The next two years will be extremely interesting! As the proposed new law winds its way through the legislature, I will continue to keep *FOCUS* readers up to date on all significant developments.

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