



HOA Brief Newsletter

Tips for the HOA Community

#22

A Guide to the Davis-Stirling Act Reorganization (AB 805)

I recently spoke to the Inland Empire Chapter of CAI regarding the upcoming changes to California's *Common Interest Development Act*, or the *Davis-Stirling Act*, which takes effect on January 1, 2014. In preparation for that presentation, it became clear that despite the numerous resources available regarding the revised Act, many people are still concerned and wonder how the new law will impact their community association. The good news is that there is no reason to panic. The revisions to the *Davis-Stirling Act* were designed to be non-controversial. As a result, the substantive changes to the law are relative few in number and small in impact. In addition, there are some advantages to revising the *Davis-Stirling Act*. The current version of the Act has several "issues." Sections which are logically related to each other are not located near each other in the Act making locating all the relevant sections difficult and confusing. Also, several sections are excessively long and complicated making them hard to read. The revisions to the Act make several changes which address the current version's short comings. These include changes which group related provisions in a more logical order, long sections are divided into shorter, easier to read sections, more consistent terminology is used throughout the Act, and governance procedures are standardized.

That does not mean there aren't some disadvantages, however. The most significant of which is that those of us who deal with the

Davis-Stirling Act will have to learn all over again what code sections contain various provisions due to the complete renumbering of the Act.

While a board may want to consider amending the governing documents, there is no legal requirement to do so. However, the new law (*Civil Code* section 4235) allows a board to amend the governing documents to update references to various sections of the *Davis-Stirling Act* by a board vote, allowing boards to avoid a member vote to amend the CC&Rs in this limited circumstance.

The following highlights the changes to the Act which we find to be the most significant. There are some additional changes which are not addressed in this article because few will ever come across them (such as the change in who can sign an amendment to a condo plan), but the changes you are most likely to encounter are covered.

1. Notice and Delivery

One of the most significant changes in the *Davis-Stirling Act* is how an association can give "notice" to its members. New *Civil Code* section 4045 allows for "general notice" to be given by (1) first class mail; (2) email, facsimile, or other electronic means upon receipt of written consent to receive notice in that fashion; (3) inclusion in a billing statement, newsletter or other document delivered in the same manner; (4) posting in a prominent and pre-designated location accessible to all members; and (5) through broadcast media or programming intended for the purpose of distributing information to members. While the association

can provide general notice to the members using these options, any member that prefers individual delivery of such notices can make a written request to receive such notices via first class mail.

2. Hierarchy of Governing Documents

In order to provide some clarity when there are conflicts among governing documents, new *Civil Code* section 4205 provides a clear hierarchy of law and governing documents to resolve conflicts among the law and an association's various governing documents. Under new section 4205 one must look to the law and governing documents in the following order: (1) Federal and State law; (2) the CC&RS; (3) the Articles of Incorporation; (4) the bylaws; and (5) the operating rules.

3. Open Forum at Member Meetings

Currently the law requires open forum for board meetings and "meetings of the association." New *Civil Code* section 5000(b) makes it clear that open forum is required at member meetings.

4. Granting of Exclusive Use Common Area

Currently, except for some limited exceptions, associations are precluded from granting any individual owner exclusive use of common area without obtaining the approval of 67% of the association's membership. New *Civil Code* section 4600 adds several additional exceptions to the requirement to obtain member approval prior to granting exclusive use of the common area. These new exceptions include (1) where the purpose is to accommodate a member with a disability; (2) where it is necessary to comply with the governing law; and (3) where the association wishes to assign parking spaces, storage units or another amenity that is designated in the declaration for assignment, but is not assigned by the declaration to a specific separate interest.

5. Custody of Ballots following Election

Currently following an election the inspector of elections is required to retain custody of the ballots for nine months, after which the ballots

are transferred to the association. In order to ensure that the ballots remain in the custody of a neutral third party until the time to challenge the results of the election has passed, *Civil Code* section 5125 now requires that the ballots remain within the custody of the inspector of elections for a full year following the election.

6. Member Rights to Inspect Governing Documents

Currently, members are entitled to inspect certain association records upon written request. *Civil Code* section 5200 expands the definition of "association records" to include an association's governing documents.

7. Requests Which Must be in Writing

In order to ensure proper documentation of certain requests, members have to make certain types of requests in writing in order for them to be effective. New *Civil Code* section 5260 specifies types of member requests which must be made in writing. Specifically, (1) requests to change member information in the association membership list; (2) requests to add or remove a second address for delivery of individual notices; (3) requests for individual delivery of general notices; (4) requests to opt out of productions of the membership list; (5) requests to receive a full copy of the annual budget or annual policy statement; and (6) requests to receive all reports in full must be made in writing.

8. Notice of Board Meetings

Currently, there is some ambiguity as to whether board meetings that are regularly scheduled must be noticed, and how to comply with the requirement to post an agenda prior to the meeting. New *Civil Code* section 4920 clarifies the law and makes clear that all board meetings must be noticed, even if regularly scheduled. Such meetings may be noticed via "general delivery" which can include posting in a pre-designated location available to all members.

9. Annual Reports and Disclosures

One of the most significant changes in the revised law addresses annual reports and financial disclosures. New *Civil Code* section 5300 creates new minimum disclosure requirements (an association's governing documents may require additional disclosures) by consolidating various disclosures under the new "Annual Budget Report," which now includes (1) a pro forma operating budget, (2) a summary of reserves, (3) a summary of the association's reserve funding plan, (4) a statement from the board regarding any decisions to defer maintenance of major components, (5) a statement of any anticipated special assessments, (6) a statement addressing the procedures used to calculate reserves, (7) a statement regarding outstanding loans with a term of more than one year, and (8) a summary of the association's insurance policies.

10. New Annual Policy Statement

In an effort to clarify requirements relating to policy disclosures, new *Civil Code* section 5310 consolidates the various requirements. Under section 5310 associations must distribute an annual policy statement within 30 to 90 days of the end of its fiscal year setting forth (1) the name and address of the person designated to receive official communications for the association; (2) a statement explaining that a member may submit a request to have notices sent to up to two different addresses; (3) the location designated for posting of general notices; (4) notice of right to receive general notices by individual delivery; (5) notice of right to receive copies of meeting minutes; (6) a statement of assessment collection policies; (7) a statement addressing lien enforcement procedures; (8) a statement of discipline policies and penalties; (9) a summary of dispute resolution procedures; (10) a statement addressing association approval requirements for physical changes to property; (11) the mailing address for overnight payment of assessment; (12) any other information that is required by law or the governing documents.

In addition, while associations are already required to distribute a copy of their fine schedule to all members upon adoption or revision of the fine schedule, new *Civil Code* section 5850 will require that a copy of the fine schedule is included in the association's annual policy statement.

11. Director Conflict of Interest

Currently there is no code section that specifically aids board members in identifying circumstances where a director or committee member must abstain from voting on a matter due to an actual or perceived conflict of interest (the *Corporations Code* addresses the validity of certain transactions or contracts involving potential conflicts of interest, but does not clearly define circumstances where a director *must* abstain from voting on a matter). As a result, directors are often unclear on whether or not they can vote on a matter. New *Civil Code* section 5350 identifies certain situations where a directors or committee member *must* abstain from voting on a matter. These include (1) discipline of the director or committee member, (2) assessments to be levied against the director or committee member for damage to common area, (3) whether to accept a payment plan request by that individual, (4) decisions to foreclose on the director or committee member's property, (5) architectural applications submitted by the director or committee member, and (6) applications for a grant of exclusive use of common area submitted by the director or committee member. Of course, while new section 5350 identifies certain specific circumstances where directors or committee members are not allowed to vote, it is not an exhaustive list of potential conflict of interest situations. Board's should check with legal counsel whenever a potential conflict, whether real or perceived, exists and get guidance on how to address any such potential conflict.

12. Due Process before Levying Reimbursement Assessments

Associations are already required to provide due process (notice, hearing, an opportunity to

address the board at the hearing) before a fine or penalty may be imposed on a member. New *Civil Code* section 5855 simply extends this due process requirement to situations where the board is levying a reimbursement assessment for damage to the common area and facilities caused by the owner, their tenants or guests.

Conclusion

In addition to the above changes, California Law Revision Commission is already looking at additional, substantive changes recommend in the future. Among items already being considered are modifications to the Act regarding non-residential or commercial common interest developments. In addition, some consideration is being given to modifying the Act to accommodate “small” associations which typically do not have legal counsel or even management and can therefore have significant difficulty complying with the complexities and burdens imposed by the current Act. However, what will qualify as a “small” association will likely be the source of significant debate.

There will no doubt be some adjustment period to the new revised *Davis-Stirling Act*. However, the reality that the revision to the *Davis-Stirling Act* was really simply rewritten rather than changed in any significant way should provide comfort to managers and board members anticipating the new law and its implementation coming in January 2014.



Robert M. DeNichilo

Nordberg | DeNichilo, LLP
ATTORNEYS AT LAW



4000 Barranca Parkway, Suite 250
Irvine CA 92604
Ph: (949) 654-1510

Email: robert@NDHOALaw.com

Website: NDHOALaw.com

Blog: HOABrief.com

We provide this newsletter for advertising and general informational purposes only. It is not intended to create an attorney client relationship. Readers should not act on any issues raised in this newsletter without consulting with legal counsel.

dlnl22 03132013 - guide to revised davis stirling act.docx