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Introducing The New Commercial and Industrial Common Interest Development Act — The CICID

From the Community Association Attorneys at SwedelsonGottlieb

The new Davis-Stirling Act ("Act") restructures and revises the law for residential properties. The old Act covered both residential and commercial California condominium associations. Because the new Davis-Stirling Act now covers only residential and to a large extent mixed-use properties, the laws pertaining to exclusively commercial properties have been combined into the new Commercial and Industrial Common Interest Development Act (the "CICID"). The CICID picks up in the Civil Code where the new Davis-Stirling Act leaves off, and creates new Civil Code Sections 6500- 6876. The following provides you with a broad overview of what's new and what has or hasn't changed in the new (as of 1-1-14) CICID (when compared to the Davis-Stirling Act).

Section 6531 of the CICID now defines a "commercial or industrial common interest development" as one that is "limited to industrial or commercial uses by law" or in its CC&Rs. "Commercial use" includes, but is not limited to, "the operation of a business that provides facilities for the overnight stay of its customers, employees, or agents." So if you own, manage or work with an association that is purely industrial or commercial, you will no longer be relying on the new Davis-Stirling Act; you will rely on the CICID, which is different from the new Act. A lot different.

What Is Not Included In The CICID That Is Found in the New DS Act?

The Davis-Stirling Act provides for and requires more disclosures and affords more protection to residential condominium owners and purchasers than the CICID. The CICID, we assume based on the legislature's belief that commercial condo owners are more sophisticated than residential owners, removes some requirements for commercial associations, such as the obligation to distribute a budget, make other new Davis Stirling Act disclosures, etc.

Many provisions of the Act relating to condominium governance and operations have, for the most part, not been included in the CICID. For example, there is no reference in the CICID to elections, board meetings, community service organizations, membership lists, or record inspection. The CICID does not include as a requirement the new General Notice and/or delivery requirements found in the



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new Act. Also not included are requirements relating to the preparation or distribution of budgets, and there are no requirements regarding reserves or disclosures to its members.

Approval procedures, such as the 30-day member comment period before adopting new rules, are not in the CICID. Neither are the rule reversal provisions. Likewise, transfer fee limitations have been removed, as well as the 67% owner approval requirement for granting common area for an owner's exclusive use. The architectural review provision found in the Act has not been included in the CICID. As a result, there is no requirement by law (but it could be in the association's CC&Rs) that boards must reconsider rejected architectural applications. In addition, the CICID does not include the provisions limiting the liability of directors and officers if certain minimum amounts of insurance are carried. The new CICID does not include the requirement that notice be made to members when there are changes in an association's insurance coverage.

Unlike residential condo associations, boards at commercial properties do not have the ability to petition the court to amend the CC&Rs under the CICID. Also absent in the CICID are provisions regarding payment plans, payments under protest, the requirement to offer IDR prior to the recordation of an assessment lien, and limits on foreclosing on properties where less than \$1,800 is owed, or that have been delinquent for more than 12 months. These are all covered (or not covered) in the association's governing documents. There are also no limits on increases in assessments for commercial properties, except as provided in the governing documents; and the provision that exempted associations from State interest rate limits no longer applies to commercial properties. There is no IDR or ADR requirement in the CICID for dispute resolution, unless the association's governing documents state otherwise.

The CICID does not include any provision for a commercial condominium association to be able to recover, as a prevailing party, its attorneys' fees or costs incurred in an action to enforce governing documents. This provision must be in an association's CC&Rs in order to hold the other party responsible for such fees and costs.

What's New In The CICID?



The CICID has some new provisions (that were not previously required in the old Davis Stirling Act) regarding the limitations of a commercial condominium association to regulate use of a member's "unit." There is no prohibition on rentals, and commercial condo associations can prohibit owners from having pets.

Regarding new provisions, in many respects the CICID and Act are the same or have only minor variations. In both:

- The law prevails if there is a conflict between the governing documents and the law (§6600).
- The Board can amend the governing documents only with a majority of a quorum of the members (§6524), except --
- The Board can amend the governing documents without member approval, with a resolution, solely to correct references to the new laws (§6610).
- Delivery and Notice provisions for deliveries to the association and for individual delivery to members are substantially the same (§§6512, 6514, 6518, 6520); however, there is no general notice and delivery provisions under the CICID.
- Schedule of monetary penalties is the same (§6850).
- Member liability is limited where common areas are owned by members as tenants-in-common, if minimum insurance requirements are met: \$2 million if there are 100 or fewer separate interests, \$3 million if there are more than 100 separate interests (§6840).
- Directors or executive committee members cannot vote on issues on which they have a conflict of interest, such as their own discipline, assessments or liens against them, architectural review of their separate interest, and grant of exclusive use of the common area to them (§6758).
- Laws about flags (§6702), signs (§6704), and satellite dishes (§6708) are the same for both residential and commercial associations.

What Hasn't Changed?

- Some provisions of the law relating to commercial condominium associations have not changed. They have merely changed code sections. For example, commercial condo developments are still required to file statements with the Secretary of State (§6760). Common area provisions (§6650), restrictions on transfers (§6656), transfer of separate interests (§§6662-6670), low water-using plants (§6712), electrical vehicle charging stations (§6713), and access



to common area wiring are the same as those that apply to residential condos (§6722). So is the provision that owners have to bear the costs of temporary relocation during common area repairs and maintenance by the association (§6716).

Takeaways from the CICID

The central theme behind the state legislature's adoption of the new CICID is to lessen consumer protection and place a strictly commercial association's power in the hands of its board, based on the provisions and requirements of the association's governing documents. By not including so many of the previously statutorily imposed notice and approval requirements and safeguards imposed on residential associations, the CICID makes a commercial association's governing documents more important than ever, and the primary authority for how the association must be governed.

Most commercial associations' CC&Rs were drafted to comply or mirror the previous statutory scheme, which (as is the case for residential associations currently) is far more restrictive or limiting on association governance. As a result, most commercial associations' CC&Rs currently impose many more requirements on association governance and restrictions on board powers than what is now permitted under the law, as outlined above. Because the CICID does not include many of the disclosure requirements, and other limitations on association or board powers, commercial boards need to be aware that notwithstanding the CICID, their associations' CC&Rs may still require procedures to be taken which are stricter than what is required by law.

What can commercial boards do under these circumstances? They can amend their association's CC&Rs in order to remove the restrictions or requirements on association governance that are no longer found in the Civil Code. The CICID provides greater ability and flexibility for boards to run their commercial associations; however, without amending the association's CC&Rs, many associations will likely not be able to benefit from these significant changes.

Please contact your association's legal counsel or SwedelsonGottlieb to determine your association's options for dealing with the impact of the CICID.



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