

**RESIDENTIAL COMMON
INTEREST DEVELOPMENTS:
AN OVERVIEW**

By

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INTRODUCTION

“One out of every eight Americans now lives in some form of common interest development, and federal projections show that this number will increase to one out of every three Americans ... by the year 2000.” (Dana Young, 1996)¹

Common interest developments (CIDs)[†] as discussed in this paper are residential housing communities — like condominiums, cooperatives, and planned communities — where individuals own their unit and share part-ownership in common property. Deed restrictions, called conditions, covenants, and restrictions (CCRs), define the relationship of the individual units to the common areas and the responsibilities of the homeowners to the community.

For example, in a condominium project, individuals might own the inside of their units. The common property might include the hallways, the outside of the building, and the parking lot. In planned unit development (PUD), individuals own their houses and lots. The common property might include the tennis courts, swimming pool, club house, and parking lots. In some planned communities, the common property includes the roadways inside the subdivision. The CCRs in any of these examples might forbid individual owners parking in certain common areas overnight. In CIDs, homeowner associations (HOAs), which are established in the CCRs, manage the common property and enforce the CCRs.

As California’s population has grown, so has the importance of common interest development. The CID has come to dominate the state’s new residential housing market:

At least 1,000 new common interest developments are created each year in California. In Orange County over 80 percent of all new housing was common interest developments, while about 60 percent were common interest developments in San Diego County and most of the Bay Area. ... Overall, 40 percent of all new ownership housing built in California in the late 1980s was in common interest developments.²

As of October 1997, over 30,000 HOAs were on file with the Secretary of State’s Office.[‡] Half of the HOAs administer developments of less than 50 units. However, 317 HOAs governed developments comprising over 1,000 units.³

Purposes of This Report

In response to the increased number of CIDs in California, the Senate Housing and Land Use Committee held an interim hearing in November 1996.⁴ At the hearing, CID lawyers, accountants, and management companies, as well as homeowners, raised issues concerning CIDs’ legal structure and their management. Across the spectrum of witnesses, one theme emerged: The Legislature should appoint a working group to

[†] The term common interest development was not used in California until adoption of the Davis-Stirling Common Interest Development Act in 1985. (Sproul, Curtis C. Common Interest Community Associations and Their Management Structure, *California Real Property Journal*, 11(4) Fall, 1993.) For common use and legal definitions of CID terms, see Appendix A.

[‡] Appendix B presents the number of HOAs by county in California.

review the Davis-Stirling Common Interest Development Act of 1985 (Davis-Stirling Act).

As a result, the California Senate passed Senate Resolution 10 (Lee & Sher), establishing a workgroup to study and recommend changes to the Davis-Stirling Common Interest Development Act⁵ (Davis-Stirling Act). In addition, Senator Byron Sher requested that the California Research Bureau develop a background paper on CIDs in California. This CRB Report, in response to Senator Sher’s request, serves three purposes:

1. To provide a unified overview of the legal structure, historical trends, and governance of California’s growing CID housing stock.
2. To provide background on CID-related issues that may require legislative attention, either to clarify the current law or deal with perceived policy problems.
3. To provide comparative information on the regulation of CID residential housing in different states regarding licensing professionals that provide services to CIDs and state oversight agencies to deal with homeowner complaints.[†]

Organization

This paper is organized into three main parts. First, it presents an overview of CIDs: briefly describing their history, structure and governing documents. Next, it outlines issues related to CID governance. After describing the homeowner associations (HOAs), it discusses the relations among the HOAs, their agents and the homeowners. Finally, the paper highlights key policy issues, including: the potential need for additional oversight, calls for licensing CID professions, requests for a Homeowner Bill of Rights, and the need for an omnibus bill to clarify and clean-up the Davis-Stirling Act.

[†] Several important CID-related topics are outside the scope of Senator Sher’s request; including, but not limited to:

- issues related to construction defect litigation;
- the legitimacy of claims that CID owners suffer under a burden of “double taxation,” paying both local property taxes and CID assessments; and
- whether CIDs improve or discourage citizen participation in local government and community life.

OVERVIEW

Historical Trends⁶

At the turn of the century in England, Ebenezer Howard developed the idea of the garden city — a planned town combining the best aspects of cities and the country.⁷ Howard’s tremendously influential idea “had two key elements meant to work in tandem: the comprehensive physical planning and political and economic organization of the model community.”⁸ CID innovators in the U.S. built on Britain’s garden city movement and its historical use of CCRs. They adapted the British models to accommodate the American emphasis on private property. Private developers used these urban and suburban land use planning tools to build private residential developments designed to safeguard property values. These new developments also incorporated elements from America’s experience with the success of luxury neighborhoods in Boston and New York City. These developments were:

designed to be separate and shielded from their surroundings. To maintain the private parks, lakes, and other amenities of the subdivisions, developers created provisions for common ownership of the land by all residents and private taxation of the owners. To ensure that the land would not be put to other uses by subsequent owners, developers attached “restrictive covenants” to the deeds.⁹

...By 1928 scores of luxury subdivisions across the country were using deed restrictions ... as their legal architecture. To guarantee enforcement of the covenants, developers were organizing “homeowner associations” so that residents could sue those who violated the rules.¹⁰

The basic elements of the CID structure were now in place.[†] Moreover, when the legal structure finally was tested in court, it survived. In 1938, the New York Supreme Court, in its *Neponsit* ruling, set two new precedents that were followed throughout the country:¹¹

1. The court granted the HOA the legal standing to enforce CCRs.
2. The court ruled that CCRs requiring assessments to pay for property maintenance also obligated subsequent buyers to pay for property maintenance.¹²

Until the 1960s, Most CIDs Were in Luxury Neighborhoods

However, CIDs remained the domain of the affluent well into the second half of this century. In 1962, an Urban Land Institute/Federal Housing Administration study found that only “470 subdivisions were reported to contain common property maintained by some type of home-owners association.”¹³ By 1990, however, CIDs accounted for 11.3% of all U.S. housing stock. The same report estimated the number of community associations had increased to approximately 130,000 nationwide.¹⁴

[†] CID structure is described beginning on page 6.

CIDs have constituted an increasing percentage of California's new residential housing since the 1960s. Responding to changes in the California economy and public housing policy, CIDs then began to provide a majority of new housing in all income levels. In 1993, the "DRE [Department of Real Estate] estimate[d] that 70% of all new housing in California [was] located within a CID."¹⁵

Changes in the Economy and Public Policy Favoring CIDs

Trends in the amount of CID housing reflect many factors:

1. increasing land costs;
2. increasing demand for exclusive communities, for example, retirement communities;
3. increasing demand for affordable housing;
4. decreasing local revenues;
5. changes within the structure of the building industry, including its organization and financing; and
6. the public policies promoted to deal with all of these changes.

The first four factors, increases in land costs, demand for exclusive as well as affordable housing, and decreasing local revenues are familiar to all Californians and will not be explicitly addressed here. How the changes in the building industry and public policy, factors five and six, have favored CIDs is discussed in the remainder of this section.

Corporate Entities Increasingly Dominated the Real Estate Industry

Corporations Began to Build Residential Housing

The first twenty years after the Second World War saw radical changes in the building industry. Large-scale corporate builders came to dominate the real estate industry. These builders standardized the housing stock they built, making housing a mass-produced item.

By 1960, high land prices threatened to either drive middle-class families out of the home ownership markets or shrink the corporate builders' profits. CIDs provided the solution to the problem:

*CID housing became not just a novelty or option, but increasingly the standard form in which the consumer product known as housing is supplied. ... Common-interest developments offered a way to shrink lot sizes, and they allowed builders to satisfy the need felt by home-buyers and public agencies to preserve some ambiance of nature. Using smaller lots and commonly owned open spaces managed by homeowner associations, builders could create low-cost amenities like parks and tennis courts without increasing the size of the overall development.*¹⁶

In the early 1960s, besides increasingly building PUDs, the building industry also began advancing the condominium form of CIDs. The building industry, "searching for ways to market housing with increased densities,"¹⁷ began petitioning Congress to recognize condominiums as a viable, successful housing form. They specifically asked Congress to

grant mortgage insurance to middle-income condominium buyers, as a way of inducing these consumers to invest in condominiums.¹⁸

The move toward corporate builders facilitated the growth in CIDs in another important way. Corporate builders had access to the larger amounts of capital needed to develop the CIDs. “Corporations were attracted by the profit potential of mass-produced housing and were able to finance such projects through the stock market rather than bank loans.”¹⁹ Corporations as different as ITT, Occidental Petroleum, Alcan Aluminum, and Boise-Cascade Corporation all set up subsidiaries to carry out large scale housing construction.²⁰

CID-Related Insurance Increased

In the early 1960s, the Chicago Title and Trust Company began offering title insurance for condominiums.²¹ Chicago Title and Trust also actively promoted the condominium as a form of home ownership with a long and successful lineage.²² As discussed below, the federal government also expanded its mortgage insurance program to cover CID residential housing.

Public Policies Have Promoted CIDs

Public policies, especially at the federal and local levels, have favored the CID form of housing. During the last 70 years, the federal government has encouraged the expansion of CIDs through technical assistance and financing. State legislatures have incorporated real estate and building practices into their codes, ensuring the legality of CID operations. In fact, one stated purpose of the Davis-Stirling Act was to validate existing practices.

For example, developers routinely gave owners in the development the right to exclusively use certain common areas, such as a patio attached to a unit. This was sometimes called an exclusive easement. The developers and owners were surprised to learn that existing California law did not recognize a property interest called an exclusive easement. The Act created this property right. It also changed the definition of condominium making it possible for mobile parks to be converted to common interest developments...²³

Federal Policies

From its beginnings during the 1930s, federal housing policy has actively promoted private home ownership in residential, planned, mass-produced communities:

The Administration seeks to encourage that type of operative builder who looks upon the production of homes as a manufacturing and merchandising process of high social significance and who, preferably, assumes responsibility for the product from the plotting and development of the land to the disposal and completed dwelling units.²⁴

In 1935 the Congress created the Federal Housing Authority (FHA) specifically to make:

*greater amounts of financing available through its mortgage insurance.
...Through its land planning, property and subdivision standards and the use of*

*conditional commitments, FHA policies encouraged large scale housing subdivisions.*²⁵

In 1961 FHA expanded its mortgage insurance to cover condominiums.²⁶ Again in 1963, the FHA published *Planned-Unit Development With a Homes Association* and provided mortgage insurance to this form of CID housing.²⁷

Local Government

In California, local government has primary responsibility for land-use planning decisions. Local land-use regulators, especially since Proposition 13 limited their taxing authority, have preferred CIDs over other types of residential development. Local governments lower their costs by “requiring that streets and other infrastructure be created by the developer and held in private rather than government ownership.”²⁸ As Curtis Sproul, a recognized expert in CIDs, notes:

*Local planners and elected officials became enamored with development plans that avoided adverse fiscal impacts on local governments by transferring the cost directly to the new homes.*²⁹

Local governments have rewritten zoning laws and building codes to accommodate CIDs. For example, they have amended laws requiring minimum lot sizes to include alternatives which calculate the minimum amount of land needed to build subdivisions with a specific number of separate-interest units, and not just minimum lot size per housing unit. Moreover, local governments often require that roads and other “infrastructure designed for *private* maintenance [meet] ... less exacting standards than [they] would require for streets dedicated over to public ownership.”³⁰

The economic stagnation of the late 70s, as well as reduced federal transfers to local governments, also resulted in local land-use regulators pushing CID housing as a way to provide services and infrastructure amenities to new development.

*For example, the Bay Area city of Fremont ... once provided a recreation center and swimming pool in each neighborhood. After the passage in 1977 of Prop 13 ... Fremont began to require that a common interest homeowners association provide these amenities in new developments.*³¹

The Basic Structure of CIDs

The Davis-Stirling Common Interest Development Act defines a “common interest development” as any of the following:³²

- ***a community apartment project*** (a development in which an undivided interest in land is coupled with the right to exclusive occupancy of an apartment),
- ***a condominium project*** (a project in which an undivided interest in a *portion* of common property is coupled with a separate interest in space called a unit),

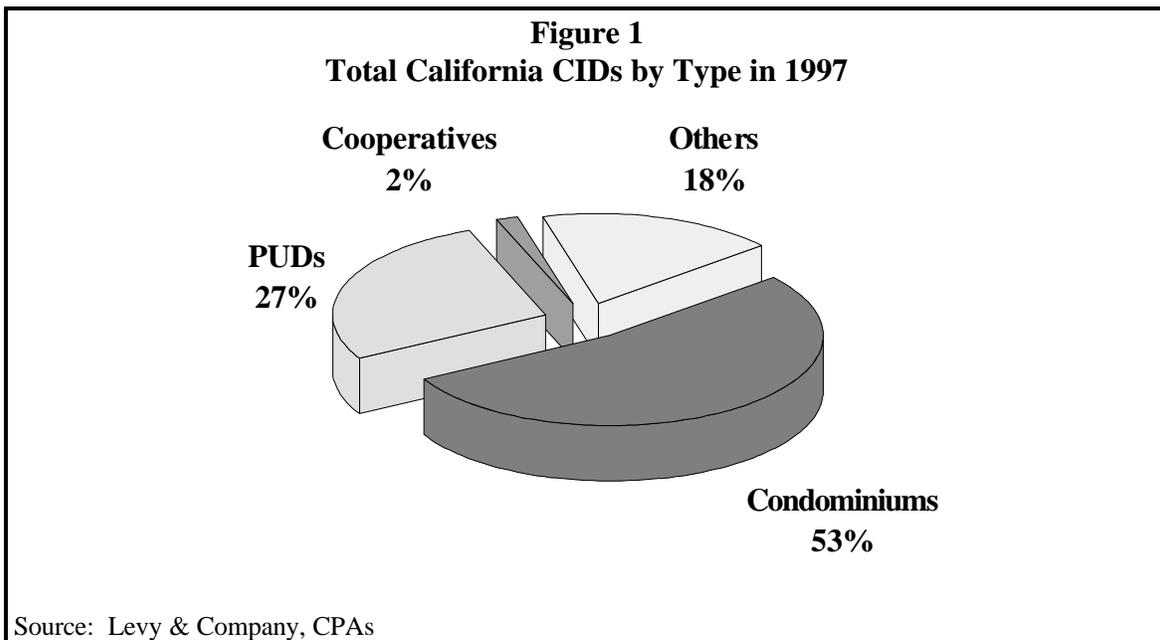
- ***a stock cooperative*** (a limited equity housing cooperative which is a stock cooperative and meets the criteria of Section 33007.5 of the Health and Safety Code), or
- ***a planned unit development*** (a development — other than a community apartment project, a condominium project, or a stock cooperative – having either a common area owned either by the association or in common by the owners or an association with the power to levy assessment and enforce deed restrictions or both).

CIDs Share Three Common Elements:

This paper focuses on residential condominiums and PUDs. These CIDs all include three basic elements:

1. Ownership includes both a separate ownership interest and an undivided interest in common with some or all of the other owners.
2. Covenants, conditions, and restrictions (CCRs) that run with the land. “Running with the land” means that these terms and conditions are binding on subsequent owners of the CID units.
3. Homeowner associations (HOA) administer common property and govern community life in line with the CCRs, declarations, and bylaws.

As shown in Figure 1, over half of California’s CIDs are classified as condominiums. PUDs make up another 27 percent of the state’s CIDs with the balance being cooperatives and other forms of CIDs.



The CID Structure Allows for Great Variation

On first encounter, CIDs seem straightforward:

- ownership of a private residence,
- membership in a HOA that cares for the common property,
- CCRs to ensure that land values and residential character remain stable, and
- private property law guaranteeing ownership rights and responsibilities.

But this seemingly simple structure belies the diversity of CIDs. While CIDs can be simple and straightforward, their basic elements can be combined in ways that are complex. As a result, the structure of CIDs can be confusing.

For example, consider profiles of CID A and CID B in Table 1 below. Each profile contains the elements of a CID. Clearly, however, managing CID A would be easier than managing CID B. Moreover, CID B, while complicated, is not as complicated as some CID communities. For example, some CIDs have complex rules concerning voting or board representation.

<p style="text-align: center;">Table 1 A Comparison of Two Possible CIDs</p>		
CID ELEMENT	CID A	CID B
Type of CID	Condominium	Planned Unit Development
Number of Buildings	1 building	105 buildings (includes all units plus commonly owned buildings)
Number of Separate Units	6 units	100 units
Amenities	None	Swimming pool, Tennis courts, Private parks, Health club
Services	City garbage dumpster Gardener	Garbage, Security gate and patrol, Street maintenance
Common property	Halls of the one building, outside of building, 1 acre lot on which the building sits	Except for lots for the individual homes (approximately .25 acres each), all the property in the 75 acre development, all amenities, etc.
HOA board structure	Each unit has one member on the board of the HOA; majority rules on all decisions	Eight board members, elected from among 100 homeowners, make all HOA decisions, unless state law requires full membership vote
Management	Board acts as on-site management company	Contracts with special CID on-site manager, accounting firm, lawyer, and various maintenance companies

As Table 1 implies, CIDs vary considerably in their size and complexity. Table 2 shows the number of CIDs in California, grouped by the number of separate interests included in the CID. Over 12,000 CIDs have 25 or fewer separate interests. These 12,000 CIDs make up almost fifty percent of the CIDs in California. At the other end of the size spectrum, over 600 CIDs are made up of more than 500 separate interests.

Table 2
California Residential CIDs By Size
1997

Size (Number of Separate Interests)	Number of CIDs	Percent*
2-25	12,384	50 %
26-50	3,886	16 %
51-100	3,594	14 %
101-150	1,896	8 %
151-325	2,176	9 %
326-500	439	2 %
501-1000	298	1 %
1001+	317	1 %
TOTAL	24,990	100 %

* Detail may not add due to independent rounding
Source: Levy & Company, CPAs

Tiered Associations and Multiple Governance Structures

The basic CID form lends itself to innovation. Among the actual developments that have been established are CIDs with tiered associations and other types of multiple governance structures. These types of developments often mix the residential CIDs with commercial common interest developments. These developments are outside the scope of this paper, so here we only note their existence. Also outside of the scope of this paper are timeshare properties.

The Law Fails to Acknowledge the Wide Variety in CIDs

One criticism of the state’s statutory regulation of CIDs is its “one size fits all structure.” Under the Davis-Stirling Act, all CIDs must comply with the same notification and other regulations. However, this can be problematic:

The reach of the Act extends from two-unit condominiums to master planned communities with thousands of units, and covers clustered townhomes, stacked condominiums and detached residences and developments with substantial common area improvements and developments with minimal improvements. Unfortunately, the Act ... fails to recognize the significant distinctions in size and type.³³

Regardless of the size of the CID or whether a professional staff exists, the HOA must prepare the same information. California Civil Code §1365 lists in detail the financial information the HOA must provide to all its members on an annual basis. The HOA also must provide a summary of the current alternative dispute regulations required by Civil Code §1354(i).

During the testimony before the Senate Housing and Land Use Committee, a number of witnesses noted the “severe diseconomies of scale suffered by smaller CIDs in properly managing their affairs.”³⁴ As one witness pointed out:

*Some condominium developments have three units with only sidewalks as common area. Others have 3000 units with extensive recreational facilities. Legislation often treats these projects as if they have the same problems, and they do not. For example, imposing the same financial reporting requirements on the 3000 unit condominium and the three unit condominium may unnecessarily increase the costs to the owners of the three unit condominium.*³⁵

The law provides only one place where a characteristic specific to the individual CID forms the criteria for compliance: Civil Code §1365(b) requires a review of the financial statement only if the gross income to the HOA exceeds \$75,000 for the fiscal year.

CIDs’ Legal Structure

CIDs’ legal structure frequently confuses homeowners. Is a CID a real estate development corporation or a group of private homes? The answer is yes to both questions. Moreover, the HOA also seems a hybrid organization, “an organization that can be characterized paradoxically as either an involuntary association or a private government.”³⁶

To fully understand their legal structure, one must consider at least the following four major areas of California law:[†]

- the statutory authority for CCRs (Civil Code §§1460 *et seq.*),
- the Subdivided Lands Act (California Business and Professions Code §§ 11000-11200),
- the Davis-Stirling Common Interest Development Act, as amended (Civil Code §§1350 *et seq.*), and
- the Non-Profit Mutual Benefit Corporations Law (California Corporations Code §§7110-8910).

[†] Other areas of law, for example, California Civil Code §§1133 *et seq.* (Transfer of property by foreclosure or sale), also apply to CIDs. However, they are not central to understanding CIDs as a type of residential housing. Therefore, they are not included in this brief. For a short overview of these laws, see Michael Garcia, Common Interest Developments: An Overview of Their Statutory Frameworks. Hastings College of Law, Public Law Research Institute, Report PLRI-XX.

CCRs

In 1872, the California Legislature enacted the existing law authorizing CCRs. The law assumes that real estate transfers are inherently contractual transactions. Therefore, parties may include binding obligations within the contract. The CCRs for CIDs are *equitable servitudes*.[†] Therefore, any homeowner in the CID may sue for their enforcement. In addition, a homeowner may sue the HOA for not enforcing the CCRs. Finally, the HOA may also sue a homeowner to enforce the CCRs.

In 1994, the Legislature amended the Davis-Stirling Act to require HOAs and owners to submit their disagreements related to CCRs to alternative dispute resolution before filing a civil court action.³⁷

State Must Approve CIDs Offered for Sale to Public

In 1965, the jurisdiction of the Department of the Real Estate (DRE) under the Subdivided Land Act expanded to regulate PUDs. The DRE's purview expanded again in 1969 "to include sales of lots in large rural land projects."³⁸ Under the Subdivided Land Act, developers must obtain a *public report*, which legally describes the CID in detail, before selling separate interests in the CID.[‡]

Davis-Stirling Common Interest Development Act of 1985, as amended

The original intent of the Davis-Stirling Act was "merely to collect and organize all existing common interest statutes in a single code."³⁹ Previously, the law for condominiums was part of the California Civil Code, while all "other forms of CIDs were variations of subdivisions ... under the Business and Professions Code."⁴⁰ Moreover, state law previously advantaged some forms of CIDs relative to others. For example,

*while the covenants, conditions, and restrictions (CC&Rs) created by a condominium plan were enforced by statute as equitable servitudes, the CC&Rs for other common interest developments were not.*⁴¹

Therefore, CCRs in CIDs other than condominiums were enforceable only if the following three conditions were shown to apply:⁴²

1. the covenant "must increase the use or value of the land benefited, or it must decrease the use or value of the land burdened,"⁴³
2. the parties must intend the covenant to continue even if the property changes ownership, and

[†] Black's Law Dictionary defines *equitable servitudes* as "[a] restriction on the use of land enforceable in court of equity. It is broader than a covenant running with the land because it is an interest in land." Black's Law Dictionary, 5th ed., St. Paul: West Pub. Co., 1979, p. 484

[‡] See discussion of the public report below, 17

3. there must be a “relationship between the parties out of which there arises some mutuality of interest.”⁴⁴

Under the Davis-Stirling Act, all CCRs for all types of CIDs are recorded and enforceable as equitable servitudes. As equitable servitudes, the CCRs are presumed to reflect a mutual relationship among the parties and, therefore, enforcement is easier — at least from a legal standpoint. In fact, “any owner subject to the [CCRs], as well as the community association, has a right to enforce the provisions against other affected owners.”⁴⁵

Additionally, prior law permitted condominiums to have management arrangements other than HOAs. The Davis-Stirling Act required:

*A common interest development shall be managed by an association ... [which] may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in Section 7140 ... Section 383 of the Code of Civil Procedures and the powers granted to the association in this title.*⁴⁶

The Corporation Code HOA governance

Section 1363 of the Davis-Stirling Act permits HOAs to be either incorporated or unincorporated. Regardless of whether an HOA is incorporated, the law states that the Nonprofit Mutual Benefit Corporations law applies to its governance. A nonprofit mutual benefit corporation is a nonprofit organization that exists to facilitate a common activity or interest and “permits a distribution of its assets to its members upon dissolution.”⁴⁷

However, amendments to the original Davis-Stirling Act relating to association governance “have shifted community associations away from the [original] corporate model toward a hybrid that draws upon legal concepts developed for public law entities.”⁴⁸ For example, to ensure homeowners access to board discussions of HOA business, the Legislature passed the Common Interest Development Open Meeting Act in 1995. This law parallels the Brown Act that governs the public’s access to state and local government meetings. The law requires notice and written minutes whenever “any congregation of a majority of the members of the board ... [occurs and they] hear, discuss, or deliberate upon any item of business scheduled to be heard by the board.”⁴⁹

Amendments like the Common Interest Development Open Meeting Act have been controversial. On the one hand, critics argue that the California Legislature is attempting to micro-manage private contractual relations. On the other hand, proponents of the changes counter:

“Micro-manage” is an entirely inappropriate phrase to describe the statutes which the Legislature had adopted for regulations of CID associations. ... The statutes deal largely with formalization and preservation of important association member rights, rights which are absolutely essential to the functioning of a democratic government-like entity. If these statutes have become more elaborate over the past year, it is because associations have abundantly demonstrated an

*unwillingness to comply voluntarily with ethical principles or more-simply-stated statutes.*⁵⁰

Governing Instruments for CIDs

Under the Davis-Stirling Act, a recorded declaration setting forth the name of the HOA and the CCRs is the only required governance structure. In practice, the documents that provide the structure for CIDs governance usually include:

- the declaration,
- the articles of incorporation for the HOA, and
- the bylaws, rules, regulations and policies for the development.

Once a developer has sold 75% of the separate interests in a CID, the members (that is, separate interest owners) of the HOA can legally change any or all of these governing documents to reflect changes in members' needs. However, the declarations of many CIDs contain conditions that determine the percentage of the HOA votes needed for a specific type of change. In many cases, these conditions require super-majorities, and under most conditions, the law upholds the CCRs with respect to the percentage of votes required to amend governing documents.

Declarations of the Covenants, Conditions, and Restrictions

Declarations

The declaration, commonly known as the CCRs, provides the basic constitution for the CIDs. Developers record declarations at the local county recorder's office when they establish CIDs. The declaration "defines the ownership interests, and sets parameters for use, construction, and authority of the owners, the developer, and the association."⁵¹ The declaration also defines the voting structure of association members. For example, during the initial stages of the development, developers often enjoy three votes for each separate interest they still own. For each separate interest owned by a homeowner, however, the separate interest is accorded only one vote. This type of voting scheme protects builders while they are "still building or have interests in units in the development."⁵² The declaration may also provide for lender voting rights. These "conditions" state:

*certain provisions may not be changed or eliminated without lender consent. These clauses help the developer get the development "lender certified" so that each purchaser in the development does not have to go through a process where the development itself is evaluated for conflict with lender regulations.*⁵³

These lender voting rights do more than provide convenience for home buyers by eliminating multiple lender certifications. Like the three-to-one voting ratio for developers, lender voting rights protect the investment of the lender to the developer. Moreover, they also provide a marketing device for the lender's loans to buyers of individual units.

Amending the Declarations

An original declaration may need amending to ensure that the CID remains in compliance with current laws or to increase the efficacy of the association. The declaration can become dated. Building standards, often explicitly specified in the declaration, can change over time. Court cases may outlaw certain types of conditions as incompatible with constitutional law. For example, in 1948 the Supreme Court ruled that racially restrictive CCRs were unenforceable. When the declaration no longer reflects current law, it should be updated.

The original declaration also may prove to contain ambiguous or inapplicable provisions. These provisions can lead to tensions or even litigation among the homeowners or between an owner and the HOA. For example, the CCRs might prohibit trucks from parking in the parking lots. Does this mean that if an owner buys a luxury pick-up truck as a second vehicle, the owner must park the truck off site? Or, is this CCR actually directed at commercial dump trucks? Some of the owners might assert that the declaration does, and should, exclude both vehicles from parking in the development. Other owners might find the exclusion of the luxury truck bureaucratic nit-picking. What should the HOA do? It could be sued for excluding the luxury truck as unreasonable (this has happened) or it could be sued for not excluding the truck. HOAs should clean up ambiguous, ill-considered CCRs contained in the declaration when they promote conflicts and potential litigation.

Under the Davis-Stirling Act, the owners of a CID may amend the declaration pursuant to the governing documents or by the approval of owners of more than 50 percent of the votes in the HOA, unless the declaration explicitly states that it is not amendable.⁵⁴ The law also provides that once a developer no longer has a business interest in the CID, the board, with the approval of a majority of owners, may delete provisions in the declaration which:

*provide for access by the owner over the common area for purposes of (a) completion of construction of the development, and (b) the erection, construction, or maintenance of structures or other facilities designed to facilitate the completion of construction or marketing of separate interests.*⁵⁵

While amending the declaration is permitted in statute, in practice, changing it each time there is a law change might not be desirable. Changing the declaration means refileing the controlling documents with the county clerk. The process often can be expensive, requiring a legal review, homeowner election, and then refileing.

Expiration of Declarations

In the early part of this century, the “average duration of deed restrictions was 33 years compared to 10 years” in earlier developments.⁵⁶ Today, most documents written continue the CIDs into perpetuity. However, there currently are a number of CIDs, especially condominiums, whose governing documents contain expiration dates. Some of these CIDs have structures that explicitly state the property owners may vote to extend the governing documents. Others, however, are silent on their extension. The Davis-

Stirling Act authorizes a process for extending the expiration dates of current CID governing documents. Section 1357 of the Civil Code states that a declaration

may be extended by the approval of owners having more than 50 percent of the votes in the association or any greater percentage specified in the declaration for an amendment thereto. ... No single extension of the terms of the declaration ... shall exceed the initial term of the declaration or 20 years, whichever is less. However, more than one extension can occur.

Some interests like the California Association of Community Managers, Inc. advocate automatically extending the expiration date of covenants. They also have proposed:

A super majority (i.e., 75% of the voting membership) should also be required to dissolve the association. With California's maturing associations, chaos could easily reign without the associations maintaining the common areas and carrying on with business as usual. I am sure the lenders and insurance providers would appreciate the necessity of this revision to the Act.⁵⁷

The question of how to maintain an aging CID's stability in the face of expiring CCRs is important. However, before the Legislature considers amending the Davis-Stirling Act to automatically extend governing documents, it should consider the potential consequences of interceding in a private contract. The need for considered study is especially compelling to some given the premise that CIDs are private property arrangements.⁵⁸

Articles of Incorporation

While the law does not require the HOA to be an incorporated nonprofit mutual benefit corporation, incorporation provides benefits to the HOA and its board of directors. Developers file Articles of Incorporation with the Secretary of State. The filing information must include a statement that:

- 1) *identifies the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act,*
- 2) *states the business or corporate office of the association [and its address], and*
- 3) *states the name and address of the association's managing agent ... if any.⁵⁹*

The primary purpose of the HOA is “*to protect and maintain the value of the property.*”⁶⁰ (Emphasis in the original.)

Bylaws, Rules, Regulations and Policies

As in any association, the bylaws outline how the association will conduct itself. They build on the declaration, and it is important that they not conflict with it. Rules, regulations, and policies are “generally aimed at simplifying and clarifying responsibilities

and expectations placed on the residents.”⁶¹ For example, such rules might define parking policies for residents and visitors, how to reserve the club house, type and number of pets, pool or spa hours, etc. Generally, the board may adopt or update the rules, regulations, and policies “without a vote of the entire membership as long as the change is legal, reflects the CC&Rs and does not exceed the authority of the board” set out in the declaration and bylaws.⁶²

The White Paper Report

California’s Subdivided Lands Law (California Business and Professions Code §§11000 *et seq.*) requires developers to obtain from DRE a subdivision public report prior to offering units in CIDs for sale. Moreover, the developers must offer this report, commonly referred to as the “White Paper Report,” to all prospective buyers. To obtain a White Paper Report, the developer’s application to DRE must include, but is not limited to, the following information and documentation:⁶³

- Proof the local land use agency has approved and filed the development’s final subdivision map.
- Proof the developer has recorded the declaration of the covenant, conditions, and restrictions.
- A licensed title company preliminary report issued after the filing of the final map and recording of the development’s declaration.
- Examples of all proposed marketing, financing, and conveyance instruments.
- The financial information and guarantees needed to ensure completion of all improvements the developer intends to included in the offering.
- Proposed or existing governing instruments for the HOA.
- Copies of all contracts or proposed contracts obligating the HOA.
- Detailed financial information on the proposed budget for the HOA.

CIDs Mixed Character

The growth of the CIDs reflects the advantages this type of development offers to developers, homeowners, and local governments. One advantage that all of these groups enjoy is the protection of property values. CIDs, however, are not without problems. The strengths and weaknesses of CIDs are inherent in their mixed characters. They marry private home ownership and joint stock companies.

Advantages

The building industry has found CIDs profitable. Developers exploit housing market niches by building “boutique CIDs, ‘single interest neighborhoods,’ designed just for singles, golfers, ... or other specific population segments.”⁶⁴ Developers control the

appearance of the community even after they have begun to sell individual units, helping to attract more buyers to the development.

Home buyers with various income levels and lifestyles also find CIDs attractive. First-time home buyers see condominiums as a way of getting a foothold in an increasingly expensive housing market. At the other end of the market, some home buyers see owning a home in an exclusive CID as a status symbol.⁶⁵ Home buyers seeking amenities like golf courses, tennis courts or senior-only communities have flocked to PUDs. Still other home buyers find the idea of “carefree” home ownership appealing.

CIDs also enjoy strong support from all levels of government. Federal mortgage insurance has favored CIDs for half a century. State governments promoting rational planning have passed laws facilitating their legal structure. Cash strapped local governments prefer developers use CIDs over other forms of subdivisions. CIDs provide and maintain the infrastructure needed for economic growth without using municipal revenues.

Disadvantages

In spite of these advantages, CIDs do have drawbacks. CIDs, especially condominiums, can suffer from a lack of adequate financial planning. Maintenance of commonly owned property might be under-funded. Original assessments, determined by the developer, can be set to attract buyers rather than reflecting actual costs. HOAs then lack the money necessary to provide promised services or needed upkeep. When individual homeowners fail to pay assessments, the HOA must either cut services, defer maintenance, or increase the assessments of other homeowners. In addition, HOAs also incur the costs associated with trying to collect delinquent assessments.

Many new CID buyers promised “carefree” living in the CID promotional materials fail to realize the responsibilities of CID home ownership. They are shocked to find that the board or management company does not maintain their separate interest property. They believe that the board should settle all neighbor disputes, even when the CCRs do not grant the board any discretion to do so.

Critics state that CIDs are also undemocratic. Governing boards often are inept or despotic or both. CCRs can build perpetual privilege into the CID, requiring some owners to subsidize others. Finally, as McKenzie notes:

Legal fictions to the contrary notwithstanding, CID membership is not voluntary for many residents who are there because of price, location, or limited options.⁶⁶

While noting the benefits of CIDs, James L. Winokur questions the “growing predominance of progressively more intrusive promissory servitude regimes [CCRs] in many residential markets.”⁶⁷ Specifically, Winokur, is especially concerned with the potential of HOA boards to become regulators of other personal activities:

As the structuring of servitude-regimes moves progressively toward vesting more discretionary power in the governing associations, an individual resident's influence over the restrictions to which he is subjected is particularly shaky where the association actively discourages member participation in association deliberations, or engages in harassment of its members ... particularly if associations remain immune from constitutional constraints [that] protect fundamental civil rights.⁶⁸

Other critics argue that the CIDs are changing the political landscape for the worse. They argue that isolated communities of the "haves" increasingly hide in CIDs, often behind gates.⁶⁹ These affluent communities provide not only amenities like tennis courts, but also better public services like garbage collection and security. Members of the CID communities then vote down taxes needed by local governments to provide services to the broader community.

GOVERNANCE

Homeowner Associations

The HOA enjoys the powers of a nonprofit mutual benefit corporation. Both the Davis-Stirling Act and the DRE regulations tend to follow the Nonprofit Mutual Benefit Cooperation Law when they address issues of internal HOA governance.⁷⁰ However, a number of commentators on CIDs, both proponents and critics, have noted that HOAs also are similar to both municipal governments and business enterprises.[†] The hybrid character of HOAs can lead to misunderstandings between individual homeowners and their board of directors.

As befuddling as CIDs and their HOAs may be, they are a large portion of California's residential housing landscape. This section of the paper sets out some of the facets of CID governance. Specifically, it presents:

- the general powers of the board of directors, including their fiduciary and other responsibilities;
- the composition and election of the board members; and
- the types of litigation in which CIDs and their boards are involved.

Board of Directors: Powers and Duties

The board of directors (board) of a CID is a powerful body, endowed with the legal authority to manage the shared property and enforce the CCRs. The board, as the directors of the HOA, has the power to conduct the following actions:⁷¹

- adopt, amend, and repeal bylaws,
- control the HOA's assets,
- hire, compensate, and fire employees and contractors,
- levy assessments,
- assume obligations and enter into contracts, and
- delegate management activities.⁷²

In addition, the board must prepare a budget, conduct meetings, and run elections.

[†] For a range of views on these issues, see Barton, Stephen E. and Silverman, Carol J. (Eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press. For an excellent legal discussion of the three models and their application to CIDs, see especially the chapter by Curtis C. Sproul, Esq., "The Many Faces of Community Associations under California Law."

Fiduciary Responsibility Under the Law

Among the most important fiduciary responsibilities of the board are:

- developing the HOA budget,
- setting and collecting assessments,
- insuring the HOA remains in compliance with all tax laws,
- contracting for insurance policies, and
- investing the HOA's funds.

Budget Responsibilities

The Davis-Stirling Act requires that the board develop and distribute to the owners a budget that includes all of the following information:

1. Estimated revenue and expenses on an accrual basis, and
2. Summary of the HOA's reserve funds, containing:
 - a) a current estimate of the replacement cost and remaining useful life of each major component of HOA common property,
 - b) an estimate of the amount of cash necessary to repair, replace, restore or maintain the major components of HOA common property,
 - c) an estimate of the accumulated cash reserves,
 - d) a statement with respect to anticipated future levies, and
 - e) an explanation of the board's method for estimating cost and revenues to defray the cost of repairing, replacing, maintaining or restoring components of HOA property.

Reserve Funds

The Davis-Stirling Act requires CIDs to conduct reserve studies every three years. The studies must estimate the replacement/repair costs for each component of common property, and calculate each homeowner's annual contribution to the reserve fund. They provide the information necessary to comply with the budget requirements.

Board Liability

In assessing board liability, the California courts generally have applied the standards outlined in the California Nonprofit Mutual Benefit Corporation Law, Section 7231. This section of the law requires that each board member act;

in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would under similar circumstances.

...a director shall be entitled to rely on information, opinions, reports or statements, including financial statements...prepared or presented by [other board members, subcommittees, or professionals].⁷³

Under the law, board members who apply this standard of care are immune from liability for failing to discharge their duties as board members. As interpreted by the courts, this has meant that boards must show:

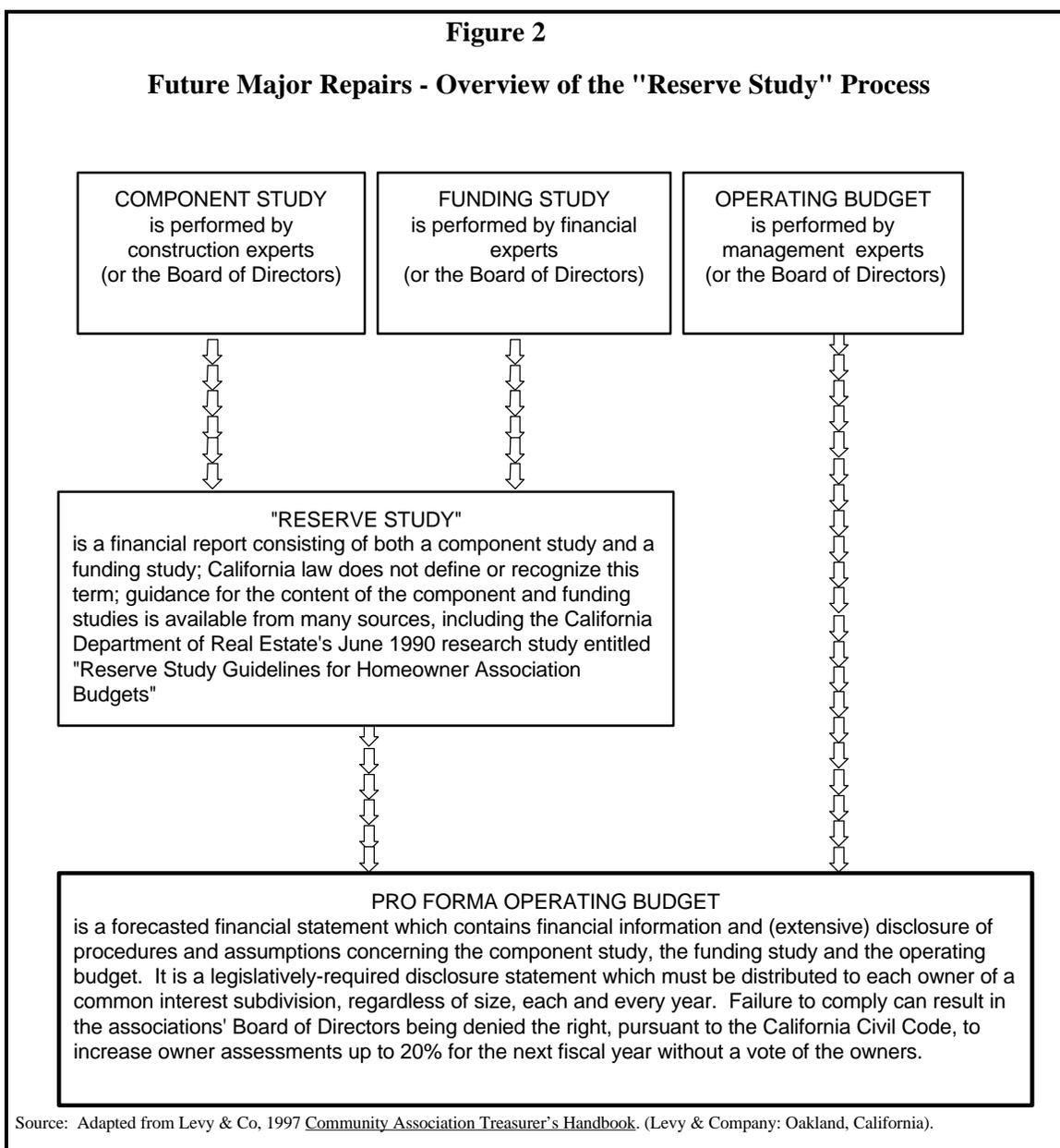
- They have acted in good faith.
- They have not made decisions that “benefit their own interest at the expense of the association and its members.”⁷⁴
- They have not acted arbitrarily or in violation of their own procedures set out in the governing documents or subsequently adopted policies and procedures.

In 1986, however, a court case led to the Legislature amending the Davis-Stirling Act. The case, *Francis T. v. Village Green Owners Association*,⁷⁵

involved a resident of the ... development who had applied to the Association for approval to install a light in the entrance way to her unit. The application was denied on aesthetic grounds and the plaintiff was subsequently the victim of an assault which she claimed would not have occurred had the entrance way been better illuminated.⁷⁶

After the *Francis T.* decision, HOAs encountered problems acquiring liability insurance. As a result, the Legislature established tort immunity for board members in 1988. It expanded the immunity in 1992. Today Section 1365.7 of the Davis-Stirling Act provides that board members of exclusively residential communities are not personally liable if the board action meet the standards of care outlined above and:

1. The act or omission was not willful, wanton, or grossly negligent.
2. The HOA maintains a specified minimum of insurance coverage for general liability of the HOA and coverage for negligent acts or omissions of the board and its officers.[†]



[†] The Legislature has also granted civil liability protection of owners of separate interests in a CIDs that “have common areas owned in tenancy-in-common if the association carries a certain level of prescribed insurance that covers the cause of action.” California Civil Code §1365.9

Components of the Reserve Studies

As Figure 2 shows, the reserve study has three parts:

- a component study,
- a funding study, and
- a final reserve study.

Accountants suggest this tri-part system to overcome financial problems that California CIDs have been facing. Future year projections can lack an analytic basis. For example, the estimated costs of replacing or repairing common facilities are seldom based on estimates from contractors for specific work. Companies developing the estimates instead rely unduly on Department of Real Estate estimates of both replacement costs and component life-span without adjustment for local market and/or climate conditions. By separating out the study of components, the board can work with contractors and other experts to adjust for actual conditions. A separate funding study also allows the board to view alternative ways of paying for replacement or repair. Moreover, critics charge that reserve studies seldom consider the homeowner turnover rates when developing estimates. As a result, they often omit estimates of income loss due to foreclosures, nor do they view their reserve funding situation the way a lender would. As a result, in spite of the reserve studies, reserve funds can fail to cover the actual costs of facility replacement and repairs.

An HOA budget, like any other budget, can fail to reflect the actual expenses the HOA will incur in the coming year. It also can reflect incorrect revenue projections. An inadequate HOA budget can result in a shortfall in the operation budget, an under-capitalized reserve fund, or both. Budgets can be inadequate for a number of reasons. Table 3 presents some, but not all, of the common reasons that HOAs underestimate budget expenses.

When the budget is inadequate, the board might need to levy a special assessment to deal with operational or predictable maintenance and replacement costs. Special assessments can present hardships to owners. They can be especially problematic, because unlike owners in non-CID housing, the individual owners cannot substitute “sweat equity” for their share of the costs. Nor can they choose to delay an expense the board incurs. Owners unable to meet special assessments face fines and liens on their properties and could potentially lose their property.

The budgeting process could also result in over-capitalized accounts. In that case, today’s owners are over-funding future repairs, repairs that will occur after they have left the CID.

Table 3 Sources of Inadequate Budget Estimates	
SOURCE	EXAMPLE
omitting expense categories	omitting the cost of required flood insurance
understating the quantities of physical expenses	inadvertently counting 20 windows in need of replacement, instead of the actual 35
underestimating the fees to ensure self financing of amenities	green fees fail to recoup the costs of maintaining the golf course
overestimating the useful lives of equipment, buildings, etc.	assuming that the roofing on the condominium will last 20 years, when its useful life is 15 years
underestimating the costs of replacing equipment, buildings, etc.	using a dated pricing list

Review of Financial Statement

Section 1365(b) of the Davis-Stirling Act requires that the board of an association whose gross income exceeds \$75,000 in a fiscal year must obtain a review of the association's financial statement. A California-licensed certified public accountant (CPA) must conduct the review using generally accepted accounting principles (GAAP).

*A review (as opposed to an audit) is the lowest acceptable level of CPA services to be provided to an association whose gross receipts for the fiscal year exceed \$75,000. A CPA **MUST** be independent with respect to an Association in order to review the financial statements.⁷⁷*

However, some critics note that the law does not define the term financial review.

Board of Directors: Composition and Election

Under the Non Profit Mutual Benefit Laws the board must have at least the following officers:

- a chairperson or a president or both,
- a secretary, and
- a chief financial officer.⁷⁸

Directors may hold terms of up to four years or less if stated in the bylaws. The law is silent on exactly how elections of HOA board members must run. In most CIDs the governing documents set out the election process. A number of critics have suggested

that the Legislature should amend the Davis-Stirling Act so that requirements paralleling California's election code would govern HOA elections.

Participation Usually Voluntary

Members of CID boards do not receive compensation. The time commitment can be substantial. The job can seem thankless. Board members seldom receive the support of other HOA members. Instead, boards report they only hear from owners when the owners are unhappy.⁷⁹ HOA member apathy, or outright hostility, has at least two important consequences for board composition:

1. board positions go unfilled, and
2. board members can lack important skills.

The results for the HOA can be significant:

... [board members] unsophisticated in financial planning and business operations and sometimes insensitive to the ethical issues [can compromise association performance.]⁸⁰

In addition, boards can become totally reliant on paid managers, lawyers, and other professionals, potentially at the expense of the HOAs financial health.

Litigation Involving CIDs has Centered on Three Themes

The growth in CID residential housing has inspired increased litigation. For example, one study found that in 1986, five percent of all HOAs had been sued in the prior year.⁸¹ Overall, three types of issues account for the majority of CID-related litigation:

- construction defects,
- HOAs enforcing governing documents, and
- HOAs attempting to collect assessments from individual owners.

Construction Defect Litigation

The issue of construction defect litigation encompasses the entire scope of building — commercial and residential. However, the Davis-Stirling Act does address this problem as it relates to CIDs. Specifically, California Civil Code §1375 sets out the following procedure with which a HOA must comply before it files a suit claiming defects in the design or construction of the CID:

- Provide written notice to the builder including a preliminary list of defects, a summary of the results of any survey of HOA members assessing the nature and extent of the defects, and a summary of any testing conducted to determine the nature and extent of the defects;

- Having provided notice to the builder, begin a 90 day period “during which the HOA and the builder either attempt to settle the dispute or agree to submit it to alternative dispute resolution;”
- Agree in writing to toll all statutory and contractual limitations on actions against all potentially responsible parties for 150 days, unless the builder gives written notice to the contrary;
- Meet at the builder’s request, if the builder requests a meeting within 25 days of the HOA delivering its original written notice.
- Make available for inspection and testing any area that the HOA had inspected or tested prior to sending the builder written notice of a claim;
- Assuming the builder submits to the HOA a written settlement offer in a timely manner, the board must meet with builder within 10 days of the offer;
- If the board rejects the settlement offer, it must hold an open meeting of all HOA members at least 15 days before filing an action for damages to discuss the issues; and
- Provide HOA members with written notice of the meeting including the agenda, options available to the CID, a copy of the proposed settlement; and other relevant documents.

Delinquent Assessment

As Sherman and Barton note,

The ongoing quality of maintenance, services, and resale values are affected by the willingness and ability of all to pay dues and needed special assessments ... When a substantial minority does not pay, either the other members of the association must come up with the needed money or all properties suffer ... If enough owners are delinquent, this can affect the resale price of other units.⁸²

At last year’s Senate Housing interim hearing on CIDs, one witness testified that in her 607 home CID, the current outstanding delinquent assessments equaled approximately \$40,000.⁸³ In the fall of 1986, 20 percent of the Californian HOAs reported that “five percent or more of the assessments [were] at least three months overdue and [10 percent] reported 10 percent or more ... overdue.”⁸⁴ Often overdue assessments indicate general financial difficulties. Owner’s mortgage payments also are in arrears. When the mortgage company forecloses, the HOA receives outstanding assessments only after first and second mortgages are paid.

Disputes Related to Assessments

The Davis-Stirling Act permits a unit owner to use alternative dispute resolution to contest HOA assessments if the owner:

- Pays all outstanding assessments, fees, etc.,
- Notifies the HOA in writing that he or she is paying the assessment under protest, and
- Sends the notice by certified mail within 30 days of receiving the HOA's notice of delinquent assessment.

Liens

The Davis-Stirling Act permits the HOA to place a lien on an owners separate interest to collect delinquent assessments and associated costs only after the HOA notifies the owners. In 1997, a US District Court in San Diego found that “homeowners associations must comply with the federal Fair Debt Collection Practices Act.”⁸⁵ This ruling potentially has far reaching consequences for homeowners associations’ collection practices and contracts.

Relationship Between HOA Boards and Their Agents

Developers

Developers build CIDs. From the time they acquire the property, develop and file the declaration, and apply to the DRE for a public report until they have built, marketed, and sold the separate interests, the CID is their domain. For example, the governing documents usually grant the developers three votes for each separate interest they own. Other owners are granted only one vote for each separate interest. This 3-to-1 voting ratio continues until 75% of the separate units are sold.⁸⁶ The DRE’s regulation permits these developer memberships and

*establishes time limitations after which the developer memberships must be converted to regular memberships and forever cease to exist.*⁸⁷

The scope of this paper excludes a discussion of the problems that arise when developers build substandard product, fail to complete amenities and other common properties, or misappropriate funds from the HOA accounts. These are important issues. The Legislature might want to consider authorizing research for the following purposes:

- to determine the extent of these problems,
- to determine if these problems are specific only to CID-related development, and, if so,
- to propose targeted statutory controls to reduce CID-related problems.

Management Companies

The majority of California’s CIDs have some professional management services. A 1995 survey found that 1,264 out of 1,447 CIDs or approximately 85% had professional management. (See Table 4.) The Davis-Stirling Act requires that any managing agent provide the board of the CID a written disclosure statement.⁸⁸ The statement provides information that helps the board assess any potential conflicts of interest, and includes the

education and training of the managing agent. The law also requires that managing agents keep all CID funds in California accounts insured by the federal government.⁸⁹

Table 4 Management of California CIDs		
Management Type	Number of HOAs	Units
Board of Directors only	173	23,549
On-site manager	68	38,774
Off-site management co.	1,188	149,439
On and off site management	38	24,019
Note: Survey of 1,447 HOAs, voluntary participants, not statistically valid sample, but gives lower bounds for types of management		
Source: Levy & Company, 1995, California Community Association Financial Survey, p.i		

Recent Survey of On-Site Managers

A recent survey of full-time on-site managers in Los Angeles provides some information concerning on-site managers. We should view the results of this survey remembering that we cannot generalize the findings to all CID on-site managers in California. The questionnaire was sent to only 65 managers in the Los Angeles area. Forty-three managers returned their surveys. Given this caution, the data can provide some information. On-site managers in the Los Angeles area report salaries (including salary base, bonuses, and on-site housing) “ranging from a low of \$30,000 to a high of \$115,000.”⁹⁰ The average [mean] salary for the 65 managers surveyed was \$61,000.⁹¹ Based on data collected every two years since 1989, it appears that while all the managers were full-time, on-site managers, the percentage of managers actually living on-site has declined from 37% in 1989 to a low of 17% in 1997. The survey also found that 53% of the managers had obtained professional certification related to their positions. The article summarized the survey results as follows:

*Overall, the survey reflects a generally highly professional status for HOA managers. The dramatic increase in association payment for job-related seminars and steadily increasing percentage of managers having a professional designation are both indications of the higher regard with which associations view their managers.*⁹²

Professional Associations

The rise of CIDs gave birth to some inexperienced or corrupt developers building and abandoning CIDs to untrained boards. These boards faced many challenges including construction defect litigation, under-funded operational and reserve accounts, and disgruntled separate interest owners. Even experienced, honest developers were concerned over the problems with transitioning from a developer board to an owner board:

By the early 1970s it was becoming apparent to builders that buyers did not understand what they were getting into, could not be counted on to run homeowner associations competently, and needed ongoing organizational support to prevent demand for CID housing from collapsing.⁹³

Community Associations Institute

This crisis in the industry led to the formation of the Community Associations Institute (CAI) in 1973. CAI was made up of five groups:

- developers,
- property managers,
- HOA board members (referred to as homeowners),
- public housing officials, and
- allied professionals (lawyers, accountants, landscapers, etc.)⁹⁴

Its original mission statement read as follows:

The Community Associations Institute is an independent, non-profit research and educational organization formed in 1973 to develop and distribute guidance on homeowner associations and their shared facilities...⁹⁵

In the early 1990s, CAI reorganized. As part of the reorganization, CAI shifted its focus to organizing for political action. Election to the board also changed. Of the 23 board positions, three were allocated to homeowners. Instead of each of the member groups voting in its own representatives,

... all were elected at large. Consequently, homeowner members could be elected to the board only if they were acceptable to the overall membership.⁹⁶

Some of the originators of the CAI have voiced concerns that the new institutional structure “reflects a single-minded property managers perspective on CID housing.”⁹⁷

Executive Council of Homeowners⁹⁸

Executive Council of Homeowners (ECHO) was founded in San Jose in 1972 with a nucleus of five HOAs. A nonprofit corporation, ECHO is dedicated to assisting California homeowners associations:

The mission of ECHO is to advance the concept, interests and needs of homeowner associations through education of and related services to board members, homeowner members, government officials and the professionals in the industry.⁹⁹

ECHO provides opportunities to train and educate officers, directors and committee members of homeowners associations about how to handle problems of the day-to-day management and operation of a development.

California Association of Community Managers

The California Association of Community Managers (CACM) is a statewide professional trade organization representing the professional managers of CIDs. CACM's "primary focus is to self-regulate the CID manager and the CID management firm in California."¹⁰⁰ Members of CACM are required to abide by a Code of Professional Ethics and Standards of Practice and can be disciplined for violating its provisions.

Professional Training

The CAI and CACM both offer training and certification for CID professionals. Both offer certification for individuals and for management companies.

CAI Certifications

CAI offers individuals a series of professional management courses. The courses combined with experience as a manager in a CID can lead to certification. Certification also requires that individuals agree to abide by the ethical precepts set out in CAI's *Professional Manager Code of Ethics*. Certification (or designations) must be renewed every three years and renewal is contingent upon continuing education and experience. To obtain the Association Management Specialist (AMS) designation, the individual must complete a two-and-half day training course and show at least two years of management experience. Similar to the public accounting experience needed for a CPA, the applicant must show experience in a number of areas of CID management. With more course work, a written exam, and another year of experience, individuals can receive the Professional Community Association Manager (PCAM) designation.

CAI also offers an Accredited Association Management Company (AAMC) designation for those companies meeting a set of criteria that includes:

- provided CID management services for three complete years,
- supervisor hold a PCAM designation,
- fifty percent or more of the company's managers hold either a PCAM or AMS designation or have taken the CAI course work required for the AMS designation, and
- follows specific fiduciary standards for all its clients.¹⁰¹

The AAMC designation also must be updated through education and verification of management experience.

Finally, upon nomination by at least one member of the College,

CAI also offers membership in the College of Community Association Lawyers (CCAL) which acknowledges CAI attorney members who have distinguished themselves through contributions to the evolution or practice of community association law ... Eligibility includes but is not limited to... ten years experience in community association law and a commitment to adhere to policies, procedures, and renewal criteria adopted by CAI's CCAL Board of Governors.¹⁰²

CACM Certifications¹⁰³

Like CAI, CACM also certifies both individuals and management companies. To become a Certified Community Association Manager (CCAM), one must complete courses and pass tests specifically on California laws that pertain to CIDs, have two years of practical experience, and complete the application process. There is also a continuing education requirement. CACM also has a certification program for CID management firms. The certification requires internal financial checks and balances verified by an independent auditor, insurability, risk management practices and a Code of Professional Ethics and Standards of Practice.

Homeowners

Buying Individual Homes In CIDs

Purchasing residential housing in a CID is complicated. Ownership implies obligations different from other types of home ownership. The purchaser foregoes certain individual choices available to other homeowners. In addition, the buyer also must become a member of an association. This membership can have significant financial consequences for the buyer. A HOA with a board that chooses to pursue litigation can obligate owners of separate interests to legal fees. Under current law, the board is not required to seek owners' permission before entering into litigation.

Home buyers, especially first time home buyers, often are either ignorant or naïve about CID housing.¹⁰⁴ Faced with inches of papers to sign, they often fail to read or understand the CCRs and other governance documents they are provided at the escrow office. This, coupled with the unique structure of CIDs, can lead to misunderstandings between the home owners and their HOA boards or their neighbors. The Legislature, recognizing the potential for misunderstanding, has established greater disclosure for residential property sales than for other real estate sales.

Buyer's Perceptions

Buyers often do not understand the concepts that underlie CID housing. They assume, based on marketing, that they are buying “carefree living,” rather than “common living.”

One of the greatest sources of friction, frustration, and frazzled nerves in common interest association affairs is who is responsible for what. Many of the disagreements between owners and the CID directors occur because owners move in expecting that the board will take care of everything — carefree living, as

*advertised. After all, this is a dues-paying society and shouldn't those dues cover everything?*¹⁰⁵

Besides misunderstanding who is responsible for maintaining what, buyers also often fail to realize that the CCRs can restrict behavior and home improvements. Some examples of the CCRs include, but are not limited to:

- CCRs that forbid leaving garage doors open during certain times of the day or parking in certain areas (including personal driveways) for extended times,
- CCRs that limit the window coverings used inside the separate interest,
- CCRs that restrict the type of landscaping on separate interests, and
- CCRs that require owners to obtain the approval of the architectural board prior to making *any* change to the outside of their homes (for example, adding skylights or a bay window).

In addition, buyers must understand that the board and its subcommittees or agents (for example, the management company) have powers over the HOA and its members. As discussed above, these powers are set out in the Davis-Stirling Act and the Nonprofit Mutual Benefit Corporations Laws.

Information Provided to Owners Under the Law

In an attempt to ensure more informed CID buyers, the Davis-Stirling Act requires that sellers provide potential buyers with information concerning the association and its financial situation. Specifically, the law requires that a seller provide a prospective purchaser with the following:¹⁰⁶

1. A copy of all governing documents of the CID, including the declaration, articles of incorporation, bylaws, rules, regulations, and policies. (§1368(a)(1)).
2. If there is a restriction limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from those governing senior housing (Civil Code §51.3), there must be a statement that the restriction is only enforceable to the extent permitted by §51.3 and a statement specifying the applicable provisions of §51.3 that are applicable. (§1368(a)(2)).
3. A copy of the association's most recently distributed financial documents (§1368(a)(3)), including:
 - the operating budget, (§1365(a))
 - a review of the HOA financial statement for any fiscal year in which gross income to the association is greater than \$75,000, (§1365(b))

- a statement describing the association’s policies and practices for enforcing legal remedies when members default on assessments, (§1365(d)) and
 - a summary of the association’s insurance policies including property, general liability, earthquake, and flood policies. (§1365(e))
4. A statement in writing from an authorized representative of the association that includes (§1368(a)(4)):
- the associations’ current regular and special assessments and fees,
 - any unpaid assessments levied against the owner’s interests, and
 - information on late charges, interest, and cost of collections which are or may be made against the owner’s interest in the CID.
5. Any changes in the association’s current regular or special assessments that have been approved but not yet become due or payable. (§1368(a)(5)).

The Davis-Stirling Act provides that anyone found to have willfully violated the disclosure requirements is liable to the buyer for actual damages, a civil penalty not to exceed \$500, and reasonable attorney fees.¹⁰⁷

Other Information that Potential Buyers Might Need

Over the past year, the Senate Housing and Land Use Committee has received correspondence suggesting other information that a potential buyer might need. This information would help prospective buyers assess their potential financial exposure as a member of the HOA. Specific information suggested includes:

- the percentage of owner-occupied separate interests,
- the percentage of assessment delinquencies, and
- the percentage of the estimated future costs in the reserve study that are funded.

In addition, a number of commentators have noted that a prospective buyer lacks information on litigation involving the CID. This lack of knowledge can have important financial consequences. As a potential member of the HOA, the buyer could face special assessments to pay the legal cost of any ongoing or future litigation.

Common Interest Brochure (SB 254, Senator Lee)

The DRE currently offers for sale to the public a publication titled “Common Interest Development Brochure.” Senator Lee currently is carrying a bill, SB 254, that would require that individuals selling their separate interest in a CID provide potential buyers a revised brochure. The purpose of the revised brochure would be to educate and inform potential buyers about the *general* aspects of CID housing. Under SB 254, the DRE must include the following topics in the revised brochure:¹⁰⁸

- the types of CID housing available in California,
- the basic structure and operation of a HOA,
- the legal powers and duties of the board, and
- an explanation of how the HOA is funded.

Homeowners and Boards

The relationship among owners and their boards often can be strained. Board members have the unenviable job of enforcing the CCRs and policies of the HOA. Non-compilers often are neighbors, and disputes can turn into personal attacks. As early as 1973, a national survey found that HOAs

[h]ad become a problem for the otherwise popular condominium concept. While a sizable majority of the respondents expressed satisfaction with their overall condominium experience, 61 percent rated their community association fair or poor.¹⁰⁹

Fifteen years later, a California study surveyed 1,000 HOA board presidents selected randomly from a list of incorporated HOAs. The study, conducted for the DRE, found:

In the past year, 27 percent of association boards had a member who was harassed by another owner or subjected to personal accusations at a public meeting ... 25 percent of boards were threatened with a lawsuit and another five percent were actually sued. In total, 44 percent of boards had at least one of these hostile interactions with members in the past year.¹¹⁰

Individual owners also have testified to problems with their boards at California legislative hearings. For example, during last year's Senate interim hearing on CID issues, one witness representing the American Homeowners Resource Center¹¹¹ testified:

Community association boards abuse individual homeowners by:

- *Refusing access to minutes and records of the association,*
- *Fraudulently changing CC&Rs,*
- *Filing false injunctions against homeowners,*
- *Running and controlling elections; refusing to place names on ballots,*
- *Posting false late charges to homeowner's accounts.¹¹²*

Separate Interest Assessments

Like all property owners, HOAs must have funds to pay for repairs, taxes, insurance, maintenance, and other costs associated with private property ownership. In addition, they incur costs in running the organization. For example, the board must print and mail specified documents to each separate interest owner at least once a year. The board also

must maintain HOA documents like minutes of meetings or copies of letters sent to owners who fail to comply with the governing documents.

The CID model builds in mechanisms for the board to raise operating and other needed moneys. The declaration of the CID requires that the owners of the separate interests pay assessments. The Davis-Stirling Act authorizes CID boards to levy two types of assessments, regular assessments and special assessments. Increases in regular assessments may not exceed 20 percent of the preceding fiscal year's assessment. Special assessments may not

Exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum¹¹³ casting a majority of the votes at a meeting or election of the association.¹¹⁴

However, the same code sections also authorize larger assessments in emergency situations, where emergency situation may mean:

- A court ordered extraordinary expense,
- An extraordinary expense necessary to repair or maintain a situation that threatens personal safety,
- An unforeseeable extraordinary expense to repair or maintain the CID property (the board must make certain written findings and distribute these with the notice of assessment), or
- An extraordinary expense associated with paying an earthquake insurance surcharge.

The Davis-Stirling Act requires the board to notify all owners of any increases in regular assessments or any special assessments. The board must provide owners at least 30-day notice prior to the due date of the increase. The law declares that assessments are delinquent 15 days after they become due. Moreover, the Davis-Stirling Act permits HOAs to recover the following costs associated with delinquent assessments:

- Reasonable collection costs, including reasonable attorney's fees,
- A late charge, and
- Interest not to exceed 12 percent per year, on all assessments delinquent over 30 days and interest on late fees and collection costs.

Enforcing Behavioral Restrictions on Individual Owners

“Rules and restrictions on the use of one’s *real* property are ... somewhat difficult to accept.”¹¹⁵ However, the Davis-Stirling Act specifically states the covenants and restrictions in the declaration are enforceable servitudes.¹¹⁶ Moreover, the courts have upheld the governing documents.

Nahrstedt v. Lakeside

Lakeside Village in Culver City is a large condominium development, consisting of 530 units spread throughout 12 separate 3-story buildings. Ownership of a unit includes membership of the project's HOA, Lakeside Village Condominium Association (Association). Among other things, the Association enforces the CCRs, one provision being "No animals (which shall mean dogs and cats), livestock, reptiles or poultry shall be kept in any unit."¹¹⁷

In January 1988, Natore Nahrstedt bought a condominium at Lakeside and moved in with her three cats, Boo Boo, Dockers and Tulip. When the Association learned of the cats' presence, it demanded their removal and began assessing fines against Nahrstedt for each month that the cats remained. Nahrstedt responded by filing suit against the Association, its officers, and two of its employees.

Nahrstedt argued that the CCRs were unreasonable, as her three cats were kept inside her condominium unit, were not allowed free run of the project's common areas, and did not bother her neighbors. Ultimately, this case went to the California Supreme Court.¹¹⁸

In *Nahrstedt v. Lakeside Village Condominium Association Inc.*, the California Supreme Court ruled in favor of the Association. The court ruled that

*when, as here, a restriction is contained in the declaration of the common interest development and is recorded with the county recorder, the restriction is presumed to be reasonable and will be enforced uniformly against all residents of the common interest development unless the restriction is arbitrary, imposes burdens on the use of lands it affects that substantially outweigh the restriction's benefits to the development's residents, or violates a fundamental public policy.*¹¹⁹

Alternative Dispute Resolution Requirements

In recent years, the Legislature amended the Davis-Stirling Act to reaffirm the enforceability of the governing documents, but added that prior to filing a civil action, the parties in CID-related suits must endeavor to resolve their problems through alternative dispute resolution.

Other States

Only two states, Florida and Virginia, have CID oversight agencies.

In Florida, the Division of Florida Land Sales, Condominiums and Mobilehomes enforces the laws through the Bureau of Condominiums. The Bureau consists of three sections, Education, Enforcement, and Examination. The Education section is responsible for disseminating information to the public concerning the laws and the administrative rules governing CIDs. The Enforcement section investigates complaints relating to alleged violations of the laws and administrative rules. Developers must file with the Division one copy of each document they are required to provide to purchasers. The Examination

section examines these documents to determine if they are consistent with the laws and applicable administrative rules.

In Virginia, the Real Estate Board regulates the sale of new condominiums and time-shares. The Condominium Act and the Real Estate Time-Share Act cover transactions occurring within the Commonwealth, even if the property involved is located outside the Commonwealth. Additionally, homeowner, condominium, and cooperative associations are required to file annual reports with the Real Estate Board. The fees from these annual reports go to fund the Common Interest Community Management Information Fund.¹²⁰

POLICY ISSUES

In California, the Legislature developed the legal framework of the CID, and then stepped back. Unlike Florida, the only state with more CID housing than California, this state has no executive agency regulating CID housing. The state's regulation is limited to the DRE's Public Report review, and it primarily serves "to protect the purchasers in new residential subdivisions from fraud, misrepresentation, or deceit with respect to the offering."¹²¹ The Legislature has amended the Davis-Stirling Act in response to consumer complaints and industry pressures. In fact, a number of witnesses at the November 1996 Senate Housing Committee's interim hearing told the committee that the Legislature was too involved in micro-managing CIDs.

Over the last year and half, the Senate Housing Committee has held hearings, work group meetings and taken written statements on the CID-related concerns of various interest groups. The Legislature has heard individual homeowners ask for more oversight of CID professionals. They also have called for a state-level agency to serve the individual separate interest owners faced with recalcitrant or despotic boards. Others — board members and CID professionals — have countered that, given the thousands of people living in CIDs, the complaints of the few should not be accorded too much import. They note the increasing complexity and cost for HOAs dealing with new legislative ground rules generated on the basis of "anecdotal evidence."

On the one hand, there is very little empirical information on how representative the concerns of many of these individual homeowner witnesses are. They might not have any relationship to systemic CID problems, especially to problems that require legislative action. On the other hand, the little empirical evidence that does exist also does not support industry's statements that residential housing consumers choose to live in CIDs. In many cases, the housing stock in an area is limited to CID housing. Many others pick the house and take the HOA as a necessary evil. Moreover, some research posits that the lack of complaints reflects a feeling that nothing can or will change.¹²²

This section of the paper summarizes the policy concerns raised in the written and verbal accounts gathered since the Senate Housing Committee's hearing in November of 1996. Issues presented include:

- Should the Legislature establish an oversight agency for CIDs?
- Should the Legislature license CID professionals?
- Should the Legislature revise the Davis-Stirling Act to define terms and present the law in more easily understood language?
- Should the Legislature pass a "Homeowner's Bill of Rights"?

Oversight/Consumer Complaint Centers

A number of witnesses asked the Legislature to consider establishing a government agency to provide more oversight of CID issues. Specifically, requests were made for the following types of overlapping services:

- a state-level agency/office where individual homeowners could receive help dealing with their boards,
- a state-level agency/office that would regulate, and perhaps license, the management professionals working for CIDs,
- a state-level agency that would ensure that consumer issues (issues of the individual separate interest owners) were researched and carried into policy debates.

These requests reflect the concerns, distrusts and frustration that homeowners have brought to the Legislature. Other commentators argue that homeowners' complaints that they have no leverage against HOA boards are not true. They point to the rights of members guaranteed in the Nonprofit Mutual Benefit Corporation Law, which provides members rights to review books, inspect and copy members' names and addresses, report suspect election outcomes to the court and the Attorney General's Office, etc.

In part, the concerns of the separate interest owners might indicate only a need for better education of CID consumers. Perhaps, the DRE brochure proposed in Senator Lee's SB 254 should also give some information about the Nonprofit Mutual Benefit Corporation Law. But, education will not fully solve these problems. Both the Davis-Stirling Act and the Nonprofit Mutual Benefit Corporation Law require individuals not only to know their rights, but to also have the personal resources to enforce them. Owners must have more understanding of the legal system than the common citizen does and the resources to engage legal counsel.

In addition, a number of CID interest groups have stated that since the interest groups exist, there is no need for governmental oversight. For example, at the Davis-Stirling Act work group meetings, one person who represents an association of individual homeowners, consistently states that the working group represents the industry professionals. The representatives of ECHO and CAI counter that their members are the HOAs and their members and, therefore they do represent the homeowners. The perspective of these organizations, however, gives some concern about the extent to which homeowner complaints are addressed by the organization when it speaks before the Legislature. They are primarily interested in the CID as a joint business enterprise. This is a very valid and important perspective. However, it might lead these organizations to discount real and valid concerns of individuals in the name of efficiency. Moreover, the groups tend to interact more with the managers and board members who may see the issues very differently from the other owners. The point here is not that any particular point of view is more valid, but rather that individual homeowners worry that they lack equal access to state-level policy making and protections may be valid and deserve Legislative attention.

If the California Legislature chooses to establish some sort of state oversight, some of the aspects of the issue it might consider include:

- What type of agency should the Legislature establish? Can a state-level ombudsman, similar to the mobile parks ombudsman, provide the needed access? Or does the issue require an agency or office with a broader mandate?
- In which agency should the Legislature establish an agency? A number of witnesses have commented on the DRE's close ties to the building and real estate industries. They suggest that the Legislature place an agency in either the Bureau of Consumer Affairs, the Department of Corporations, or more often, the Department of Housing and Community Development.
- How should such an agency be funded? Witnesses have testified that the agency's funding structure could come from a surcharge on HOAs. This is the funding used to support Florida's bureau.

Private Certification v. Public Licensing

The Legislature could choose to require licenses for CID professionals to assure that managers and management companies have appropriate skills. It also provides a way to punish managers whose conduct fails to meet professional ethical standards. The associations which certify CID professionals favor private certification. They argue that they decline to certify or recertify poor or unethical managers or management companies. Moreover, they believe they can respond to changes in the CID market place, updating their certification requirements more easily than state-mandated licensing requirements can respond.

Homeowners' Bill of Rights

Individual owners have asked the Legislature for an explicit bill of rights, limiting HOAs' power over individuals. The CAI has developed a Community Association Members' and Residents' Bill of Rights. A version of this statement has been adopted in Florida. However, the CAI document is not what California's homeowners have asked the Legislature to enact. This may be because the CAI document states "that CIDs are neither governments or businesses and should not be subject to 'the full panoply of governmental limitations.'"¹²³ The owners of separate interests, rather are requesting that CIDs provide guarantees similar to those found in the American and California Constitution.

A Tune-up for the Davis-Stirling Act

Even those who find the Davis-Stirling Act a good workable framework for CID housing are asking for some clean-up and reform. They note that in the 15 years since its original passage, the Legislature has amended the act a number of times. Some of these amendments have led to inconsistencies in California law. For example, among the concerns that Robyn Boyer Stewart, a former CID lobbyist and noted writer on California's CIDs, submitted to Senator Lee were the following:

As a guide book for lay volunteers, the Davis-Stirling Act has a number of shortcomings. The language of the Act is tortured and legalistic. There are a number of sections which do not make sense and are very difficult to understand or interpret without the help of an attorney. This should be remedied so that any reasonably thoughtful person can make sense of the Act's requirements.

The CID Open Meeting Act, Civil Code §1363.05, contains a number of provisions which are inconsistent with the Corporations Code, which also governs the activities of board and annual membership meetings. These inconsistencies should be resolved and reconciled so that the two codes are the same.¹²⁴

Other commentators have noted other technical problems including, but not limited to:

- inconsistent notice requirements
- lack of standards for calculation of reserve funds,
- need to review requirements and make some requirements tiered to reflect economies of scale,
- lack of consistent and accurate language, format, internal references, etc.
- numbering of sections lack logical clarity,
- lack of clarity about which sections refer only to residential CIDs versus the sections that cover all CIDs.

Additional Research

The Legislature has moved toward more regulation of CIDs, but has not undertaken a full review and collected testimony in various parts of the state. It has been ten years since the DRE contracted with Barton and Silverman at the University of California to conduct the broad study on CID governance issues. The Legislature might wish to consider establishing a subcommittee on residential CID housing to provide more up-to date empirical research on HOAs and the associated issues.

APPENDIX A: COMMON USE AND LEGAL DEFINITIONS

Reproduced from Dana Young, Common Interest Developments: An Historical Overview of CID Development, (Public Law Research Institute, UC Hastings College of the Law: San Francisco, CA) Appendix A.

Association

Legal definition

California Civil Code §1351 defines “association” as “a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.”

Common area

Legal definition

California Civil Code §1351 defines “common area” as “the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing. However, the common area for a planned development specified in paragraph (2) of subdivision (k) may consist of mutual or reciprocal easement rights appurtenant to the separate interests.”

Common Interest Development (CID)

Legal definition

California Civil Code §1351 (c) defines “common interest development” as any of “(1) A community apartment project. (2) A condominium project. (3) A planned development. (4) A stock cooperative.”

California Civil Code §1351 (k) defines “planned development” as “a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features: (1) the common area is owned either by the association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area. (2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367.”

Common usage

By common usage a CID is a development involving a combination of individually owned lots or units coupled with common area parcels or spaces. The common areas or spaces are either owned by an association whose members are the individual lot/unit owners, or by the owners as tenants in common. CID is typically used

interchangeably with Planned Urban Development (PUD), and Property Owner Association (POA), and it may also be referred to as a common interest community (CIC).

Common Interests

Legal definition

California Code of Regulations Title 10, Chapter 6, Article 1, §2705 (m) defines common interests as “property owned or controlled by, and/or services furnished to, owners, lessees or persons having the exclusive right to the use of subdivision interest, by an association comprising the separate owners of said interests in those subdivisions enumerated in §11004.5 of the Code.”

Community Apartment Project

Legal definition

California Civil Code §1351 defines “community apartment project” as “a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.”

Condominium Plan

Legal definition

California Civil Code §1351 defines “condominium plan” as “a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged by the record owner of fee title to that property included in the condominium project. In the case of a condominium project which will terminate upon the termination of an estate for years, the certificate shall be signed and acknowledged by all lessors and lessees of the estate for years and, in the case of a condominium project subject to a life estate, the certificate shall be signed and acknowledged by all life tenants and remainder interests. The certificate shall also be signed and acknowledged by either the trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property. Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the condominium plan. A condominium plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by all the persons whose signatures would be required to record a condominium plan pursuant to this subdivision.”

Condominium/ Condominium Association (COA)

Legal definition

California Civil Code §1351 (f) defines “condominium” as “an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel plan, or condominium plan in sufficient detail to locate all boundaries thereof.”

Common usage

According to common usage a condominium association is usually located in a multi-story building with multiple families. The condominium owners hold title to their respective interior residence spaces and hold the remaining property, (dividing walls, hallways, stairways, elevators, exterior walls, and land), in common. The COA does not own any property, it manages the common property areas.

Condominium Project

Legal definition

California Civil Code §1351 (f) defines “condominium project” as “a development consisting of condominiums.”

Declarant

Legal definition

California Civil Code §1351 (g) defines “declarant” as “the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.”

Declaration

Legal definition

California Civil Code §1351 (h) defines “declaration” as “the document, however denominated, which contains the information required by Section 1353.”

Exclusive use common area

Legal definition

California Civil Code §1351 (i) defines “exclusive use common area” as “a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.”

Governing documents

Legal definition

California Civil Code §1351 (j) defines “governing documents” as “the declaration and any other documents, such as bylaws, operating rules of the association, articles of

incorporation, or articles of association, which govern the operation of the common interest development or association.”

Home Owner Association (HOA)

Legal definition

California Civil Code §1351 (a) defines “Association” as “a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.”

Common usage

According to common usage it describes detached houses or townhouses with common areas — the homeowners own both the interior and exterior of their residences including the land beneath and around them; the mandatory membership association owns and manages the common property. Typically used interchangeably with Residential Community Association.

Planned Unit or Use Development (PUD)

Legal definition

California Civil Code §1351 (k) defines “planned development” as “a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features: (1) The common area is owned either by the association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area. (2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367.”

Common usage

Often referred to as cluster housing; the term is essentially synonymous with CID and CIC.

Property Owner Association (POA)

Common usage

By common usage a POA is “an organization of unit owners bound together by the governing documents of the development. Typical POAs are condominiums, stock cooperatives and homeowners associations.”[†]

[†] Carl B. Kress, Beyond Nahrstedt: Reviewing Restrictions Governing Life in a Property Owner Association, 42 UCLA L. REV. 837, at FNI (1995).

Residential Community Association (RCA)

Common usage

By common usage an RCA includes “nonprofit corporations created by real estate developers with the approval of local government officials”; they provide a governing mechanism to supply services, maintain common areas, create and enforce CC&Rs and collect assessment fees.

Separate interest

Legal definition

California Civil Code §1351 (l) defines “separate interest” as “the following meanings: (1) In a community apartment project, ‘separate interest’ means the exclusive right to occupy an apartment, as specified in subdivision (d). (2) In a condominium project, ‘separate interest’ means an individual unit, as specified in subdivision (f). (3) In a planned development, ‘separate interest’ means a separately owned lot, parcel, area, or space. (4) In a stock cooperative, ‘separate interest’ means the exclusive right to occupy a portion of the real property, as specified in subdivision (m).”

Stock cooperative

Legal definition

California Civil Code §1351 (m) defines “stock cooperative” as “a development in which a corporation is formed or availed of primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners’ interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f) of section 25100 of the Corporations Code.”

Common usage

By common usage, the term “cooperative” is used to denote high-rise, multi-family buildings in an urban setting. Association members do not own any real property, but rather acquire a long-term renewable leasehold interest in their residence in addition to a share, or proportionate shares, in the corporation which owns the building and its grounds. There are relatively few of these probably because of the blanket mortgage provision.

Subdivision Interests

Legal definition

California Code of Regulations, Title 10, Chapter 6, Article 1, §2705 defines subdivision interest as “[l]ots, parcels, units, undivided interest shares, time-share estates or time-share uses subject to regulation under the provisions of Chapter 1, Part 2, Division 4 of the Code.”

**APPENDIX B:
CIDS PER COUNTY: 1997**

County	# of Associations	County	# of Associations
Alameda	1177	Orange	3212
Alpine	21	Placer	313
Amador	33	Plumas	50
Butte	134	Riverside	1232
Calaveras	45	Sacramento	509
Colusa	5	San Benito	22
Contra Costa	1034	San Bernardino	645
Del Norte	5	San Diego	4074
El Dorado	150	San Francisco	1199
Fresno	302	San Joaquin	231
Glenn	5	San Luis Obispo	359
Humboldt	18	San Mateo	706
Imperial	19	Santa Barbara	558
Inyo	13	Santa Clara	1455
Kern	264	Santa Cruz	439
Kings	24	Shasta	62
Lake	42	Sierra	2
Lassen	8	Siskiyou	48
Los Angeles	9837	Solano	137
Madera	44	Sonoma	442
Marin	352	Stanislaus	136
Mariposa	12	Sutter	14
Mendocino	44	Tehama	24
Merced	28	Trinity	8
Modoc	5	Tulare	120
Mono	101	Tuolumne	48
Monterey	242	Ventura	623
Napa	116	Yolo	70
Nevada	96	Yuba	7

Reproduced from Levy & Associates September 1997 price list HOA-Info™ Association Database Price List.

APPENDIX C: CALIFORNIA CID CASE LAW AT A GLANCE

Reproduced from Barbie L. Anderson, Common Interest Developments: An Historical Overview of California Case Law, (Public Law Research Institute, UC Hastings College of the Law: San Francisco, CA) Appendix B.

Enforcing CC&R's		
Issue	Disputants	Case
Attny fees	HOA v. Owner	<u>Heather Farms Homeowners Ass'n, Inc. v. Robinson</u> , 21 Cal. App. 4th 1568 (1004).
Attny fees	HOA v. owner	<u>Harbor View Hills Community Ass'n v. Torley</u> , 5 Cal. App. 4th 343 (1992).
Land use	HOA v. owner	<u>Citizens for Covenant Compliance v. Anderson</u> , 12 Cal. 4th 345 (1995).
Lease restrictions	HOA v. owner	<u>City of Oceanside v. McKenna</u> , 215 Cal. App. 3d 1420 (1989).
Notice of CC&R's	HOA v. developer	<u>Fig Garden Park No. 1 Homeowners Ass'n v. Assemi Corp.</u> , 223 Cal. App. 3d 1704 (1991).
Ownership of common areas not required to prove trespass/ CC&Rs/ deck	Owner v. owner & HOA	<u>Posey v. Leavitt</u> , 229 Cal. App. 3d 1236 (1991).
Patio cover/adjoining landowners not indispensable parties	Owner v. HOA	<u>Duffey v. Superior Court (Coast Homeowners Ass'n)</u> , 3 Cal. App. 4th 425 (1992).
Pet policy	Owner v. HOA	<u>Nahrstedt v. Lakeside Village Condominium Ass'n</u> , 8 Cal. 4th 361 (1994).
Recordation of notice of violation of CC&R.	Owner v. HOA	<u>California Riviera Homeowners Ass'n v. Superior Court</u> , 56 Cal. Rptr. 2d (Sept. 6, 1996).
Repairs	Owner v. HOA	<u>Cutujian v. Benedict Hills Estates Ass'n</u> , 41 Cal. App. 4th 1379 (1996).
Repairs	Owner v. HOA	<u>Franklin v. Marie Antoinette Condominium Owners Ass'n, Inc.</u> , 19 Cal. App. 4th 824 (1993).
Tennis ct. restriction	Owner v. HOA	<u>Liebler v. Point Loma Tennis Club</u> , 40 Cal. App. 4th 1600 (1995).

Construction Defects		
Issue	Disputants	Case
Repairs	Owner v. HOA	<u>Cutujian v. Benedict Hills Estates Ass'n</u> , 41. Cal. App. 4th 1379 (1996).
Defect disclosure	Buyer v. HOA	<u>Kovich v. Paseo Del Mar Homeowners Ass'n</u> , 41. Cal. App. 4th 863 (1996).
Developer not entitled to equitable indemnity from owners	HOA v. developer	<u>Lauriedale Associates, Ltd. v. Wilson</u> , 7 Cal. App. 4th 1439 (1992).

Procedural Question		
Issue	Disputants	Case
Repairs/ statute of limitations	Owner v. HOA	<u>Cutujian v. Benedict Hills Estates Ass'n</u> , 41. Cal. App. 4th 1379 (1996).
Recordation of notice of violation of CC&R/ litigation privilege	Owner v. HOA	<u>California Riviera Homeowners Ass'n v. Superior Court</u> , 56 Cal. Rptr. 2d (Sept. 6, 1996).
Attney fees/ CC&R's	HOA v. Owner	<u>Heather Farms Homeowners Ass'n, Inc. v. Robinson</u> , 21 Cal. App. 4th 1568 (1994).
Attney fees	HOA v. owner	<u>Harbor View Hills Community Ass'n v. Torley</u> , 5 Cal. App. 4th 343 (1992).
Adjoining landowners not indispensable parties/ patio cover	Owner v. HOA	<u>Duffey v. Superior Court (Coast Homeowners Ass'n)</u> , 3 Cal. App. 4th 425 (1992).
Ownership of common areas not required to prove trespass/ CC&Rs/ deck	Owner v. owner & HOA	<u>Posey v. Leavitt</u> , 229 Cal. App. 3d 1236 (1991).
Notice of CC&R's	HOA v. developer	<u>Fig Garden Park No. 1 Homeowners Ass'n v. Assemi Corp.</u> , 223 Cal. App. 3d 1704 (1991).
Homeowners' Consents to petition to extend	HOA #2 v. HOA #1	<u>La Jolla Mesa Vista Imp. Ass'n v. La Jolla Mesa Vista Homeowners Ass'n</u> , 220 Cal. App. 3d 1187 (1990).

Condominium Conversion		
Issue	Disputants	Case
Interpretation of state conversion regulations	City v. HOA	<u>City of West Hollywood v. Beverly Towers, Inc.</u> , 52 Cal. 3d 1184 (1991).

HOA Board of Directors		
Issue	Disputants	Case
Privacy of ballots	Director v. HOA	<u>Chantiles v. Lake Forest II Master Homeowners Ass'n</u> , 37 Cal. App. 4th 914 (1995).

APPENDIX D: HOA INSURANCE NEEDS

Below is a list of minimum coverages that Levy & Company suggests should appear in all association policies.[†] These coverages might be beyond the legal minimums.

Building or Structure Coverage

- a) Building coverage amount to 100% of replacement cost. Ask your agent how he (she) developed this figure for replacement coverage.
- b) “Replacement Cost” endorsement.
- c) “All-Risk” “Special Form” endorsement.
- d) Make sure that the policy covers all interior items of a permanent nature, i.e., all types of floor coverings, drapes, finished walls, cabinets, electrical fixtures, etc.
- e) Waiver of subrogation endorsement.
- f) A “reasonable” deductible.
- g) “Inflation Guard” endorsement.
- h) “Blanket” endorsement, if the association has two or more buildings.

Minimum Liability Requirements

- a) Comprehensive general liability
- b) Bodily injury and property damage
- c) Non-owned auto & hired auto
- d) Products and completed operations
- e) Broad form property damage
- f) Pool liability
- g) Cross suits liability
- h) Make sure the amount of liability meet the requirements of Senate Bill (S.B.) 1369.5.
- i) Personal injury
- j) Employees as additional insureds
- k) Property damage legal liability

[†] Adapted from Levy & Co, 1997 Community Association Treasurer’s Handbook. (Levy & Company: Oakland, California)

APPENDIX E: HOA DOCUMENTS

Below is a list of documents that Levy & Company suggests should be kept on file.[†] These files might be beyond the legal minimums.

Financial Records

Bank reconciliations, statements, deposit slips/advices, canceled checks (other than for special payments or purchase of major assets — which should be kept permanently)

Cash receipts and disbursements records, including assessment billing/aging ledgers, accounts payable ledgers, vendor invoices

General ledgers (if year-to-date with full year detail available, monthly printouts need not be retained), annual budgets, reserve studies financial statements, income tax returns

Administrative Records

Board meeting minutes

Correspondence, general

Correspondence, legal and/or other important matters

Drawing of facilities, major maintenance specifications, architectural change approvals/denials/violations

Employment, personnel and payroll records

Governing documents (articles of incorporation, by laws, CC&Rs)

Insurance records (attorney suggests some may be “permanent”)

[†] Adapted from Levy & Co, 1997 Community Association Treasurer’s Handbook. (Levy & Company: Oakland, California)

ENDNOTES

¹ Young, Dana, 1996. "Common Interest Developments: An Historical Overview of CID Development," Hastings College of Law, Public Law Research Institute, Report PLRI Fall96-XX. p. 1.

² Barton, Stephen E. & Silverman, Carol J. "History and Structure of the Common Interest Community," in Barton, Stephen E. & Silverman, Carol J. (eds.), 1994. Common Interest Communities, Berkeley, CA: Institute of Governmental Studies Press, University of California, p. 12. McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, also states: "CIDs have become so much the norm for new housing that, as the ACIR notes, 'In many rapidly developing areas, such as those in California, nearly all residential development is within the jurisdiction of residential community associations.'"(p.12)

³ "HOA-Info Community Association Statistics," Oakland, Levy & Company, 1997

⁴ "Common Interest Development Issues After 'Nahrstedt,'" Interim Hearing of the Senate Committee on Housing and Land Use, November 12, 1996, Sacramento, CA.

⁵ Chapter 879, Statutes of 1985. Codified in California Civil Code §§1350 *et seq.*

⁶ This section relies primarily on three references: the well-documented analysis of Evan McKenzie; Levy & Co.'s *1997 California Community Association Statistics* (presentation to the California Department of Real Estate,) and Treece, Clifford J. (ed.) 1993 *Community Associations Factbook* (Alexandria, VA: Community Associations Institute). McKenzie's book, which won the 1995 American Political Science award for the best book in urban politics, presents the best integrated analytic history on the rise of CIDs. McKenzie focuses his analysis especially on the rise of the regulatory structure of CIDs in California. Levy's presentation presents the only systematic and comprehensive data on community associations in California. The 1993 ed. of CAI's *Factbook* represents the most recently published compilations on the nation's associations.

⁷ Howard, Ebenzer, Garden Cities of Tomorrow. London, S. Sonnenschein & Co., Ltd., 1902.

⁸ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 3.

⁹ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 9.

¹⁰ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 9. McKenzie documents the pervasive use of CCRs to ensure that neighborhoods remained racially and ethnically homogenous. (See especially Chapter 3.) In 1948, the US Supreme Court found racially and ethnically these types of CCRs unconstitutional. *Shelley v. Kraemer*, 1948. After the Supreme Court decision, some developments used mandatory homeowner associations to continue to keep neighborhoods racially homogenous. In 1953 the US Supreme Court outlawed these options for continuing racial discrimination. (*Barrows v. Jackson*, 346 US 249 [1953]).

¹¹ *Neponsit Property Owner's Association, Inc. v. Emigrant Industrial Savings Bank*, 278 NY (1938)

¹² For a discussion of the case and its importance, see McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, pp. 53-55.

¹³ Urban Land Institute/Federal Housing Administration, *The Homes Association Handbook*, Technical Bulletin no. 50 (Washington, DC: Urban Land Institute, 1964) vi. quoted in McKenzie p.201, note 38.

¹⁴ Treece, Clifford J. (ed.) 1993 *Community Associations Factbook*, Alexandria, VA: Community Associations Institute, p. 13.

¹⁵ Sproul, Curtis C. Common Interest Community Associations and Their Management Structure, *California Real Property Journal*, 11(4) Fall, 1993, p. 2.

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- ¹⁶ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, pp. 83-84.
- ¹⁷ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 94.
- ¹⁸ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 95.
- ¹⁹ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 99.
- ²⁰ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p.100.
- ²¹ Treece, Clifford J. (ed.) 1993 *Community Associations Factbook*, Alexandria, VA: Community Associations Institute, p. 11.
- ²² McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 94, also note #27, pp. 217-218.
- ²³ Written testimony of Professor Katherine Rosenberry, reproduced in Senate Housing and Land Use Committee, "Common Interest Development Issues after Nahrstedt, Summary Report." Sacramento: The Committee. November 12, 1996. p. 31.
- ²⁴ Wiess, Marc A. and Watts, John M. *Rise of the Community Builders: The American Real Estate Industry and Urban Land Planning*, quoted in McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 63.
- ²⁵ Treece, Clifford J. (ed.) 1993, *Community Associations Factbook*, Alexandria, VA: Community Associations Institute, p. 11.
- ²⁶ Treece, Clifford J. (ed.) 1993, *Community Associations Factbook*, Alexandria, VA: Community Associations Institute, p. 11.
- ²⁷ Treece, Clifford J. (ed.) 1993, *Community Associations Factbook*, Alexandria, VA: Community Associations Institute, p. 11.
- ²⁸ Winokur, James L. "Choice, Consent and Citizenship in Common Interest Communities," in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press, p. 89.
- ²⁹ Sproul, Curtis C. Common Interest Community Associations and Their Management Structure, *California Real Property Journal*, 11(4) Fall, 1993, p.2.
- ³⁰ Winokur, James L. "Choice, Consent and Citizenship in Common Interest Communities," in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press, p. 89.
- ³¹ Barton, Stephen E. & Silverman, Carol J. "History and Structure of the Common Interest Community," in Barton, Stephen E. & Silverman, Carol J. (eds.), 1994. Common Interest Communities, Berkeley, CA: Institute of Governmental Studies Press, University of California, p. 11.
- ³² California Civil Code §1351 (c)
- ³³ Written testimony of Jeff Wagner, CBIA, reproduced in Senate Housing and Land Use Committee, "Common Interest Development Issues after Nahrstedt, Summary Report." Sacramento: The Committee. November 12, 1996. p. 114.
- ³⁴ Written testimony of Frederick L. Pilot, reproduced in Senate Housing and Land Use Committee, "Common Interest Development Issues after Nahrstedt, Summary Report." Sacramento: The Committee. November 12, 1996. p. 114.

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- ³⁵ Written testimony of Professor Katherine Rosenberry, Esq. reproduced in Senate Housing and Land Use Committee, "Common Interest Development Issues after Nahrstedt, Summary Report." Sacramento: The Committee. November 12, 1996. p. 33.
- ³⁶ Barton, Stephen E. & Silverman, Carol J. "History and Structure of the Common Interest Community," in Barton, Stephen E. & Silverman, Carol J. (eds.), 1994. Common Interest Communities, Berkeley, CA: Institute of Governmental Studies Press, University of California, p. 12. Also see: Curtis C. Sproul, Esq., "The Many Faces of Community Associations under California Law" in Barton, Stephen E. and Silverman, Carol J. (Eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press.
- ³⁷ California Civil Code §1354.
- ³⁸ Sproul, Curtis C. Common Interest Community Associations and Their Management Structure, *California Real Property Journal*, 11(4) Fall, 1993, p.4.
- ³⁹ Sproul, Curtis C. Common Interest Community Associations and Their Management Structure, *California Real Property Journal*, 11(4) Fall, 1993, p.4.
- ⁴⁰ Sproul, Curtis C. Common Interest Community Associations and Their Management Structure, *California Real Property Journal*, 11(4) Fall, 1993, p.4.
- ⁴¹ Garcia, Michael. Common Interest Developments: An Overview of Their Statutory Frameworks. Hastings College of Law, Public Law Research Institute, Report PLRI-XX.
- ⁴² These three conditions come from Gifis, Stephen H., "Run with the land," *Law Dictionary*, 3rd ed. 1991 Hauppauge, NY: Barron's Educational Series, Inc. p. 428-429.
- ⁴³ Gifis, Stephen H., "Run with the land," *Law Dictionary*, 3rd ed. 1991 Hauppauge, NY: Barron's Educational Series, Inc. p. 428-429.
- ⁴⁴ Gifis, Stephen H., "Privity," *Law Dictionary*, 3rd ed. 1991 Hauppauge, NY: Barron's Educational Series, Inc. p. 375.
- ⁴⁵ Sproul, Curtis C. Common Interest Community Associations and Their Management Structure, *California Real Property Journal*, 11(4) Fall, 1993, p.2.
- ⁴⁶ California Civil Code §1363.
- ⁴⁷ Curtis C. Sproul, Esq., "The Many Faces of Community Associations under California Law" in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press, p. 46, Note 4.
- ⁴⁸ Sproul, Curtis C. Common Interest Community Associations and Their Management Structure, *California Real Property Journal*, 11(4) Fall, 1993, p.4.
- ⁴⁹ California Civil Code §1363.05
- ⁵⁰ Written testimony of Carroll S. Slemaker, reproduced in Senate Housing and Land Use Committee, "Common Interest Development Issues after Nahrstedt, Summary Report." Sacramento: The Committee. November 12, 1996. p. 117. The Summary Report provides a number of examples of individuals attesting to both sides of a number of issues.
- ⁵¹ Grimm, Beth A., Esq. and Lane, Jim R., 1995. Finding the Key to Your Castle, privately published by Beth A. Grimm, Esq. and Jim R. Lane, p 10.
- ⁵² Grimm, Beth A., Esq. and Lane, Jim R., 1995. Finding the Key to Your Castle, privately published by Beth A. Grimm, Esq. and Jim R. Lane, p.10.
- ⁵³ Grimm, Beth A., Esq. and Lane, Jim R., 1995. Finding the Key to Your Castle, privately published by Beth A. Grimm, Esq. and Jim R. Lane, p.11.
- ⁵⁴ California Civil Code §1355. In addition §1356 provides that the HOA or an individual owner may petition superior court in that county to lower the percentage of affirmative votes over 50 percent needed to amend the declaration under certain conditions.

⁵⁵ California Civil Code §1355.5. The section defines approval of the owners as “a majority of the votes at a meeting or election of the association constituting a quorum,” defined as “more than 50 percent of the owners who own no more than two separate interest.”

⁵⁶ Treece, Clifford J. (ed.) 1993, *Community Associations Factbook*, Alexandria, VA: Community Associations Institute, p. 10.

⁵⁷ Letter to Senator Barbara Lee from Karen D. Conlon, President, California Association of Community Managers, dated July 1, 1997.

⁵⁸ See, for example, written testimony of Kirk Watilo, reproduced in Senate Housing and Land Use Committee, “Common Interest Development Issues after Nahrstedt, Summary Report.” Sacramento: The Committee. November 12, 1996. p. 92.

⁵⁹ California Civil Code §1363.5.

⁶⁰ Grimm, Beth A., Esq. and Lane, Jim R., 1995. Finding the Key to Your Castle, privately published by Beth A. Grimm, Esq. and Jim R. Lane, p. 9.

⁶¹ Grimm, Beth A., Esq. and Lane, Jim R., 1995. Finding the Key to Your Castle, privately published by Beth A. Grimm, Esq. and Jim R. Lane, p 11.

⁶² Grimm, Beth A., Esq. and Lane, Jim R., 1995. Finding the Key to Your Castle, privately published by Beth A. Grimm, Esq. and Jim R. Lane, p. 11.

⁶³ The process for applying for and obtaining a DRE public report is found in California Business And Professions Code §§11010-11024 and Title 10 California Code of Regulation Article 12 §§2790-2800. Section 2792.1 enumerates the complete documentation necessary before the DRE can issue a Final Report for a CID.

⁶⁴ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 57.

⁶⁵ Blakely, Edward J. and Snyder, Mary Gail, 1997. Fortress America: Gated Communities in the United States. Washington, DC: Brookings Institution Press, p.40.

⁶⁶ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 25

⁶⁷ Winokur, James L. “Choice, Consent and Citizenship in Common Interest Communities,” in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press, p. 109.

⁶⁸ Winokur, James L. “Choice, Consent and Citizenship in Common Interest Communities,” in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press, pp. 115-116.

⁶⁹ See for example, Reich; Blakely, Edward J. and Snyder, Mary Gail, 1997. Fortress America: Gated Communities in the United States. Washington, DC: Brookings Institution Press; and McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press.

⁷⁰ Curtis C. Sproul, Esq., “The Many Faces of Community Associations under California Law” in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press; California Nonprofit Mutual Benefit Corporations Law is found at California Corporations Code §7110-8910.

⁷¹ California Corporations Code §7140.

⁷² California Corporations Code §7210.

⁷³ California Corporations Code §7231.

⁷⁴ Sproul, Curtis, Written comments submitted to “Common Interest Development Issues After ‘Nahrstedt,’” Interim Hearing of the Senate Committee on Housing and Land Use, November 12, 1996, Sacramento, CA, p. 35.

⁷⁵ (1986) 42 Cal 3d 490.

⁷⁶ Sproul, Curtis, Written comments submitted to “Common Interest Development Issues After ‘Nahrstedt,’” Interim Hearing of the Senate Committee on Housing and Land Use, November 12, 1996, Sacramento, CA. p. 36.

⁷⁷ Levy & Co, 1997 Community Association Treasurer’s Handbook. (Levy & Company: Oakland, California), §1.40

⁷⁸ California Corporations Code §7213.

⁷⁹ Barton & Silverman, 1987, Common Interest Homeowners’ Association Management Study, Sacramento, California Department of Real Estate, p. 13.

⁸⁰ Winokur, James L. “Choice, Consent and Citizenship in Common Interest Communities,” in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press, p. 91.

⁸¹ Barton & Silverman, 1987, Common Interest Homeowners’ Association Management Study, Sacramento, California Department of Real Estate, p. 13.

⁸² Silverman, Carol J. and Barton, Stephen E., “Community and Conflict in the Common Interest Development” in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press, pp. 135-136.

⁸³ Nicholson, Margurette M., Written comments submitted to “Common Interest Development Issues After ‘Nahrstedt,’” Interim Hearing of the Senate Committee on Housing and Land Use, November 12, 1996, Sacramento, CA, p. 96.

⁸⁴ Barton & Silverman, 1987, Common Interest Homeowners’ Association Management Study, Sacramento, California Department of Real Estate, p. 22.

⁸⁵ *Thies v. Law Office of William A. Wyman*, 97-0734.

⁸⁶ Curtis C. Sproul, Esq., “The Many Faces of Community Associations under California Law” in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press, p. 50.

⁸⁷ Curtis C. Sproul, Esq., “The Many Faces of Community Associations under California Law” in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press, p. 50, Note 15.

⁸⁸ California Civil Code §1363.1.

⁸⁹ California Civil Code §1363.2.

⁹⁰ Adams, Adrian J., “Salary Survey of On-site Managers,” *Condo Management, California*. October 1997 6(62): 42.

⁹¹ Adams, Adrian J., “Salary survey of on-site managers,” *Condo Management, California*. October 1997 6(62): 42.

⁹² Adams, Adrian J., “Salary survey of on-site managers,” *Condo Management, California*. October 1997 6(62): 44.

⁹³ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 109.

⁹⁴ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 111.

⁹⁵ quoted in McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 113.

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- ⁹⁶ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 116.
- ⁹⁷ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 119.
- ⁹⁸ This section draws heavily upon “About ECHO” <http://cidnetwork.com/echo/1.htm>, as of 3/7/98
- ⁹⁹ “About ECHO” <http://cidnetwork.com/echo/1-2.htm>, as of 3/7/98
- ¹⁰⁰ Conlon, Karen, Written comments submitted to “Common Interest Development Issues After Nahrstedt,” Interim Hearing of the Senate Committee on Housing and Land Use, November 12, 1996, Sacramento, CA, p. 80
- ¹⁰¹ CAI Brochure: CAI Accredited Association Management Company Designation.
- ¹⁰² CAI Handout: CAI Professional Development/Recognition Opportunities.
- ¹⁰³ This section draws heavily upon Conlon, Karen, Written comments submitted to “Common Interest Development Issues After Nahrstedt,” Interim Hearing of the Senate Committee on Housing and Land Use, November 12, 1996, Sacramento, CA.
- ¹⁰⁴ Winokur, James L. “Choice, Consent and Citizenship in Common Interest Communities,” in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press, p. 99.
- ¹⁰⁵ Grimm, Beth A., Esq. and Lane, Jim R., 1995. Finding the Key to Your Castle, privately published by Beth A. Grimm, Esq. and Jim R. Lane, p. 17.
- ¹⁰⁶ All references are to the section of the California Civil Code requiring the specific disclosure.
- ¹⁰⁷ Civil Code §1368(d)
- ¹⁰⁸ SB 254 also would charge the DRE with producing and keeping the brochure current. It also authorizes the DRE to charge a fee to cover the cost of development, production, updating, and distribution of the brochure.
- ¹⁰⁹ Wiess, Marc A. and Watts, John M. *Rise of the Community Builders: The American Real Estate Industry and Urban Land Planning*, quoted in McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 108.
- ¹¹⁰ Barton, Stephen E. and Silverman, Carol J, 1987. *Common Interest Homeowner’s Associations Management Study*. Sacramento, CA: California Department of Real Estate, p. 13.
- ¹¹¹ American Homeowners Resource Center is a non-profit organization dedicated to preserving the rights of individual homeowners.
- ¹¹² Elizabeth McMahon testimony before “Common Interest Development Issues After ‘Nahrstedt,’” Interim Hearing of the Senate Committee on Housing and Land Use, November 12, 1996. p. 7.
- ¹¹³ California Civil Code §1366 (b). For the purpose of this section, quorum means more than 50 percent of the owners of an association.
- ¹¹⁴ California Civil Code §1366 (b).
- ¹¹⁵ Grimm, Beth A., Esq. and Lane, Jim R., 1995. Finding the Key to Your Castle, privately published by Beth A. Grimm, Esq. and Jim R. Lane, p.4.
- ¹¹⁶ California Civil Code §1354.
- ¹¹⁷ *Nahrstedt v. Lakeside Village Condominium Association Inc.* 1994 Cal. LEXIS 4555, p. 4
- ¹¹⁸ *Nahrstedt v. Lakeside Village Condominium Association Inc.* 8 Cal. 4th 361, 1994 Cal. LEXIS 4555, 33 Cal. Rptr. 2d 63.
- ¹¹⁹ *Nahrstedt v. Lakeside Village Condominium Association Inc.* 1994 Cal. LEXIS 4555, p. 18.
- ¹²⁰ [http://www.state.va.us/dpor/boards.htm#Property Registration](http://www.state.va.us/dpor/boards.htm#Property%20Registration).

¹²¹ Annt, James Real Estate Commissioner, Department of Real Estate, Written comments submitted to the Interim hearing p. 41.

¹²² Winokur, James L. "Choice, Consent and Citizenship in Common Interest Communities," in Barton, Stephen E. and Silverman, Carol J. (eds.) 1994 *Common Interest Communities: Public Governments and the Public Interest*. Berkeley, CA: Institute of Governmental Studies Press.

¹²³ McKenzie, Evan, 1994. Privatopia: Homeowner Associations and the Rise of Residential Private Governments. New Haven, CT: Yale University Press, p. 167.

¹²⁴ Personal Letter from Robin Boyer Stewart, President, Common Interest Advocates to Senator Barbara Lee, Chair, Senate Housing and Land Use Committee, dated June 30, 1997.