

Commercial and Industrial Common Interest Development Act: How it Differs from the Davis-Stirling Common Interest Development Act

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Effective January 1, 2014, solely commercial or industrial common interest developments were no longer subject to the Davis-Stirling Common Interest Development Act ("Davis-Stirling Act"). These associations instead became subject to Civil Code sections 6500-6876, "the Commercial and Industrial Common Interest Development Act" ("Commercial & Industrial Act").

The Commercial & Industrial Act is based on the rewrite of the Davis-Stirling Act in 2014 but excludes many of its requirements, even more than were contained in statutory exclusions for commercial and industrial projects prior to January 1, 2014 (*i.e.*, former Civil Code section 1373).

A. LAWS THAT DO NOT APPLY

The following provisions of the Davis-Stirling Act did not carry over to the Commercial & Industrial Act and do not apply to commercial and industrial common interest developments. ****Remember: some of these requirements may be in the association's governing documents so they may apply pursuant to the governing documents, even if they are no longer required by law.****

- (1) The award of reasonable attorneys' fees and costs to the prevailing party in an action to enforce the governing documents (Civ. Code §5975).
- (2) The authority to petition the court for approval of CC&R amendments where the document requires super-majority owner consent (Civ. Code §4275).
- (3) The requirements for circulation of proposed operating rule changes to owners prior to board enactment, and notice of rule changes (Civ. Code §4360). Note, however, that Civil Code section 6632, within the Commercial & Industrial Act, requires the following:
 - (a) Rules must be in writing,
 - (b) Rules must be within the authority of the board per the law and the governing documents,

- (c) Rules must not be in conflict with the governing documents, and
 - (d) Rules must be reasonable and adopted, amended or repealed in good faith.
- (4) The restrictions on the applicability of CC&R amendments prohibiting rental of separate interests (Civ. Code §4740).
 - (5) The requirement that the association prepare and disclose or distribute a budget (Civ. Code §5300).
 - (6) The requirement that the association conduct owner meetings in accordance with a recognized system of parliamentary procedure (Civ. Code §5000(a)).
 - (7) The rights of owners to access to association records (Civ. Code §5200 *et seq.*).
 - (8) The regulation of member discipline procedures (Civ. Code §5855).
 - (9) The rights of owners in a joint association to attend meetings and access records of the joint association (Civ. Code §4820).
 - (10) The requirement of a document disclosure index (former Civ. Code §1363.005, omitted in Davis-Stirling 2014).
 - (11) The secret ballot voting requirements and campaign limitations for elections and certain other votes, like document amendments (Civ. Code §§5100 *et seq.*).
 - (12) The Open Meeting Act requirements (Civ. Code §4900 *et seq.*).
 - (13) The requirement that at least 67% of the owners consent to a proposed grant to a member of exclusive use of any portion of the common area (Civ. Code §4600).
 - (14) The disclosure requirements for management and rules governing handling of association funds (Civ. Code §§5375, 5380).
 - (15) The informal dispute resolution (IDR) requirements (Civ. Code §5900 *et seq.*).
 - (16) The requirement to distribute an Annual Budget Report, Annual Policy Statement, and the requirement to annually disclose to members insurance information, reserves, and reserve deficits (Civ. Code §§5300, 5305, 5310, 5320).
 - (17) The requirement to prepare reserve studies and restrictions upon use of reserve funds (Civ. Code §5550 *et seq.*).

- (18) The requirement to annually disclose collection policies and association rights with regard to collection (Civ. Code §5730).
- (19) The limits on late charges and interest charges on delinquent assessments (Civ. Code §5650(b), (c)).
- (20) The right of owners to request dispute resolution and to request a payment plan for delinquent assessments (Civ. Code §§5660(d-f), 5665, 5670).
- (21) The requirement for periodic board review of financial information and reports (Civ. Code §5500).
- (22) The limits on permissible assessment increases without a vote of the members (Civ. Code §5605).
- (23) The prohibition on assessments or fees which exceed the amount necessary to defray the costs for which it was levied (Civ. Code §5600(b)).
- (24) The prohibition on assessments based on the taxable value of the separate interest (Civ. Code §5625).
- (25) The owner's right to pay disputed assessments under protest (Civ. Code §5658).
- (26) The requirement that associations credit payments first to assessments and thereafter to fees and costs of collection, attorneys' fees, late charges, or interest (Civ. Code §5655(a)).
- (27) The requirement that associations mail duplicate notices to separate addresses when demanded by the owner (Civ. Code §4040(b)).
- (28) The prohibitions on the use of foreclosure to collect assessments less than 12 months in arrears or \$1800 (Civ. Code §5720(b)).
- (29) The requirement to provide a selling owner with statutorily-specified documents upon the seller's request (Civ. Code §4525 *et seq.*)
- (30) The prohibition on charging a transfer fee when a separate interest is sold (Civ. Code §§4575, 4580).
- (31) The requirement that a party offer alternative dispute resolution (ADR) before filing an enforcement action in court (Civ. Code §5925 *et seq.*).
- (32) The rules pertaining to the processing of architectural applications (current Civ. Code §4765).

- (33) The mandatory CC&R provisions related to the location of the property in an airport influence area or in the jurisdiction of the San Francisco Bay Conservations and Development Commission (Civ. Code §§4250, 4255).
- (34) The requirement that the association allow for at least one type of fire retardant roof covering material that meets the legal requirements in a very high fire severity zone (Civ. Code §4720).

No amendments made to the Davis-Stirling Act *since January 1, 2014* carried over to the Commercial & Industrial Act, so they also do not apply. These include:

- (1) Limitations on prohibition of artificial turf or synthetic surfaces that resemble grass and restrictions on imposition of fines or assessments against owners who reduce or eliminate watering during drought emergencies, as defined (Civil Code §4735(a)(2), (c-e)).
- (2) Prohibiting enforceability of pressure washing requirements during state or local government declared drought emergencies (Civil Code §4736).
- (3) Repeal and replacement of provisions regarding general maintenance obligations, effective January 1, 2017 (Civil Code §4775(c)).

Most of these recent amendments involve drought-related concerns. Even though they are not in the Commercial & Industrial Act, commercial and industrial associations pursuing enforcement efforts should still consider the public policy behind recent drought-related regulation in the Davis-Stirling Act, as well as other potentially applicable regulations involving water use. Consider consulting with legal counsel for guidance. Managers and board members of associations subject to the Commercial & Industrial Act should also remain watchful for any additions, deletions or changes which may come in in the future.

B. LAWS ADDED IN 2014 THAT APPLY

In 2014 new laws were added in the Commercial & Industrial Act to apply to commercial and industrial associations. These include:

- (1) Civil Code section 6758 establishes a list of conflicts of interest as to which a director (or member of a committee of the board) may not vote. Examples include:
 - (a) Decisions regarding discipline of the director/committee member
 - (b) Collection of assessments owed by the director/committee member
 - (c) Architectural changes sought by the director/member
 - (d) Grants of exclusive use of common areas to the director/committee member

The list is not exclusive and existing provisions of law relating to so-called “interested transactions” still apply to association director decisions.

- (2) Civil Code section 6514 addresses notices from the association to an owner by “individual notice or delivery:”
 - (a) First-Class Mail, Postage Prepaid; Registered or Certified Mail - per Civil Code section 6518, delivery is deemed complete on deposit in mail
 - (b) Overnight Delivery by Express Service Courier
 - (c) E-mail, Facsimile, Other Electronic Means With Prior Written Consent of Owner - per Civil Code section 6518, delivery is deemed complete at time of transmission
- (3) Civil Code section 6632 imposes the following requirements for rules:
 - (a) Rules must be in writing,
 - (b) Rules must be within the authority of the board per the law and the governing documents,
 - (c) Rules must not be in conflict with the governing documents, and
 - (d) Rules must be reasonable and adopted, amended or repealed in good faith.

Common interest development managers and board members with questions about whether or not they are subject to the Commercial & Industrial Act, or regarding its application to their associations, should contact legal counsel for more information.