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Planning For The Future: The Restated Davis-Stirling CID Act

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The Davis-Stirling Common Interest Development Act (Act) is getting a face-lift. First adopted in 1986 as an amalgamation of existing statutes governing common interest developments (CID), the Act has since had more than 225 provisions added, repealed and oft-amended. Today, the Act is considered misshapen, difficult to navigate and poorly written.

The California Law Revision Commission (CLRC) is working on a restated Act, the goals of which are to clarify, simplify, and reorganize the Act. It is currently expected to finalize its draft and find an author to introduce it as a bill in early 2011. If, as expected, the journey through the legislature is a two-year effort, the governor will have the opportunity to sign the restatement in the summer or fall of 2012. The bill would likely have a one-year implementation period and an effective date of January 1, 2014.

Such a restatement will have universal impact, affecting all common interest communities, their associations, boards of directors, members and managers. The community manager's role will be of paramount importance, and adjusting is not expected to be easy. There is much to be said for a manager's virtues of patience and calm planning for the future.

Clarification
The first of the CLRC's goal is clarification. An example of a clarified concept that will have a profound, daily effect on managers is brand-new notice and document delivery requirements. The CLRC considers it important to have highly-specified provisions for when notice is given and how documents are to be delivered (whether to or from an association). The record-keeping role of management and required precision will necessarily expand. Record-keeping costs must inevitably rise, along with new exploration of electronic efficiencies. Management contracts will need to keep up.

Simplification
The CLRC's second goal is to simplify the Act. For example, to minimize confusion, annual disclosures will be largely placed into *two* distinct timeframes. Rather than make most, but not all required disclosures *once* each year at budget-time, the restated Act will divide up disclosures into (1) major financial disclosures to be made prior to the beginning of each fiscal year and (2) all other disclosures (minutes availability, fine schedules, dispute resolution rights, architectural review procedures, etc.) made within 120 days after the fiscal-year end, along with distribution of the year-end financial statement. The CLRC expects that this new simplified approach to disclosures will enhance communication and compliance. It will necessarily have an important impact on management practices.

Reorganization
The Act will be particularly affected in its new organization. To allow for a more comprehensible outline and to afford more room for future expansion of the Act, the restatement uses a wholly new numbering system that will at first be jarring. The good news is that the new Act's organization is intentionally patterned after the order of provisions found in an association's CC&Rs, which should aid in familiarity.

Analytical Efforts
As with any legislation that reworks a major body of law, unintended legal consequences must be anticipated. To help minimize such effects, the Real Property Law Section of the California State Bar authorized a sub-committee of four widely-experienced CID attorneys to advise the CLRC and comment on its proposal. The sub-committee has

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heavily analyzed and commented on the proposed new Act, suggested improved navigational tools, pointed out substantive changes that were likely unintended, and evaluated those changes that the Commission did intend.

A major criticism of the restatement is in the Commission's preference for using a myriad of cross-references. An inherently confusing practice, multiple cross-referred provisions become quickly tangled and can lead to disputes. A major educational effort in coming years will be needed to bridge this comprehension gap.

Planning Ahead

The restated Act will be *very* different. For those who have delved into it in depth, the effect is to be puzzled, then disconcerted, followed by a long period of frustration. Familiarity and a feeling of confidence in one's understanding the Act and its implications simply evaporate.

Planning first of all involves taking a positive, confident approach that the new Act can and will be mastered, understood and applied in each manager's daily professional life. Manager education will be key to this transition, and management companies are well-advised to gear up financially for the cost of it.

Managers are also well-advised to not act on premature advice. The proposed restated Act is still in tentative form and will be further changed before it becomes a bill. For example, it is a prime goal of the CLRC that existing governing documents will remain fully effective. How that can be effectively implemented is yet to be seen, but will be clearer long before the anticipated 2014 implementation date of the Act.

Managers can encourage colleague and board patience and urge board member education. Building an awareness of future educational budget needs in associations will be critical, particularly aiming for 2013, the year before the restatement is expected to formally become effective.

Managers will want to give the restated Act time for familiarity to grow, to move beyond initial feelings of bewilderment and a frustrating lost sense of mastery, knowing that each day's new experience will build on the one before. While the familiar shorthand of "1368 disclosures" and "1356 petitions" will be lost, the future holds the potential for new instant references to such things as "4020 notices" and "5015 budgets."

Given time, the advantages of a clearer, simpler and better organized Act will take over. The year 2013 will be key.

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