The New Davis-Stirling Act: Get Ready!

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The Davis-Stirling Common Interest Development Act (commonly referred to as the "Davis-Stirling Act") is the primary set of laws that govern common interest developments and homeowners associations in California. This set of laws was enacted in 1985 to establish a unified statutory framework that regulates the governing bodies for all types of common interest developments in California. Throughout the past 25 plus years, the Davis-Stirling Act has experienced numerous amendments, and effective January 1, 2014 the implementation of a complete renumbering and reorganization of the Davis-Stirling Act will take place (the "new" Davis-Stirling Act will be codified in California Civil Code Sections 4000 through 6150). Much has already been written about the renumbering and reorganization of the existing provisions in the Davis-Stirling Act. The focus of this article is to address some of the key substantive changes being made to the new Davis-Stirling Act and highlight how associations should best handle these changes.

The intent of the new Davis-Stirling Act and its revisions is to make the law more user/consumer friendly, and easier to read and understand. Some of the organizational changes to the new Davis-Stirling Act include shorter Civil Code sections, a separation and regrouping of subjects and the inclusion of standardized terminology.

One important area of change under the new Davis-Stirling Act centers on the establishment of standardized rules of notice and delivery that an association and its members are required to follow. The new Davis-Stirling Act differentiates between notices given to an individual member (Section 4040) from that of notices given to the entire membership as a whole (Section 4045). With respect to "individual notice" or "individual delivery" (such as for the delivery of notices of disciplinary hearings and annual disclosures), an association may now send documents to individual members by first class mail, registered or certified mail, express mail, overnight delivery by an express carrier, and electronic means (if the member has given written consent for electronic delivery).

For “general delivery” or “general notice” (such as for the noticing of association board meetings), an association may now give notice by any of the methods permitted for individual notice/individual delivery, inclusion in a billing statement or newsletter, posting in a prominent and designated common area location (so long as the members have previously been given notice of the notice designation area), or inclusion in closed-circuit association television programming that is utilized by the association for information distribution. An association’s board members and management team should be fully aware of the new notice and delivery requirements to avoid unnecessary costs, delays in association business, and claims of non-compliance with the law.

Other key changes present in the new Davis-Stirling Act center on required annual reports and disclosures. New Civil Code Sections 5300 and 5310 require an Annual Budget Report and Annual Policy Statement, respectively, to be delivered to all association members on an annual basis (these replace the existing budget and disclosure requirements under the current Davis-Stirling Act). The Annual Budget Report is to include, at a minimum: a pro forma operating budget; a summary of the association’s reserves; a summary of the reserve funding plan; a statement regarding outstanding loans; a summary of the association’s insurance policies; and statements about deferred maintenance, the levy of special assessments, the funding of reserves and the procedures used to calculate reserves with respect to those major components for which the association is responsible. The Annual Policy Statement, on the other hand, must include, among other disclosures: contact information for a designated association representative; information regarding the association’s assessment collection policies; a description of the association’s discipline and fine policies; dispute resolution procedures; and architectural modification application requirements.

While much of this information is currently required to be given by an association to its members on an annual basis, the information now has to be organized in a new and different manner. An association must, as a result, update and revise its annual budget and disclosure processes and forms, or else the association may be limited in increasing regular assessments, collecting delinquent assessments and/or imposing disciplinary measures. It is imperative for an association to seek helpful resources on a proactive basis now to ensure compliance with the new law. If an association has a

fiscal year that begins mid-year (sometime after January 1), we believe that the budget and disclosures distributed for the association's 2013-2104 fiscal year must comply with both the current and new Davis-Stirling Act requirements (no one said this was going to be an easy transition).

A very specific, and important, substantive addition in the new Davis-Stirling Act covers board member conflicts of interest. Civil Code Section 5350 will prohibit an association board member from voting on a variety of matters that concern himself/herself, including discipline of the board member, a request by the board member for a payment plan for delinquent assessments, the decision of whether to record a lien or to foreclose upon the board member's separate interest, proposed architectural modifications by the board member, and the granting of exclusive use common area to the board member. These new requirements will help avoid conflict of interest issues when conducting board business.

Another substantive change in the new Davis-Stirling Act involves the granting of exclusive use of common area to association members. Associations will now be permitted, without member approval, to grant exclusive use of the common area in order (1) to accommodate a disability, (2) to assign a parking space, storage unit, or other amenity, that is designated in the declaration for assignment, but is not assigned by the declaration to a specific separate interest, and (3) to comply with the law, which have been added to other existing exceptions where member approval is not necessary. That said, it is important for an association granting exclusive use of common area to consider requiring that a covenant running with the land be recorded against the applicable member's separate interest to protect the association and describe maintenance, insurance, and legal responsibilities for the exclusive use area.

In addition, various other changes have been made in the new Davis-Stirling Act. For example, a member is no longer responsible for any fees and costs incurred by his/her association as a result of a lien recorded in error, including costs associated with the pre-lien or intent to lien letter, or late charges, fees, interest and other related costs. Moreover, if a member employs dispute resolution, and the lien is determined to have been recorded in error, the association must pay for the entire cost of dispute resolution.

Further, a properly noticed hearing before an association's board of directors is now required before the board can levy a reimbursement assessment against a member for costs incurred by the association to repair damage to the common area for which the member is responsible. Also, it is now clarified that an association is not responsible for any temporary relocation costs (*e.g.* lodging, meals, transportation) incurred by a member due to the need of the member to temporarily vacate his/her separate interest as the result of maintenance or repair of the common area by the association.

Some of our association clients have questioned whether an association should wait to update and rewrite its governing documents until after January 1, 2014. If an association's governing documents are six to eight years old, the association undoubtedly has out of date documents (in terms of both the law and best business practices), and we believe associations should get ahead of the curve and consider amendments now, as it is a perfect time for an association's board of directors to begin the process of amending and restating its governing documents. Keep in mind that certain association documents, such as an association's collection policy, will need to be amended before the end of the year and distributed to the members to comply with the new Davis-Stirling Act.

On the subject of collection, it will likely be necessary for an association (and, as applicable, the association's managing agent and/or collection services provider) to update the association's late letter, pre-lien (intent to lien) letter, and lien if these documents refer to existing Davis-Stirling Act code sections. Although there is no penalty for not updating these documents, we've all heard the saying that "an ounce of prevention is worth a pound of cure". It is easier to update an association's assessment collection documents now, than to later explain to a delinquent member why a collection letter or publicly recorded document makes reference to a nonexistent/superseded Civil Code section.

The changes discussed in this article are only a few of the important substantive changes in the new Davis-Stirling Act taking effect in 2014. Many of these changes will impact how associations and their boards and members communicate, interact and conduct business, and will also impact the business practices and requirements

of an association's managing team. While the new Davis-Stirling Act makes a concerted effort to bring transparency and fairness to the forefront, it will be incumbent upon association boards of directors to meet the new law halfway and implement and carry out its provisions in a compliant manner.

Have questions about how we can help your association prepare for the new Davis-Stirling Act? Contact us at 800-372-2207 or info@sghoalaw.com.