

# THE DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT: How it Affects Housing Cooperatives

The Davis-Stirling Act is a California state law that regulates housing cooperatives as well as condominiums and other common interest developments. This Act covers many aspects of governance of housing cooperatives and it is important that co-op boards and managing agents be fully aware of the requirements it imposes. The purpose of the Davis-Stirling Act is to provide legally required guidelines for operations, and to assure transparency for all members on the operations. This Report provides detail on some of the key elements of the Act, but is by no means comprehensive. In an effort to summarize portions of the Act, many details have been left out. Board members and managing agents should read the full Act and if they have questions about the proper implementation, they should consult legal counsel for advice on interpretation.

Please Note: This Report is based on the revised Davis Stirling Act, which went into effect on January 1, 2014. If you are dealing with issues that occurred before that date, you will need to refer to the previous version of the Act or consult legal counsel.

## LEGAL DISCLAIMER

Every effort has been made to provide the most accurate and complete information currently available. However, the authors are not attorneys and this pamphlet should not be construed as legal advice. Nothing provided in this pamphlet should be used as a substitute for the advice of competent legal counsel.

## NOTIFICATION REQUIREMENTS

The act states that certain communications must take place to ensure transparency through notification between the co-op and its members. There are two ways to deliver notifications that are related to general co-op business: “*Individual delivery*” and “*General delivery*.” Many different documents and notices require either an individual or general delivery. Some of the more important ones are discussed below. Refer to the full text of the Act for more detail. Reference sections are listed. (Note: § stands for Section)

### **Individual Delivery/ Notice**

If a provision requires a notice to be delivered by an *individual delivery*, it can be delivered by mail, or by email with recipient’s written consent. Documents that require an *individual delivery* include: a review of the financial statement (§5305), summary or full report of both Annual Budget Report and Annual Policy Statement (§5310-20) and a notice to member of any increase in the assessments (§5615).

### **General Delivery/ Notice**

If a provision requires *general delivery*, the document may be provided by including it in a billing statement or newsletter, posting it in a prominent location or by mail. Documents that require a *general delivery* include the text of proposed rule change (§4360(a)), notification of a board meeting (§4920), and tabulated results of an election (§4360(a)).

## **OPERATING RULES**

Operating Rule refers to a regulation adopted by the board of directors that applies to the management, operation and affairs of the cooperative. An operating rule has to be in writing, consistent with the law and legal documents of the cooperative, and adopted or amended in good faith and in substantial compliance with the requirements of the Act. For full discussion on Operating Rules, please refer to §4340-§4370.

Rule Change means the adoption, amendment, or repeal of an Operating Rule by the board. A proposed Rule Change of policies regarding certain issues such as election procedures, use of common area, member discipline, monetary penalties and resolution of disputes, requires a **notification before and after making a Rule Change**, and members of a cooperative owning 5% or more of the shares may call a special vote of the members to reverse a Rule Change.

The board must provide a *general notice* with the text of the proposed Rule Change and a description of its purpose and effect at least 30 days before making the Rule Change. After making a Rule Change, the board must deliver a *general notice* of the Rule Change.

A new rule cannot take effect until 30 days after it is passed by the board. An exception is when there is an emergency Rule Change, which may be made to address an imminent threat to public health or safety. In such case, no proposed emergency rule change notice is required, but a *general notice* must be issued including the text, a description of the purpose and effect of the rule change, and the date that the Rule Change expires (no more than 120 days).

## **DISCLOSURE TO NEW PURCHASERS**

It is legally the responsibility of the *owner* of separate interest (in a co-op, that is the share holder) to disclose information to prospective purchaser before the transfer of the title or the execution of a real property sales contract. (§4525) This is often done by the co-op or property management, however it is the departing member's responsibility to make sure it is done.

Required information includes:

1. A copy of all governing documents
2. Any restriction in the governing documents limiting the occupancy (such as seniors only)
3. A copy of the most recent annual documents distributed;
4. A written statement with the amount of the association's regular and special assessments, and any unpaid assessments, fines or penalties still due by co-op member. This statement shall include information on late charges, interest, and costs of collection;
5. A copy or a summary of any notice previously sent to the owner that sets forth any alleged violation of the governing documents that remains unresolved;
6. Any change in the association's current regular and special assessments and fees which have been approved by the board, but have not become due and payable as of the date disclosure;
7. If there is a provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant, a statement describing the prohibition and its applicability;
8. Per prospective purchaser's request, a copy of the minutes of board meetings, excluding meetings held in executive session, conducted over the previous 12 months that were approved by the board.

## **ELECTIONS**

Elections for the Cooperative's Board of Directors, amendments to the governing documents, and other purposes must be held based on the Davis Stirling Act. If there is a conflict between the Act and the Cooperative's governing documents, the Act prevails. For full details on elections, see §5100-5145.

A Cooperative must adopt Election Rules, based on and notify membership of these rules, which include the following:

1. The process for appointment of an independent third party as Inspector of Elections, the duties of the Inspector, and who can serve in this role;
2. The qualifications for candidates for the board and procedures for the nomination of candidates;
3. The qualifications for voting and the voting period for elections.

Elections must be conducted following specific voting procedures, which include:

1. Ballots and two preaddressed envelopes with instructions on how to return are delivered to members not less than 30 days prior to the deadline for voting.
2. The ballot is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. The member signs the outer envelope and returns it to the Inspector of elections, as explained in the ballot instructions.

Votes must be counted by the Inspector of Elections, in public at a properly noticed meeting open to all members. Election results must be reported to the members within 15 days of the election. The ballots are retained by the Inspector for one year, when the period for challenging the election has expired

## **FINANCES & RESERVES**

The act sets out legal requirements on handling accounts and reserves and reserve planning. These are good practices for any co-op to assure that adequate funds are available and that the handling of those funds is transparent to the members.

### **Accounting**

The board must do all of the following

Review the latest account statements for operating and reserve accounts.

Review on a quarterly basis, reconciliation of the association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared to the budget; an income and expense statement for the operating and reserve accounts.

### **Reserve Funds**

1. A withdrawal from the cooperative's reserve accounts requires at least two persons' signatures, one of whom must be a director.
2. Reserve funds may not be spent for any purpose other than the repair, replacement, or maintenance of major components, or litigation involving these purposes.

3. The board may authorize the temporary transfer of funds from a reserve fund to the general operating fund to meet short-term cash flow requirements for a limited time and under specific terms (§5515).

### **Reserve Planning**

1. At least once every three years, the board of directors shall have a Capital Reserve Study prepared that involves inspection of the major components that the cooperative is obligated to repair, replace or maintain as part of a study of the reserve account requirements. The board must review this study annually and make necessary adjustments to the reserve account requirements (§5550).
  - a. The study must identify the remaining useful life of the components, estimate the cost to repair, and estimate the total annual amount necessary for the repairs.
  - b. Provide a **reserve funding plan** that indicates how the association plans to fund the amount necessary for the repair and replacement of all major components with an expected remaining life of 30 years or less. The plan shall be adopted by the board at an open meeting before the membership of the association (§5560),
2. The summary of the association's reserves must be included in the annual budget report, using a specific form from the Davis Stirling Act, with details about estimated replacement costs, estimate of the reserves necessary to replace the major components, the amount of accumulated reserves actually set aside for replacements and any deficiency in reserve funding expressed on a per unit basis (§5565).

### **ASSESSMENTS AND ASSESSMENT COLLECTION**

A cooperative levies assessments sufficient to perform its obligations under the governing documents and this act, and must not impose or collect an assessment that exceeds the amount necessary to cover the costs for which it is levied.

1. The Board may increase monthly assessments if they comply with Annual report requirements or obtain the approval through a vote of members.
2. Under certain emergency situations, assessments may be increased under different requirements.
3. The cooperative must provide notice to the members of any increase in the assessments, at least 30 days before the increased assessment is due.

The Davis Stirling Act covers procedures for declaring cooperative member delinquent on assessments and other fees owed to the association. These are measures normally handled by the management agent, and the board should be sure that agent follows these procedures carefully (§5650-90).

A Copy of the full Davis Stirling Act is available at: [coopnetwork.net](http://coopnetwork.net)

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