



CHIEF DEPUTY  
Jeffrey A. DeLand

PRINCIPAL DEPUTIES  
Joe Ayala  
Cindy Merten Cardullo  
Amy Jean Haydt  
Thomas J. Kerbs  
Kirk S. Louie  
Robert A. Pratt  
Patricia Gates Rhodes  
Janice L. Thurston

Sergio E. Carpio  
Lisa C. Goldkuhl  
Baldev S. Feir  
Michael R. Kelly  
Romulo I. Lopez  
Fred A. Messerer  
William E. Moddelmog  
Gerardo Partida  
Aaron D. Silva

DEPUTIES  
Jennifer Klein Baldwin  
Jennifer M. Barry  
Vanessa S. Bedford  
Eric V. Bender  
Ann M. Burastero  
Daniel J. R. Calvert  
Emilio Camacho  
William Chan  
Elaine Chu  
Byron D. Damiani, Jr.  
Stephen G. Dehrer  
Sharon L. Everett  
Krista M. Ferns  
Nathaniel W. Grader  
Mari C. Guzman  
Jacob D. Heninger  
Stephanie Elaine Hoehn  
Russell H. Holder  
Cara L. Jenkins  
C. David Johnson, Jr.  
Valerie R. Jones  
Lori Ann Joseph  
Aliza R. Kaliski  
Naomi Kaplowitz  
Christina M. Kenzie  
Michael J. Kerins  
Eunie Kim  
Eve B. Krottinger  
L. Erik Lange  
Fellecia A. Lee  
Jason K. Lee  
Kathryn W. Londenberg  
Anthony P. Márquez  
Christine P. Maruccia  
Abigail Maurer  
Sheila R. Mohan  
Natalie R. Moore  
Lara Bierman Nelson  
Kendra A. Nielsen  
Yooli Choi O'Brien  
Sue-Ann Peterson  
Lisa M. Plummer  
Cameron Rhudy  
Robert D. Roth  
Stacy Saechao  
Michelle L. Samore  
Melissa M. Scolari  
Stephanie Lynn Shirkey  
Jessica L. Steele  
Mark Franklin Terry  
Josh Tosney  
Daniel Vandekoolwyk  
Marta R. Vanegas  
Joanna E. Varner  
Joyce L. Wallach  
Bradley N. Webb  
Rachelle M. Weed  
Genevieve Wong  
John Wright  
Armin G. Yazdi  
Jenny C. Yun  
Jack Zorman

LEGISLATIVE  
COUNSEL  
BUREAU

LEGISLATIVE COUNSEL BUREAU  
925 I STREET  
SACRAMENTO, CALIFORNIA 95814  
TELEPHONE (916) 341-8000  
FACSIMILE (916) 341-8020  
INTERNET WWW.LEGISLATIVECOUNSEL.CA.GOV

June 9, 2014

Honorable Richard Roth  
Room 4034, State Capitol

**COMMON INTEREST DEVELOPMENTS: SHORT-TERM  
RENTALS - #1410118**

Dear Senator Roth:

**QUESTION**

Under Civil Code section 4740, is an owner of a separate interest in a common interest development subject to a provision in a governing document or amendment to a governing document that became effective on or after January 1, 2012, and that prohibits an owner from renting out the owner's interest in the property under certain conditions, such as a short-term lease?

**OPINION**

Under Civil Code section 4740, an owner of a separate interest in a common interest development is subject to a provision in a governing document or amendment to a governing document that became effective on or after January 1, 2012, and that prohibits an owner from renting out the owner's interest in the property under certain conditions, such as a short-term lease, only if either (1) the prohibition took effect before the owner acquired title to his or her separate interest in that development, or (2) the owner consented to the governing document or amendment containing that provision.

## ANALYSIS

The Davis-Stirling Common Interest Development Act (Civ. Code, § 4000 et seq.)<sup>1</sup> (hereafter the act) regulates common interest developments, which include community apartment projects, condominium projects, planned developments, and stock cooperatives. The activities of owners of separate interests are regulated by a variety of governing documents of the development or association.<sup>2</sup> These governing documents contain restrictions and covenants that control the behavior of owners of separate interests and form the basis for governing the development. Such “[u]se restrictions are an inherent part of any common interest development and are crucial to the stable, planned environment of any shared ownership arrangement.” (*Nabrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 372 (hereafter *Nabrstedt*)). “[S]ubordination of individual property rights to the collective judgment of the owners association together with restrictions on the use of real property comprise the chief attributes of owning property in a common interest development.” (*Id.* at p. 374.) Use restrictions contained in a development’s recorded conditions, covenants, and restrictions are enforceable unless unreasonable. (§ 5975, subd. (a); *Nabrstedt, supra*, at pp. 379-380.)

As a result, a restriction on renting out one’s separate interest in a common interest development would ordinarily be enforceable unless unreasonable. (§ 5975, subd. (a).) However, section 4740, subdivision (a), effective January 1, 2012, provides as follows:

“(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to his or her separate interest.”

Section 4740 applies only to prohibitions adopted after January 1, 2012. (§ 4740, subd. (f).)

To answer your question, we first examine the language of the statute itself. “If the statutory language is unambiguous, ‘we presume the Legislature meant what it said, and the plain meaning of the statute governs.’ [Citation.]” (*Yu v. University of La Verne* (2011) 196 Cal.App.4th 779, 788.) By its plain language, section 4740 applies to any rental or lease of a separate interest in a common interest development. Nothing in the language of section 4740 suggests that the Legislature meant to address only certain types of rentals, such as long-term rentals. Thus, the plain meaning of section 4740 prohibits a homeowners’ association from

---

<sup>1</sup> All further section references are to the Civil Code, unless otherwise specified.

<sup>2</sup> The term “association” refers to a nonprofit corporation or unincorporated association created to manage a common interest development. (§ 4080.)

enforcing a provision in a governing document or an amendment to a governing document that became effective on or after January 1, 2012, if that provision prohibits *any* rental or lease of a separate interest in a common interest development and if the provision took effect after an owner acquired title to his or her separate interest (hereafter section 4740 prohibition).

Further, section 4740 is part of the act. Courts must harmonize the various parts of a statutory enactment by considering the particular section in the context of the statutory framework as a whole. (*Lambert Steel Co. v. Heller Financial, Inc.* (1993) 16 Cal.App.4th 1034, 1040.) Nothing in the act as a whole distinguishes between short-term and long-term rentals. Because the plain meaning of section 4740 does not distinguish between short-term and long-term rentals, and because the act does not distinguish between short-term and long-term rentals, we think a court would conclude that the section 4740 prohibition applies without regard to the term of a rental.

You asked whether any distinction exists between a prohibition and a restriction such that a homeowners' association could place limits on an owner's ability to rent his or her separate interest in a common interest development as long as the homeowners' association did not prohibit rentals entirely. The legislative history demonstrates that the Legislature sought to address both rental restrictions and outright prohibitions. (See Assem. Com. on Housing & Community Development, Analysis of Sen. Bill No. 150 (2011-2012 Reg. Sess.) as amended Jun. 9, 2011, p. 3 ["Some CIDs have *restrictions on rentals which take a variety of forms*, including ... prohibiting rental of a unit until the rental has been owner occupied for at least a year or prohibiting renting or leasing outright" (emphasis added)] ; Assem. Com. on Judiciary, Analysis of Sen. Bill No. 150 (2011-2012 Reg. Sess.) as amended Jun. 9, 2011, p. 3 ["*In some cases, these governing documents may prohibit leasing a unit entirely ... [m]ore commonly, such restrictions take the form of a limit on ... the total units in the CID that may be rentals*" (emphasis added)].) Thus, the purpose of the section 4740 prohibition was to exempt owners from any rental prohibition, regardless of its nature, that took effect on or after January 1, 2012, unless the prohibition took effect before the owner acquired title.

Our conclusion is supported by the fact that the committee analyses do not distinguish between outright prohibition and restrictions—instead, the analyses use the terms interchangeably. (See Sen. Judiciary Com., Analysis of Sen. Bill No. 150 (2011-2012 Reg. Sess.) as amended Apr. 25, 2011, p. 5 [analyzing "two relevant cases on the issue of rental restrictions" and "the ability of an association to deny the owner the ability to rent his or her home"]; Assem. Com. on Judiciary, Analysis of Sen. Bill No. 150 (2011-2012 Reg. Sess.) as amended Jun. 9, 2011, p. 5 [opponents of the bill argue that "a homeowners' association's ability to make 'reasonable rules and regulations, including renter restrictions, must be fluid and change with conditions imposed by the mortgage market or personal needs'"].) That the committee analyses do not distinguish between prohibiting and restricting rentals indicates that the Legislature viewed those terms as interchangeable. Given this legislative history, we conclude that section 4740 does not distinguish between an outright prohibition on rentals of separate interests in a common interest development and a restriction on rentals of those separate interests.

However, there is an exception to the section 4740 prohibition. Subdivision (b) of section 4740 permits a homeowners' association to prohibit the rental or lease of separate interests in a common interest development if the owner of a separate interest expressly consents to be subject to such a prohibition in a governing document or amendment to a governing document. This exception applies even if the owner already had acquired title to his or her separate interest before the homeowners' association requests the owner's consent to a rental prohibition.

Therefore, it is our opinion<sup>3</sup> that under Civil Code section 4740, an owner of a separate interest in a common interest development is subject to a provision of a governing document or an amendment to a governing document that became effective on or after January 1, 2012, and that prohibits an owner from renting out the owner's interest in the property under certain conditions, such as a short-term lease, only if either (1) the prohibition took effect before the owner acquired title to his or her separate interest in that development, or (2) the owner consented to the governing document or amendment containing that provision.

Very truly yours,

Diane F. Boyer-Vine  
Legislative Counsel

*Aliza R. Kaliski*

By *WEM*  
Aliza R. Kaliski  
Deputy Legislative Counsel

ARK:sjk

---

<sup>3</sup>"The opinions of the Legislative Counsel, though not binding on a court, are entitled to consideration by a court [citation] ... ." (*Los Angeles County Dependency Attorneys, Inc. v. Department of General Services* (2008) 161 Cal.App.4th 230, 240.)