Study H-850 January 22, 2001

# Memorandum 2001-19

## Common Interest Development Law: Scope of Project (Background Study)

### INTRODUCTION

This memorandum initiates the California Law Revision Commission's consideration of common interest development (CID) law. This memorandum should be read in conjunction with the background study prepared for the Commission by Professor Susan F. French of UCLA Law School, *Scope of Study of Laws Affecting Common Interest Developments* (November 2000).

Attached to this memorandum as an Exhibit are the letters listed below, which provide comments addressed to Professor French's report. We have not generally reproduced attachments that accompany the letters. However, the attachments will be considered during the course of the study in connection with the specific issues to which they relate.

*Exhibit p.*

1. Samuel L. Dolnick, Homeowner, La Mesa . . . 1
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17. Jeffrey G. Wagner, Attorney, Walnut Creek . . . 64
18. Joan B. Lee, Gray Panthers of Northern California . . . 66
19. Susan M. Hawks McClintic, Attorney, San Diego . . . 68

20. William Powers, Congress of California Seniors . . . . . . . . . . . . . . . . . . . . 71
21. Robert Lewin, Homeowner, Irvine . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 72
22. Stephen Glassman, Attorney, Los Angeles . . . . . . . . . . . . . . . . . . . . . . . . 75
23. Alisa Ross, Homeowner, Irvine . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 76
24. Frederick L. Pilot, Common Interest Consumer Project . . . . . . . . . . . . . . 81
25. Curtis C. Sproul, Attorney, Sacramento . . . . . . . . . . . . . . . . . . . . . . . . . . 84
26. Tyler P. Berding, Executive Council of Homeowners . . . . . . . . . . . . . . . . 92
27. John Jones, Homeowner, Aliso Viejo . . . . . . . . . . . . . . . . . . . . . . . . . . . . 96
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29. Lee Ford, Homeowner, Texas . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 99

Please note that we have reproduced here only correspondence received in connection with release of Professor French's report and our request for comment. We have in the past received other correspondence that identifies problem areas in the law or suggests improvements in the law. Some of this correspondence is summarized in Professor French's report; the rest will be referred to at appropriate points during the course of this study.

This memorandum refers to major points made in the correspondence listed above. That correspondence also contains a wealth of detail, including specific instances of problems and specific suggested solutions. The correspondence should be consulted directly for that detail.

Our objective at this time is to make initial decisions concerning the scope, direction, and priorities for this study. We will get into specific problems and proposed solutions later.

## BACKGROUND

The concept of a study of common interest development law was first brought to the Commission in 1998. During its annual review of suggested new topics and priorities that year, the Commission concluded that such a study would be appropriate. In its *1998-1999 Annual Report*, 28 Cal. L. Revision Comm'n Reports 679, 693-94 (1998), the Commission explained:

> Common interest housing developments are characterized by (1) separate ownership of dwelling space coupled with an undivided interest in common areas, (2) covenants, conditions, and restrictions that run with the land, and (3) administration of common property by a homeowner association.
>
> The main body of law governing common interest developments is the Davis-Stirling Common Interest Development Law. Civ. Code § 1350 *et seq.* Other key statutes include the

> Subdivision Map Act, the Subdivided Lands Act, the Local Planning Law, and the Nonprofit Mutual Benefit Corporation Law, as well as various environmental and land use statutes. In addition, statutes based on separate, rather than common, ownership models still control many aspects of the governing law. See, e.g., Civ. Code §§ 1102 *et seq.*, 2079 *et seq.* (real estate disclosure).
>
> The complexities and inconsistencies of this statutory arrangement have been criticized by homeowners and practitioners, among others. See, e.g., SR 10 (Lee and Sher) (April 10, 1997); California Research Bureau, *Residential Common Interest Developments: An Overview* (March 1998).
>
> The association boards that administer common interest developments, composed of elected unit owners, encounter a statutory framework that is unduly complex; the lay volunteers often make mistakes and violate procedures for conducting hearings, adopting budgets, establishing reserves, enforcing parking, and collecting assessments. The statutes provide no practical enforcement provisions to deter violations. Housing consumers do not readily understand and cannot easily exercise their rights and obligations.
>
> The statutes affecting common interest developments should be reviewed with the goal of setting a clear, consistent, and unified policy with regard to their formation and management and the transaction of real property interests located within them. The objective of the review is to clarify the law and eliminate unnecessary or obsolete provisions, to consolidate existing statutes in one place in the codes, and to determine to what extent common interest housing developments should be subject to regulation.

The Legislature authorized the proposed study in 1999. Resolution Chapter 81 of the Statutes of 1999 approves for study by the Law Revision Commission the following topic:

> Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to formation and management of these developments and transaction of real property interests located within them, and to determine to what extent they should be subject to regulation.

Due to the potential magnitude of this project, the Commission decided to seek guidance as to the possible scope and priorities for the study. In 2000 the Commission retained a "team" of academic consultants for this purpose,

comprised of Professors Susan French of UCLA Law School and Roger Bernhardt of Golden Gate University Law School. Professor French is the Reporter for the Restatement (Third) of Property, Servitudes and has written and lectured on common interest development law. Professor Bernhardt is a real property law expert and author of the annual California Continuing Education of the Bar survey of developments in real property law. During preparation of the scope report, Professors French and Bernhardt, with the concurrence of the Commission's Executive Secretary, determined that Professor French should produce the study, with Professor Bernhardt acting in a consultative capacity.

In November 2000 Professor French delivered the background study, *Scope of Study of Laws Affecting Common Interest Developments* (November 2000). On receipt, the Commission publicized and circulated the report, with a comment deadline of January 15, 2001. Responses received are listed above.

## A WORD ABOUT THE COMMISSION'S PROCESS

For the benefit of persons interested in this study who are unfamiliar with Law Revision Commission proceedings, a thumbnail sketch of our typical process will be helpful.

The Commission conducts all its work at public meetings. The Commission's staff prepares written material for consideration at the meetings, and oral remarks may be received at the meetings. The meetings are not hearings, but working sessions, designed for constructive problem-solving. The Commission determines policy; underlying legal research and legislative drafting to implement Commission decisions is performed by the Commission's staff.

The Commission makes initial policy decisions at early meetings, which are developed in detail at subsequent meetings. The Commission prepares a complete package, consisting of a narrative explanation of the perceived problems and proposed solutions, together with implementing statutory language. The package, titled a tentative recommendation, is circulated widely (beyond the persons participating at Commission meetings) to interested persons and organizations for review and comment. The Commission reviews comments received on the tentative recommendation, and makes any necessary revisions before submitting the package to the Governor and Legislature as a final recommendation. The proposal then goes through the regular legislative process.

The Commission has a high success rate in the Legislature (in the vicinity of 95%).

The process is a thorough, deliberate, and deliberative one. It can take a fair amount of time to complete. A project of this magnitude typically will require several years. On occasion the Commission will break a major topic into smaller discrete segments so that work completed early on will not become stale during the time it takes to complete the remainder of the study.

At present, the staff does not anticipate any major departures from this standard process. But that is one of the reasons the Commission has decided to begin with a scope analysis. The size and direction of the study have yet to be determined.

## SYNOPSIS OF SCOPE REPORT

Professor French's scope report reviews the main bodies of law governing common interest developments — the Davis-Stirling Act, the Nonprofit Corporation Law, and the Subdivided Lands Act — as well as miscellaneous other applicable statutes. Of these, Professor French identifies the Davis-Stirling Act as most problematic. The major criticisms are (1) the law is complicated and hard to understand, (2) its coverage is uneven, (3) securing compliance with the law is difficult, and (4) protections for individuals are weak.

Professor French's primary recommendation is that the Commission investigate the possibility of replacing the Davis-Stirling Act with the Uniform Common Interest Ownership Act (UCIOA), augmented by helpful provisions drawn from the Davis-Stirling Act and from the Restatement (Third) of Property, Servitudes. UCIOA deserves careful consideration because it is clearly written, reasonably well organized, and reasonably comprehensive. It would standardize California terminology with the rest of the country and stabilize California law so it would not require constant amendment.

Other areas of study recommended by Professor French are:

(1) Review the interrelation among the governing documents, the common interest development law, and the Corporations Code for suitability and compatibility, and clarify which provision prevails in case of conflict. Also determine whether the governing laws are mandatory or are merely default rules.

(2) Examine ways to provide better protection to members of common interest developments. Problem areas include protecting members from deferred maintenance decisions, intrusive regulations or regulations that disrupt settled expectations, and unresponsive boards. Consideration should be given to enacting a members' Bill of Rights.

(3) Investigate nonjudicial oversight options. Jurisdiction of the Department of Real Estate or another regulatory agency could be extended to cover ongoing operations of an association. Jurisdiction could be invoked on an as-needed basis to resolve a dispute; dispute resolution services could be provided.

(4) Consider extension of the law to developments where lots or units are subject to an obligation to fund enforcement of CC&Rs even if there is no common area.

## ISSUES ADDRESSED IN SCOPE REPORT

In this section of the memorandum, the staff digests general reaction received in response to Professor French's suggestions. We do not get into detailed examples and variations proposed in the correspondence. The Exhibit to this memorandum should be consulted for that purpose.

Depending on the Commission's determinations as to the scope and direction of the project, we will revisit the detail contained in the correspondence. In this connection, the staff notes that a number of the commentators have offered their assistance, or the assistance of their organizations, in this effort. See, e.g., comments of William N. Littlefield, Paula Reddish Zinnemann (Real Estate Commissioner), Cara Black, Gene Bicksler, Jeffrey G. Wagner, Curtis C. Sproul, Tyler P. Berding (ECHO).

### General Reaction

Professor French's report details deficiencies in existing law and suggests several basic directions where improvement appears achievable. Her overall conclusion is that, "California law governing common interest developments could be substantially improved by simplifying, clarifying, and expanding the scope of the current statutes and by providing more affordable and available means to ensure compliance with the law and resolve disputes among CID members and boards. The current study provides an opportunity to develop new statutes that would accomplish these results." Background Study p. 8.

The general reaction to Professor French's observations and suggested directions for study was favorable. Many commentators expressed basic agreement with her analysis of the defects in existing law and the tenor of the proposed solutions. See, e.g., comments of Samuel L. Dolnick, Timothy Lange, Robert M. Nordlund, Patrick L. Sullivan, Jeffrey G. Wagner, William Powers, Curtis C. Sproul.

Some commentators were skeptical about the concept of trying to rehabilitate the law in this area. Their perspectives ranged from a concern that the common interest development is an inherently flawed housing model that cannot be fixed, to cynicism about institutional bias in favor of the establishment. See, e.g., comments of Donie, Vanitzian, Thomas Foster, Janette Davis, Lee Ford.

**Replace Davis-Stirling Act with UCIOA**

Professor French's primary suggestion is that the Commission investigate the possibility of replacing the Davis-Stirling Act with UCIOA. "The Uniform Common Interest Ownership Act (UCIOA) deserves careful consideration because it is clearly written, reasonably well organized, and reasonably comprehensive." Background Study p. 6. She notes a recent law review article by Professor Rosenberry and Curtis Sproul, both of whom were involved with the development of the Davis-Stirling Act, concluding that California law could be improved by shifting to UCIOA as the basic statute.

Regardless of the solutions proposed, there was agreement that existing California law requires reorganization, clarification, and simplification. See, e.g., comments of Anthony E. Siegman, Gene Bicksler, Patrick L. Sullivan, Jeffrey G. Wagner, Joan Lee, William Powers, Curtis C. Sproul. A common complaint was that existing law is too convoluted and complex, and too difficult to use, particularly for lay boards of volunteers that must work with it. There was a general plea for simplification. See, e.g., comments of Susan M. Hawks McClintic ("I certainly agree with Ms. French that existing California laws leave much to be desired. The law is very confusing and ever changing. I would support any effort to make the law more comprehensible." Exhibit p. 69).

The concept of a new start, using UCIOA as a base with improvements drawn from the Davis-Stirling Act and the Restatement (Third) of Property, Servitudes, received broad support. See, e.g., comments of Samuel L. Dolnick ("much of the current confusion and ambiguity in the Davis-Stirling Act would be eliminated" Exhibit p. 1); Anthony E. Siegman; Jeffrey G. Wagner ("I concur wholeheartedly"

Exhibit p. 64). It should be noted, however, that at least one commentator was not overly impressed with one of the Restatement provisions. See comments of Michael J. Gartzke (The provision "tells me nothing as a nonattorney. It is not specific and a minefield for the uninformed." Exhibit p. 11).

Susan M. Hawks McClintic noted that she has not practiced in a UCIOA jurisdiction, so it is difficult to say whether UCIOA would be better or more workable than existing California law; the overall format of UCIOA is good. She reports that one attorney in her office who moved here from Connecticut misses the Uniform Condominium Act and "found it much easier to interpret and use than the California laws." Exhibit p. 68.

Frederick L. Pilot expresses concern about a shift to UCIOA. In his opinion, UCIOA, as last revised in 1994, has too narrow a focus on real estate perspectives. "Since that time, there have been significant changes in the CID marketplace, and California has been a leader in attempting to address the problems which have arisen." Exhibit p. 82. Common interest developments are more than just real estate developments — they are a de facto privatized from of local government. Any review of UCIOA for adoption in California must be done carefully to ensure that some of the more advanced California provisions are not inadvertently forfeited.

Tyler Berding is also circumspect about the concept of shifting from Davis-Stirling. He notes that the Legislature has previously considered and rejected such an approach, concluding that a custom body of law is better suited to California's unique needs. In addition, "thousands of new communities have been established, and thousands more have amended their governing documents, to reflect what was considered a permanent fixture of California law." Exhibit p. 94. Finally, courts have interpreted existing provisions of the Davis-Stirling Act and applied them in a substantial body of common law that is now used in day-to-day understanding and advising of community associations.

One argument made in favor of shifting to UCIOA, however, is that the Davis-Stirling Act is a patchwork, and is constantly being amended, with new and changing rules developing on an ongoing basis. The Rosenberry & Sproul 1998 article cataloged 39 amendments to the Act's 27 sections during its 13-year existence, and there have been additional amendments in the past two years bringing the Act to 41 sections. The Uniform Act holds out the hope of greater stability in the law and greater certainty for common interest developments and their residents, a fact not lost on a number of the commentators. See, e.g.,

comments of Samuel L. Dolnick, Susan M. Hawks McClintic ("Every year, there are changes to the law making it very difficult for community association managers and members of the boards of directors to keep up to date with the current legal requirements." Exhibit pp. 68-69).

The staff has not investigated the practical (and possibly constitutional) issues that would be involved in retroactive application of a basic shift in the law governing common interest developments. Certainly existing and perhaps even "vested" contract and property rights may be at stake. If the Commission decides to look into UCIOA as a new basis for California law, we will research this matter.

The staff is confident that we would receive plenty of support from the National Conference of Commissioners on Uniform State Laws (NCCUSL) in this endeavor. Their primary interest is in promoting uniformity of the law, and California's adoption of UCIOA would be a major boost for that Act. At the staff's request, the Joint Editorial Board for Uniform Real Property Acts devoted a session to discussing UCIOA with our consultants Professors French and Bernhardt. It should be noted that the Commission's Assembly Member and Legislative Counsel are both members of NCCUSL; the Commission's Executive Secretary is an associate member.

Whether or not the Commission decides to investigate the possibility of a shift to UCIOA, the staff is confident we can work with existing law to make it more user-friendly, a goal advocated by many commentators. This can be done by breaking up long sections into discrete subjects, reorganizing the provisions in a logical way, rephrasing where appropriate to simplify legalese, etc.

**Integrate Laws Governing CIDs**

Professor French observes that various bodies of law impact common interest developments. The interrelation among these laws, and in particular their interaction with the governing documents of the common interest development, the common interest development law, should be reviewed. The law should clarify which provision prevails in case of conflict, and should determine whether the governing laws are mandatory or are merely default rules for the common interest development.

These suggestions received a sympathetic response from several commentators. Susan M. Hawks McClintic agrees, "It is often unclear which provision prevails in the event of a conflict or whether the statutory provisions

are mandatory." Exhibit p. 69. Curtis C. Sproul details at length examples of these sorts of conflicts in the law, particularly between the Davis-Stirling Act and the Nonprofit Corporation Law (Exhibit pp. 86-89) and between case law under the Davis-Stirling Act and the general law of equitable servitudes (Exhibit pp. 89-91).

Frederick L. Pilot does not agree that an effort should be made to straighten out the interrelation among the governing laws. Rather, the common interest development law and the nonprofit corporation law should be integrated into a single statutory scheme. "We recommend that the two code sections be reviewed with the goal to create a separate section for CID laws, rather than attempt to continue to use other code sections and try to reconcile the conflicts between them and the existing Davis-Stirling Act." Exhibit p. 81. William L. Littlefield expresses the same thought — the Act should be combined with the relevant provisions of other codes into a single document. Exhibit p. 8.

At this point in the project, the staff does not have sufficient information to be able to offer the Commission an informed perspective on the issue. We do not know whether homeowner associations are sufficiently different in character from other incorporated and unincorporated associations that the general laws in the area are inadequate. (Note. The Commission currently has under consideration a project to develop statutory law, including governance issues, for unincorporated nonprofit associations generally.)

The staff suggests that the question of integrating the various bodies of law governing CID operations be deferred until the Commission is further along in its work of reviewing the Davis-Stirling Act or UCIOA. If the Commission decides to develop UCIOA for California, that may have a significant impact on this decision, since UCIOA includes within it a substantial body of governance law.

**Provide Better Protection to Members of CIDs**

Professor French suggests that the Commission examine ways to provide better protection to members of common interest developments. Problem areas she mentions include protecting members from deferred maintenance decisions, intrusive regulations or regulations that disrupt settled expectations, and unresponsive boards. She suggests that consideration should be given to enacting a members' Bill of Rights.

This matter struck a responsive chord with many of the commentators. Typical comments were that existing law substantially favors the board over homeowners, the law is biased in favor of management, the law needs to even the playing field, there has been an erosion of individual homeowner rights. See, e.g., comments of Timothy Lange, Donie Vanitzian, Janette Davis, Robert Lewin, Stephen Glassman, Alisa Ross.

Commentators were prolific in their suggestions for improvements that might be made to the law. Commonly expressed thoughts were to elect boards by secret ballot, impose conflict of interest limitations on board members, impose higher duties and standards of care on board members, educate board members concerning their responsibilities and the governing rules and regulations of the association, fine board members who do not adhere to the governing rules, provide residents removal power over board members, impose term limits on board members, require open meetings, require written documentation of board actions and decisions, impose more detailed financial accounting standards, make the books and records of the association accessible to homeowners, require competitive bidding for goods and services contracted by the association, require management companies to be accessible to residents, provide better communication vehicles for homeowners, protect homeowners against unexpected maintenance assessments (and educate board members as to the need for maintenance of proper reserves), provide all parties with clear statements of their rights and responsibilities. See, e.g., comments of William N. Littlefield, Bob Dow, David R. Hagmaier, Timothy Lange, Anthony E. Siegman, Janette Davis, Joan Lee, William Powers, Alisa Ross, Edward J. Brisick. A number of commentators saw value in last session's AB 2031 (Nakano), which would have imposed a sunshine law, and express dismay at its defeat in the Legislature. See, e.g., comments of David R. Hagmaier, Donie Vanitzian, Stephen Glassman.

However, not all commentators necessarily agreed as to the need or advisability of these remedies. Gene Bicksler, for example, believes that with a better reorganization of the law, "individual rights of owners will show themselves to be adequate and that in general no further protections are needed." Exhibit p. 55. Michael J. Gartzke is concerned that board members receive too little, rather than too much protection. "Verbal abuse from members is the #1 reason why board members quit. Many associations have difficulty fielding a full slate of candidates. Don't make it more difficult to volunteer for the board." Exhibit p. 11. He is also concerned that some of the proposals attempting to make

the board more accountable are so onerous that they would impose greater burdens on running an association than the law imposes on local government itself.

Even among persons who agree on the need for greater homeowner protections, there is disagreement as to individual remedies. For example, there may be serious drawbacks to term limits for board members, secret ballots, and sealed competitive bids. See the comments of Anthony E. Siegman at Exhibit p. 52.

Our object here is not to discuss or decide on the merits of any of these points. And in fact, there are undoubtedly significant pros and cons as to every remedy proposed. That will all come out when we are further down the road on this project.

Rather our object here is to survey the range of opinion as to this aspect of Professor French's report. The staff thinks that, given the intense interest in the matter, the Commission will need to devote a fair amount of time to analyzing the identified problems and reviewing the proposed solutions, as part of this study. We do not at this point know the extent to which (1) the Davis-Stirling Act may already address these issues but simply not provide an adequate enforcement mechanism, and (2) UCIOA may deal with some of these matters in a satisfactory way. Once we have determined basic direction of this project, we will begin the analysis process.

**Investigate Nonjudicial Oversight of CIDs**

Professor French recommends that the Commission investigate nonjudicial oversight options, but not necessarily full-fledged state regulation. For example, jurisdiction of the Department of Real Estate or another regulatory agency could be extended to cover ongoing operations of an association, to be invoked on an as-needed basis to resolve a dispute. Also dispute resolution services could be provided by such a regulatory agency.

There was a substantial amount of comment on this point. In general, homeowners were dissatisfied with existing remedies to enforce existing rights. A common complaint was that there is little or no recourse available for board mismanagement. Although the law provides for alternative dispute resolution, it doesn't work. The only other remedy is litigation, which is not practical in terms of the types of issues that come up in common interest developments. Moreover, there is the added disadvantage that the board's legal expenses are required to be

funded by the challenging homeowners. The result is that there is no accountability for board members, who can act arbitrarily and with impunity. Some other enforcement mechanism is needed. See, e.g., comments of Samuel L. Dolnick, Timothy Lange, Donie Vanitzian, Thomas Foster, Anthony E. Siegman, Joan Lee, William Powers, Robert Lewin, Alisa Ross, Frederick L. Pilot, John Jones, Edward J. Brisick.

Tyler P. Berding notes that common interest developments are simultaneously businesses, nonprofit corporations, quasi-governments, housing developments, real property owners, operators of social and recreational amenities, expressions of land use policy, and peoples' homes. Given such diverse purposes, we need to establish more effective principles of regulation to sustain CIDs through their anticipated lifetimes. "We think sound revision of state law, in conjunction with agency regulation, is the best and brightest answer to administering the multi-faceted entities that comprise modern common interest communities." Exhibit p. 93.

The concept of extension of state regulation was not unanimously endorsed, however. See, e.g., comments of Gene Bicksler ("I am concerned about the idea of setting up a regulatory agency. I would suggest a *thorough* investigation be made of other states that have such an agency, in particular Florida. I am concerned about a long term negative impact of a regulatory bureaucracy on CID housing." Exhibit p. 55)

Whether or not a regulatory mechanism is pursued, a number of commentators saw value in the involvement of a neutral party, for dispute resolution purposes if nothing else. See, e.g., comments of Bob Dow, Gene Bicksler. On the other hand, at least one commentator has had positive experience with the existing alternative dispute mechanisms. See comments of Susan M. Hawks McClintic ("In my experience, this has been very effective in addressing disputes between associations and members. In San Diego, we often use the San Diego Mediation Center which provides mediation services at a very nominal cost." Exhibit p. 69). (The staff notes that Ms. McClintic's favorable experience with the existing program is not universal. We have received comments from a number of homeowners indicating it has not worked well in their cases. See, e.g., comments of Samuel L. Dolnick.)

A number of commentators saw value in exploring the possibility of an ombudsman to help resolve homeowner complaints. See comments of Samuel L. Dolnick (concept of ombudsman has been raised in Legislature without success;

the type of ombudsman program used in other circumstances "could also be beneficial for CIDs." Exhibit p. 4), Cara Black (ombudsman could be helpful to protect homeowners from unnecessary lawsuits; this is "a HUGE problem and must be addressed." Exhibit p. 46), Alisa Ross ("Nevada has already put in place an ombudsman for homeowners and considering placing the position under their Consumer Affairs division." Exhibit p. 79).

#### Broaden Coverage of CID Law

Professor French suggests that we consider extending coverage of the common interest development law to some areas not currently covered, but where fair enforcement of CC&Rs is an issue. This recommendation struck a responsive chord with Glenn Youngling. "I would like to see Civil Code Section 845 amended and a cross reference made in the Davis Stirling act to provide that in the event more than half of the users of a road voluntarily form a Davis-Stirling qualified association, the Association or any owner may petition the court utilizing C.C. Section 845 and the Court is authorized to set the 'fair share" road assessment as the assessment amount determined by the Association and consistent with the Davis-Stirling Act requirements." Exhibit p. 48.

### ISSUES NOT ADDRESSED IN SCOPE REPORT

Professor French's scope report focuses primarily on operational issues involving common interest developments. This was also the principal concern of commentators on the report. However, there were a number of suggestions for other areas of study as well, that the Commission needs to consider. Perhaps the broadest sweep of inquiry was suggested in the letter of Tyler P. Berding, concerned about community obsolescence and affordable housing (Exhibit pp. 94-95):

> ECHO has raised what we believe are significant concerns about the long-term financial viability of common interest developments as housing stock. Far too often subject at their birth to poorly-conceived and -built construction, and often plagued by major funding deficiencies during their lifetimes, California's community associations need a strong regulatory scheme to preserve common elements that are intended to last. The importance of requiring strong financial health in every community cannot be minimized — both at the birth of a development by its developer, as budgets are set and reserves begin to grow, and by the association's members once on their own wing. Even before that, quality construction — in

> design, components, building techniques, supervision, and adherence to building codes and standards — is essential to avoid financially debilitating defects and to ensure the ongoing affordability of housing. Where defects do occur, legal remedies for recovery must be protected. Imprudent future funding of major repairs by special assessment, long-term under-assessment of reserves, lack of basic legal protections for assessment collection in lender foreclosures and owner bankruptcy, and the trouble (and growing) potential for mis-use of association assets held in trust all undermine the state's struggle to provide affordable housing and foretell the obsolescence and eventual loss of common interest communities.

**CID Development**

Tyler P. Berding explicitly suggests review of issues involved in development of common interest housing, including construction defect remedies. See comments set out above. However, another commentator explicitly cautions the Commission against involvement in this area. "Legislation should focus on the ongoing operation issues surrounding CIDs, not one-time Development or Development transition. While all future associations will transition from Developer control, all current and future CIDs need ongoing, clear legal direction about the ongoing operation of their association." Robert M. Nordlund, Exhibit p. 53.

**Other Bodies of Law Affecting CIDs**

Professor French's report identifies various bodies of law that affect common interest developments, but focuses primarily on deficiencies in the Davis-Stirling Act. One commentator writes to remind us that the Davis-Stirling Act was never intended to comprehensively include all relevant bodies of law, and we should not overlook those other bodies. "It is therefore important that other parts of the Civil Code (such as section 1102 et seq. pertaining to seller disclosures and section 2079 et seq. concerning the duties of real estate licensees in residential transactions) and the Corporations Code (as it pertains to homeowners associations) be reviewed as part of the scope of this study, keeping in mind the study's overall goal of developing a clear, consistent and unified regulatory framework regulating the formation and management of CIDs and the transactions of separate interests within them." Frederick L. Pilot, Exhibit p. 81.

**Education and Disclosure**

Quite a few commentators saw real value in better information for prospective homeowners before they buy into a common interest development.

There was concern, for example, that people do not understand the practicalities of what they are getting into, and a condominium or planned community does not necessarily result in idyllic, carefree living. Promotional literature emphasizes the amenities, without cautioning about the realities of CID living. See, e.g., comments of Cara Black, Robert Lewin, Alisa Ross.

There were a number of suggestions that at least fundamental information about the particular common interest development should be provided to a potential homeowner ahead of time. That would include basic information about the financial health and stability of the development. See, e.g., comments of David R. Hagmaier (detailing a number of proposed pre-purchase revisions; Exhibit pp. 13-14), Robert M. Nordlund (suggesting disclosure of percentages of owner occupancy, 90-day delinquencies, and reserves funded; "We need to create a structure in California where CID owner and prospective owners can expect to find the basic information on their association as easily as they can find the calories in a can of soda, the SPF rating of their sunscreen, or the mileage on a used car." Exhibit p. 54), Robert Lewin ("When prospective homeowners choose to buy units in homeowners associations, they should be provided all the pertinent disclosure about the association they are considering buying into, including the financial health of the association and a history of any abuses and litigation by the association." Exhibit p. 73).

The prospective purchaser should also be provided copies of the governing CC&Rs and other documents such as association bylaws and rules. See, e.g., comments of Samuel L. Dolnick ("there are many laws requiring full disclosure of many aspects in the purchase of real estate. Turning over the governing documents in a timely manner, prior to the close of escrow, is sorely lacking." Exhibit p. 5), Anthony E. Siegman ("The disclosure must be made an adequate time in advance of a prospective purchase" Exhibit p. 50).

In this connection, there were complaints about the complexity and confusion of CC&Rs. One commentator notes that attorneys give contradictory interpretations as to the meaning of particular CC&Rs. See comments of Cara Black ("The only ones gaining anything from the CC&R's are attorneys." Exhibit p. 47). Several commentators suggest that the CC&Rs need to be more clear, whether through use of standardized forms or otherwise. See, e.g., comments of

David R. Hagmaier ("Put an end to the legal disputes by eliminating vague and unclear verbiage typically associated with governing documents." Exhibit p. 13.)

### Changes in Condominium Project After Plan is Recorded

Jeffrey G. Wagner strongly urges the Commission to address a significant problem with the law requiring unanimous consent to make any changes in a condominium plan, once recorded. He notes that changes are often advisable after the project has suffered a casualty such as a fire or earthquake; in addition as projects age and need renovation, requests for changes become more common. "I am experiencing an increasing number of requests for such changes and must advise my clients that it is an extremely difficult task and almost impossible in larger projects. It is an ill-advised law that creates permanently-fixed interests in real property that cannot be revised as changing circumstances warrant despite the will of a majority of its owners." Exhibit p. 64.

### Licensing of Community Association Managers

Our commentators have not suggested that the Commission get into the issue of licensing community association managers. However, one commentator does mention the issue, and it is a matter of which the Commission should be aware. See comments of Susan M. Hawks McClintic (Exhibit p. 69):

> With respect to the oversight issue, please note also that efforts have been made to adopt legislation to require licensing for community association managers. If such legislation is enacted, it is very likely that this licensing of managers will result in some form of oversight for community associations. Most disputes between an association and a member also involves the manager and any regulatory oversight of the managers would result in oversight of the association's actions.

## GENERAL OBSERVATIONS

The commentary we have received on the scope of this project prompts the staff to make a number of general observations.

### Tenor of Comments

We are impressed with the overall quality of the commentary we have received. There were many thoughtful observations about the nature of common interest development housing and its problems, and many creative and

constructive ideas for solutions are proposed. We will get into specifics after the Commission has determined the scope and priorities for this study.

Many comments of homeowners display a tone of righteous indignation and anger. There is also a certain similarity among some of the comments, resulting in part from a letter-writing campaign. See, e.g., the comments of Lee Ford, Exhibit p. 99.

The commentary we have received so far is generally positive to Professor French's suggestions as to direction for this project. However, it is important to note that the commentary represents a heavily homeowner oriented perspective. There are a variety of other voices on this topic we have yet to hear from. In particular we have to date received only a limited response from management professionals. We will discuss this matter further. See "Politics and Law Revision" below.

**Thoughts on Nature of CID Housing**

A number of "big picture" perspectives on the nature of common interest development law were offered. Commentators noted that the hybrid nature of the CID — the combination of private and public ownership coupled with a community governance mechanism — creates a situation ripe for conflict. Individuals who have had unsatisfactory experiences in the communities in which they live were pessimistic about the future of this sort of living arrangement, calling it a flawed model and warning against its use. Others were more resigned, noting that CID housing is the only affordable housing being built, and there is no alternative but to try to make it a more workable concept.

Commentators also observed that common interest developments provide more than just housing. CIDs often assume many of the functions of municipalities. A number of commentators referred to Evan McKenzie's *Privatopia*, which develops this concept in depth. Tyler P. Berding notes that common interest developments are quasi-governments, with constitutional-like duties but without governmental immunities (a significant distinction that legislators often overlook). Exhibit p. 93.

The quasi-governmental nature of CIDs was the focus of much of the concern expressed by homeowners. The conflict between board members and dissenting homeowners on matters such as personal liberties, property maintenance, assessments, access to records, redress of grievances, etc., was a feature of many comments. But that appears to be an almost inevitable feature of CID living, just

as not all citizens are happy with decisions made and actions taken by their governmental officials.

At least one commentator would resist the impulse to treat CIDs like mini-governments. See comments of Michael J. Gartzke, Exhibit p. 12:

> Are you planning to move the statutes pertaining to CID governance from the business law to government law? These organizations are set up as businesses, not governments. You indicate that boards are not responsive to their members. Frankly, my county supervisor and state legislators have been unresponsive to my concerns. County planning commissions and architectural review boards are notorious for making up rules as they go that have dramatic impacts on the public. Are you looking to impose a tougher standard on CID boards than on our democratically-elected representatives and their appointees?

**Role of Professional Management**

Because of the complexities involved in managing common interest developments, there has been a trend towards professionalization of management. This trend was the focus of a fair amount of commentary.

Some commentators noted that professional management is a practical necessity. Reliance on private homeowner volunteers is problematic; they do not have the expertise and skills necessary for, and typically cannot devote sufficient time and attention to, running a CID. Moreover, the worst management versus homeowner disputes may arise where a feuding homeowner assumes management authority and uses that power improperly.

Other commentators were more cynical about the role of professional management. They noted that CID management has become a large industry, with profiteering by managers and their lawyers. The cost of professional management drives up the cost of living in a CID. Moreover, professional managers are less responsive to the needs of homeowners than fellow citizens. Professional management destroys the opportunity to develop a sense of community among homeowners.

The observation has been made that “the best protection an owner can have is the ability to become a leader in the community and change the direction of the community, if that’s what needs to happen.” Gene Bicksler, Exhibit p. 55. However, many of our disenchanted homeowner commentators indicate they have tried that, without success. They were appalled at some of the procedures used and decisions made, but were unable to change anything. As dissident

members of a self-perpetuating board they were marginalized and isolated by the majority.

In any event, the Commission is admonished not to assume that all associations have professional management. In crafting solutions, we should not lose sight of the needs of the small association, one managed by volunteer. See, e.g., Michael J. Gartzke, Exhibit p. 11:

> Lost in many of the law revisions is the fact that thousands of associations in California are small, managed directly by the board of directors. Some are as small as 3 units while the average size association in our group is less than 50 units. Most small associations cannot afford professional management nor do management companies want to work with the small association. Therefore, they do not have the same access to resources that larger associations do.

And Anthony E. Siegman, Exhibit pp. 49-50:

> In formulating laws governing the operation of CIDs and especially CID/HOA boards, I strongly urge the Commission to recognize the "amateur" status of many if not most of these boards.
>
> In my observation many if not most members of HOA (and other) boards, while often dedicated and well-meaning, are inexperienced in organizational and governance issues, have limited organizational and management skills, and have limited knowledge of legal issues, parliamentary procedures, and other aspects of board operations.
>
> In addition, they are generally volunteers with limited time, limited experience, limited opportunity to acquire on-the-job training in effective board membership, and limited access to professional assistance in carrying out their board duties.

### Politics and Law Revision

The Law Revision Commission historically has felt it important to hear all voices and perspectives in developing its recommendations to the Governor and Legislature. The Commission is often able, out of the interplay of conflicting views, to develop consensus solutions that satisfactorily address an identified issue without causing other problems of its own. That process helps both to ensure a balanced recommendation, and to foster its enactability.

The staff is concerned that, at least initially, we have only heard from a limited segment of the persons and interests involved in CIDs. We will continue to seek input from other sectors as we go along.

We requested Professor French to comment on the political feasibility of her suggestions concerning the scope of this study. She notes that she is not in a position to address this question, but observes that there is a group that will probably strongly resist adoption of UCIOA. Background Study p. 8.

John Jones argues that the Commission should not take political considerations into account in determining the scope of this project — "I would like to see the CLRC develop the best, most comprehensive proposal possible, and leave the results to politics, if necessary. Even elements that are rejected now could still serve as a useful springboard for further discussion." Exhibit p. 96.

This remark echoes an ongoing debate within the Commission that is present in every area the Commission addresses. The Commission's tendency is towards idealism as suggested by Mr. Jones; the staff's tendency is towards practical political considerations. The staff does not like to see the Commission waste its time, and the time of all the participants in its projects, by developing a recommendation that is not enactable. The Governor and Legislature give the Commission substantial resources to address problem areas in the law; if the Commission responds with "solutions" that are unrealistic, people will begin to wonder whether this sort of endeavor ought to continue to receive public funding.

Some skepticism is expressed in letters of commentators about the commitment of the Legislature, and of the Commission, to really addressing problems that have been identified. See, e.g., comments of Cara Black ("What worries me is that the lawmakers in Sacramento will make it appear that they are concerned about what is going on (by asking for a study like this one) but have no intention of addressing the problem." Exhibit p. 47).

In particular, Donie Vanitzian is critical of law reform efforts and of the Commission. "Self-important groups not unlike the LRC and other legislative task forces regarding CIDs are prone to lose their sense of proportion. The Commission has followed in a new tradition of imperial over-reach among the quangocracy." Exhibit p. 37. The staff would point out that this criticism appears to be misdirected; it apparently assumes the Commission was involved in the development of the Davis-Stirling Act. In fact, the Commission has never had any involvement with that law, and has made no decisions or recommendations concerning it. The present memorandum is the first occasion the Commission has

had to consider CID law, apart from the initial decision to seek legislative sanction to study it.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

**SAMUEL L. DOLNICK**
5706-348 Baltimore Drive
La Mesa, CA 91942-1654
Phone/Fax: 619-697-4854

Law Revision Commission
RECEIVED
DEC 08 2000
File:__________

December 6, 2000

California Law Revision Commission
Attn: Professor Susan F. French
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Request for Public Comment on Laws Affecting Common Interest Developments

Dear Professor French:

I read with considerable interest the background study on Laws Affecting Common Interest Developments for the California Law Revision Commission which you prepared. As a homeowner who has been involved with common interest communities since 1980, I feel I have a contribution to make in this area. A copy of my background in enclosed as Attachment #1.

In general I agree with your findings and feel that if California were to adopt the Uniform Common Interest Ownership Act (UCIOA) as a basic document, much of the current confusion and ambiguity in the Davis-Stirling Act would be eliminated. In addition to the Davis Stirling Act various other California Codes impinging on common interest developments (CIDs), make it impossible for lay persons, who comprise the boards of directors, to function properly without paying tremendous attorney fees to decipher and give clarity to the laws.

May I take the liberty of elaborating on some of the items in your study?

- The Rosenberry & Sproul analysis of the Davis-Stirling Act, as you state "...counted thirty-nine amendments to the twenty-seven sections of the act..." They went on to say: "By comparison, during the same period [1985 to 1988] the legislature amended the California version of the Uniform Commercial Code only twelve times even though it contains 11,004 sections." Converted to percentages, the Davis-Stirling Act was amended 137% while the Uniform Commercial Code was amended .1%. This big differential shows that something is wrong. Are the amendments to the Uniform Commercial Code far and few between because the lawmakers do not wish to upset the market place with annual changes? Is there the feeling that it is okay to constantly make changes to CID laws because homeowners (not the associations) do not have an effective spokesman in the legislature to prevent these annual changes?

  One is seven people in the state of California live in CIDs. The amount of money collected by the associations for assessments runs into the billions of dollars. The amount of real estate taxes collected from these homeowners also run into millions of dollars. The roads and other amenities such as tennis courts, pools, exercise rooms, riding trails, golf courses and many others relieve the municipalities of millions of dollars in upkeep. It appears that the legislature should give as much consideration to CIDs as they should do to other commercial enterprises when it comes to restraint in amending the laws pertaining to CIDs.

  There is a lack of a level playing field between the boards of directors where they discipline association members for violations of the governing documents; association members cannot discipline boards of directors for violating these same documents. The board of directors can deny

homeowner members the use of amenities, or fine the member (if the governing documents so allow) after a hearing before the board of directors. Homeowner members do not have this option.

Should the board of directors as a group, or should individual board members violate these same governing documents the association members have no recourse but to go to court with the resultant legal fees which this entails. Even though the law provides for Alternate Dispute Resolution, when a member asks for this alternative, the law allows for the board of directors to refuse. This forces the homeowner to file a lawsuit with the associated costs. This, in most cases is beyond the homeowner's capabilities.

Attached is a letter dated November 21, 2000 to Attorney General Bill Lockyer giving specific examples of these differences. (See Attachment #2) The response, dated November 30, 2000, indicates that the Attorney General's office does not have sufficient funds to follow through on these violations. (See Attachment #3) This, even though Corporation Code Section 8216 gives the Attorney General authority to intervene when homeowners in nonprofit public benefit corporations are denied certain specific rights. (See Attachment #4)

- Civil Code Section 1363.05, the Open Meeting Act for CIDs, allows boards of directors to hide a large portion of the disbursements of the association. Paragraph (b) of this Section states in part: "Any member of the association may attend meetings of the board of directors of the association, *except when the board adjourns in executive session to consider* litigation, *matters relating to the formation of contracts with third parties,* members discipline or personnel matters." [*Italics not in original*]

  Please see "Contracts Re: Civil Code Section 1363.05. (See Attachment #5)

  Contracts are let by CID boards anywhere from at least $600 to over $1,000,000. None of these contracts, even the winning contract approved by the board, are available to CID members as these contracts are discussed in executive session. Yet the vast majority of money spent by these boards reside in these same contracts. Thus, there is absolutely no oversight by anyone as to how effectively the money is being spent.

  All public bodies must open contracts and discuss them in a public meeting. Since CIDs are quasi-governmental, why are CID boards protected from monetary scrutiny? Why are they allowed to conduct these fiscal items in private and in secret? This appears to be the most illogical portion of the Open Meetings Act. This opens the door to all types of possible fraudulent action, kick backs, conflict of interest, nepotism and other ills.

Thank you for your attention to the information supplied. I am available should you have a questions or need any clarification.

Sincerely yours,

Samuel L. Dolnick,
Homeowner

**SAMUEL L. DOLNICK**
5706-348 Baltimore Drive
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Phone/Fax 619-697-5854

Law Revision Commission
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DEC 15 2000

File:___________

December 12, 2000

California Law Revision Commission
Attn: Professor Susan F. French
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Public Comment on Laws Affecting Common Interest Developments

Dear Professor French:

This is a supplement to my letter of December 6, 2000 in regards to your background study on Laws Affecting Common Interest Developments.

The study mentioned the Uniform Common Interest Ownership Act (UCIOA); the lack of homeowner affordable and accessible means to enforce common interest development (CID) laws; and alternate dispute resolution (ADR). Comments on each area are submitted as well as an additional comment on failure of seller and/or escrow company and/or real estate agent to disclose to buyer the Declaration of Conditions, Covenants and Restrictions (CC&Rs) in a timely fashion.

**Uniform Common Interest Ownership Act (UCIOA0**

Over the years various individuals and groups tried to convince legislators to accept UCIOA as the basic document for common interest developments but to no effect. It should be brought to the attention of the legislators that over the years the legislature has adopted into law fifty-three different Uniform Acts. A listing of these various Uniform Acts are shown in Attachment #1. Certainly, because of the ambiguity and contradictions in many aspects of the Davis-Stirling Common Interest Development Act, the acceptance of UCIOA as the basic document would be a vast improvement.

**Lack of Homeowner Means To Enforce CID Laws**

Over the years the concept of a CID ombudsman (to help homeowners when members of the board of directors, or the board as a group, continue to violate the governing documents) has been floated to various legislators with no success. Again, there is legislative precedence for the use of ombudsmen as evidenced by the eight areas where the legislature has authorized the use of ombudsmen. These areas are

Apparel Industry, Gov. 15317
Health Care Service Plans, H & S 1368.02
Insurance Policy holder, Ins. 11752.6
Long-Term care Ombudsman Program, W & I 9700 et seq.
Mobilehomes and Mobilehome Parks, CC 798.29; H & S 18150 et seq.

Small Business, Corp. 14022
Teachers' Retirement System, Ed. 22211, 22302
Workers' Compensation Insurance Policy Holders, Ins. 11752.6

It has been said that the use of ombudsmen would be to hard to administer, that homeowners would complain about every minor situation and would overload the ombudsmen, that it would be a waste of time, that certain homeowners would make a nuisance of themselves and other objections.

[As a personal note: I served as an ombudsman in the Long-Term Care Ombudsman Program for four years, in San Diego County, when it was first developed in the early 1980s. The program was very successful as evidenced by the fact that it is still in existence. Although the ombudsman was the advocate for the patient, he/she was also a fact finder and frivolous complaints were quickly settled. One of the best results of the program was that various changes were made in the laws affecting long-term skilled nursing facilities based on the reports forwarded to the State Ombudsman.]

This same type of ombudsman feedback could also be beneficial for CIDs. An individual homeowner currently, who can convince his/her legislator to enter a bill affecting the entire industry, would have to factual backup data that the bill is necessary based on the reports of the ombudsman throughout the state. Corporations Code 8216 Enforcement for Non-Profit Mutual Benefit Corporations, suggests a pattern of how ombudsmen requests may be handled. See Attachment #2.

**<u>Alternate Dispute Resolution [ADR]</u>**

Currently, Civil Code Section 1354 provides for ADR, however, it fails to serve the homeowner effectively. Paragraph (b) states in part:

> "...and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected."

Further in the paragraph the following appears:

> "Parties receiving a Request for Resolution shall have 30 days following service of the Request for Resolution to accept or reject alternate dispute resolution and, if not accepted within the 30 day period by a party, shall be deemed rejected by that party."

Since a board of directors does not have to accept the offer of ADR, which is emphasized by being repeated twice, the only alternative left to the homeowner is to contact the Attorney General, as noted in Corp. Code 8216, or go to court. Attached, as #3, is a reply from the Attorney General's office to a request. The third paragraph is important.

> "Should the association fail to respond to your complaint, you will need to consider joining other members of like-mind to retain an attorney who could directly represent your interests. The Office of the Attorney General is not funded by the California Legislature to provide

> legal research, legal analysis, legal advice, or to represent private individuals under most circumstances."

The final result, after all these procedures which seemingly are to help the homeowners, fail as the homeowner must hire an attorney and go to court. Boards of directors in most cases refuse ADR as they know the homeowner does not have the financial wherewithall to hire an attorney.

**Disclosure of CC&Rs**

Over and over again one hears horror stories from homeowners complaining that they were never told of the restrictions prior to purchasing their homes. It appears that in those cases neither the seller, the real estate agent nor the escrow company gave this information. Neither of these three entities turn over the CC&Rs, where the financial requirements and restrictions are noted, to the buyer until after escrow is closed. Then and only then are the governing documents given to the buyer.

It is suggested, to prevent the many complaints that this procedure fuels, the governing documents should be given to the buyer upon the deposit of the earnest money. The buyer should then have three days to review the documents, ask questions and then have the option of going forward with the purchase or declining to purchase and receive their earnest money back without penalty.

There are many laws requiring full disclosure of many aspects in the purchase of real estate. Turning over the governing documents in a timely manner, prior to the close of escrow, is sorely lacking.

Thank you for you attention to the material presented. I am available should you have any questions or should you require more information.

Sincerely yours,

Sam Dolnick
Homeowner

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DEC 2 0 2000

File:____________

December 18, 2000

California Law Revision Commission
Attn: Professor Susan F. French
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Further Public Comment on Laws Affecting Common Interest Developments

Dear Professor French:

This is an additional supplement to my letters of December 6 and 12, 2000 in regards to your background study on Laws Affecting Common Interest Developments.

In reviewing my files regarding this topic, I came across the enclosed letter from January 9, 1999 written to the California Legislature and sent to fifteen newspapers throughout the state. In my area the letter appeared in the Letters to the Editor section in *The Californian.* I do not know if it appeared in any of the other papers.

However, based on the actions of the legislature for the 1999 legislative year, the letter fell on deaf ears. Hopefully, The Law Revision Commission will have more success.

Sincerely yours,

Sam Dolnick

Enclosure

**SAMUEL L. DOLNICK**
57096-348 Baltimore Drive
La Mesa, CA 91942-1654
Phone/Fax 619-697-4854

January 8, 1999

AN OPEN LETTER TO 1999
CALIFORNIA LEGISLATORS:

As a citizen living in a common interest development (condominium) for twenty years and serving on its board of directors as a director, as a secretary and as president, I am imploring the legislators to declare a moratorium on legislation affecting these common interest communities so that board members and homeowners may have a respite to catch their breath from the yearly barrage of changes which cause confusion and extreme difficulty in the volunteer governance of these projects.

Katharine Rosenberry, professor at California School of Law and legal consultant to the legislative task force when the Davis-Stirling Act was written, and Curtis Sproul, both of whom specialize in community association law, in their article in Volume 28, No. 4, 1998 issue of the SANT CLARA REVIEW, point out that "The opinion that the law is confusing is supported by the fact that the legislature has amended Davis-Stirling Act [California Civil Code Sections 1350-1376] thirty-nine times since 1987, although it contains only thirty-seven sections. By comparison, during the same period, the legislature amended the California version of the Uniform Commercial Code [California Commercial Code Section 1101-151104] only twelve times even though it contains 11,004 sections"

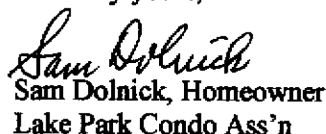
Why this disparity? Why is the latter allowed extreme stability while the former is constantly mutated causing turmoil?

Common interest homeowners cannot keep up with these constant alterations. The professionals the homeowners rely upon: attorneys, certified public accountants, reserve specialists and community association managers cannot properly advise their clients because of the constant shift in the laws.

It is time that the over 3,500,000 Californians who live in these common interest communities had a little relief. These associations have governing documents approved by the Department of Real Estate. Each association, through their homeowners, may amend these documents if they so wish. There is no need for the legislature to try to micomange them.

Hopefully the 1999 California legislative session will result in clearing the ambiguities in the current Davis-Stirling Act and allow homeowners, their boards and the professionals who guide them, to consolidate their thinking, to absorb and understand all the changes that have occurred in the past hectic years of change.

Sincerely yours,



Sam Dolnick, Homeowner
Lake Park Condo Ass'n

12 Vienna
Newport Beach, Ca 92660

17 December 2000

Nathaniel Sterling, Executive Secretary
California Law Revision Commission
4000 Middlefield Rd, Room R-1
Palo Alto, CA 94303-4739

Law Revision Commission
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DEC 20 2000

File:________

Subject: Common Interest Development Law

Dear Mr. Sterling:

I was a member of both the Turtlerock Hills Community Association and the Turtlerock Park and Recreation Association (the latter being referenced in the Ross's e-mail dated 2/3/2000) from mid 1970 until May 1998. During that period of time I served on the Hills Board on three separate occasions including a two year stint as president of the first all homeowner board of the Hills. I served on the Park and Rec Board on two separate occasions, once in the 1970's and again in the mid 1990's. During my service on these boards, realizing the problems that could come from a board with little restriction, I rewrote the by-laws of both associations to severely restrict the powers of the board to take actions other than those intended by the CCR's..

During my last term of service on the Hills board, the board became aware of and did extensive research into Davis Sterling. We found that the Hills board had extensive violations of Davis Sterling and to its credit the board undertook to force compliance. There was considerable sacrifice to the individual board members because they became the object of derision by both internal opponents of the board but also the management company of 25 years. As you might guess, the management company did not want to make the required changes and exploited internal opponents. Concurrently, I also advised the Park and Rec Board through the filing of an ADR. The Park and Rec Board was not interested in making the changes but did implement some because they were to obvious to ignore.

A month following the ADR I was elected to the Park and Rec Board in a heated and nasty election involving the authority of the board to allocate major blocks of time in a community facility for the near exclusive use of a swim team comprised of a minimum of 15% non-members. My attempts to bring further changes were ineffective since I was a vote of one out of five. I was marginalized and denied access to Association documents. At the annual meeting where I was elected, the Association's attorney stated publically that the Associations election process was in compliance with the by-laws requiring that ballots not be marked so they could be identified. The proxy and the ballot were the same document.

Out of this experience, I would offer the following recommendations:

(1) to combine Davis Sterling with the relevant provisions of other codes into a single document
(2) to impose daily fines on individual board members, paid individually by those board members, for failure to comply not only with Code but also the associations own governing documents when said board members have been notified of said deficiencies
(3) to impose daily fines on management companies and individual managers for failure to comply
(4) to impose upon a board member to certify at time of election that he/she has read all the associations individual documents and the relevant code sections
(5) directors must recuse themselves when voting for issues in which they have had or may have

had an interest (in my case four members were elected by a swim team who members came from less than 10% of the Associations's membership

(6) if an association has a newsletter it must be made available to all points of view so it does not become the mouth piece of the board and/or management company.

(7) management companies/managers must have posted hours when documents can be reviewed by members; further management companies/managers would receive daily fines for failure to comply (enforced by local law enforcement jurisdictions with revenues accruing to those jurisdictions)

(8) boards would be responsible to maintain in the office of their manager copies of all minutes, financial statements together with documentation of each expense and all insurance policies including those of any user who has designated the association as a co-insured (penalty and enforcement same as (7)

(9) management companies/managers who operate from a private residence would not only be required publically notice this but also sign an agreement with the association that the residence is a place of business from which members cannot be barred

(10) elections must be by secret ballot received and counted by an independent agency (i.e, a CPA other than one who prepares tax returns, financial statements or audits and who has no employees and/or partners who reside in the association holding the election)

(11) teeth need to be put into the open meeting provisions, again by fines on individual board members

There is much more I could detail based on my experience the last couple of years. I would be more than happy to appear, at my own expense, before any legislative committee working on this issue. Or if a task force is formed, I would likewise be willing to serve.

I also request to be place on any mailing list for any future notices concerning this legislation.

Sincerely,

William N Littlefield

X-Sender: bobdow@pop3.cris.com (Unverified)
Date: Thu, 21 Dec 2000 22:17:37 -0800
To: KJS@sen.ca.gov
From: bob dow <bobdow@cris.com>
Subject: HOA's
Cc: Nsterling@clrc.ca.gov
Mime-Version: 1.0
X-Loop-Detect: 1

As a former board member, I can't even to begin to tell you the abuses that boards are allowed to get away with. GET AWAY?? yes, Civil Law protects them even if they wrong. The Association where I live, makes up rules on the fly, Fines people on issues that the rules clearly state are ok, Violate the CC&R's in spending funds, and not maintaining proper gounds. They even violate voting rights of people by charging more for 2 bedroom units than 1 bedroom, even though the CC&R's clearly state 1/200. I sat on the board for 8 months as VP, during this time not one other member of this board even had a copy of the CC&R's in front of them when they voted on a issue! It is very sad when a disabled vet, sitting on the board (me) can't get the Association to comply with it's own CC&R's. Although I agree boards are necessary to enforce simple rules, Way too much room for abuse exists. So, I ask you, what can a member do to make a Association comply with the CC&R's?? Unless you are independently wealthy, Nothing! even lawyers will not try to make a board comply with CC&R's.

There is a need to have a look at the Civil Laws that protect boards from wrongdoing, Or at least give a member a way to resolve issues, without begging the board to correct it's problems. Although being on the board is voluntary and without standards, there still needs to be a way to remove a board that is not acting in good faith!! There also needs to be some standard for board members and a reasonable way to find accountability for abuses. Maybe enpower mediators to remove boards that are not acting in good faith or for the people that vote a board into such to remove a board without waiting a year to vote in someone else that the board itself reccomends. Thank you for your time.

From: "Michael Gartzke" <gartzke@silcom.com>
To: <comment@clrc.ca.gov>
Subject: Propery Law - Common Interest Developments
Date: Wed, 27 Dec 2000 10:42:10 -0800

I read your background study with interest and am reply to your offer to accept comments. I am a co-founder of a 130-association educational group here in Santa Barbara County. We have been providing educational opportunities (newsletters, meetings) to area board members since 1989.

Lost in many of the law revisions is the fact that thousands of associations in California are small, managed directly by the board of directors. Some are as small as 3 units while the average size association in our group is less than 50 units. Most small associations cannot afford professional management nor do management companies want to work with small association. Therefore, they do not have the same access to resources that larger associations do.

Much of the Davis-Stirling Act is applicable to any association no matter what the size. Compliance by small associations is much more burdensome than for larger associations. Any revision of this law should take into consideration the impact to the thousands of small associations in this state.

With respect to some of the specific items in the background study, I would like to comment as follows:

Section 6.13 of the restatement (page 6) tells me nothing as a nonattorney. It is not specific and a minefield for the uninformed. It opens up the board to liability if someone disagrees as to what is fair and reasonable. Board members want specifics. What do we have to do?

Deferred maintenance has been a problem for years and it will be a problem forever. My experience as a CPA in this industry for 18 years is that much more often than not, it is not the board's idea to defer assessments for maintenance. Boards are under substantial political pressures from some members not to increase fees. I have attended membership meetings on the board's behalf to explain the necessity for assessment increases to meet major repair obligations. Assessment increases open the board to criticisms from their neighbors which can be acrimonious. Verbal abuse from members is the #1 reason why board members quit. Many associations have difficulty fielding a full slate of candidates. Don't make it more difficult to volunteer for the board.

Many associations had no pet restrictions. However, high rise and hotel style associations found pet restrictions to be necessary for sanitary reasons and due to noise problems. A barking dog couped up in a 11th floor condo while the owner is gone is no picnic for the unfortunate neighbors who have to listen

to it. The rights of these people to the quiet enjoyment of their property has been trampled by the state legislature.

Percent funded is an arbitrary calculation and associations that are less than 100% funded based upon the calculation may never have to special assess or drastically increase assessments. There are many variables that go into a reserve study some of which are not known at the time the study is prepared.

Are you planning to move the statutes pertaining to CID governance from the business law to government law? These organizations are set up as businesses, not governments. You indicate that boards are not responsive to their members. Frankly, my county supervisor and state legislators have been unresponsive to my concerns. County planning commissions and architectural review boards are notorious for making up rules as they go that have dramatic impacts on the public. Are you looking to impose a tougher standard on CID boards then on our democratically-elected representatives and their appointees?

Many boards today have trouble securing multiple bids for projects costing thousands of dollars, let alone $250 (page 10).

Again, keep the interests of the small associations in mind when drafting your recommendations. If I can provide any additional information, please do not hesitate to call.

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From: "Dave Hagmaier" <machis1@earthlink.net>
To: <nsterling@clrc.ca.gov>
Subject: Common Interest Development Reform
Date: Wed, 27 Dec 2000 22:14:25 -0800
MIME-Version: 1.0
X-Priority: 3 (Normal)
X-MSMail-Priority: Normal
Importance: Normal
X-MimeOLE: Produced By Microsoft MimeOLE V5.50.4133.2400
X-Loop-Detect: 1

December 27, 2000

California Law Revision Committee
nsterling@clrc.ca.gov

Dear Committee Members,

Both the seasoned and first time homebuyers often get caught up in the excitement associated with home buying. Buyers Euphoria can effect purchasing decisions and cause simple errors to occur which could adversely impact a buyers initial home buying objective.

Homebuyer profiteers and homeowner associations, which generate revenue from monthly assessments paid by property owners, must be held accountable to the highest of standards. Complete and accurate disclosures cannot be compromised especially where a buyer's single most important investment is at stake. Homeowner associations must conduct and transact their affairs with the same diligence, foresight and prudence expected from any profitable corporation.

Below are a few suggestions I wrote down to help illustrate some of the serious flaws in an outdated HOA concept. Granted these suggestions won't solve all the CID problems, but they will help bring to light some very important issues for your consideration.

Proposed Pre-Purchase Revisions

* Determine with all certainty if CC&R's meet the legal definition and requirements associated with a contractual agreement, whereas, both parties have voluntarily engaged in formative structuring and acceptance of the documents contents. Put an end to the legal disputes by eliminating vague and unclear verbiage typically associated with governing documents.

* Clearly, disclose the buyers' involuntary acceptance of mandatory association membership initiated after closing a CID property sale. Include the expected fulfillment of all obligations such membership creates. Disclose any factor, which may influence "truth in lending" and "buyer beware" safeguards.

* Develop and mandate the issuance of a Pre-Purchase Corporate Disclosure Package, which must clearly articulate the health of the corporation,

presented in a prospectus style format. Additionally, require associations or their agents to prepare and deliver to the buyer ten days prior to close of escrow complete, current and accurate information. Levy severe penalties against any association, which publicizes for any reason, false, inaccurate and contrary statements. Grant compensatory settlements to damaged owner/buyers.

* Require Real Estate advertisers to classify CID properties separately from non-CID properties.

Proposed Post Purchase Revisions

Education and limiting the board's authority are the main keys to alleviating many problems CID homeowners may eventually experience. Therefore developing an educational course similar to Traffic School, where CID homeowners effectively learn the fundamentals associated with responsible private community living. Below are a few suggestions to aid that process.

* Mandate all new homeowners to satisfactorily complete a mandatory educational requirement structured to help understand their associations' Governing Documents. Other courses could be developed to address events and circumstances CID living create. Course completion should be accomplished within three months from the close of escrow. The DRE could assist the development of additional subject topics as needed.

* Mandate educational requirements and guidelines for all newly seated association board members. DRE and industry professionals (CACM) can aid in developing these course objectives.

* Prohibit association directors from engaging in civil law enforcement and rule enforcement activities. A disinterested party should direct and control rule enforcement duties or enforcement of rules that carry monetary fines.

* Homeowner associations and their governing directors should ensure association members the following services:

A. Common area maintenance and repairs.
B. Property improvements that enhance and modernize community facilities.
C. Civic functions intended to promote community awareness and well-being.
D. Due process regarding all disputes via municipal and small claims proceedings.
E. Accurate record keeping including financial reports, bank statements, board decisions, minutes, election results with secret ballots to name just a few.
F. Open, unrestricted and timely access to association records.
G. Informative monthly newsletters.
H. Enhance safety related concerns throughout the project.

I. General duties associated with the management of corporate matters.
J. Provide continual educational programs that improve homeowner and board awareness.

Viewpoint

I am sure many suggestions could be added to the list. However, minimizing administration, management and civil governance practiced by many inexperienced and volunteer boards will certainly provide solutions to a growing number of CID dilemmas. Law enforcement activities should be removed from association boards that often impose unjustified monetary fines for unverified violations or mistaken identities of alleged violators. Local law enforcement agencies should provide their professional services to CID residents as they would any other non-CID resident. End the practices, which allow board directors to harass selected homeowners they consider as inferior residents. Association rules and regulations should not exceed established local statutes and should conform to customary legal and constitutional standards.

The birth and expansion of CID's has born the creation of unregulated and unsupervised mini governments. These governments or Governing Boards preside over CID homeowners with a contractually binding set of rules, unlike the constitutionally protected lifestyles appreciated by homeowners not living in a CID. Non-judicial foreclosures have become a reality in some states. Insurance companies providing policies to CID communities often act as a sword rather than a shield. Some homeowners have actually lost their homes to reimburse scrupulous attorneys representing association insurance companies. Financially out resourced, many homeowners hide in the shadows of their communities to avert attention from rogue property managers and board directors.

Civil codes, regulations and statutes were written to benefit the interests of homeowner associations, not consumer homeowners. This fact must be reviewed and considered before any revisions are decided. Laws, which would benefit the interests of consumer homeowners while providing some level of investment protection, must be drafted and firmly established. Homeowners living on a family budget cannot possibly match the resources associations generate from monthly assessments; therefore, a level playing field does not exist to grieving homeowners with unresolved disputes.

Community associations are becoming more and more complex. Some communities have their own schools, libraries, supermarkets, and more recently, we have seen communities with an airport, parks, dams, reservoirs, radio and other private communication capabilities. Yet, there are no protective regulations that prevent the possibility of organized groups from intentionally inflicting tyrannical control of these communities and their resources.

CID homeowners are left no protection from rogue boards, which could intentionally fabricate disciplinary measures, and established bogus fines.

If left unpaid such fines could acquire additional penalty assessments resulting in property foreclosures to satisfy the outstanding debt. It has been duly reported that an Orange County resident lost his home over a $250 fine. Since an unleveled playing field exists to resolve disputes, it is not impossible or difficult for an organization to intentionally seize property using the methods described above.

AB 2031 introduced at last years legislative session is an excellent example of the reform CID homeowners need and deserve. The opponents of the bill believe releasing confidential disciplinary actions against homeowners violate those owners' rights. I disagree; member homeowners should be allowed access to such information to ensure rogue or inexperienced volunteer boards are not continually or intentionally imposing sanctions against any one particular group of residents such as minority or ethnic families. Without full and unconditional disclosure rights member homeowners cannot possibly protect themselves against this and other atrocities we all hear so much about. I see no valid opposition to the bill, which has my full support. Please review and consider the bill carefully as an alternative to other costly CID law revisions.

Sincerely,

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Law Revision Commission
RECEIVED

JAN 08 2001

File:____________

January 4, 2001

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

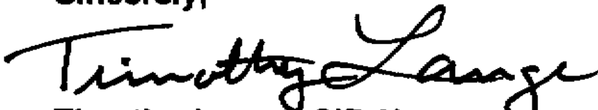
Dear Commission,

It is a pleasure to offer comment regarding the study entitled, "Scope of Study of Laws Affecting Common Interest Developments" , by Susan F. French, UCLA Law Professor. I have found the background study to be very reinforcing regarding what appears to be increasing fissures in the area of board fiduciary responsibilities by some lay boards who self-manage.

While there may be many more instances of mismanagement practices, my emphasis has been on the senior citizen CID. It is my impression that the longer the CID has wavered from its original Articles of Incorporation, the greater the chance of compliance problems.

I wish you the very best as you move forwards with your endeavors.

Sincerely,



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# Position Paper

# Response to CID Study: A CID Homeowners Perspective

submission to:

California Law Revision Commission

January 4, 2001

Timothy Lange, DAPA, LEP
Yucaipa, California

**“We must make injustice visible”**

**M. Gandi**

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## Background and Introductory Comments

I find the study by Professor Susan F. French, UCLA Professor of Law, on the state of the California CIDs, to be very accurate and objective.I could not concur more regarding her citation of the criticisms of an expensive litigation process and the erosion of individual home owner rights.

If you will be kind enough to bear with me, I'd like to share a perspective as both an owner and advocate, for the restoration of rights and fair play regarding board fiduciary responsibility. It seems unreasonable that boards can operate virtually free of accountability.

This paper is written seven months after taking our CID Board of Directors to dispute resolution. The experience cited, following the review of the literature, is correct to the best of my knowledge. As always, there is a degree of bias which cannot be controlled when the accounting is based on the perceptions of any one reporter.

Our home, since 1997, is located in a Southern California Common Area Development. This is the third occasion, in my sixty-two years, that I have owned property in a California homeowner's association. The prior two experiences were very beneficial with good professional management. With the exception of use of the recreational facilities, previous contacts with managers and boards were limited to paying dues, reading the newsletters, and following the rules and regulations.

The recourse available to the low-income senior citizens, living as an owner in a CID is limited and individual rights are exceptionally weak. There are implications that the democratic process that created them allows CID's to operate without an umbrella of protection.

Board responsibilities seem rather straight forward, when viewed from the corporate CC&Rs. The following are from the the Sun Park II Yucaipa, Inc. CC&R's as last modified in 1993. The declarant of the MODIFICATION OF DECLARANTS of the C.C.& R's reads: **will endeavor to comply with all existing Legislation governing mature senior citizens regulations, and to avail themselves of their constitutional right of free association with mature, senior citizens, and their right to contractual relationships.**

Few board members know the Bylaws, nor refer to them. There is essentially no board interest, nor participation, in any outside CID organizations. There is no board training and no schedule for new boards to follow. Parliamentary procedures are frequently not followed, and the rights of several owners have been violated. The right of minority is absent here. It reminds me of those days in Nottingham (without Robin Hood).

Given association quasi-corporate/pseudo-government status, it would seem that there would be some agency of the state to oversee the industry, not only during those critical few months following opening and occupancy, but over the life of the thirty-five year old, self-managed CID. It appears that there is no system of checks and balances.

The concerns expressed in this submission are not an isolated incident. Study of published and non-published materials (see attached list of references) suggests that mismanagement is alive, yet not-well in our state, if not throughout the country. When CIDs run astray, when compliance standards are brushed aside, and resources do not exist to insure compliance, then it seems that fiduciary is not only hard to spell, it's harder to know.

California's long term senior citizen common area developments have significant levels of despotism evident. It is my best estimation that, given the resources to research, the longer the time from the issuing of Articles of Incorporation, especially in senior citizen developments, the greater the probability that these little governments can become very self-serving. Some very unethical, illegal, behaviors occur when lay boards are given too much freedom. Democracy breaks down.

We are left with an environment where no one oversees the CID operation, except itself--the self-managed board of directors. This has existed over a long period of time with chronic and systemic errors and omissions.

In reviewing the literature, an eye opening paragraph appears in **Privatopia: Homeowner Associations and the Rise of Residential Government**. The publication is a prize winning political scientists discourse into the state of the home owner associations/CIDs as they exist in the United States

***The CID boards are neither businesses nor voluntary third sector neighborhood organizations. They are private governments that have been charged with what would otherwise be public responsibilities--a fact that would seem to require a means for ensuring that volunteers who operate them will act as though they were running governments. Yet no mechanism exists to ensure accountability of CID boards as governments. There is no method in place to move CIDs away from one extreme of excessive reliance on managers and lawyers or the other extreme of excessive informality, and toward becoming functioning, evolving, self-government communities.***

*Evan McKenzie*

To further disclose the realities of association living, the title of another publication seems to communicate a meaningful message in the title itself. This is Joni Greenwalt's book entitled **Homeowner Associations: A Nightmare or a Dream Come True?** Ms. Greenwalt offers many fine suggestions on how to create a positive environment in which the board is dedicated to manage the CID in an effective "win-win" manner. She does indicate that **homeowners can and do experience a sense of loss of freedom, and "them against Us" allegations regarding board behaviors is not uncommon.**

Writing in the July/August, 2000 issue of the Greater Inland Empire (GRIE) Community Association News, Sherry Neal, PCAM, makes and excellent case on the issues and risks regarding board self management in her article entitled, "*Dangers of the Unmanaged Association*". She states, **"While it is certainly possible to self-manage competently and effectively, board error and association liability are far more likely to occur in unmanaged associations than in those which are professionally managed by experienced common interest development managers."**

In the March 2,000 issue of **California Lawyer** is an article entitled, "*Trouble in Condo Land*". **A California attorney has had her practice increase from six cases four years ago to one hundred in the last twelve months. Her speciality is representing CID home owners.** When boards overstep their bounds, this leads to a growing perception that "**home owner associations are getting a little wacko**". Additionally, **"When homeowner associations choose to take residents to court, they are using the fees collected from residents to take legal action against residents. And that is bound to foster abuses".**

An E-mail was recently received from the **Home Owners Association of America.** Enclosed was an article that came off an Associated Press release from Newark, New Jersey. The writer speaks of a **"growing number of residents in condo villages and townhouse developments complaining that the volunteer homeowners association that run their neighborhoods are operating beyond democratic control.** Bill Connally, Director of Codes and Standards for the State Department of Community Affairs, also said **he "now takes more complaints about home owner association boards that about landlords".**

This state director further stated, **"It's amazing what goes on in some of these little governments. These associations carry out many of the functions of government. They're little democracies. The idea is to make more workable democracies out of them".**

In **Community First! Reshaping America's Condominium and Homeowner Associations,** contributors state that the authors accept industry expert observation, **"The conceptual fabric of self managing communities governed by untrained volunteer homeowners often unwilling to accept the responsibility for running what are essentially multi million dollar real estate holding corporations has grown frayed and rented.** The author continues **to lay the groundwork for reformation in the industry. At the heart of the matter are "instance of unchecked abusive governance". It is noted that without reformation there is a coming crisis regarding the confidence in CID housing".**

The authors of **Conditions of "Voice", Disappointment and Democracy in Homeowner Associations**, **"There are iterations of common interest development in Holland, Israel,and Japan, that are plagued with surprisingly similar problems of governance and construction quality as their American counterparts."**

Political scientist Evan McKenzie further comments that **"In order for CIDs to survive in the future , they will require a greater degree of institutional support from government and academia". It is suggested that these needs go largely ignored in an environment of phenomenal growth of CIDs with the many implications.**

The last reference prior to documenting a homeowner's nightmare, is a quote from the **<u>Bulletin of Classes</u>** offered this Fall and Winter at the California State University, San Bernardino. The introductory sentence of the course announcement on Homeowners Association Board basics is as follows: **"The homeowner's association board of directors has become known as the bane of property owners, with virtually every owner able to tell an Orwellian tale of intrusion into their lives".**

It is my impression that the study by Professor French sets a foundation for further study and development of plans of action. As she states, **"There is no regulatory agency charged with overseeing CIDs once they have passed by the DRE's control over the initial sales stage".** It is her recommendation that there needs to be **"better protection to members of CIDs than is currently available through the legal system."**

Additionally, it is not in any ones interest to stereotype CIDs. They come in many sizes shapes and forms. Most are managed with significant care and promising practices, not only related to the statutes but through professional and successful business management practices, including both legal and ethical responsibilities to owners. Industry standards for managers such as the certificate/licensing structure for managers and consultants are highly supported.

## <u>The Experience</u>

We moved from Redlands, California to Yucaipa, California after inheriting a smaller home. I was retiring, due to health problems, and it seemed perfect. No more mortgage, smaller place to keep clean, wonderful views of the Crafton Foothill Conservancy and the San Bernardino National Forest, including Mt. San Gorgonio. We have many fine neighbors and acquaintances.

Soon after moving, however, we were approached by individuals with some rather stern observations. My wife was told that she couldn't live here (rationale-too young), that we couldn't make improvements to our property without board approval, and that our dog was too big. In reality, there were no violations committed. I had studied the Sun Park II Yucaipa, Inc. Articles of Incorporation, CC&R.s Bylaws, and the Rules and Regulations prior to making our decision to move.

I mentioned this puzzling experience to one or two of our family friends that live here, they immediately proclaimed ---"Don't get mixed up with the board". I had no idea what they were talking about. They were essentially mute as to why they gave such advice.

A few months passed and I didn't think much about our new "Park", as the owners refer to it. Then one day, I was walking our dog and a gentleman approached. His was an association acquaintance, saying that no one wanted to run for office. The idea was given consideration and I responded, serving for six months on the board as a Vice-President. Many problems were disclosed which ultimately led to a resignation (at the counsel of an attorney and corporate executive).

Board membership and participation in the CID over the next six months was a very interesting experience, unlike any I have ever had. There was no agenda before nor at the meetings. Discussions and actions appeared to favor a core group of long term owners. Minutes were recorded but often appeared with changes that were both omissions and additions. The bylaws were seldom referred to nor were the state laws even known nor discussed. It was as if they didn't exist.

Our common area development is comprised of multiple components---grounds (park like setting), large clubhouse, shuffleboard court and swimming pool. Corporate records were reviewed in order to become further aware of corporate structure and operation. There was no evidence suggesting that a Reserve Study had ever taken place nor even considered.

The corporations bylaws call for an annual financial audit. When I suggested the need to have one as early as possible, since it was years overdue, it essentially fell on deaf ears. Receiving the supporting funds to carry out overdue maintenance and repairs were also difficult to obtain. When funds were expended they were frequently questioned.

I retreated for a few months and ultimately decided there was still work to be done. The needs of the many owners who are either too ill or discouraged to attend board meetings was still at hand. There is still a way to serve this and the greater community of senior citizen's owning property in the CID environment.

In the late Fall of 1999, I met individually with the President and a board member. I brought up the need to follow the regulations, referring especially to the need for a reserve fund. I can still hear the answer from the President. It was, "If we have any money left over at the end of the year we will think about putting some into it".

The issues were taken a step further in December of 1999. I asked to be placed on the agenda and then presented an oral/written set of concerns. This was handed to the President following the presentation, which was met with essentially silence. The only response was from the President, who was very aggressive. He stated sternly, "WHERE are those other twenty-six people?"

I would suspect that the number 26 came from gossip. I had made inquiry of 26 owners (before stopping) regarding if they had been asked to run for office. The tally was one "yes" and 25 " no".

Some time later, an envelope was received from the address of the President. The letter carried no heading nor signature. A response from the board never occurred.

A letter, drafted by my attorney was mailed to the board regarding the concerns/allegations. It was forwarded to all owners with a note saying the board might have to raise a special assessment to pay for the cost of a lawyer. There was nothing forthcoming at that time indicating that Board of Directors would move towards legal compliance.

Dispute resolution was not a cost effective method for obtaining compliance with key sections of the Civil Code. Known electrical hazards have gone unrepaired for up to three years. Attempts to remediate deficiencies have been marked by multiple errors. The board authorizes and pays for the services of volunteers to do the work of licensed and bonded contractors. The use of contractors is a mandate from the association's insurance agent.

It is difficult to predict what the long term effects are from the dispute resolution agreements. The board has not been fully informed of the agreements made. The corrective actions are rather incomplete. The reserve study is not accurate and the new budget does not include all parts of the major components,which are now some 35 years of age.

The CID has just held elections and new officers were installed at the December, 2000 meeting. If the statement made by the incoming President is correct, it seems that the association will continue to be managed as if it is immune from any error in judgment. What he said really caught my ear, as he held up the **Community Association Law Resource Book**, he stated that he wasn't going to pay much attention to the law book. "By the time laws are in print they are are out-of-date. It is precedence that counts", he proclaimed to all present.

## Discussion

Even in the presence of multiple and chronic mismanagement, there is little to no recourse available to the concerned and informed owners in California CIDs--that operate not only off the track but into the canyon below. When deliberating over the options that exist, there is only one definitive course of action--Move.

It appears that boards are overprotected by the law as it currently exists. Yes, they are lay volunteers. That's great. What isn't great is the fact that they are essentially free of consequences related to CID management ,without going to court. The later isn't a viable option, especially for the aging senior citizen owner, living on fixed income.

There is enough in life for our elders to worry about. Almost all of the seniors are living on pensions or Social Security, the price of utilities is skyrocketing and few have the financial means of gaining the services of professionals.

When the board is uneducated and ignorance prevails regarding its responsibilities, when there is no established contact with the outside world, it is very easy to stray from the path of fiduciary responsibility. In these instances, where boards are more interested in their self-interests, mismanagement can permeate operations.

It is my opinion that the reformation in the CID industry is needed. All the professional opportunities in the industries organizations cannot help boards that don't avail themselves of the opportunity. It appears that CIDs need standards and enforcement support.

## Personal Wishes

*That the review and revision process be allowed to academically study the state of California's CIDs.

*That there be safeguards in place to protect the dues and assessment levied on the senior citizens, living in retirement type CIDs.

*That special arrangements be made to solicit the opinions and experiences of the seniors who aren't able to travel due to poor health and/or limited resources.

*That the state will see fit to wrap itself protectively around the victims of mismanagement when and where it occurs.

*That monitoring and compliance regulations be drafted and reviewed to protect the limited financial resources of the senior, many of whom are living at the subsistence level.

*That in thinking of long term care and housing, the continuum be extended to protections and welfare as delivered in-home as well as medical type facilities.

*That boards of CIDs be fully accountable for their services to the corporations they serve.

*That there be a full continuum and procedures constructed to see that the limited resources of the senior citizen are protected.

*That it be recognized that CIDs are not governmental agencies but corporations given the power to govern without a system of checks and balances.

* That legislative efforts embrace the entire industry, from original agreement with the state until the corporations are dissolved.

*That the checklist from the appendix of the Epsten et. al publication, be reviewed and enhanced with early consideration to assist in building accountability.

*That inquiry and reporting be made of the other forty-nine states.

*That fraud and other fiduciary acts which counter the "win-win" environment be punishable by legal action against the individual and/or board members.

*That the real estate industry set early remediation related to disclosure responsibilities with consequences.

*That review take place by governmental agencies to see that citizens are afforded the same protections and assurances given to other governmental and corporate entities.

*That senior CIDs be placed on an inspection basis by the county fire and safety authorities.

*That an Owners Bill of Rights and Responsibilities be developed.

As an individual and advocate for others, it is my hope that your efforts will lead to a new age in California home owner associations. One that continues to support democracy and meaningful structure where structure of sorely needed.

One in which we can all share peace and goodwill with our neighbors--to call this home.

In closing, thank you for your attention to the issues faced by home owners who have chosen to live in common area developments. Little did we know that we were surrendering some of our God given and constitutional rights as citizens.

Sincerely,

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# References

**A Complete Guide to Reserve Funding and Reserve Investment Strategies.** Alexandria Virginia: Community Association Institute, 1998

Barton, Stephen E and Carol J Silverman, **Common Interest Communities: Private Governments and the Public Interest**, 1994

**Reserve Study Guidelines for Homeowner Association Budgets**, Sacramento: California Department of Real Estate, 1997

**Bulletin**, California State University, San Bernardino:CSUSB, Fall 2,000

**Common Interest Development Brochure**, Sacramento:Department of Real Estate, 1996

**Common Interest Development: Issues After 'Nahrstedt',** Sacramento: The Summary Report from the Interim Hearing of the Senate Committee on Housing and Land Use, 1996

**Community Associaton Law: Resource Book**, San Diego, California :Epsten, Danow, Howell and Gatlin, 2000

French, Susan F. **Scope of Study of Laws Affecting Common Interest Developments**, Palo Alto, California: California Law Revision Commission, 2000

Greenwalt, Joni, **Homeowner Associations: A Nightmare or a Dream Come True?**, Denver, Colorado: Cassie Publications, 1997

McKenzie, Even, ***Privatopia: Homeowner Associations and the Rise of Residential Private Government,*** New Haven, Conneticut:Yale University Press, 1994

Neal, Sherry, **"Dangers of the Unmanaged Association"**, Riverside, California: Community Association Institute, GRIE *Community News,* July/August, 2000

**Operating Cost Manual for Homeowner Associations.** Sacramento: California Department of Real Estate, 2000

Overton, Bill **Community First! Emerging Visions Reshaping America's Condominium and Homeowner Associations**, Alexandria, Virginia: Community Association Institute, 1999

**Residential Common Interest Developments: An Overview**, Sacramento: California Research Bureau, 1998

**Reserve Study Guidelines for Homeowner Association Budgets**, Sacramento: California Department of Real Estate, 1997

**Trouble in Condo Land**, *California Lawyer*, Los Angeles, California: Daily Journal Corporation, March 2,000

January 4, 2001

Mr. Nat Sterling
California Law Revision Commission
400 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

# THE CALIFORNIA LAW REVISION COMMISSION
# THE DAVIS-STIRLING ACT
# and
# THE TEMPLE OF BLAME

Dear Mr. Sterling and the Law Review Commission,

For five years I researched, then wrote what came to be known as Assembly Bill 2031 which was carried by Assemblyman Nakano. Before and after I contacted Assemblyman Nakano, I phoned and faxed every Assembly and Senate member regarding questions I had of the Davis-Stirling Act ("Act"). Not one Member's office was able to intelligently discuss the problem, that is if they were familiar with it at all. This speaks volumes for the ambiguous statute, the nucleus of which consists of inconsistencies, cross-over law, and various conflicts some of which exist between incorporated and unincorporated Associations, equal protection and the allowance for grotesque abuses of due process.

Many liken living in California as traveling to another age in a time machine. The place glistens with prosperity. Everyone seems wealthy and contented. Everything works perfectly and smoothly. But something in the atmosphere does not feel quite right.



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That "something" is yet another Revision of prior Revision(s) of a wholly inadequate Act. As the Commissions meet, California smiles on in the wake of growing Homeowner Association ("HOA") disasters. The present potential revision is tantamount to administrative terrorism perpetrated on thousands of Common Interest Development ("CID") homeowners abandoned by the law. Abandoned because the Act **is, and remains ill conceived.**

The Commission and Legislative experts express their perplexity at the vehemence of property owners in CIDs and soon turn their attention elsewhere. Oh well, its "their" problem, not ours. The Act has become embarrassingly passé. It smacks of the past, not the future, and suggests a grave lapse of judgment that is best quickly forgotten.

There are two ways of interpreting the California-Legislators' apparent indifference to problems surrounding CIDs and HOAs. It may be that they are in denial about the ghastly economic consequences many homeowners have suffered and continue to suffer because their rights as compared to other homeowners in California, implode. This is the view of most economic analysts advising CID homeowners, who are convinced that contrary to the Legislature's mythical belief that condominiums are equal to "affordable" housing, **CID housing actually subjects owners to serious if not greater losses and costs that no other homeowner in California would be forced to bear.**

It may be, on the other hand, that California CID property owners are psychologically quite well prepared to suffer these kinds of losses - but for most of us this is not the case. Perhaps the drafters of the Act never really believed that those millions of dollars in CID investments might vanish at the hands of say, a beautician, janitor, file clerk, stained glass cutter, a bankrupt person, an English teacher, or Playboy employee, sitting as President or Director of an HOA Board — or for that matter, Property Management Company ("Mgt.Co.").

In an HOA - funds vanish as quickly as they appear. With no accountability to homeowners and no consequences to be paid by the "Good-Faith Board"[1], funds vaporize quicker than osmosis. Maybe the drafters of the Act don't really live in a time-warp, they are instead, in the ordinary sense of the word: stupid.

The Act is not a regulatory conundrum, it is just bad law. It is counter productive. Not only should the Act be scrapped and abandoned, CIDs should cease to exist. They serve absolutely no functional purpose in this day and age. **How many Law Revision Commission members actually <u>own</u> <u>and</u> <u>live</u> in a CID? How many drafters of the Act actually own and live in a CID?**

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[1] "Good Faith": Encouraged by the Davis-Stirling Act, attorneys and Boards, California case law and precedent alike, support this cryptic and indefinite term which every Board, regardless of degree of incompetence or negligence or intent, meet the standard merely by reiterating the "Good Faith Mantra."

I live in Marina del Rey - a community where CID homeowners are held hostage to HOA, CIDs, and assessments paid mostly to cover the actions of incompetent Boards. For 18 years I requested to see where my hard earned money was going once it was turned over to the HOA, and for 18 years I continue to be told by the Board and the Board's nebulous core of attorneys it "was none of my business" and that as a property owner I "had no right to look at any books."

How is it, that California homeowners owning property in a CID do not have a right to oversee accounts, check books and receipts, of an organization they **are forced to financially fund without any accountability**? Answer: The Davis-Stirling Act.

**Law Revisions are an Imperfect Political Gauge**. Homeowners not unlike myself, who live and own in CIDs are beginning to experience a surge of uncontrollable fury. This fury is easily directed at lawmakers who do not fully appreciate the repercussions of their actions with regard to laws that effect the lives and **quality of life** of property owners in CIDs. Homeowners believe the Law Review Commission (LRC) will morph us into the Davis-Stirling Act inanimate and that the Act will continue to be shoved down our throats along with the rest of our rights that we were forced to forfeit upon purchase of our property in a CID.

What worries me and should worry the LRC, are the generalizations into which the legislators and lawmakers slip into when characterizing and legislating CIDs and HOAs. **CIDs and HOAs should never have been legislated separate and apart from existing laws.** By merely the purchase of property in a CID, the unsuspecting homeowner automatically forfeits his rights - rights that are automatically afforded to all other single family home purchasers. Not one other homeowner in the State of California is denied access to bank books or other property related instrumentalities involving their investments.

Property owners in a CID are at the mercy of years of an alienated and wounded California Government. Early on, the Act **was an ill conceived idea that** failed horrendously. It failed because like most laws that boast of predicting the future without the gift of divine intervention, **it failed to plan.** The Act was set in motion as California's legislature simply plodded along and collected their paychecks. There was, and is, no better recipe for disaster. The Act is unfair, unreflective of an HOA's ability to govern itself, contrived and treacherous - it is an utterly unessential element in the process of homeowner democracy and ownership.

**HOAs Are the New Deep Pockets of the 21st Century.**

Couple these facts together:

- There are no term limits to serving on an HOA Board, therefore, a particular faction (or representative thereof) can, and **do**

remain on the Board and effectively continue to scam homeowners with impunity, more often than not the scam and/or incompetence(s) go unnoticed because of the domination and control these Board members wield;

- Boards and Mgt. Co's. are **<u>not</u>** compelled by the Act or any California Code for that matter, to keep books (let alone "accurate" books) or records substantiating their actions (i.e., receipts, invoices, contracts);

- nor is it mandatory that HOA Boards keep or provide accounting to individual homeowners of their actions;

- and, because of fear instilled by attorneys (real or imagined) of the "possibility"of lawsuits, more attorneys and Mgt. Co's are recommending **"over"** insurance rather than **"adequate"** insurance.

- more attorneys and Mgt. Co's. are recommending "Boards" ignore problems (and homeowners) rather than address or fix them because they **know the homeowner's only recourse is to sue** the Board, and homeowners are in a weakened position when it comes to suing HOA Boards. A homeowner is then placed in a position that no other single family resident homeowner is placed in. An HOA homeowner must continue to **<u>pay for their opposition's attorney's fees</u> <u>and</u> <u>their own attorney fees simultaneously</u>**. (See Appendix A)

**<u>Who benefitted from the Act</u>?** The Condominium Association Institute and other like organizations, their members, and attorneys and Mgt. Companies. The LRC along with the Act has effectively legislated these entities into never-ending paychecks. These organizations and special interests **created an industry for themselves funded by HOA property owners**. After all,

| Where else can a homeowner pay into a reserve fund that he will never be able to access or obtain the records for? |
|---|

| Where else can a Board of Directors (and/or Mgt. Co.) have a statutory right to artificially inflate a reserve account without proving the accuracy of their accounting to those who pay into and fund the account? |
|---|



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Where else can a Board of Directors (and/or Mgt. Co.) fail to submit detailed quarterly financial accountings to those who pay into and fund the account?

Where else can a Board budget for a $40,000 item and not intend to use the budgeted $40,000 for an item at all? And then absorb the budgeted $40,000 for "something altogether different" or merely "keep it." (This has happened in my HOA consecutively for three years. The bogus item, which I might add was and remains in dire need, is tree trimming. The LA Fire Dept. has deemed it a fire hazard, but members on the Board want to make "cosmetic" changes to Board units rather than trim trees. So by budgeting for and not using the $40,000 for its intended use, they **accumulate**, albeit, **artificially inflate the reserves** under false pretenses by that amount.)

Where else can a homeowner whose unit is severely burdened by common area problems **not** be able to contact those who are in charge (i.e., Board and/or Mgt. Co.) to have the problem corrected because the homeowner is not allowed to correct a common area problem himself? Never mind, that the effects of being ignored by a Board/Mgt. Co. include a "devalued" unit, "denial" of home equity loans due to devaluation or "refinancing", "loss of sale" due to a burdened property, and more. Again, the homeowner's recourse is to sue?

Where else can a homeowner have their unit burdened with erroneous fines to the extent they are compounded by bogus interest charges for no other reason than a Board's intent to harass and denigrate a homeowner's quality of life, enough so, to force that particular homeowner to sell at a loss, move out of the CID or suffer the wrath of those in "control."

These and other sanctioned acts by Board members with or without proxies, are often based on a contrivance of facts against homeowners. Not surprisingly, the "facts" always remain in the custody and control of the Board or Mgt. Co.



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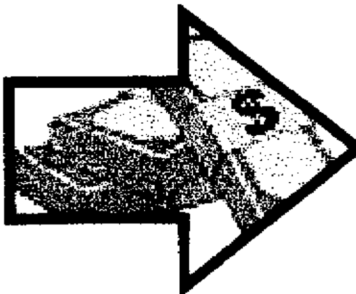
Because of the Act:



When moving out of a CID, the Seller is effectively <u>**forced**</u> to **donate ALL** of his **unused monies** paid into the HOA Non Profit Organization bank account without the benefit of a personal tax deduction. **This is money that is unused for the purpose it was collected or it would not be in a reserve or general account.** In any other setting this would be considered a crime. But the **Davis-Stirling Act makes it legal.**

This **growing disaster** is the complete domination of so many by so few. The "many" are the unfortunates who have likely spent their life savings on a godforsaken condo – the "few" are legislators, lobbyists, special interests and political action committees and the like.

In recent years it has become fashionable to decry the legislative system as a lingering fetish of elitism and everything that is wrong with California - but in this case that is proven. **Those that are effected by the passing of the Act were the very people omitted from its construction.** Instead the Act was constructed by those in powerful positions. It was constructed if not conceived by, persons, companies, corporations and industry with absolutely <u>**everything to gain**</u>.

Did no one question or wonder why or how so many lobbyists and special interest groups were allowed to back door the Act? Where was the homeowner involvement? There was none. Odd, since the Act was supposed to legislate CID <u>**homeowners**</u>.

Why should corporations, industry, and lobbyists, be allowed to influence legislation in the very environment in which they trade and receive remuneration?

For those CID homeowners who expected big change, the Act came and proved itself as a disappointment. It was a pre-packaged pay-back to the lobbyists and industry disguised as a self-congratulatory victory to Davis and Stirling.

We must be very careful not to cosset any section of the population at the expense of the community as a whole. We must take care to avoid a situation in which CID property homeowners become the milch cow to be milked irrevocably and continuously by legislators and their special interests.

Those who pushed the irrevocably and continuously merited Act deserved **scrutiny** both for verbal infelicity and an imperfect understanding of the Act's inevitable incertitude. Not even the Act's authors bothered to cross check the existing Codes against the inconsistencies of the Act and/or its consequences on homeowners.



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Homeowners living in CIDs and belonging to HOAs, have become an unpopular race. We are supposed to share attributes and attitudes, be collectively deserving of blame and if/when something goes wrong, we are supposed to be "generally" irresponsible to the extent the public views us as selfish and grasping. So much so, we need to be stripped of our rights and legislated separately from the other so-called worthier property owners. "They" have got it coming. "They" — all of them — are even to shoulder a kind of folk-guilt for what the case law, statutes, and legislatures put into action decades ago. Language like this is very potent — but legislators should take care.

Little causes a greater feeling of injustice than assumptions about an individual which are based only upon his membership of a group - especially a **mandatory membership**. In matters of race it's called racism. Here it can easily be akin to Equal Protection violations. How many people are we talking about? Thousands upon thousands. **That's a hell of a lot of voters to write off.**

The notion of a CID economy is so imprecise as to be almost meaningless. Who talks our language? The People's language? Is it the Davis-Stirling Act? **And it was all looking so promising.** There was that excellent promise by Davis and Stirling, the LRC, CAI, Industry, Construction companies, Insurance conglomerates, Lobbyists, etc. Just who was the audience and could they bear to applaud that all inclusive package? **No, but the rest of you did.**

**It was in the end, nothing but lip-service** to substantiating each person's place in the legislature. None of the sentiments uttered were wholly sincere, but at least according to the LRC, they were muttered, and that apparently in your view "is progress." Little did you understand that you set back the plight of each and every homeowner who purchased in a CID, by an entire generation. You had no problem forcing the Act down our throats, but not one LRC member, attorney or legislator, let alone Davis **or** Stirling, tried to mitigate the damages once the complaints started rolling in. And the complaints did roll in.

What does this debacle tell us about the Act? First it displays an astonishing degree of ignorance and arrogance about law and order from those who like to think they are experts. This is an elementary distinction which should be clear to anyone who has even glanced at this problem. To lump private property home-owners who are **forced** to belong to an HOA in with a CID (aka: The Act) is like trying to solve the problem of speeding by installing radar guns in Volkswagens, not Ferraris.

**If the Reasoning Behind the Act Was Wrong, What About its Consequences**? Thousands of otherwise law-abiding CID-homeowners find themselves tarnished by fines imposed by Boards and/or Mgt. Co's. resulting in levies against their homes and property, all compiled **without** due process or compiled with a "contrived pre-determined" process the results of which are already known. Many CID homeowners



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are in fact the target of certain individuals that masquerade as a HOA Board of Directors, to harass, embarrass, and financially cost a particular homeowner. Such fines can affect an individual homeowner's record (criminal? civil?), it can bar him or her from job and credit opportunities. **Great work, LRC.**

Though to those who made these laws it may seem marginal, **this is not a trivial mistake**. It is in fact a mistake on a grandiose scale, a mistake so devastating and costly, that because of the complexity of the error (i.e., the multi-faceted problems inherent in the Act) the direct effect and impact on thousands of lives can hardly be adequately calculated. Until you have experienced the effects of case law predicated on the Act, and attorneys hired by Boards and Mgt. Co's. that claim to be acting within the purview of the Act, you will have absolutely no idea what I am talking about.

It is a sign however, of **how out-of-touch the Legislators and LRC are** that they do not recognize this or they refuse to correct it. It is also a sign of how shambolic the legislative politicians are that it could allow - even boast about their successes when they should in reality be considered accomplices in the biggest scam on a certain segment of individual homeowners in the history of California. So worried are these legislators about their re-election and back door deals, that the cottage industry created by the Act will likely go untouched.

It is the dumbing-down of the Legislature as if their lives are more worthy than ours. Just who do these worthy idiots think they are? Do they live in a condominium? Have they ever been targeted by a Board? Sued by a Board? No? Then how on earth could they have been so purblind, self-indulgent and insensitive as to compose a statute as ludicrous as the Act? And worst yet, to allow it to stand unabated all these years!

A legislature that loses its sense of history eventually loses all sense of proportion and finally, as George Orwell noted, obliterates the very notion of truth. How, worst of all, could these so-called learned and well-intentioned idiots baldly state that the CID model as detailed in the Act is the solution to the ill-conceived concept of CIDs to begin with. The fundamental answer to these questions is one that ought to be familiar to the sort of people who habitually sit on these boards, committees, and commissions. Self-important groups not unlike the LRC and other legislative task forces regarding CIDs are prone to lose their sense of proportion. The Commission has followed in a new tradition of imperial over-reach among the quangocracy. The hallmark of the new quangocracy is to start with a sensible idea and take it beyond its logical conclusion, to the point of reductio ad absurdum. That my friends is nothing less than the Davis-Stirling Act.

Sincerely,

Donie Vanitzian

**P.O. Box 10490 • Marina del Rey • CA 90295 • Tel: (310) 301-9569**



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Examples from my own HOA that transpired within the past 12 months.

- Our HOA paid $50,000 twice for a new roof. The first roof was faulty but because the board can't find the guarantee, or the contract, or the cancelled checks we had to replace it again. So we paid <u>twice</u> for a new roof.

- Our HOA insurance liability policy was cancelled because the Board and Mgt. Co. did not have the funds to pay the premium. When I obtained a copy of the Insurance Cancellation Notice directly from the insurance company, the HOA distributed a flyer claiming the funds had been paid. I requested to see the checkbook and was denied. The HOA and all 35 owners are now jointly and severally liable for the incompetence of the Mgt. Co. and the Board. Needless to say the **<u>all credentialed</u>** Mgt. Co. was recommended to the very impressionable board by an Attorney belonging to the Executive branch of CLAC and CAI. Of course the Mgt. Co. belongs as well.

- The Board hired the Mgt. Co. without making the contractual agreement known to the homeowners. To this very day, **not one homeowner has been allowed to see or read the Management Company contract** that this Board bound us to. The Board has no problem spending thousands of dollars to pay an attorney to deny homeowners the right to protect their property investment, but they won't pay to fix <u>known</u> and urgently <u>needed</u> common area repairs that are affecting individual units.

- I am presently being charged "late fees" and "interest" because according to the Board I am the only homeowner who apparently doesn't send their monthly fees on time. Oddly enough, I have all the registered, signed, receipts verifying timely payment, but the Board insists I owe the money. All other homeowner's monthly fees are posted in a timely manner. How do I defend myself when every shred of evidence is in the possession and control of the Board. The Board consists of 5 friends who have effectively managed to control the CID for several years, and have removed themselves from homeowner contact. They hired a Mgt. Co. and an attorney - none of which return my phone calls or answer my letters.

- The Board does not deliver monthly meeting notices or financial reports nor do they inform any homeowners of the monthly meetings. We are not only held hostage to the fact the law gives us no recourse other than to sue, but we are held hostage to the sophomoric business practices of ill informed and uneducated persons who have managed, somehow, to remain on the Board of Directors to the detriment of those of us who do not have the clout or the proxies to change it, and the existing California laws do nothing to protect us.



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ASSEMBLY BILL No. 2031
Introduced by Assembly Member Nakano
February 18, 2000

An act to add Section 1365.6 to the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2031, as introduced, Nakano. Common interest developments: records.

Existing law, the Davis-Stirling Common Interest Development Act, prescribes rules for the governance of common interest development associations.

This bill would require the board of directors of a common interest development association to retain all documents and records of the association included but not limited to, records of proposals, contractual agreements, correspondence, and tax filings, among other documents, for not less than 7 years, and to provide members of the association with the same access to these documents as the members of the board, but would require the redacting of certain types of information, except as specified. The bill would require the board to make documents available for viewing within 10 days of receipt of a written request from a member.

The bill would provide that a member who sustains economic loss because the association failed to retain or provide access to documents may recover compensatory damages, up to $5,000.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.



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**Scenario One:**

*There was an elderly homeowner that lived close by me who had no family. She was confined to her unit because she was on a respirator. She once told me she* ***doesn't have the energy to fight the Board, she simply wanted to see the books.*** *She told me* ***the Board said if they waited long enough she would die*** *and then they wouldn't have to worry about it. She told me the Board told her "****there's nothing you can do about it—sue us.****"*

**Scenario Two:**

*"We sat on the board,* ***we found money going out.*** *We asked about it, the good-old-boys who always sat on the Board of Directors didn't like the question.* ***They kicked us off the Board because they knew, if we were just "members" we had no standing to look at anything.*** *They remained on the Board and* ***kept throwing their bar-b-ques*** *and* ***pool parties*** *while the* ***main plumbing and the roofs*** *of the association* ***rotted away.*** *As the kickbacks continued, someone finally sued them to find out what happened to the tens of thousands of dollars that were missing.* ***They all moved and took the books with them."***

**Scenario Three:**

*She told me, "Honey I'm 80 years old. All I want to do is see where my money is going.* ***I asked the Board if I could see their receipts. They told me to go to hell.*** *Can you believe that? I called everyone in government and no one knows what to tell me.* ***They tell me the same thing, 'lady you got to sue.'*** *How can I sue. I don't know where to start and I live off social security and I'm sick. Nobody's going to help me.* ***This condo is all I have. I worked my whole life for this.*** *I just don't know what to do.* ***They are treating me this way because I am old.****"*

**Scenario Four:**

*"I sit on the Board.* ***Its four against one, them against me. They hide the books from me, they hide the receipts from me, and every time I ask if I can see the books or contracts they keep signing, they ignore me or tell me to go mind my own business.*** *What do I do? Man,* ***that's my investment they're playing with****! Its all I've got.*



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January 16, 2001

Mr. Nat Sterling
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Dear Mr. Sterling,

Please note the following correction to be made on the correspondence dated January 4, 2001 and re-faxed to you because of an error in address. Erroneously, the Community Association Institute was referred to as the "Condominium" Association Institute, but the abbreviation was correct (CAI). I intended to refer to the **Community** Association Institute.

Thank you.

Sincerely,

Donie Vanitzian

*A copy of this correspondence was sent via email.*

January 5, 2001/January 16, 2001

Mr. Nat Sterling
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Dear Mr. Sterling,

I initially sent this letter to you on January 5, hard copy and via email, however it was returned to me because I had the wrong address on the envelope. Therefore I am also faxing it to you.

I have never written to you or any government official before so please bear with me if I have not addressed this correspondence appropriately but I understand that the Commission is meeting to discuss the Davis-Stirling Act.

I am a Real Estate Broker. I own and live in a Common Interest Development for 20 years. There are only 35 units here. If I knew then what I know now, I NEVER would have purchased in a CID. Purchasing a home in a CID is not what real estate agents refer to as "affordable" housing. It actually costs more to live in a CID.

I am not a lawyer and have no legal background but I believe that the Davis-Stirling Act was and remains today, poor legislation. It is not well drafted and in reality it has been very costly for homeowners. The Davis-Stirling Act is misleading and is compounding property owners' problems who happen to have purchased in a CID.

I have sat on various HOA boards and have witnessed a variety of acts that if committed in the "private" sector of society would be deemed unlawful if not criminal. I hasten to add I was unilaterally removed from my HOA board because I refused to partake in their machinations against other homeowners and refused to take part in their schemes and systematic misrepresentations to the homeowners.

Not one board member who committed and/or continues to commit these acts has been caught, questioned, reprimanded, fined, penalized, or removed as a board member. The reason they are getting away with it is because homeowners do not have access to the HOA books, checks, registers, proposals, receipts, and other pertinent and imperative documents. The board knows this and they are using this knowledge against the homeowners.

The board hired an attorney who is on the executive arm of organizations like CLAC and CAI, and he along with another CAI property management firm have effectively taken over our CID/HOA. Our homeowners are now totally in the dark regarding our association, and we have been shut out of everything we once partook. Once the property management company was hired homeowners asked to read the contract. The board has not allowed homeowners to read the contract. Imagine that! The board has bound all 35 homeowners to a contract that not one homeowner has read, let alone seen! Its absolutely absurd.

We are paying triple and at times quadruple for items that once cost us a pittance. The problems are taking longer to correct, if they are corrected at all. The Board systematically destroys documents and receipts and anything that will implicate them. They do this with immunity because the CAI attorney has told the board members (I was present) there are no laws

that say the board has to keep records and what the homeowners don't know won't hurt them. The attorney instructed the board to dismantle a document that was forwarded to our insurance carrier (upon the insurance carrier's request) that was falsified. In its falsified state it was meant to paint a particular homeowner in a bad light. When the insurance company learned of the falsification it discredited our association.

Since the CAI attorney's involvement, our board has spent more on attorney and management fees and "extras" than we have in fixing common area problems. Only problems affecting board member units are fixed and extra gardening takes place only at the Board member's units.

Because the board has artificially inflated the reserve account numbers, and homeowners have no way of proving this, when the annual meeting rolls around, the numbers will "look about the same" so it will give the appearance that everything is fine. BUT, what the homeowners don't know and will never find out, is that the Board did little if nothing with regards to the actual maintenance and care of our units. They planned it this way because they knew if the numbers "looked" close to last year's numbers, homeowners would assume everything is ok - but everything is not ok. The money that has been paid out to the management company and attorney could have been applied to our property. We have instead turned into the new cash cow for organizations like CAI, attorneys and property management companies/individuals. Of all the fees I pay each year to a Board that refuses to fix my roof, plumbing, cracks in my garage, an alleyway without expansion joints so it deposits water into my unit causing it to sink on one side – I could have taken that money and with the estimates I have received, fixed ALL of it. Instead I am ignored by the Board, their attorney and the property management company. What's my alternative? The California laws say "I" must "sue." Why in hell must that be "my" alternative! I've paid three times over-enough to the HOA to have these problems fixed/rectified.

I would like to request that the Commission consider the fact of doing away with CCRs. Here is my suggestion. Rather than legislate HOAs into amending, updating and/or rewriting CCRs to comply with existing California Statutes and Federal Laws, why doesn't California codify ONE SIMPLE CCR. A ONE or TWO LINER that defines a CID then states the obvious i.e. that HOA/CIDs can't violate the existing laws. Period.

This will save HOAs millions of dollars and will begin to get us out of the grips of some of the big lobbies and political action committees.

Frankly, Common Interest Developments should be altogether abolished. They no longer serve a functional purpose in California. Today's Common Interest Development is a homeowner's jail. A jail that the homeowner pays for the privilege to live in. It is nothing more than a legislated Prison filled with legislative pork.

Thank you for your time.

Thomas Foster
17621 Lemarsh St.
Northridge, CA 91325

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY GRAY DAVIS, *Governor*

**DEPARTMENT OF REAL ESTATE**
OFFICE OF THE COMMISSIONER
2201 Broadway
P.O. Box 187000
Sacramento, CA 95818
(916) 227-0782

Law Revision Commission
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January 5, 2001

Mr. Nathaniel Sterling
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

Thank you for the opportunity to review Professor Susan F. French's background report regarding the revision of the common interest development laws.

There are many interesting issues raised in the report and the Department of Real Estate will offer any technical assistance that is needed with respect to your review of the common interest development laws. In this regard, please continue to advise us of the Commission's actions.

Sincerely,

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

PRZ:lar

January 9, 2001

Cara Black
815 Camaros
San Clemente, CA 92672

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

To Whom It May Concern,

I received a copy of the "Scope of Study of Laws Affecting Common Interest Developments" written by Professor Susan F. French. I would like to say that I think she did a very good job of identifying the problems and identifying some of the groups that will try to block any changes to the status quo.

Let me give you a little of my background and why I am interested in participating in this Review.

I moved in to an HOA two years ago. Our Association is one of fifteen sub-associations that belong to a Master Association. The Master Association consists of 1600 homes. Our Master Association is responsible for maintaining a fair amount of open space and hillsides.

We moved in to a brand new home. The house is located at the end of a cul-de-sac up against a large hill. The builders graded a larger area than originally planned which made our house sit about eight feet from the "toe of the slope" instead of six. When I found this out I thought it would be silly to have a small strip of land that no one would use but that I could incorporate into my side yard. I was told by the building supervisor that I could ask the Master Association for a "license to use agreement". This agreement means that I pay a nominal fee to use the land, and I pay to landscape and irrigate it. We also went to the City and got an approval to move the fence line. "License to use" is used in many other Associations; it is not a new concept. Out of 1600 homes only 7 have this agreement. In order to access the Licensed "common area" a member of the association would have to knock of the door of the owner and ask to go into their backyard.

One of my neighbors is a real estate agent (and has a bit of a screw loose). He got angry when another neighbor put his house up for sale with a different real estate agent. That was two years ago and he has made it his crusade to yank all the "license to use" agreements from all the homeowners. Some of the homeowners have had their License to use agreements for over 10 years. It has been a frustrating and emotional fight to maintain what we have. It has not been fair and that is what began my education about the fundamental problems with Association living.

I realized I could complain about the people who were on the board or I could run and be on the board hoping to be a voice of reason. I have been on the board for over a year now and have gotten involved in the Master Board as well. There are significant problems with HOA's and with the CC&R's. It is encouraging that these problems have been identified by Professor French and are being reviewed by your organization.

THERE NEEDS TO BE BETTER EDUCATION ABOUT HOA'S:

All too often, housing in master planned communities, condominiums and town homes are sold as a "carefree living" in which amenities are emphasized with little mention of the serious risks and obligations of homeowners association membership. We purchased our home through a real estate agent. There was nothing said to us about the fundamentals of living in an HOA. We were told about the requirements in the CC&Rs. It seemed simple enough for us to keep our home looking nice and keep the basketball hoop out of sight. What it didn't say was that Ed Beverage lived in our neighborhood who is a nut and was getting himself elected to the sub-association board, the master board, the architectural review, landscape review, etc. It also didn't inform us that if there was a problem and it couldn't be resoved at the board level that we wouldn't have a fair chance because we didn't have limitless money to pay lawyers where as the association did.

PROTECT HOMEOWNERS FROM UNNECCESSARY LAWSUITS:

The members of the Association board are protected by lawsuit insurance. A person with an agenda could get himself or herself elected to a board position and cause trouble for a neighbor knowing that they are protected from any lawsuit. On the other hand if a rouge board picks on a person that person would have to pay an enormous amount of money out of their own pocket to fight any wrong doing.

An idea to address this problem would be to have an Ombudsman based out of the Department of Consumer Affairs. This could be paid for by collection a $2.00 per homeowner fee. With six million homeowners living in HOA's it could pay for this position as well has a staff.

This is a HUGE problem and must be addressed.

THE RELIANCE ON VOLUNTEERS TO HANDLE THE AFFAIRS OF AN ASSOCIATION:

People lead busy lives. HOA's rely on volunteer's to run the affairs of the association. There is a huge apathy among homeowners often for good reason. Where are people going to spend their time? I for one would rather be spending my time with my two young children and educational issues. Instead I spent one month of my spare time walking the neighborhood and talking on the phone, campaigning for candidates. Then the following month I spent my time doing the same thing for the Master Association. I

will get to do this every year I live here if I want to be sure we live in a friendly neighborhood. This is not the place I would really choose to spend my time.

There is also I problem of getting people who don't know how to run the financial aspects of an association. We have seen this here and it has caused some problems although not as big as some problems I've heard of from other associations.

CONFUSING CC&R'S:

I have seen time and again where we have hired an attorney to interpret the laws of the CC&R's. We will get one opionion and then another attorney will come up with on entirely different opionion. The only ones gaining anything from the CC&R's are the attorneys.

LOSS OF CHOICE

I live in San Clemente. Over 5,500 homes are being built here and they are ALL HOA's. CHOICE is being taken away as to whether someone even wants to live in an HOA. I know that this problem is huge and dates back to Prop. 13. Cities don't have the money to maintain the streets, open space, lights, emergency personal etc. This is not right. If I decide that HOA living is not for me my choice as to were I could move is drastically limited. Something needs to be done so that cities can plan for fair choice in housing.

I'm led to believe that CAI and CHUBB insurance are working hard to maintain the status quo. The current set up also provides a limitless supply of work for lawyers. What worries me is that the lawmakers in Sacramento will make it appear that they are concerned about what is going on (by asking for a study like this one) but have no intention of addressing the problem. Apparently this happened recently in Arizona. I hope that this study is successful and the powers that be recognize that there is a real need for some changes. Is there a real commitment to change the current situation?

I'm happy to participate in any way I can. I have found some very useful and informative web sites that you made find helpful.

www.ahrc.com
www.consumersforhousingchoice.org
www.cicproject.org/
www.starman.com/hoa/

Good luck.

Sincerely,

Cara Black

TOTAL P.02

X-Version: Law 6.2 .3385.0
From: "Glenn Youngling" <youngling@law.com>
Date: Wed, 10 Jan 2001 12:03:16 -0800
X-Priority: Normal
To: nsterling@clrc.ca.gov
Reply-To: youngling@law.com
Subject: Davis-Stirling Act Amendment
Mime-Version: 1.0
X-Loop-Detect: 1

There are literally thousands of informal road associations throughout California and which are governed only by the "pay your fair(?) share or litigate" provisions of Civil Code Section 845. In some instances these roads are miles in length and present complicated maintenance, repair and life safety challenges. The Civil Code Section is not up to the task and many of these old subdivisions and/or neighbors sharing private roads struggle unsuccessfully to maintain or better their situations.

I would like to see Civil Code Section 845 amended and a cross reference made in the Davis Stirling act to provide that in the event more than half of the users of a road voluntarily form a Davis-Stirling qualified association, the Association or any owner may petition the court utilizing C.C. Section 845 and the Court is authorized to set the "fair share" road assessment as the assessment amount determined by the Association and consistent with the Davis-Stirling Act requirements.

I would be pleased to provide examples or elaborate further. These people need help.

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Law Revision Commission
RECEIVED
JAN 1 6 2001
File:____________

Wednesday, January 10, 2001

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto CA 94303-4739

Re: Comments on Laws Affecting Common Interest Developments
By fax to (650) 494-1827

Commission members:

I have read the Background Study H-850 on this topic prepared by Professor Susan F. French, and would like to submit additional comments for the record based on that document and on my own personal experience with these issues.

By way of background, I have served on the board of a 128-unit vacation-townhouse CID located at Lake Tahoe and on the Board of Directors of Stanford Campus Residential Leaseholders (SCRL), a non-CID association representing some 900 single-family residences on the Stanford University campus.

I have also served on the Board of Directors and been president of the Optical Society of America, a major scientific society with 100 full-time employees and $20M annual revenues, and have been involved in many numerous committees and task forces and been co-chair of the Faculty Senate during a 42-year career as a Stanford faculty.

I am also a regular reader of "misc.consumers.house.homeowner-assn", an Internet newsgroup which regularly debates many of the controversies involved in the operation of CIDs and HOAs.

Based on this experience I would recommend the following points to your Commission:

**1) Recognize the "Amateur" Status of the Majority of CID Boards**

In formulating laws governing the operation of CIDs and especially CID/HOA boards, I strongly urge the Commission to recognize the "amateur" status of many if not most of these boards.

In my observation many if not most members of HOA (and other) boards, while often dedicated and well-meaning, are inexperienced in organizational and governance issues, have limited organizational and management skills, and have limited knowledge of legal issues, parliamentary procedures, board responsibilities, and other aspects of board operations.

In addition, they are generally volunteers with limited time, limited experience, limited opportunity to acquire on-the-job training in effective board membership, and limited access to professional assistance in carrying out their board duties.

Implications of this include:

a) *Simplify the language*: Great efforts should be made to see that legislation concerning board operations and responsibilities should be as phrased as much as possible in straightforward, everyday language, avoiding "legalese" or legal jargon.

b) *Set standards, avoid excessive detail*: Legislation should avoid excessively detailed requirements on boards and board members. Rather it should set broad but minimal standards for board and HOA actions and records, and allow for flexibility in implementing these.

   (It should always be kept in mind that these are in many cases small HOAs with amateur boards—not global corporations or huge financial institutions.)

c) *Focus on assisting HOA boards*: The Commission should recognize the need to assist boards in operating effectively, for example by providing materials for board training and education such as brochures giving basic information on board responsibilities and legal requirements; information sheets on particularly common or contentious issues such as "flag laws", satellite dishes, pet regulations, and the like; and references to other useful information sources such as Robert's Rules and various condominium handbooks.

**2) Focus on Basic Standards and General Principles**

Legislation should focus on basic standards and general principles for those issues that are most likely to be the focus of controversy between owners and boards, including:

a) *Advance disclosure for potential CID purchasers*: Potential purchasers within a CID must be provided with full and adequate advance disclosure of relevant information concerning a prospective purchase within a CID, including copies of all relevant basic documents (CC&Rs, Articles of Incorporation, bylaws, and published rules) and full access to any additional information that would be available to existing owners (e.g., board minutes, financial records, on-going litigation).

   This disclosure must be made an adequate time in advance of a prospective purchase; responsibility for providing it should fall primarily on the realtor (if involved) and on the selling owner.

b) *Open communications and full disclosure from boards to owners*: It goes almost without saying that there should be full and very open communications between an association and its board and individual unit owners, including fully open meetings and open access to association records as a matter of right.

   Boards and board committees should fully document all their activities and decisions and fully communicate this information to unit owners whether through mailings, a web site, or other means. Unit owners should have full access on demand to essentially all HOA written and financial records, all committee and subcommittee meetings, contracts, and the like,

with only very limited exceptions for special situations such as possibly privacy concerns for another unit owner, or personnel matters for a CID employee.

c) *Importance of written documentation of board and HOA actions and decisions*: Without going into excessive detail, legislation should emphasize the importance of maintaining adequate written records of board and HOA actions and decisions, and the availability of written documentation of association rules, regulations and policies should be emphasized.

d) *Open meetings*: All board meetings and all board or association committee meetings at which significant decisions are to be taken should be announced an adequate time in advance, with an adequate agenda distributed or published in advance, and should be open to all unit owners. Any meeting at which an issue of particular significance to an individual unit owner is on the agenda should be made known to that owner an adequate time in advance.

e) *Communications mechanism among association members or unit owners*: As a rather minor detail, every association or CID should be required to provide some acceptable mechanism for any one member or unit owner to communicate with all other members of the association.

   That is, it should be possible for any association member to transmit a letter or other communication concerning association affairs to all other association members—to attempt to rouse the troops on some issue, if you will—without control or censorship by the association itself.

   It is not essential that this be accomplished by making the association's membership or mailing list openly available to any member on demand; there are clearly strong differences of opinion among different people as to the privacy issue involved in doing this.

   It should be possible to do this, however, through an association channel if necessary, but without censorship and at low cost and in timely fashion—for example by inclusion of such a letter in a regular association mailing or dues billing.

### 3) Establish More Detailed Standards for Financial Matters

While I would urge the Commission to approach the topics in preceding section in the spirit of establishing "basic standards and general principles" rather than detailed prescriptions, I suggest that the standards for any matters involving financial charges by a CID on any individual unit owner be spelled out more carefully and in more detail. The requirements on an association and its board for enforcing dues collection, for initiating dues increases, and for imposing any kind of special assessments, fines, penalties, or liens, should be clearly established and carefully spelled out. (An association should be able to do all these things; it should just have to do them only by following well-known and well-established due processes.)

### 4) Drop Davis-Stirling, Move Toward UCIOA

Professor French's background study is persuasive to me that Davis-Stirling is probably flawed beyond repair, and should be replaced by either adopting or moving very close to the UCIOA legislation.

**5) Consider a State-Operated Regulatory Mechanism**

One of the lessons of experience is that in proposing or adopting any new legislation or regulatory mechanism one should very carefully consider unanticipated or especially undesirable consequences that may flow from this action.

Nonetheless I am in full agreement with the observations in the background study that neither the legal system or ADR currently provide adequate mechanisms for securing compliance of CIDs and CID boards with acceptable standards of behavior, or more generally for effectively resolving conflicts between CIDs and individual owners who feel aggrieved or believe that their rights have been violated.

Therefore, I support the suggestion in the background report that the state consider providing a regulatory mechanism that could attempt to resolve such disputes in a more effective manner. (In saying this I am not aiming at or taking sides with either of the parties in these disputes. In my personal experience there are examples of badly behaved and irresponsible boards, and also of irresponsible and unreasonable unit owners with CIDs.)

**6) Actions Not Recommended**

I would like to speak specifically against a few detailed suggestions that are noted (but not recommended) in the background study. One can read between the lines to guess at how these suggestions could have arisen from frustration in some specific situation. Nonetheless, I believe it would be unwise to mandate any of these, including:

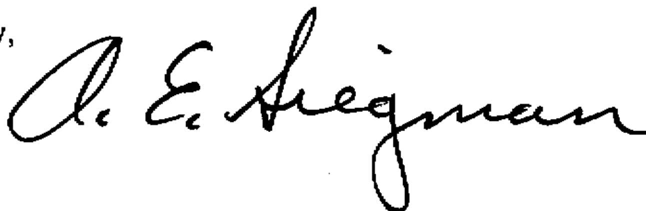
a) Term limits: While recognizing how this suggestion one could arise, allowing board members to develop board experience, board know-how and corporate memory over time is a much more important objective.

b) Secret ballots: Individual CIDs or associations may elect to do this, and to write it into their governing documents, but it should not be mandated for associations who do not feel the need for the substantial additional complexity that this involves.

c) Mandated multiple sealed bids for contracts: Boards should clearly run association affairs in an open and responsible manner (as they would run their own personal affairs). Nonetheless, the primary mechanism for encouraging responsible behavior by boards should be full transparency and openness of actions and records, rather than excessively detailed legislative mandates.

Your attention to these opinions is appreciated.

Yours truly,



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*Reserve Studies for Community Associations*

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Seattle, WA

January 10, 2001

California Law Revision Commission
c/o Mr. Nathaniel Sterling
4000 Middlefield Road, #D-1
Palo Alto, CA 94303-4739

Law Revision Commission
RECEIVED
JAN 1 2 2001
File:

Subject: Common Interest Development Regulations in California

Dear Mr. Sterling:

Thank you for the opportunity to make a contribution to this effort to improve the laws guiding Common Interest Developments (CIDs) here in California. Our firm has been preparing Reserve Studies for these CIDs since 1986, and we now have over 3000 different California associations among our national client base.

The Background Study prepared in November 2000 was informative, and I generally concur with its findings. I would like to emphasize, two points at this time.

1) Legislation should focus on the ongoing operational issues surrounding CIDs, not one-time Development or Development transition. While all future associations will transition from Developer control, all current and future CIDs need ongoing , clear legal direction about the ongoing operation of their association.
2) Legislation should promote disclosure of key parameters so existing CID members will be able clearly know the status of their association, and so prospective CID members can make informed choices about which CID to join. We currently have a reckless situation, where CIDs regularly bury their key information, leaving CID members in the dark (and often suspicious) and forcing prospective CID members to make blind purchase decisions. Specifically, in our experience an association can be summed up by the following "key three" disclosures:

    - Percent Owner Occupied (over 70% good, under 50% poor)
    - Percent 90-Day Delinquencies (under 5% good, over 10% poor)
    - Reserves Percent Funded (over 70% good, under 30% poor)

    These "key three" simply and effectively reveal who the other homeowner partners are, how they are doing taking care of current financial priorities, and how stable the association is on a long term basis. Added to these key disclosures might be a summary of key rules (pet restrictions, no resident cars in guest parking spots, etc.), pending special assessments, association loan obligations, and current/pending litigation.

We need to create a structure in California where CID owners and prospective owners can expect to find the basic information on their association as easily as they can find the calories in a can of soda, the SPF rating of their sunscreen, or the mileage on a used car.

Thanks for your time, and good luck!

Sincerely,

Robert M. Nordlund, P.E., R.S.
President

# BICKSLER AND ASSOCIATES

2411 OLD CROW CANYON RD., SUITE 140 •SAN RAMON, CA 94583•(925) 743-3090

January 11, 2001

Professor Susan F. French
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Law Revision Commission
RECEIVED

JAN 1 2 2001

File:___________

RE: The Davis-Stirling Act

Dear Ms. French,

I would like to provide you with a few comments on your background study.

- Great benefit would be received by a simple reorganization of this Act. I agree with your comment that "the Act lacks a logical organizational structure." This should be a primary focus of your effort.

- I am concerned about the idea of setting up a regulatory agency. I would suggest a thorough investigation be made of other states that have such an agency, in particular Florida. I am concerned about a long term negative impact of a regulatory bureaucracy on CID housing. I do like the idea in your report which suggests some kind of jurisdiction or agency that would enable CID members to resolve disputes.

- I believe that with a better reorganization of the Act that individual rights of owners will show themselves to be adequate and that in general no further protections are needed.

  I believe that the best protection an owner can have is the ability to become a leader in the community and change the direction of the community, if that's what needs to happen. This may also include changing or clarifying the procedures for removing directors who are "harming" the community. It might be of interest for you to review a study prepared for the California Department of Real Estate in October

1987 by Steven Barton Ph.D. and Carol Silverman Ph.D. of the Institute of Urban and Regional Development, University of California, Berkeley. Among other facts they found was that 23% of CID's had fewer candidates for positions on the Board of Directors than seats available. I think that this is a very important point to keep in mind. While there are plenty of "horror" stories about the way CID's are operated, and while there seem to be plenty of people who would like to complain about the way their CID is operated, my experience is that very few CID's have owners clamoring to be in a leadership role, i.e. the Board of Directors. So those that do step up should be afforded deference in the law as shown by the Lamden vs. La Jolla Shores ruling.

- It is important to review and change the Act as it relates to the question of reserves. We need to more clearly define the terms used and keep in mind the practical purpose for which reserves are created.

I hope these comments serve a useful purpose for you. If you do not have the October 1987 study available to you I would be happy to reproduce my copy for you. I would also be interested in being on a list of professionals that you can turn to for resources. I have been a manager of CID's for 25 years. I began in this industry in the state of Oregon and was influential in 1981 and 1983 in developing their Planned Community Act. Since moving to California in 1985 I have been Active with the Community Association Institute and California Association of Community Managers in their legislative efforts.

Cordially,
BICKSLER AND ASSOCIATES

Gene Bicksler

Law Revision Commission
RECEIVED
JAN 1 2 2001
File:________

January 11, 2001

**By Fax and Hardcopy**

Mr. Nathanial Sterling
California Law Revision Commission
400 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Dear Mr. Sterling,

Though the California Law Revision Commission (Commission) saw fit to make only "one" correspondence available for public view, that correspondence, artfully chosen was submitted by Mr. Frederick L. Pilot, President of Common Interest Consumer Project (CICP). As such, it demands response.

To begin let me say that I have never, nor do I now belong to any group affiliated with homeowners or homeowner associations. I have not written a book, play or movie regarding the subject matter and I do not belong to a newsgroup. I am writing as a very concerned homeowner who believes common interest developments and homeowner associations have outlived their usefulness (if they had any at all) and that they are damaging the lives of those living in them.

The Commission needs to know that individuals, other than CICP have been requesting a review of the Davis-Stirling Act (Act) because it is incomplete, ill conceived and inconsistent. It is laden with conflicts and it is biased legislation **against** homeowners. Hundreds if not thousands of homeowners have been expressing their views to legislators and the Commission regarding the Act's incompetence, longer than CICP has been in existence.

Contrary to Mr. Pilot's righteous indignation that the Commission is considering the inclusion of an expert to review the "continued" codification of common interest developments, **he and CICP have done nothing to further that end** other than post articles authored by third parties, cases that are open to the public via indexing, and write one letter to you. What organization(s) have publically endorsed the CICP to the extent that the CICP believes it can influence the Commission's review of the Act? For that matter **what is the Common Interest Consumer Project**? **Exactly what documented consumer "projects" has CICP supported, initiated, funded, or furthered?**

Facts indicate that the principals of CICP are Gayle J. Mayfield, Vice President, Stephanie Paul, Secretary, Helen E. Roland, Treasurer and Vicki Sternfeld. Still, CICP is an illusive non-profit group that frankly has done nothing for the cause of homeowners living in common interest developments other than **host a web site**, oppose legislation

meant to further Homeowner's living in CIDs and their Rights, and attack individuals on the internet who don't agree with CICP. Further, Pilot's claim that he conceived the success of a popular radio station program on CID/HOAs is also not without controversy. Those in the know say his claims are questionable.

What is perplexing is that CICP's correspondence expresses "concern" and "puzzlement" at the recommendation of the hiring of so-called "experts" and introduction of the possibility of yet **another** Uniform Code (aka: a "Common Interest Ownership Act"). Concern? Puzzlement? At what? Up until this point in time, where has CICP been that they are now all of a sudden "concerned" and "puzzled." Where was CICP when the Davis-Stirling Act started falling apart?

CICP goes on to request that "political considerations be left to the **elected members** of the Legislature who ultimately set public policy and in no way influence the Commission..." How so?

Why would Mr. Pilot request that the Commission consult, let alone consider "industry" perspectives in reviewing the bad law? Remember, the "industry" assisted Davis and Stirling initially in co-authoring and controlling said law in the first place! Moreover, the "Legislature" prevented laws from being passed to HELP homeowners in their plight.

The Commission is reminded that records indicate that Mr. Pilot, an agent for, and acting on behalf of CICP, was in direct communication with Assemblyman Nakano's office during the introduction of Assembly Bill 2031.

AB 2031 was researched, proposed, and written by a constituent who happened to be a homeowner living in a CID. That homeowner acted alone. She did not have any help from CICP in drafting her Bill - yet when Pilot was approached by the Assemblyman's office, on behalf of **CICP Pilot opposed** the Bill. Pilot's erroneous obsession with "who would enforce the bill" is a transparent cover-up for his lack of acumen and understanding of homeowner rights, since the Bill clearly had a $5,000 cap on **proven** damages which was intentionally set to allow homeowners to bring their actions in a Small Claims Court - -which the Act conveniently does not provide.

AB2031 would have been the first bill of its kind to afford homeowner-owners residing in a CID and belonging to an HOA to have access to instrumentalities of the HOA. It would have finally **required** HOAs to keep books, which as the Commission are no doubt aware, presently there are absolutely no Federal or California State laws requiring HOAs to keep books. Imagine that. This was no error in the final drafting of the Act. The "industry experts" and "consumer experts" that were available for the first round of the Act, and that Pilot proposes be available for the second round of the Act,

intentionally omitted the facts present in AB2031 **because they did not want to be held responsible for anything**. The **ACT SHIFTED THE BURDEN from those in power and control, TO THE HOMEOWNERS.** You don't have to be a lawyer to know something is wrong with this standard of proof.

**Mr. Pilot and CICP are on record as having opposed this Homeowner Rights Bill.** The nonsensical argument Mr. Pilot put forth against AB2031 was surprisingly the same argument the Community Association Institute (CAI), CLAC, ECHO, and other like lobbyists scourged: It would micro manage associations! Who would enforce it? We would have to keep books? That's right - a ticket to ride for CAI, CLAC, ECHO and every Property Management Company and Attorney in existence. But remember this, **A.A.R.P.**, a multimillion member strong organization **SUPPORTED AB2031.**

CICP's expertise consists of dispersing its agent, Mr. Pilot, to public internet sites rather than their own web site. Mr. Pilot's apparent skill appears to be utilizing personal ad hominem attacks committed against others under the guise of satire and poetic license. Here are two public examples of the tactics CICP employs against private individuals and a bona fide private production company in good standing:

> --- In hoaa@egroups.com, "Frederick L. Pilot" <fpilot@d... wrote:
> HOLLYWOOD (October 12, 2000) --Speculation, intrigue and
>paranoia swirled among CID housing industry consumerists,
> reformers, dissidents and abolitionists this week over reports that
> a Hollywood documentary on homeowners associations was in
> the works.

> > At the heart of all the buzz is the mysterious Hollywood
> production company, St. Leger Productions, which according to
> CID shit disturber Dave "No SPAM" Hagmaier of Fullerton,
> California is "legit." Hagmaier claims he saw the production
> company's name on a late night infomercial featuring a tropical
> paradise, though he admits he may have fallen asleep in front
> of the television and can't remember for certain.
>
> Hagmaier reportedly spoke with "Dee," the shadowy figure who
> is allegedly the mastermind behind the production. Some
> speculate Dee is former White House Press Secretary Dee Dee
> Myers, for whom CID housing consumer activist Fred Pilot had
> the hots early in first term of the Clinton administration. Pilot is
> still morose over Myers' marriage to New York Times Los
> Angeles Bureau Chief Todd Purdum two years ago.
>
> Las Vegas tough guy and CID abolitionist Phil "The
> Ghostbuster" Testa speculates the purported "documentary" is an
> intelligence gathering venture of what Testa terms as the
> "Treasonous Two:" The Community Associations Institute and

> the Urban Planning Institute.
>
> Testa was spotted Thursday in a coffee shop on North
> Hollywood's Lankershim Boulevard along with his wife Dixie
> and several swarthy men, there for a meeting with Hagmaier.
> "We gotta talk, kid," Testa told Hagmaier as the men eased into
> a booth in the back of the coffee shop. "You've been fuckin'
> up."
>
> The next moment was a scene straight out of the Hollywood film >
"Casino." Suddenly the men accompanying Testa grabbed
> Hagmaier and took him behind the coffee shop and began
> working him over. Witnesses said Testa's wife Dixie then broke
> into tears. "Now, Philip, I told you to be nice," she said. "Call
> off your goons."
>
> Testa replied, "Don't worry, Hon. They won't kill him. We just
> had a little Justice for Home and Condo Owners business to
> settle." After they finished discussing JHCO business matters
> with Hagmaier, Testa's assistants tossed him into a nearby
> dumpster.
>
> Sources told C.I.D. Confidential the documentary producers
> badly want to make copies of an original tape Testa has in his
> possession of behind the scenes chatter at various CAI and ULI
> conferences Testa attended. Testa attended the events under an
> assumed name and disguised in a Rasputin-like beard, all the
> while keeping a mini recorder at the ready in a pocket of his
> suitcoat.
>
> C.I.D. Confidential has learned the tapes -many recorded during
> evening cocktail receptions - document various prominent CAI
> and ULI officials making disparaging remarks about CID
> housing consumers, including labeling them as "rattle and cattle
> that simply have to be kept in line." St. Leger producers are
> reported to badly want Testa to turn over his original recordings
> and any copies in his possession for their documentary.
>
> But many Hollywood insiders fear that reality will once again
> mirror art and drive CID housing paranoia to new heights. That's
> because Testa invited St. Leger officials to meet with him and
> Jay "Pink Flamingo" Di Bernardo at the Italian American Social
> Club in Las Vegas to discuss the recordings. Hollywood
> scriptwriters tell C.I.D. Confidential the meeting scenario
> closely resembles the closing scene of one of Hollywood's best
> paranoiac films, "Enemy of the State." In the film, the National
> Security Agency Director (Jon Voight) is seeking the sole copy
> of an incriminating videotape showing the assassination of a
> U.S. Senator by NSA operatives.
>
> "What's it gonna take to get you to turn over the film?" Voight

> asks a Mafioso, who a fugitive attorney played by Will Clark
> claimed possessed the recording. "The end of the world," the
> Mafioso replies before several goodfellas open fire on Voight
> and several NSA aides in an incredible bloodbath.

> --- In hoaa@egroups.com, "Frederick L. Pilot" <fpilot@d...> wrote:
> C.I.D. CONFIDENTIAL EXCLUSIVE
>
> HOLLYWOOD and LAS VEGAS -- Speculation, intrigue and
> paranoia continue to churn this week among CID housing
> industry consumerists, reformers, dissidents and abolitionists
> after Fullerton, California CID shit disturber Dave "No SPAM"
> Hagmaier once again stirred the pot. Hagmaier continues to
> bemoan the failure of a mysterious Hollywood production
> company, St. Leger Productions, to begin production of a
> television documentary on homeowners associations.
>
> Hagmaier insists the entity is "legit," claiming he saw the
> company's name on a late night infomercial featuring a tropical
> paradise, though he admits he may have fallen asleep in front
> of the television and can't remember for certain. Hagmaier
> also claims he spoke with "Dee," the shadowy figure who is
> allegedly the mastermind behind the production. "Dee"
> reportedly told Hagmaier the production would die unless
> 10,000 emails in support of the documentary were received at
> several temporary email addresses by midnight on Halloween.
>
> Frustrated that the documentary never got off the ground,
> Hagmaier was intrigued by a late night television ad for "U R
> The Producer" that promised viewers they could produce their
> own documentary for just $1000. A two day and two nights
> stay at the MGM Grand in Las Vegas was included in the offer
> for the first 500 customers who sign up.
>
> Hagmaier immediately sent a $1000 money order to the company
> as requested and headed off to Las Vegas to the MGM Grand
> to take advantage of the "U R The Producer" promotion. But
> little did he know that "U R The Producer" has ties to the
> underworld and had tipped off Las Vegas tough guy Phil "The
> Ghostbuster" Testa that Hagmaier would be coming to town.
>
> As Hagmaier was playing the dime slots at the MGM Grand,
> suddenly a security guard approached and shocked him with an
> electric cattle prod in a scene out of Martin Scorcese's film
> "Casino" in which casino security personnel nab a card cheat
> by making it appear the cheat has suffered a heart attack.
>
> Hagmaier is put on a stretcher and taken behind the casino. But
instead of being put in an ambulance, Hagmaier is tossed by
> several swarthy men into the back of a powder blue Humvee,

> Testa's Justice for Home and Condo Owners staff car.
> Hagmaier is then put under with chloroform and driven far out
> into the desert, where Testa's goon squad works him over.
>
> "You're really a dumb fuck, ya know that kid?" Testa tells
> Hagmaier between blows. "I thought you learned your lesson
> when we left you in that dumpster down on Lankershim
> Boulevard a few weeks back."
>
> Testa then instructed the men to bury Hagmaier in the desert up
> to his chest. "Next time, we're gonna bury you completely and
> leave you here for the rats and rattlesnakes, jerkoff," Testa told
> Hagmaier has he and his men piled into the Humvee and drove
> back to Vegas.

I contacted the production company representatives with my story and after meeting with them volunteered my time. Mr. Pilot was also contacted by the production company and had several conversations with one of the producers. Instead of assisting in a common goal, the best Mr. Pilot could offer was to refer us to Mr. Phil "Ghostbuster" Testa of Justice for Home and Condo Owners, in Las Vegas, Nevada. Mr. Testa did not return calls or acknowledge our letters. Mr. Pilot treated the production company as outsiders reigning in on his turf and proceeded to disparage the production company as seen in the above so-called satire.

Prior to that time, the production company was unaware of the strong conflicts and infighting present among homeowners within particular factions. It is also my understanding that individuals on the crew had threats made against them not unlike the aforementioned satire. As such, it appears as if CICP has turned its non-profit status into a **hunt and destroy organization**. It is also my understanding that the production company is following this and other developments closely along with various Agencies.

**The bottom line is that the Act must be abolished as bad law.** The legislature should recognize that it made a mistake, admit it and look for alternatives to correct this growing horrendous problem or there will be a revolt/uprising by homeowners against CIDS and HOAS.

I recommend that the Commission enlist the assistance of the homeowner-constituent/author of AB2031, she seems to have her act together and hasn't been bought out by any group, organization, newsgroup entities, internet project organizations, pitiful radio and newspaper whiners, personal book deals and the like. **You need someone like her on your Commission.**

Sincerely,

Mrs. Janette Davis
5630 Eveningside Lane
San Bernardino County
Riverside, California 92509

*Patrick L. Sullivan*
CERTIFIED PUBLIC ACCOUNTANT

29965 SUGAR MAPLE COURT
HAYWARD, CA 94544

(510) 690-1040
FAX (510) 690-1088

January 11, 2001

Law Revision Commission
RECEIVED
JAN 1 2 2001
File:

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, Ca 94303-4739

Dear Sirs,

I am a Certified Public Accountant with many Common Interest Developments (CID's) as clients, as well as being a member of the Executive Council of Homeowners (ECHO) Accountant's Resource Panel.

I agree wholeheartedly with the criticisms of current California law governing Common Interest Communities as outlined in the California Law Revision Commission "*Background Study*".

The study points out numerous criticisms of current California law, including...." the law is too complicated and hard to understand."

If, ultimately, the Davis - Sterling Act of the California Civil Code is re-written, please keep in mind that it is the lay person, i.e. the board member, who must understand the law. Therefore, keep it simple, understandable, and with no "legalese."

Yours truly,

Patrick L. Sullivan

Patrick L. Sullivan

echo/letter.005

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January 11, 2001

Law Revision Commission
RECEIVED

JAN 1 2 2001

File:___________

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Common Interest Developments

Ladies and Gentlemen:

I want to voice my support for Professor Susan F. French's recommendation in Background Study H-850, dated November 2000, regarding the need to simplify, clarify and expand the scope of the Davis-Stirling Act. I concur wholeheartedly with Professor French's conclusions regarding the inadequacies of the Act and the recommendation for a wholesale revision that incorporates the best parts of the Act and UCOIA.

In addition to the recommendations set forth in the study, I would strongly urge the Commission to address a significant problem with the Act as it relates to condominium projects. I refer to the difficulty presented if changes to a condominium project must be made after the condominium plan is recorded. Both statutory and case law require unanimous consent by owners and lenders to effect any changes to the unit, common area and/or exclusive use common area as shown on the condominium plan. Changes often are advisable after a project has suffered a casualty such as a fire or earthquake. In addition, as projects age and need renovation, the requests for changes will become more common. Unfortunately, the unanimity requirement allows one owner to veto any change.

I am experiencing an increasing number of requests for such changes and must advise my clients that it is an extremely difficult task and almost impossible in larger projects. It is an ill-advised law that creates permanently-fixed interests in real property that cannot be revised as changing circumstances warrant despite the will of a majority of its owners.

I have enclosed a Law Review article I wrote in 1993 which addresses this particular problem in some detail.



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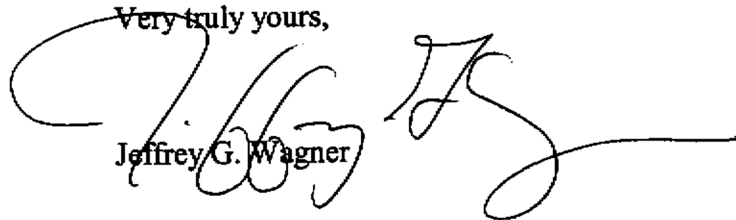
If the Commission elects to adopt Professor French's recommendations, I would be happy to assist the Commission in any manner that it feels appropriate.

Very truly yours,



Jeffrey G. Wagner

JGW:mjc
Enclosure

cc: Susan F. French (w/encl.)
UCLA School of Law
Box 951476
1242 Law School Building
Los Angeles, CA 90095-1476



F:\LJW-DATA\WPDocs\Jw\CaLawRev.ltr.wpd

GRAY PANTHERS
Of Sacramento

age and youth
in action

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Sacramento, CA 95819
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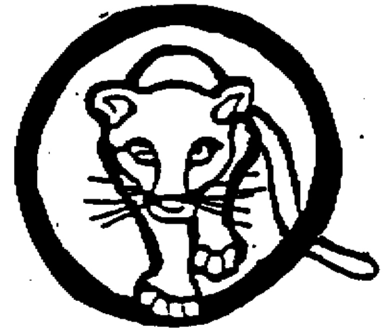

1-11-01

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Rd. #D-1
Palo Alto, CA 94303-4739

Law Revision Commission
RECEIVED
JAN 1 6 2001

File:__________

Dear Commissioners:

The ability to remain independent in one's own home is a highest priority issue for Gray Panthers. Homeowners in condominiums or membership communities have called upon us for support to bring about changes in the Davis-Stirling act. We believe, with those home owners, ① that the Act leaves no enforcement body, except the attorney General.

② Companies apparently do not make up-front provisions for upkeep and often elderly homeowners are devastated by unexpected assessments. And finally ③ the whole statutory framework is so legalistic & complex ~~as~~ as to be nearly incomprehensible, particularly to volunteer boards.

Please give these issues your serious consideration in investigating the Davis-Stirling Act. Condominium owners deserve due process in the face of often unreal demands by owners.

Sincerely

Joan B Lee

Legislative Liaison

Gray Panthers No. Calif.

5313 Fernwood Way
Sacramento CA 95841
916-332-5980

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JAMES F. DANOW SR. SHAREHOLDER
THOMAS S. GATLIN MNG. SHAREHOLDER
SHERYL J. ROSANDER OF COUNSEL

January 12, 2001

**BY FACSIMILE (650) 494-1827**

California Law Review Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Common Interest Development Laws
Our File No. 9991.07

Dear Members of the Commission:

I am writing to provide comments on the report prepared by Professor Susan French relating to the revision of the common interest development laws. Our firm provides legal services in all aspects of community association law to more than 800 community association clients located throughout Southern California. I am a shareholder in the firm and have practiced community association law for over 10 years. I am also the co-chair of the Common Interest Development Subsection of the Real Property Section of the State Bar. My comments are my own, with input from other members of my firm.

I agree that the existing laws governing common interest developments are complicated and hard to understand. When I asked attorneys in my office for input on the report, they were very eager to point out particular sections of the existing law which are difficult or impossible to understand, which need clarification, or which are simply unworkable. I have attached a list of just a sampling of these specific concerns to my letter.

Since I have not practiced in a jurisdiction using the Uniform Common Interest Ownership Act (UCIOA), it is difficult to say whether it would be better or more workable than the existing California statutory framework. I generally like the overall format of the UCIOA. There is one attorney in my office who recently moved here from Connecticut. She stated that she misses the Uniform Condominium Act and found it much easier to interpret and use than the California laws.

I agree with Ms. French that there is a great benefit to taking steps to stabilize California law and to avoid the constant amendments. Every year, there are changes to the law making it very difficult for community association managers and members of the

boards of directors to keep up to date with the current legal requirements. I also agree with Ms. French that part of the study should be to look at the interrelationship among the associations' own governing documents, the Davis-Stirling Common Interest Development Act and the Corporations Code. It is often unclear which provision prevails in the event of a conflict or whether the statutory provisions are mandatory.

The most controversial issue raised by Ms. French's report is the discussion of non-judicial oversight and dispute resolution for associations. I believe that any regulation requiring common interest developments to file regular reports or otherwise demonstrate they meet legal requirements is unnecessary, overly burdensome, and likely expensive. In our experience representing community associations, we rarely discover that boards are engaging in any abusive activities or purposely refusing to comply with any applicable laws or other requirements. Of course, we deal with boards of directors that are seeking legal counsel which in and of itself evidences the fact that they wish to comply with all applicable legal requirements.

Currently, certain disputes between the association and its members are subject to alternative dispute resolution procedures set forth in Civil Code section 1354. In my experience, this has been very effective in addressing disputes between associations and members. In San Diego, we often use the San Diego Mediation Center which provides mediation services at a very nominal cost. In associations, expenses are almost always an issue. We hope that any type of oversight which is proposed will keep the expenses to the association and its members as low as possible.

With respect to the oversight issue, please note also that efforts have been made to adopt legislation to require licensing for community association managers. If such legislation is enacted, it is very likely that this licensing of managers will result in some form of oversight for community associations. Most disputes between an association and a member also involve the manager and any regulatory oversight of the managers would result in oversight of the association's actions.

In summary, I certainly agree with Ms. French that existing California laws leave much to be desired. The law is very confusing and ever changing. I would support any effort to make the law more comprehensible.

Sincerely,

EPSTEN GRINNELL & HOWELL, APC

Susan M. Hawks McClintic

SHM/jml
Enclosure

SD 152471 v 1

**COMMENTS**

1. It would be helpful if it was made clear whether "maintain" and "repair" have the same, or different meanings.

2. Define "capital improvement."

3. Executive session meetings should specifically include meetings with counsel and there should not be a membership notice requirement prior to the meeting.

4. A court judgment should be specified to qualify under Civil Code section 1355 for an emergency special assessment.

5. In one case, I had a judge hold that an HOA must comply with both the requirements of the CC&Rs and Civil Code section 1355 with respect to amending the CC&Rs. This needs clarification.

6. The requirement of a parliamentary procedure has become a joke. Most associations adopt a procedure such as Roberts, but no one knows how to use it, or how to respond to a knowledgeable homeowner who attempts to implement it at a meeting. This needs a fresh approach.

7. The association should be able to recover attorneys' fees if it is required to commence litigation to remove an owner under Civil Code section 1364(c)(d) in order to perform repairs or termite work.

8. There is still much disagreement over the association's duty of disclosure to prospective buyers. A legislative response would be helpful.

9. Civil Code section 1366(b) is very confusing.

10. Civil Code section 1364 needs to be re-written. It needs to be clarified to what extent it supersedes CC&Rs and how it applies to exclusive use areas in projects with pre-Davis-Stirling documents. Subsection (b) incorrectly assumes all planned development units are detached dwellings.

SD 152471 v 1

# CONGRESS OF CALIFORNIA SENIORS

CALIFORNIA'S VOICE FOR THE NATIONAL COUNCIL OF SENIOR CITIZENS

January 12, 2001

California Law Review Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Law Revision Commission
RECEIVED

JAN 1 6 2001

File:

Attention: Nathaniel Sterling

Re: Common Interest Development Law

Dear Commissioners:

I am writing on behalf of the Congress of California Seniors in response to your invitation to comment on a report dealing with possible study of the current law on Common Interest Developments. The Congress of California Seniors is a statewide organization of seniors and others with an affiliated membership of over 600,000.

We welcome the opportunity to comment on this important matter and believe that it is long overdue. The Scope of Study by Professor Susan F. French clearly establishes the need for a full-blown review of the statutes governing common interest developments. The Davis Sterling Act is confusing, complex and difficult to understand.

From the anecdotal evidence we have received over the years, the owners in these developments do not feel that their interests are properly protected and changes are desperately needed. We agree with many of the concerns outlined by Professor French, as well as those communicated to you earlier.

1. The law must be simplified and made understandable for those who buy into CIDs.
2. There must be better regulation by a state agency.
3. Due process for owners must be insured.
4. The right and responsibilities of all parties must be clearly established.

Our organization urges the Commission to hold hearings to gather information from the broadest sector of those concerned about CID governance.

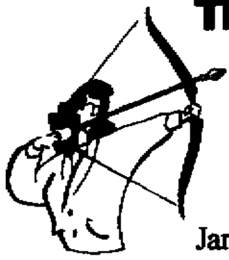
Sincerely,

William Powers
Legislative Director



WP:ef

1228 "N" ST., SUITE 29, SACRAMENTO, CA 95814 (916)442-4474 (800)543-3352 FAX (916)442-1877 www.seniors.org




13 Eucalyptus
Irvine, California 92612–2326

January 13, 2001

Law Revision Commission
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JAN 1 6 2001

File:______________

Nathaniel Sterling
California Law Revision Commission
4000 Middlefield Road, Room D–1
Palo Alto, California 94303–4739
Via Certified Mail

Re: Scope of Study of Laws Affecting Common Interest Developments Background Study

To Whom It May Concern:

That there are problems with common interest developments is indisputable. What is also indisputable is that the same problems exist across the country and will have to be addressed sooner or later.

According to http://propertyrightstexas.com/HTMLarticles/cai_1.htm, "there are two basic kinds of change — incremental and paradigm. This raises the question: Does it make sense to incrementally tweak statutes written by and largely for the benefit of the industry to make them more consumer–oriented, or should we instead be asking the legitimate public policy question of whether we should continue down the road of privatizing local government by continuing to enact more legislation on top of an already sizable body of industry–authored statutes enacted not necessarily to benefit voters and consumers, but to maintain and preserve the future of the CID industry? As Evan McKenzie notes in Privatopia, 'the rise of CID housing is a unique, ad hoc form of privatization carrying with it significant social and policy considerations that never have been adequately considered by government or academics.'"

Should the California Law Revision Commission determine that CIDs are not hopelessly, systematically flawed — and can be made into something that is beneficial, rather than detrimental, to society — then I suggest it avail itself of the golden opportunity it has to recommend changes that would serve to clarify the laws regulating HOAs and hopefully provide real protections for housing consumers.

I believe any revisions to the statutes should include, at a minimum, the following:

**(1) Proper disclosures about homeowner associations, in general, and specific information about the HOA being considered by a prospective buyer.**

As it stands now, many homebuyers have no idea of all the implications of common ownership, the powers of the collective and the loss of individual rights. That needs to be spelled out ahead of time so there are no misunderstandings of what is involved.

When prospective homeowners choose to buy units in homeowners associations, they should then be provided all the pertinent disclosures about the association they are considering buying into, including the financial health of the association and a history of any abuses and litigation by the association.

Since the association prepares the disclosures, at a cost to the seller, the association and not the seller should be accountable for the contents of the package. There have been far too many incidents, nationwide, where material information that could have affected the decision to proceed with the purchase had been withheld by the association — information not readily available to the members of the HOA.

**(2) Protect the property and personal rights of the individual.**

In this unholy alliance of private and common property, the personal and property rights of the individual tend to get lost. The laws should provide for clear protections for the rights of the homeowners, in respect to their personal rights and their rights to the peaceful enjoyment of their private property.

**(3) Provide for meaningful oversight.**

Currently the individual members in a mandatory homeowners association are responsible for enforcing, at great personal expense through the civil court system, California statutes regulating common interest developments. Unless and until the State provides for some oversight, protections of the homeowner and enforcement of State statutes, there will never be any pretence of peace in a homeowners association.

(4) I believe it follows from the preceding, that **the California Law Revision Commission should only propose — and the legislature should only enact — laws they feel are worth enforcing.**

Otherwise, may I suggest, they will regulate one party, the homeowner, while leaving HOAs as unaccountable as they currently are.

"Citizens in a HOA are not given equal treatment," writes Willowdean Vance.

"They do not comply with the mutual benefit statutes," she writes, "and any other corporation would be closed down for failure to comply so the state is allowing rogue corporations to violate state law just because of the free property tax windfall.

"That is illegal, unethical and a violation of public trust." (See http://www.ahrc.com/HOAorg/Media/ma_Reg091200_Bob.html)

Thank you for the opportunity to provide you with input.

Sincerely,

Robert Lewin

Robert Lewin, Member — and Rogue Clique Target — of
The Terrace Community Association

Attachments: http://loan.yahoo.com/m/ten.sm.html
http://www.usnews.com/usnews/issue/001030/nycu/homeowners.htm
http://www.kiplinger.com/magazine/archives/2000/September/managing/hoa.htm
http://www.nypost.com/news/17072.htm
http://www.lvcitylife.com/News/stories/01010404n.html

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January 15, 2001

By Facsimile

Nat Sterling
California Law Review Commission

Dear Mr. Sterling:

Last year, AB 2031 was introduced by Assemblyman George Nakano of my district. The purpose of this bill was to give back to homeowners some of the rights taken away from them by the Davis-Stirling Act. I am confident you remember that Act. It was touted as providing all sorts of rights to members of Common Interest Developments (CIDs). In fact, what that Act did was given rights to the boards that govern those associations while, at the same time, taking away rights from the homeowners.

AB 2031 was successful opposed by the CAI, the so-called trade association for CIDs and by the Consumers Attorneys Association, at group also well involved with the CAI. Actually, the CAI represents management companies whose jobs would be impacted by the legislation contained in AB 2031. However, that they would oppose it should come as a surprise to everyone. It appears, from their opposition, that the Davis-Stirling Act has become the association management company's full employment act.

The Law Review Commission needs to include the Davis-Stirling Act among those it plans for review and amend in the coming year or years. As a homeowner whose major investment is his condominium, I find it difficult to believe that the board I elect can, after election, run roughshod over my rights without so much as by-your-leave. I am shocked to learn that I have to spend my neighbors and my money to hire attorneys to do work which has been made unnecessary by operation of law. It is difficult enough to maintain property, buy insurance and do all the other things which common interest developments require, without having to incur additional expense, often from those who can least afford it, to do some paperwork that is not necessary and to have to hire lawyers to do it.

As it now stands, the Davis-Stirling Act provides nothing for homeowners and takes away from them rights that may have existed prior to its enactment. This year an amendment to the Davis-Stirling Act goes into effect requiring associations to engage attorneys and incur expenses to correct documents that have been automatically corrected by operation of law. Yet, the same groups that propose and support this type of legislation actively oppose the type of legislation that would give homeowners back their rights. That, in and of itself, is reason enough to revisit the Davis-Stirling Act.

Thank you.

Yours sincerely,

Stephen Glassman

SG:mac

Date: Mon, 15 Jan 2001 13:45:50 -0800
From: Ross Family <NoHOAs@home.com>
Organization: Only Those Who Dare Truly Live - Dare to be Different
MIME-Version: 1.0
To: sterling@clrc.ca.gov
Subject: Re: [Fwd: Homeowner Association Reform Study - Save the American Dream of Home Ownership Now!!!!]
X-Loop-Detect: 1

Dear Mr. Nathaniel Sterling and Professor Susan French:

Please submit for review for the HOA study being conducted. As a member of a homeowners association, I have no pecuniary or financial interest in submitting these comments. My only interest is to ensure that the home that we have purchased with our hard earned money is protected. I am not required to sit as President of these great United States to have my rights upheld, nor should homeowners in associations be required to sit on HOA boards. Those 'elected' neighbors who choose to participate in HOA governance, must have a fiduciary duty to the membership and must be held accountable without homeowners having to resort to costly litigation to uphold the law.

As it stands, the HOA corporation has the power to fine, lien and foreclose on homeowners for failing to abide by the governing documents. Why shouldn't the homeowners have the power to fine, lien and foreclose on the BOD for failing to abide by the governing documents? Why should the BOD be backed by millions of dollars in duty to defend D&O liability policies paid for by my dues and that offers "duty to defend" coverage for even wrongful acts like libel, slander, defamation of character, harassment and discrimination (then the boards begin their wrongful attacks) but the homeowners have no protection?

The HOA corporation is well protected by our dues. We pay a hefty premium for HOA policies that can turn around and be used against homeowners at the whim of board decisions. (You better hope they like you). It is my understanding that Chubb Insurance Group, who also sponsors or is sponsored by the Community Associations Institute, carries a monopoly on these policies across the nation. Is it true that CAI lawyers supposedly wrote laws to ensure the need for such "duty to defend" policies that cover even wrongful acts and Chubb gets all the business? Is that a coincidence?

The industry partisans have done a good job of cornering a lucrative market. Writing and lobbying for laws that tend to enrich themselves. Our homes have been turned into employment tools and cash cows for the HOA industry. They have successfully turned the American Dream of Home Ownership into a corporate feeding trough with the lowly homeowner having to reach in their pockets time and again for unlimited special assessments, unlimited increasing dues, fines, liens and foreclosure and all without ones right to due process. All run by BOD elected under an electoral process with elections being swung like swings at recess.

The industry tries to blame the consumer for not participating in or understanding the complex bundle of rights and obligations they inherited, treating HOA's and the homeowners as if they were living in de facto governments with the 'dissident minority' having no rights. Yet on the other hand, feigning corporate sovereignity when it suits them! Claiming that under corporate soveriegnity, you have given up your consitutional and civil rights. So which one is it? Can you decide?

The HOA industry does a great job representing their special interest trade group and I do not understand why legislators feel their word is gospel, treating homeowners as if they were a bunch of uneducated types for not understanding a product that was not properly disclosed to them to begin with! It has taken me two years to understand what lurks beneath the surface of HOA housing. How can a consumer understand it in the few minutes at closing and signing for their escrow documents?

All those wonderful amenities look inviting, and it is easy to get homeowners to buy HOA, luring them in with pools, tennis courts, parks, and such. (although in our HOA, our pool has been taken over at the whim of board decisions by a city swim league replete with board members children and the judge said it was ok to divide the common areas in that way.) This is misleading, false advertising and contractual adhesion. All the important stuff is left out!

When we purchased our home, it did not include the applicable corporate and civil codes. The CCR's had questionable and missing revisions. We had no idea we were buying a home in a private defacto unregulated corporate government, subject to the same risk and liability that any corporation is subject to. The only difference is, our home becomes the collateral for the errant decisions of a handful of 'elected' neighbors with little or no training in handling the corporate formalities. Along comes the HOA lawyer "advising" them of this and that, attending board meetings, annual meetings and collecting the green$$$. Seemingly 'advising' HOA's right into potential litigation - sure to fatten their own coffers or that of a brethren along the way.

I once thought of contacting the Community Associations Institute after it was brought up at a meaning as if it were some sort of a support group for homeowners. I requested their information. It didn't take long to realize that these were the very people that I was fighting desperately against to protect my property rights. The multi million dollar insurers, the Lawyers, and the management company. I will forward more detailed and very lengthy information on my particular situation under separate email. However, I want all names to remain confidential as I fear retaliation.

Homeowner advocates nationwide have worked hard to shed light on concerns surrounding HOA's and lack of protections for the individual homeowner. It has been said that HOA's are quickly garnering more collection, lien and foreclosure powers in violation of constitutional, homestead and collection protections than even the feared IRS. Every homeowner deserve equal protection under the laws.

While there are some good laws on the books, they are virtually unenforceable but through costly litigation. They are useless without some sort of regulatory and enforcement structure whereby homeowners can resolve disputes without having to resort to costly litigation and risk equity in their homes.

I feel very strongly that HOA's are an inherently flawed housing model doomed to failure and will soon be going the way of the dinosaur anyway, but in the interim, there are a number of things that must be done to protect the American Dream of Home Ownership. Negative publicity has created a climate of uneasiness in prospective buyers as homeowner advocates are warning the American Consumer to be aware of the flaws. As with any corporate prospectus, their is always a disclaimer "past performance is no guarantee of future performance". You are potentially only one 'election' away from disaster. Is this the type of investment you want your home to be in?

Will you be the next victim of bad laws or even good laws that are not worth the paper they are written on?

A few suggestions I have seen and support are:

1. Mandatory secret written ballot process collected and counted by an independent third party.
2. Mandatory term limits for board members.
3. Sunshine laws that allow homeowners to view and copy association financials, books, records, all insurance policies, contracts and minutes of meetings within 5 working days of request. *Reasonable* copying charges apply - not $5.00 per page or $10.00 per set.
I have requested time and again to view the Chubb Insurance D&O policy. The HOA refused. I filed a complaint with the attorney general office and they sent the HOA a warning letter to comply. The HOA lawyer wrote the attorney general that they were not entitled to show me the Chubb Insurance policy that I pay for and now the HOA lawyer wants me to pay the bill for his having to respond to the AG's office. The AG's office told me to go hire my own lawyer.
4. Large bids for repair, maintenance or management contracts be provided via multiple (3) sealed bids opened at a regular business meeting of the association.
5. Protection from unlimited special assessments that can be in the thousands of dollars. (Failure to pay special assessments and fines can result in foreclosure).
6. Protections from non-judicial foreclosures that violate constitutional right to due process.
7. Delinquent debts owing to the association, (dues, fines, special assessments, etc.) should be collected in accordance with the Fair Debt Collection Practices Act.
8. Yearly increases in Association dues should not exceed the Consumer Price Index. (Imagine if taxes went up an average of 10% per year for several years).
9. HOA Insurance liability policies, paid for by the homeowners, must have a fiduciary duty to the homeowners and should not be used against them. D&O liability policies often offer "duty to defend" coverage for even wrongful acts like libel, slander, defamation of

character, harassment and discrimination - and the boards begin their wrongful attacks. Such policies give boards no incentive to settle disputes with homeowners. They pay a small deductible and are then backed by millions of dollars.

10. Members of associations are entitled to undivided interest of the common areas. Privately held common areas should NOT be used or divided in any way that excludes and discriminates against other members of the association without their permission or at member cost and inconvenience. We have a majority BOD of swim team parents who consistently votes in favor of and in conflict of interest with their child's special interest 120 member junior olympic size swim league activity and uses the pool for practices and swim meets all summer long, during the heat of the day.

11. The original intent of HOA dues must be upheld to provide for maintenance of common areas ONLY - LESS MICROMANAGEMENT.

Of course the industry will claim that writing laws like the Pet Bill are considered micromanagement. These laws were necessary because the industry wrote and allowed "corporate HOA's" to trample upon ones right to life, liberty and the pursuit of happiness! We needed a new law to give the elderly the right to have a pet and ease up the HOA oppression. We all understand the companionship that a pet can provide for the elderly and how it benefits them. The industry does not want anything to stand in the way of their cash cow.

I believe that the industry should be held accountable for mass violation of constitutional and civil rights under the guise of "contractual" agreements that were flawed to begin with and violate the meaning of contract even in the most simplest terms. This is a contract that can change before you even get to move into your home. This is a contract that is not required to be fully disclosed as the corporate and civil codes that apply and may supersede this 'contract' are not included. Let alone CCR's that are not provided until they are mailed to you after you move in.

More than anything else....because all of the above is useless without it.........

12. An enforcement and regulatory structure through which homeowners can enforce HOA governing documents and settle disputes without having to resort to costly litigation, mediation or arbitration, eroding life savings and risking their homes.

13. Oversight by the Department of Consumer Affairs as homebuyers are one of the largest monetary consumer groups. We hope to see the State Consumer Services Agency take a look at restructuring to do just that. Nevada has already put in place an ombudsman for homeowners and considering placing the position under their Consumer Affairs division. (It is currently under the Real Estate Division where there may be conflict of interest.)

Who will be the next victim of bad laws or even good laws that are not worth the paper they are written on?

Following is our personal horror story in a separate email. I have removed the names as I fear retaliation. I am already living with a hidden camera on the front of my home from repeated acts of vandalism and I have three small children to protect. I have already been

threatened with my life and once had a phone trap placed on the phone by the police department.

We are very pleased to hear that this study is being conducted. Our hope is that something constructive will come of it and the legislators will hear the people rather than the special interest trade groups that live off the HOA cash cow. WE don't have a lot of money like they do, but we do have passion!

Perhaps these are strong words to you and I apologize for that. You tend to become rather emotional and passionate when you have had to defend yourself, your good character, your home, your livelihood, your family and your children, against vicious personal attacks, lies, innuendo and when you have been silenced out of fear of retaliation. However, I have become stronger and I am coming out of my shell shock. When the time is right I intend to advertise from the highest hilltop what has happened to me, my family and my children at the hands of an abusive HOA/BOD and their ilk. I will never, ever give up. I will forever be that malcontent, disgruntled homeowner that the industry likes to label 'complainers' as, and PROUD of it.

I did not break any rules - the BOD did. And they used my money to defend themselves. I once heard that "HOA's and their ilk are like parasites and your home is the bloodline". Well I already give to the Red Cross and I refuse to give to the "Red Army".

Respectfully,

Alisa Ross
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From: "Frederick L. Pilot" <fpilot@cicproject.org>
To: commission@clrc.ca.gov
Subject: Public comment on background study for Study H-850, Common Interest Developments
Date: Mon, 15 Jan 2001 13:37:20 -0800
Organization: Common Interest Consumer Project Sacramento www.cicproject.org

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

January 15, 2001

VIA E-MAIL TO commission@clrc.ca.gov

RE: Study H-850, Common Interest Developments

The Common Interest Consumer Project submits the following comments on the background study prepared for the Commission, "Scope of Study of Laws Affecting Common Interest Developments." We find the overall tone of the background study to be positive and constructive and offer these observations and caveats:

The Commission should take care to avoid focusing solely on the Davis Stirling Common Interest Development Act in its study of CID law. As the background study notes in section II, The Davis Stirling Act, at p. 2, Davis Stirling "did not attempt to be comprehensive" in consolidating common interest development related statutes into a single code section. It is therefore important that other parts of the Civil Code (such as section 1102 et. seq. pertaining to seller disclosures and section 2079 et. seq. concerning the duties of real estate licensees in residential transactions and the Corporations Code as it pertains to homeowners associations) be reviewed as part of the scope of this study, keeping in mind the study's overall goal of developing a clear, consistent and unified regulatory framework regulating the formation and management of CIDs and the transactions of separate interests within them.

The background study's recommendation in Section IV at p. 7 that "the CID Act [presumably Davis Stirling] and the Corporations Code should be reviewed for suitability and compatibility, and also to ensure that it is clear which provision prevails in the event of a conflict" is inconsistent with this goal. We recommend that the two code sections be reviewed with the goal to create a separate section for CID laws, rather than attempt to continue to use other code sections and try to reconcile the conflicts between them and the existing Davis-Stirling Act.

We are particularly pleased to note the background study's section III(C) that emphasizes the difficulty consumers face when attempting to hold parties accountable under the law due to the excess reliance on litigation with its attendant drawbacks of being too costly and time consuming. This is a major problem with the current legislative scheme that has been repeatedly brought to our attention by consumers of CID housing since CICP was formed in 1997.

This litigation-oriented resort to the courts unfortunately tends to frame efforts at law enforcement in the context of adversarial disputes, which is an overgeneralization since not all failures to comply with the law in the context of CIDs are necessarily disputes on their face. In fact, litigation-oriented approaches to enforcing the law can, due to their adversarial nature, foster disputes where none might have otherwise existed. Based on consumer communications to CICP, many failures to comply with CID law requirements appear to stem from ignorance and/or a lack of respect for the rule of law rather than bona fide disagreements over the requirements of the law and/or the underlying facts that require adjudication. Some sort of regulatory scheme that would migrate away from the current litigation-oriented approach and help ensure good faith compliance with the law, particularly serving as an educational resource and one that prevents ignorance and disputes, would be salutary for all stakeholders. We concur with the background study's statement that the Commission's study of CID law provides an opportunity to afford the Legislature well considered recommendations for new statutes to accomplish this.

As to the background study's recommendation that the Uniform Common Interest Ownership Act be considered as a basis for a new statutory scheme, we note the UCIOA has been drafted largely from a real estate development perspective, with its last revision in 1994. Since that time, there have been significant changes in the CID marketplace, and California has been a leader in attempting to address the problems which have arisen. For these reasons, we believe the perspective in the UCIOA is too narrow given that there are an estimated 35,000 CIDs in California. These developments are no longer merely real estate; they have become a de facto, albeit privatized, form of local government [see Laguna Publishing Co. v. Golden Rain Foundation (1982) 131 Cal.App.3d 816] for some six million Californians and therefore require viewing them in a context broader than real estate law. CIDs are real estate but as the background study illustrates with the various and complex statutes now in place governing them, they are much more than that. While we concur the UCIOA should be reviewed, the review and any recommendations for adoption should be done carefully to ensure that legislation promulgated by California that is more advanced than the some of the provisions found in the UCIOA is not inadvertently forfeited.

/s/

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President
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January 15, 2001 **VIA FACSIMILE TO:650-494-1827**

Prof. Susan F. French
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Law Revision Commission
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***Re: Background Study of Laws Affecting Common Interest Developments***

Dear Professor French and Members of the Law Revision Commission:

Thank you for providing me with the opportunity to comment on the Background Study that Professor French has prepared concerning California's laws relating to community associations and common interest developments. As a member of the original Task Force whose work contributed to the drafting of California's Davis-Stirling Common Interest Development Act (Cal. Civil Code §§1350-1376; the "Act"), I have followed the subsequent evolution of that law via statutory amendments and reported cases with considerable interest. As you might anticipate, I do, indeed, have some thoughts on how the law could be improved.

Generally speaking I agree with all of the comments and criticisms concerning the Act which Professor French presents in her study. When the idea for promulgation of a statute specifically dealing with legal issues unique to common interest subdivisions first arose, the charter that was given to the Task Force was really quite narrow and focused primarily in the consolidation in one title of the Civil Code provisions relating to common interest subdivisions. Prior to adoption of Davis-Stirling, the rules regarding the operation and management of common interest developments had been scattered among various provisions of both the Civil Code and the Business & Professions Code with the result that distinctions without a difference had evolved as between condominium projects and planned developments (see,



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Sproul & Rosenberry, *Advising California Condominiums and Homeowner Associations*, CEB 1991 at§§1.4-1.8; hereinafter, "Sproul & Rosenberry".). However, in the years since the Act's adoption in 1985, Davis-Stirling has become the home for a host of issue-specific amendments that appear to have originated primarily in complaints received by legislators from constituents living in common interest developments. Those complaints were then passed into law without any discernable attempt to develop a cohesive and internally consistent approach to the evolution of law in this field. Those issue specific amendments (some of which have been included in portions of the Civil Code which are outside of the Act) include at least the following:

(i) provisions relating to the installation of solar energy systems (Civ. Cd §§714, 714.1);

(ii) provisions relating to the presentation of real estate signs (Civ. Cd. §§712, 713);

(iii) provisions relating to the construction of manufactured housing (
Civ. Cd §714.5);

(iv) provisions relating to dispute resolution in several different contexts relevant to common interest developments and community associations (Civ Cd. §§1354, 1363(h), 1363.05(b), 1366.3). See attached letter discussing the internal inconsistencies of these provisions;

(v) provisions imposing open meeting rules on community associations (Civ. Cd. §1363.05);

(vi) provisions imposing restrictions on the use of capital replacement reserve funds (and including exceptions to those restrictions) (Civ. Cd. §1365.5(c));

(vii) provisions restriction the imposition on some, but not all, assessments imposed as penalties (Civ. Cd. §1367(b)); and

(viii) provisions relating to the initiation and settlement of construction defect suits (Civ. Cd. §§1375 and 1375.1) (for a criticism of the complexity of these sections, see Sproul & Rosenberry, Supplement at §11.13)

Many of these subsequent amendments to the Act impose what I call "hiccup rules" in that the author of the amendment seemingly began with a simple idea posed by a constituent and then practically gutted that idea with exceptions to the once simple statement. For example, Civil Code section 1365.5(c) begins with the rather straightforward proposition that when community associations accumulate capital replacement reserves, the accumulated funds shall only be used for the capital replacement project for which the money was accumulated. Then, the following exceptions where added to qualify that rule, similar to ornaments being added to adorn a once basic Christmas tree: (i) reserve funds may be used to fund litigation involving the capital component for which the reserves have been accumulated; (ii) except that reserves may be temporarily withdrawn to meet short-term cash flow requirements; (iii) but if funds are withdrawn for other purposes, the board must repay the fund within one year; (iv) unless the board cannot make the one year deadline. Similarly, Civil Code section 1363(d) directs that meetings of community association members must be conducted in "accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt." In other words, follow Robert's Rules, Sturgis, or any other rules you may want to adopt. How helpful; and what about board meetings which are held far more frequently than member meetings?

When I served on the Davis-Stirling Task Force I was coming off of a recent tour of duty on the State Bar Committee on Corporations in which I



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served as a liaison between that committee and the special committee chaired by Professor Michael Hone (USF School of Law) which drafted the 1980 Nonprofit Corporation Law. As a result of my familiarity with that then new nonprofit statute, I was successful in convincing Professor Katharine Rosenberry and my other colleagues on the Task Force that Davis-Stirling did not need to contain numerous provisions relating to issues of internal corporate governance such as are found in the Uniform Common Interest Ownership Act. Once again, however, Davis-Stirling has been subsequently amended to add a number of provisions relating to issues already addressed in the Nonprofit Mutual Benefit Corporation Law, such as time requirements for the issuance of notice of meetings, the manner in which notice is provided, and the manner in which board meetings are conducted. Often those Davis-Stirling provisions are inconsistent with the Mutual Benefit rules or are ambiguous regarding the extent to which it was intended for the Davis-Stirling rules to supercede the Mutual Benefit rules.

For example, Civil Code §1363.05 adds to Davis-Stirling what is termed the "Common Interest Development Open Meeting Act." That statute, patterned on the Ralph M. Brown Act, applicable to meetings of the boards of local agencies, contains a very broad definition of what constitutes a board meeting (subparagraph (f) of §1363/05) which, in my opinion, proves difficult to administer and apply in the context of volunteers serving on an association board.

The Davis-Stirling Open Meeting Act also:

(i) permits "executive sessions" (as defined) to be conducted to the exclusion of attendance by the general membership, and yet suggests that an association cannot call an executive session meeting without first conducting an open session (see subparagraph (a) which speaks of "adjourning" to executive sessions). With meetings being broadly defined to include any congregation of a majority or more of the members of the board,

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would this requirement preclude a majority of the board from meeting with counsel at counsel's office, to discuss pending or threatened litigation?

(ii) permits "emergency meetings"of the board to occur without proper prior notice to the members if it is impracticable to provide proper notice (subparagraph (h) of §1363.05). Apparently, however, it is still required that the Mutual Benefit notice provisions be met, although the Civil Code provisions are silent on that subject; and

(iii) requires that most board meetings be open to member attendance, and yet the Code is silent on whether and under what circumstances methods of conducting meetings sanctioned by the Mutual Benefit Corporation Law are still permitted of community association boards (such as meetings by conference telephone, meetings conducted by electronic means, and meetings conducted at locations remote from the common interest development — as is common of meetings of boards of resort community associations).

In addition to often conflicting with the technical requirements for notice of members under the Mutual Benefit Corporation Law, Davis-Stirling contains so many different notice rules for various types of notice as to be become an unnecessarily complex trap for the unwary volunteer endeavoring to properly manage a community association. Schedule of fines must be delivered personally or by first-class mail (Civ.Cd §1363(f)). Notice of those board meetings requiring advance notice to the members must be given "by posting in a prominent place or places within the common area, by mail or deliver of the notice to each unit in the development, or by newsletter (Civ. Cd. §1363.05(g)). Copies of the annual operating budget of the Association must be "annually distributed . . . to all members" (Civ. Cd. §1365(a). Members must be informed of decisions to use reserve funds for purposes other than the purpose for which the reserve was accumulated "in the next available mailing to all members pursuant to Section 5016 of the Corporations

Code." If the Board is going to meet to consider the imposition of discipline against a member the Board must give the targeted member written notice "by either personal deliver or first-class mail" (Civ. Cd. §1363(h)), however, when the Association reaches the next step in the disciplinary process and decides that it wishes to formalize the dispute resolution process, the targeted member must receive a "Request for Resolution" (containing specified information) and that document must be served on the member "in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure[1]" (Civ. Cd. §1354(b)), unless, of course, the discipline involves nonpayment of assessments for which the association desires to pursue lien and foreclosure requirements, in which case, notice to the delinquent member must be sent by certified mail (Civ. Cd. §1367(a)).

Finally, a disturbing trend in California law which has resulted from the adoption of Davis-Stirling and the relatively recent interest displayed by California courts in matters pertaining to common interest developments and community associations is a divergence in the legal rules and principles applicable to equitable servitudes and nonprofit mutual benefit corporations, generally, and the rules that are evolving for equitable servitudes in common interest developments and the rules applicable to community associations as a sub-set of nonprofit organizations. For example:

(i) Traditionally the law has presumed that restraints on alienation and restrictive covenants affecting title to real property are unreasonable and unenforceable and has thus imposed the burden of proof on those persons who favor enforcement of restrictive covenants (see generally Civ. Cd. §711). However, in the case of common interest restrictions that

[1] That CCP cross reference creates its own confusion regarding the types of notice that are permissible.

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presumption and burden has been reversed (see Civ. Cd. §1354(a); *Nahrstedt v Lakeside Village Condominium Assn.* (1994) 8 Cal. 4th 361);

(ii) When CC&Rs for a standard (i.e., non-common interest) subdivision contain no provision for amendment or extension, amendments require approval of all affected property owners. However, CC&Rs recorded against common interest property that contain no provision for amendment, or which permit amendment only at certain specified anniversary dates, or which provide no means of extending the term of the declaration imposing the restrictions, the Davis-Stirling Act presents flexible statutory alternatives for amending or extending the term of the covenants (see Civ. Cd. §§1355 - 1357).

(iii) Finally, whereas directors of all other nonprofit mutual benefit corporations can look to a long line of cases interpreting the appropriateness of corporate decision-making under the so-called "business judgement rule", community association directors have apparently been subjected to a new and different standard of review, called a "rule of judicial deference", regardless of whether the association is incorporated or unincorporated (see *Lamden v LaJolla Shores Clubdominium Assn* (1999) 21 Cal4th 249; Sproul, "*Judicial Review of Community Association Decisionmaking*" 28 Calif. Real Prop. J. No 2 (Spring, 2000)). I know of many large standard subdivisions in which lots are encumbered by a Declaration of CC&Rs which contains many of the same provisions as a common interest set of CC&Rs for a similar common interest community. Ideally, the rules applicable to the two types of developments and their equitable servitudes should be the same or, at a minimum, standard subdivisions meeting certain criterial ought to be able to "opt into" the Davis-Stirling regulatory milieu (or specified portions thereof) on approval by some

WEINTRAUB GENSHLEA CHEDIAK SPROUL

*A Law Corporation*



specified vote of the property owners.[2] Short of such an opt-in provision, consideration ought to be given to extending to standard subdivisions some of the regulatory flexibility that has been extended to common interest developments via the Davis-Stirling Act.

I would be pleased to supplement these comments and suggestions for further revision of the laws relating to common interest developments. To that end, my telephone and fax numbers are noted on this stationary and my email address is csproul@weintraub.com. Thank you once again for giving me the opportunity to comment on Professor French's background study on common interest developments.

Sincerely,

**WEINTRAUB GENSHLEA CHEDIAK SPROUL**
A Law Corporation

By: Curtis C. Sproul

cc: Professor Katharine Rosenberry

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[2] For example, a large standard development may have initially been organized so that recreational facilities constructed by the original subdivider of the surrounding residential lots were not characterized as common area, but rather existed as voluntarily supported amenities, the support of which was elective by the members desiring to use the amenities. Now, thirty years later, the residents of the surrounding development find that they have no effective means of enforcing their property use restrictions and the recreational amenities are deteriorating due to the lack of mandatory support by all property owners. If local governmental entities can vote to impose new taxes on themselves, what would be so wrong or contrary to public policy if the residents of such a standard subdivision were given a statutory method of converting their voluntary recreation association into a true common interest community association?

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Executive Council of Homeowners

Of, By and For Homeowners

Law Revision Commission
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January 15, 2001

**VIA FACSIMILE TO 650 494-1827 & U.S. MAIL**

Nathaniel Sterling, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303

**Re: Response to Background Study, Scope of Study of Laws Affecting Common Interest Developments, Study H-850**

Dear Mr. Sterling:

On November 28, 2000, the California Law Revision Commission released Professor Susan French's background report on Common Interest Development Law. At the time, it sought public comment on the report from interested parties. We hope you will forward our comments to the members of the Commission for their consideration.

ECHO, the Executive Council of Home Owners, represents more than 1,400 California common interest developments and their boards of directors and members. In addition, ECHO members include almost 300 professional firms and individuals who provide services to community associations. ECHO has long been aware of difficulties implementing state law in the area of community associations, with hit-and-miss identification of associations (there is no statewide data bank), with sometimes sketchy compliance with the law and lack of meaningful accountability in association leadership, with often inarticulate and inexact special interest legislation that, while it seeks to respond to such needs, only layers complexity and detail onto a body of state law that, as Professor French observes, already lacks a foundation in basic legal principles.

These problems come to ECHO's attention in the form of response at ECHO's educational forums and seminars, distress calls from directors and owners, stories of unchecked statutory non-compliance, tales of sorely underfunded associations that can no longer afford to maintain common area infrastructure, and years of reacting defensively to special interest

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legislation rather than pro-actively seeking help, credibility and respect in the Legislature for community associations and the significant contributions and benefits they impart.

**Inadequate Regulation**

We share Ms. French's view that common interest developments lack adequate regulation. Such developments, and the associations established to manage them, are creatures of the Legislature left to languish once no longer under the aegis of the Department of Real Estate (generally after the first few years of their existence). Common interest developments are "hodgepodge entities," simultaneously considered to be businesses, non-profit corporations, quasi-governments (with constitutional-like duties but without governmental immunities, a significant distinction that legislators often overlook), housing developments, real property owners, operators of social and recreational amenities, expressions of land use policy, and, ultimately, people's homes.

Given such inordinately diverse purposes, we dramatically need to take a look at the principles of law that create common interest developments, in order to establish more effective principles of regulation to sustain them through their anticipated lifetimes. ECHO is staunchly in support of assimilating these principles into a body of law to be implemented and watched over by a regulatory agency of state government. We think sound revision of state law, in conjunction with agency regulation, is the best and brightest answer to administering the multi-faceted entities that comprise modern common interest communities.

As the diverse purposes of common interest developments are considered in formulating an effective regulatory scheme for them, ECHO would like to contribute to the policy discussion.

**Uniform Common Interest Ownership Act and Other Uniform Acts**

Professor French appears to advocate adoption of a Uniform Act for California's common interest developments. Whether that would or would not answer remains to be debated, possibly point-by-point though hopefully on a broad conceptual front and avoiding most special interest tussles and debate-numbing detail. Fifteen years ago, the Legislature considered but rejected such an approach, concluding instead that a "custom" body of law better suited our state's unique needs. While undeniably lacking in fundamental legal principles and oft-amended in knee-jerk fashion, with a tweak here and a yank there, until largely unrecognizable and operationally

complex, the original Davis-Stirling Common Interest Development Act did carve out and define a unique housing type — communities with common elements. Such communities go back in time to, and the Act now governs, such housing developments established as early as 1900. Moreover, since the Act was instituted in 1986, thousands of new communities have been established, and thousands more have amended their governing documents, to reflect what was considered a permanent fixture of California law.

The Act swept up within its definitional embrace hundreds of existing communities of diverse type, size and age, laid governing document blueprints for thousands of new housing communities that burgeoned from the mid-1980s to the present, and was the inspiration for modern document revisions for thousands more. Moreover, courts have since interpreted existing provisions of the Act and applied them in a substantial body of common law that is now used in day-to-day understanding and advising of community associations. In short, we are where we are, a fact that must be considered in any major shift in common interest development law to a Uniform Act

As the advantages and disadvantages of adopting a Uniform Act for California's community associations are considered, ECHO would like to contribute to the review and debate.

**Community Obsolescence/Affordable Housing**

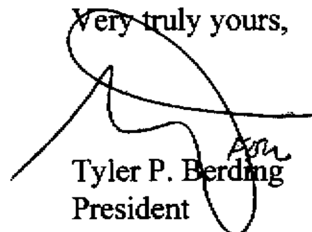
As is perhaps known from its articles (some of which are enclosed), editorials, statements made before legislative committees, and other perspectives, ECHO has raised what we believe are significant concerns about the long-term financial viability of common interest developments as housing stock. Far too often subject at their birth to poorly-conceived and -built construction, and often plagued by major funding deficiencies during their lifetimes, California's community associations need a strong regulatory scheme to preserve common elements that are intended to last. The importance of requiring strong financial health in every community cannot be minimized — both at the birth of a development by its developer, as budgets are set and reserves begin to grow, and by the association's members once on their own wing. Even before that, quality construction — in design, components, building techniques, supervision, and adherence to building codes and standards — is essential to avoid financially debilitating defects and to ensure the ongoing affordability of housing. Where defects do occur, legal remedies for recovery must be protected. Imprudent future funding of major repairs by special assessment, long-term under-assessing of reserves, lack of basic legal protections for assessment collection in lender

foreclosures and owner bankruptcy, and the troubling (and growing) potential for mis-use of association assets held in trust all undermine the state's struggle to provide affordable housing and foretell the obsolescence and eventual loss of common interest communities.

As funding concerns, issues of quality construction, preservation of homeowner protections for defective construction, and trust fund accountability models for viable community associations are considered, ECHO would like to contribute to the policy review and debate.

Thank you for considering ECHO's concerns as the Commission determines the scope, general direction and priorities for its study of common interest development law. We will be present at the Commission's February meeting and would be pleased to answer any questions the Commissioners might have.

Very truly yours,



Tyler P. Berding
President

TPB:SMB
Enclosures coming under separate cover
cc: Oliver Burford, ECHO Executive Director
Clark E. Wallace, ECHO Advocate
S. Guy Puccio, ECHO Advocate
Sandra M. Bonato, Esq., Chair, ECHO Legislative Committee

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Mime-Version: 1.0
Date: Tue, 16 Jan 2001 08:29:06 -0800
To: sterling@clrc.ca.gov
From: "John Jones" <j1jones@email.msn.com> (by way of Stan Ulrich)
Subject: Study H-850
X-Loop-Detect: 1

Dear Sirs & Madams,

I recently read Professor Susan French's study (H-850) of Common Interest Developments (CIDs). I have not had as much time to review it as I would like, but since today is the deadline for comments, I would like to offer a few tentative comments of a general nature.

1. I tend to agree with Frederick Pilot's request that you refrain from using a consultant to determine the scope of study based on the possibility of political opposition. (See first supplement to Memorandum 99-58) I would like to see the CLRC develop the best, most comprehensive proposal possible, and leave the results to politics, if necessary. Even elements that are rejected now could still serve as a useful springboard for further discussion.

2. I have not had the opportunity yet to read the Uniform Common Interest Ownership Act, but if it is as good as indicated (see pg 6 of the study) I would be in favor of the approach where UCIOA is adopted as a general framework, while grafting in the portions of Davis-Stirling that are more detailed. (I'm also in favor of this, because it promotes a more consistent practice throughout the various United States.)

3. I agree that there is a need for a regulatory agency to have the power to step in as needed. (see pg. 8 of study)

4. Gale Guthrie's suggestion to amend the law so that Davis-Stirling can apply to all subdivisions with CC&Rs sounds good, but I think that an effort should be made to determine why Civ. Code 1374 (which removes developments without commons areas from the control of Davis-Stirling) was written in the first place.

Besides these comments on the study, here is a concern that hopefully can be addressed during the life of this project:

CIDs tend to be over-professionalized due to liability concerns. In the neighborhood where I live (Laguna Audubon II) a homeowner asked the board why we couldn't use homeowner volunteers for landscaping projects: the question was referred to counsel, and the answer that appeared in our newsletter was that it would create a liability, so all work in the common areas had to be done by professionals. Likewise, in my complex (Seagate Colony) one of my neighbors volunteered to help put up Christmas lights, but was told by the board president that it should only be done by an insured professional. There has to be a better balance here: because of this many CID homeowners have little more freedom than apartment renters. Besides this, an opportunity to develop a sense of community is lost when neighbors are not allowed to work together on the common land. If there is a statutory way to develop immunity for associations that allow homeowners to get involved in the community, that would be much appreciated.

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January 16, 2001

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California Law Revision Commission
400 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

RE: Homeowners Association Reform Study

To the Honorable Members of the Commission:

I am in support of the below-listed, suggested inclusions into promulgating Common Interest Development Law - (Homeowners Associations/HOA's).

1. Mandatory secret written ballot process collected and counted by an independent third party.

2. Mandatory term limits for board members.

3. Sunshine laws that allow homeowners to view and copy association financials, books, records, all insurance policies, contracts and minutes of meetings within 5 working days of request. *Reasonable* copying charges apply - not $5.00 per page or $10.00 per set.

4. Large bids for repair, maintenance or management contracts be provided via multiple (3) sealed bids opened at a regular business meeting of the association.

5. Protection from unlimited special assessments that can be in the thousands of dollars. (Failure to pay special assessments and fines can result in foreclosure.)

6. Protections from non-judicial foreclosures that violate constitutional rights of due process.

7. Delinquent debts owing to the association, (dues, fines,special assessments, etc.) should be collected in accordance with the Fair Debt Collection Practices Act.

8. Yearly increases in association dues should not exceed the Consumer Price Index. (Imagine if taxes went up an average of 10% per year for several years.)

9. HOA Insurance liability policies, paid for by the homeowners, must have a fiduciary duty to the homeowners and should not be used against them. D&O liability policies often offer "duty to defend" coverage for even wrongful acts like libel, slander, defamation of character, harassment and discrimination - and the boards begin their wrongful attacks. Such policies give boards no

incentive to settle disputes. They pay a small deductible and are then backed by millions of dollars.

10. Members of associations are entitled to undivided interest of the common areas. Privately held common areas should not be used or divided in any way that excludes and discriminates against other members of the association without their permission or at member cost and inconvenience.

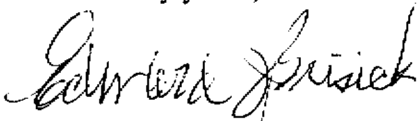
11. Less micro management. More than anything else, because all of the above is useless without it.

12. An enforcement and regulatory structure through which homeowners can enforce HOA governing documents and laws without having to resort to costly litigation.

13. Oversight by the Department of Consumer Affairs as home buyers are one of the largest monetary consumer groups. I hope to see the State Consumer Services Agency take a look at restructuring to do just that. Nevada has already put in place an ombudsman for homeowners and is considering placing the position under their Consumer Affairs Division. (It is currently under the Real Estate Division where there may be a conflict of interest.)

***I do not favor banning HOA mandated housing.***

Sincerely yours,



Edward J. Brisick

Reply-To: "Lee & Arlai Ford" <headspace@netzero.net>
From: "Lee & Arlai Ford" <headspace@netzero.net>
To: <sterling@clrc.ca.gov>
Subject: Fw: Homeowner Association Reform Study
Date: Mon, 15 Jan 2001 19:49:05 -0600
MIME-Version: 1.0
X-Priority: 3
X-MSMail-Priority: Normal
X-MimeOLE: Produced By Microsoft MimeOLE V4.71.1712.3
X-Loop-Detect: 1

Nathanial; I too am currently in litigation with my homeowners association over my failure to pay the increase in the assessment charge since the increase was enacted by a Board of Directors who were not elected in accordance with the covenants. I live in Texas. I thought that this was a free property state. It seems that the founders wanted the state that way since they did not create zoning. But, this HOA system and the legislature have practically destroyed freedom and the use of ones property through this HOA system the have legislated. Hope we can all work together to put an end to this infringement upon our freedom. Lee **-----Original Message-----**
**From:** W.E.Want <NoHOAs@home.com>
**To:** W.E.Want <NoHOAs@home.com>
**Date:** Thursday, January 11, 2001 9:17 PM
**Subject:** Re: Homeowner Association Reform Study

**Dear Fellow Homeowners:**

**Have you ever had a problem with your Homeowners Association? Well now is the time to address those concerns!!**

**We were very pleased to have received a News Release from the California Law Review Commission (http://www.clrc.ca.gov) dated November 28, 2000 regarding a study of Common Interest Development Laws - (Homeowner Associations/HOA's). Homeowner advocates nationwide have worked hard to shed light on concerns surrounding HOA's and lack of protections for the individual homeowner. It has been said that HOA's are quickly garnering more collection, lien and foreclosure powers in violation of constitutional, homestead and collection protections than even the IRS. Every homeowner deserve equal protection under the laws.**

**While there are some good laws on the books, they are virtually unenforceable but through costly litigation. They are useless without some sort of regulatory and enforcement structure whereby homeowners can resolve disputes without having to resort to costly litigation and risk equity in their homes. A few suggestions I have seen and support are:**

**1. Mandatory secret written ballot process collected and counted by an independent third party.**
**2. Mandatory term limits for board members.**
**3. Sunshine laws that allow homeowners to view and copy association financials, books, records, all insurance policies, contracts and minutes of meetings within 5 working days of**

request. *Reasonable* copying charges apply - not $5.00 per page or $10.00 per set.

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More than anything else....because all of the above is useless without it.........

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14. And my personal favorite - ban HOA mandated housing altogether. The housing consumer survived happily for decades without them.

Please take advantage of this rare opportunity for public comment. Nevada, Texas, Arizona, Florida and New Jersey are doing the same. A growing group of homeowner advocates nationwide are committed to ensuring that the American Dream of Homeownership is protected.

To receive timely consideration for the study, try to submit comment by January 15, 2001. However, even after that date is OK. Thank you all for your support as this potentially affects all homeowners.

Will you be the next victim of bad laws or even good laws that are not worth the paper they are written on?

Submit comment to: by email: Nathanial Sterling - sterling@clrc.ca.gov
or by mail: California Law Revision Commission (ph# 650-494-1335)
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
or fax: # 650-494-1827

Interesting and useful articles and websites for homeowners:
US News Magazine -
http://www.usnews.com/usnews/issue/001030/nycu/homeowners.htm
Kiplingers -
http://www.kiplinger.com/magazine/archives/2000/september/managing/hoa.htm
Smart Money Magazine - http://loan.Yahoo.com/m/ten.sm.html
http://www.ahrc.com
http://members.homenet/concernedhomeowners/
http://www.cicproject.org
http://www.homeownerjustice.org
http://www.propertyrightstexas.com
http://www.hshia.org
http://starman.com/hoa
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http://members.home.net/NoHOAs/
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