

First Supplement to Memorandum 2001-31

Nonjudicial Dispute Resolution under CID Law: Discussion of Issues

This memorandum supplements the information provided in Memorandum 2001-31. Attached to this memorandum are the following materials (omitting accompanying attachments):

	<i>Exhibit p.</i>
1. John & Leigh Anne Isgreen, Homeowners, Soda Springs	1
2. Roger Williams, Homeowner, Seal Beach	3
3. Statistics from Montgomery County, Maryland	5

NEED FOR EFFECTIVE NONJUDICIAL DISPUTE RESOLUTION

The letters from Mr. & Mrs. Isgreen and Mr. Williams testify to the need for an effective nonjudicial dispute resolution mechanism. The Isgreens state (Exhibit p. 2):

Litigation is not a poor man's option. We have had a lawyer write a letter to the board of directors, but even he estimates that to go to court to protect our rights would cost at least \$25,000-\$30,000. Even if we prevailed, there is no guarantee that we would recoup our costs. We don't have this kind of money.

Mr. Williams notes (Exhibit p. 4):

Homeowner's association boards can act under current law in any way they wish, knowing that they can act with impunity and individual association members have no recourse in dealing with improper and tyrannical conduct by their board of directors. I pray that the legislature will provide a vehicle that will give association members the opportunity to take action that may end such conduct.

Administrative Adjudication (with Mediation)

We have received a few statistics from Montgomery County, Maryland, concerning the operation of their nonjudicial CID dispute resolution process. See Exhibit p. 5. More information is promised.

The statistics indicate that there are just over 100,000 CID dwelling units in Montgomery County. During the year 2000 Office of Common Ownership Communities received 534 telephone inquiries, resulting in the filing of 36 disputes. Thirteen disputes went to formal mediation during that period, and seven to administrative adjudication. Three decisions or orders were issued, and judicial review was sought of only one decision or order.

These statistics would tend to show that the program is successful. It is not surprising that 534 telephone inquiries resulted in the filing of only 36 disputes, since the Montgomery County scheme precludes the filing of a dispute until after the parties have made a good faith attempt to exhaust internal procedures; presumably, once the parties beginning talking to each other, many of these issues are resolved.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

March 5, 2001

Law Revision Commission
RECEIVED

MAR 7 2001

California Law Revision Commission
4000 Middletown Rd. Room D1
Palo Alto, Ca 94303-4739

File: _____

Dear Commissioners:

My husband and I live in the planned community development of Pla Vada Woodlands, in Nevada County near Soda Springs. I heard about your commission through another woman who lives in the same subdivision named Karen Caves. She and her family were fined \$34,500 for trying to access their property. I believe that she addressed your commission. Our situation is the same as the Caves except that we have no physical disabilities and we have been fined only \$500. There is not much consistency to their fining procedure as we often drive over a "closed" road to access our house, but have only been fined once.

My husband's family had the house built that we live in in 1959. My husband has lived here full time for more than 30 years. Originally, no roads were plowed during the winter. Over the years, roads were gradually plowed as more people started building houses, vacationing and living here year-round. My husband had no reason to believe that the road we live on would not also be plowed eventually. However, in the late 80's-early 90's The policy of opening more roads as the population grew, was changed. The board's position was that the the remaining unplowed roads would stay closed for winter recreation and not to access property "except by foot, snowmobile or ATV". When some of us addressed safety issues, inequities in treatment of laws, and civil liberties, we were, and are, told that Pla Vada is a private community made up of private property and roads, and as such they can make rules as they see fit.

We strongly believe that we have a right to enjoy, protect, and provide a measure of safety for ourselves and our property. We believe that in our community we are entitled to equal protection of the laws that our governing board makes, as well as the county, state, and federal laws already in place. We don't believe that perpetuating two classes of citizens (those that have full access and enjoyment of their properties and access to emergency services, and those that don't) within one community is healthy or even legal.

We have appealed to the county, the local fire department, and even senator Tim Leslie, and have been told by all (either verbally or in writing) that there is nothing they can do because it is a private subdivision, and we would have to obtain a lawyer. I had always thought that part of the county, state, and federal governments duties were to ensure that citizen's constitutional rights were protected, but I seem to have been mistaken.

Litigation is not a poor man's option. We have had a lawyer write a letter to the board of directors, but even he estimates that to go to court to protect our rights would cost at least \$25,000-\$30,000. Even if we prevailed, there is no guarantee that we would recoup our costs. We don't have this kind of money.

I have enclosed the correspondence we've had with the governing board since we started documenting the issue in 1994. The letters go into more detail regarding our situation. Reading through the material it is evident that the board consistently refuses to address the safety, and equal access issue. Most of the time they refuse to answer our letters at all.

My husband owns his own snow plowing business and when he attempts to clear the road to our house, the board threatens us with fines, lawsuits, arrest, and most recently, restraining orders and injunctions. All we are asking for is to have the same access to our property that many others in the subdivision already have, so that we, too, can have access to emergency services, the convenience of parking in our driveways instead of packing everything in and out, access for repair people, UPS/FED EX people, access for older/disabled friends and family, increased property value, etc.

I am sure that homeowners associations were created with the best intentions; a mini government that stays in close touch with the needs of its citizens. Instead, what has been created, in our case, is a private gestapo that promotes its personal agenda (in this case snowmobiling) regardless of people's rights. Furthermore, the creation of this type of "private government" ENSURES that no county or state agency will step in to protect our rights because it is a "private" association and no one will claim any jurisdiction. We are back to square one: no money, no rights.

I don't know what your commission does exactly, but Karen Caves said you were reviewing the Davis Sterling Act. If you are looking into the laws governing homeowners associations, we would be interested in attending any meetings you might have if they are open to the public.

A 10 year battle has left us highly frustrated and at our wit's end, but we won't be driven from our home. If our problem is not within the scope of your agency, maybe you can point us in a direction more applicable. Thank you very much for any assistance you can give.

Sincerely,

John and Leigh Anne Isgreen, (530)426-3261
P.O. Box 895, Soda Springs, Ca 95728

ROGER WILLIAMS
12200 MONTECITO RD., UNIT L203
SEAL BEACH, CA 90740
562-431-9632
rogerewilliams@yahoo.com

Law Revision Commission
RECEIVED

MAR 15 2001

File: _____

March 13, 2001

California Law Revision Committee
Attn: Nathaniel Sterling, Executive Secretary
4000 Middlefield Road, Suite D-1
Palo Alto, CA 94303-4739

Re: Rossmoor Park Homeownes Association
12200 Montecito Rd.
Seal Beach, CA 90740

Dear Mr. Sterling:

I recently read a letter "to the Editor" in the Sunday, February 25, 2001 Edition, of the Los Angeles Times which provided information regarding the Legislature's interest in dealing with "tyrannical" conduct of homeowner's associations. A copy of that letter is enclosed.

Upon reading that "letter", I was driven to draft and mail to your office, my statement describing conduct on the part of the homeowner's association in the condominium complex in which I have owned a unit and lived since October 1, 1979.

This complex contains 256 units that were constructed about 1970 by Goldrich and Kest, Inc. as an apartment complex. In the late 1970's Goldrich and Kest successfully converted the complex to condominiums and targeted the elderly retired community for buyers. The Covenants, Conditions and Restrictions drafted at that time, excluded persons under the age of eighteen as occupants.

Most of the original owner/occupants have either passed away or sold, or rented, their units to families with children. Consequently, there is currently, a very large number of families living here. The current Board of Directors have "declared war" on families with children and, are attempting to drive those families out of the complex. To attempt to discuss the issue with members of the board, will elicit the response that "children were never supposed to be living here".

I can describe many different examples of destructive conduct by our Board of Directors but there are too many to discuss in this statement. A few examples of the Board's more egregious actions now follow.

One of our owner/occupants is a family with several preschool age children who have been the target of the Board. This family has been threatened with a Board of Directors "fine" for damage the children caused to a complex gate. Two of the children are autistic and are very, very closely watched by their parents. The third child is an infant. The older children would lack the strength to cause damage to the gate even if their parents did not supervise them. If there was damage to a gate, that damage was not caused by these children. The Board's actions were motivated by a desire to punish the family for attempting to get the Board to authorize the expenditure of homeowner's association funds to maintain one of two swimming pools; the smallest one and the only one the children were allowed by the Board to use. The Board's position was that it was only the children's pool, therefore it was not important to maintain it. Last

summer, the pool's lack of periodic maintenance resulted in a murky and unhealthy condition which I observed on several occasions. The Board's actions against this family is clearly retaliatory and punitive in nature.

The annual requirement for election of the Board members produced a lack of a quorum on two occasions this last year. There was a third scheduling of an election, which I believe also did not achieve a quorum. Other than a notice of the rescheduling of the election there was little, or no effort by the Board to achieve a quorum. I believe that the board members have decided that a lack of a quorum was a mandate for the old Board members to continue on with "business as usual" and there will be no further electoral attempts. To ask for an accounting of the quorum count for the third election, results in a refusal to make that information available.

Last September I requested that the Board take action to prevent lint, from six clothes dryers in a laundry room, being directed toward our small swimming pool which is only a few feet away. That pool was, by the Board's ruling, the only pool children were allowed to use. This exposed the children or, any person using the pool, to ingesting lint that was blown by the wind and/or carried into the pool on the feet of people using the pool. Furthermore, the lint would then get in the pool filter system. I asked that dryer filters be installed to prevent this. The position of the Board was that, since the pool was the children's pool it was not important to expend homeowner's funds on solving this problem. If it were the "adults" pool, the matter would have been addressed immediately. The response to my request, was the Board's decision to install three more dryers; all vented in the direction of the pool and all without filters. Clearly the health and welfare of the families using this pool is not important to this Board.

Many parents of children living in this complex have been ordered to appear before the Board so that they could be told that they would be fined for some infraction by their children, such as making too much noise or playing with their toys in a manner that offended the Board or their supporters.

I accuse our current Board of conducting itself in ways that deserve the attention of an organization such as yours. I can and will, if called upon to do so, testify to facts, of which I have knowledge and/or have witnessed. I am grateful that the legislature has considered such conduct as being worth studying. Homeowner's association boards can, act under current law in any way they wish, knowing that they can act with impunity and individual association members have no recourse in dealing with improper and tyrannical conduct by their board of directors. I pray that the legislature will provide a vehicle that will give association members the opportunity to take action that may end such conduct.

I intend to forward a copy of my letter to our Board of Director's as a courtesy to them and I fully expect to be punished for my "impudence". I have already advised by current Board's property manager that, he has been authorized by the Board to deny any request for "service" that I may make in the future.

I am pleased that the legislature is taking an interest in such a matter. That interest has been too long in coming. If you find my statements of interest and would like more information from me, please contact me at the address shown above.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. van".

Office of Common Ownership Communities

Report to the County Executive on the
Commission on Common Ownership Communities
October 23, 2000

Dispute Activity:

Disputes filed during 2000	36
Disputes closed during 2000:	25
Disputes adjudicated at Public Hearing during 2000:	07
Formal mediation sessions held during 2000:	13
Cases open as of October 1, 2000:	36
Telephone inquires during 2000:	534
Written responses to inquires during 2000:	22
Complaint forms sent out during 2000:	131

Decisions & Orders Issued: 03

Decisions & Orders Appealed to the Circuit Court: 01

Registration Statistics:

New Communities Registered in 2000:	16	Total - 682
New Units in Registered Communities in 2000:	1,284	Total - 104,168