Study H-851 May 10, 2001

First Supplement to Memorandum 2001-42

Nonjudicial Dispute Resolution Under CID Law: General Approach

Attached to this memorandum are the following letters that touch upon the Commission's general approach to nonjudicial dispute resolution under common interest development law:

The substance of the letters is briefly summarized in this memorandum.

Comments of Mr. Lange

Mr. Lange is concerned primarily with issues involving senior citizens in common interest developments. He has a number of suggestions, some of which coincide with concepts the Commission will be exploring as part of its nonjudicial dispute resolution inquiry. His suggestions include:

(1) Governmental support services, perhaps by the Departments of Real Estate (initial construction and occupancy), Corporations (educate, guide, monitor), and Justice (intervene in significant or chronic violations).

(2) Educate boards and homeowners.

(3) Designate an advocate for disputes — "Please bear in mind, there is a real and significant cost for taking your board to task, informally, formally, and including mediation. These are not strangers, but our neighbors who serve."

(4) Research needs of seniors and the recourse available to both boards and homeowners when conflicts arise.

(5) The need is for help from government, not harsh penalties for individuals or boards.

Comments of Ms. Vanitzian

Ms. Vanitzian is skeptical about the potential for alternative dispute resolution. She believes what is really needed are laws making association books and records accessible to homeowners. Her points include:

(1) Both mediation and arbitration are costly and time consuming. “Mediation is ineffective for homeowners in a CID, and arbitration can not only be confusing for the homeowner complainant, it is more often than not, futile.”

(2) Making the small claims court available to the homeowner is useless, unless the rules are changed to require the association to keep books and records and make them available to the homeowner, enforceable by compensatory damages up to the jurisdictional limit of the small claims court.

(3) Homeowners should retain voting rights regardless of their current balance due with the association.

(4) There should be confidentiality of communications between homeowners and the board.

(5) There should be a moratorium on new CID legislation until the Commission’s review of the Davis-Stirling Act is completed.

With respect to this last point, the staff notes that the Commission’s position has always been that the fact that the Commission is studying a topic should not be used in the interim as an excuse to derail needed legislation. Unfortunately, we believe the Commission’s study of CID law is being used as an argument by opponents of bills seeking to defeat the bills.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

From: Tlocotillo@aol.com
Date: Tue, 8 May 2001 19:43:45 EDT
Subject: Message to the Commission
To: sterling@clrc.ca.gov
MIME-Version: 1.0

Dear CLRC:

With your consent, I would like to offer additional comment regarding the selfmanaged, 30-35 year-old senior citizen CID. It is my opinion at this time, that the professionally managed CIDs pay close attention to their financial and other obligations, in accordance with Civil Code Section 1365 (and related sections). There is a significant chance that many of these type nonprofit corporations are often run more like a church group or civic club, rather than a business. Some have no policies, as an example. None. The board members have no training, no professional guidance, and essentially start over every year. Deferred maintenance can become a chronic malady.

Please consider a continuum of support services from the state as well as county levels. It would seem appropriate for the agency responsibilities to be shared. Perhaps the Dept. of Real Estate to monitor and guide during initial construction and occupancy, the Dept. of Corporations to educate, guide, and monitor, and the Attorney General to intervene only in cases of significant and chronic violations.

Please pursue further educational opportunities for boards and homeowners alike. It would be beneficial if there were someone assigned from the executive staff to serve as an advocate for the industry. Please bear in mind, there is a real and significant cost for taking your board to task, informally, formally, and including mediation. These are not strangers, but our neighbors who serve.

In the interest of our aging elders, please review the status and needs of this special population. This special group of CID owners are frequently physically and emotionally challenged. We respectfully request that objective research be considered, regarding the state of the senior CID and the current and projected recourse available to both boards and homeowners when conflicts arrive.

In closing, we do not advocate for harsh penalties for individuals or boards. What we do ask, however, is for the government that created California Senior Citizen Common Interest Developments to lend us a hand, to throw us a life ring.

I wish you the very best in these and all endeavors,

Timothy Lange
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May 7, 2001

Mr. Nathanial Sterling
California Law Revision Commission
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THE TEMPLE OF BLAME - CONTINUES
PLEASE! NO BAND AIDS
THERE ARE TOO MANY BAD BAND AIDS

Dear Nat,

Thank you for speaking with me today. As discussed earlier, I am a co-author of the Los Angeles Times "Common Interest Living" column, and I am also the sole author of Assembly Bill 2031, the first Bill of its kind to afford homeowners living in common interest developments "rights." The Bill took me over two years to research and write. I have enclosed the language of my Bill in hopes you may include if not all, some of the language conferring rights on homeowners owning in common interest developments.

The reason I am writing is because I see "some" of the language from my Bill in some of the recommendations of the CLRC, but where the CLRC is dancing around the "real" language, problems continue to exist for homeowners with no relief in sight. Why not **use the Bill in toto - it is what the homeowners want.**

LIVING IN AN HOA IS ANYTHING BUT "AFFORDABLE"

Where, when and how, did the line get drawn separating "real" homeowners from those of us living in a CID? When did equal protection of the law only come to mean, equal protection of all those homeowners "outside" of a CID? Who decided that homeowners would be pitted against other homeowners (i.e., neighbors), only because one has enough clout to have himself voted on a board of directors, year after year after year? The obvious conclusion is that the industry has a lot to answer for. Their money and their access has effectively imprisoned millions of homeowners to what many first thought was their dream home. Homeowners have found that the claims of "affordability" were a very expensive **hoax.**

Every month we find money leaving our bank accounts and going into the **HOA black hole** with no mandatory accountability. I would call it a circus, but even a circus keeps books and makes them available to auditors and/or investors.

THE FATAL FLAW IN MEDIATION AND ARBITRATION: NEITHER TOLLS A STATUTE

I am an arbitrator. I can tell you from experience, both mediation and arbitration are costly and time consuming. **Neither tolls the statute for the complainant, neither is free, and neither judge must take precedents into account.** Mediation is ineffective for homeowners in a CID, and arbitration can not only be confusing for the homeowner complainant, it is more often than not, futile. One homeowner paid over $5,000 in mediation fees and described it as "an unmitigated hell" that resulted in a $155,000 lawsuit that he was trying to avoid! In theory both mediation and arbitration are touted as the panacea to obtaining some form of justice albeit, relief, under existing bad law (the Davis-Stirling Act).

SMALL CLAIMS COURT

Merely making Small Claims court available to CID homeowners, is useless. Without accountability of the Boards **TO** homeowners (not to management companies) Small Claims is a waste of the homeowner's time. Homeowners will be entering the Small Claims Court arena on a whim and a prayer. The balance of power must shift. **The burden should not be placed on the homeowner,** it must be placed where it rightfully belongs: on the board - and Assembly Bill 2031 does just that:

> This bill would **require** the board of directors of a common interest development association to retain all documents and records of the association including, 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 and records as the members of the board. The bill would require the board to make documents and records available for viewing within 10 days of receipt of a written request from a member.

ASSEMBLY BILL 2031 LANGUAGE

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

The board of directors of the association shall retain all documents and records of the association, including, but not limited to, records of proposals, contractual agreements, correspondence, tax filings, receipts, checks, canceled checks, ledgers, accounting books, ballots and other voting instruments, and voting records, for a period of no less than seven years.

The board of directors of the association shall provide all members of the association with the same access to the documents and records specified in subdivision (a) as members of the board, including the right to view and copy ***all*** *such documents and records.*

Documents and records shall be ***made available for viewing and copying within 10 days of receipt of the written request of the member.***

A member of the association who has sustained economic loss because of the association's violation of subdivision (a) or (b) may recover compensatory damages therefor, not to exceed five thousand dollars ($5,000).

If the limit for Small Claims Court changes, and I recommended in another proposed Bill to Assemblyman Nakano that the amount change to $10,000, so should the damages amount.

There should be **NO "redaction" language** and **NO "reasonableness" language**.

Every day I come home to a barrage of paper from the homeowner association and the incompetent "all credentialed" management companies they keep hiring (as if a management company will cure the problems of this HOA). In order to substantiate their positions they create work for themselves, they create projects that associations must do, they create mounds of paperwork and flood homeowners with inconsequential B.S. **Homeowners want to be left alone in the privacy of their homes, have equal access to information and accounts where their money goes month after month without adequate accountability, and equal protection under the law.**

Further to the above, I would add the following concepts.

VOTING RIGHTS ARE IRREVOCABLE

Homeowners "purchase" into the CID, therefore, they should **never**, regardless of fines owed or breach of self-imposed (by a board) regulations, lose their voting rights. **Homeowners have a proxy coupled with an interest. When they purchased in that CID they PURCHASED a VOTE.** The interest is the money the homeowner paid, and continues to pay into the general HOA account and the HOA reserve account. If even **one cent** of the homeowner remains in a **reserve** account, they have a vote coupled with an interest. If they are on title, they have a vote coupled with an interest. Since when did the line blur giving boards and management companies rights that supersede those of the purchaser/homeowner? Please find one legislator that will pass this Voting Bill - good luck.

BIND BOARD MEMBERS AND MANAGEMENT COMPANIES TO CONFIDENTIALITY

There are no safeguards to homeowners that they will not become a target of a majority of homeowners and/or a board. Many homeowners have become targets out of pure vengeance. I know because it has happened to me.

We immediately became a target of the board when we experienced serious problems with the common area affecting our unit. Had the board fixed the problem when we brought it to their attention, the cost would probably have been approximately $2000 dollars. Instead, the board forced us to literally expend thousands of dollars in expert reports to "prove our case." After we mortgaged our home to pay for the experts, the board hired an "industry" attorney recommended by the "all credentialed management company" to barrage us with intimidation letters at a cost of approximately $10,000 to the association. The board never fixed the common area problems.

Another example is the harassment and lies we have been forced to endure from each successive board. These machinations have cost us thousands of dollars that no other homeowner in my CID has been forced to pay. Still the board will not fix the common area problems that are causing our unit damage, even with a two inch drop in the foundation of our unit. Instead we are ridiculed and held in contempt the community where we live. One reason for this is because the **board members are not bound by confidentiality**.

Correspondence from our attorneys to the board and from us to the board have been duplicated and passed around our neighborhood without fear of reprisal.

ALL ADDITIONS TO THE DSA SHOULD BE "STAYED" -
A "MORATORIUM" SHOULD EXIST REGARDING LEGISLATION FALLING WITHIN THE SUPPOSED PURVIEW OF THE DSA

It is amazing to think that, while the CLRC is reviewing the uselessness of the DSA, and hundreds if not thousands of homeowners across the State suffer and are continuing to suffer the consequences of the bad law, that the California legislature continues to enact legislation meant to supplement if not be incorporated into the DSA. **This should not be.**

Did not the CLRC consider requesting the State Legislature to put a stay on all legislation affecting the DSA until this mess is sorted out? Would that not be a suggestion worth looking at!

Sincerely,

Donie Vanitzian

Received Time May. 8. 10:43AM