

## Second Supplement to Memorandum 2001-54

### **Nonjudicial Dispute Resolution Under CID Law: Administrative Hearing Procedure (Comment Letters)**

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We have received comment letters from James P. Lingl (Exhibit p. 1) and Helen Mullally (Exhibit pp. 2-3) addressed to issues raised in Memorandum 2001-54 and its First Supplement and in Memorandum 2001-55.

#### **State Administrative Hearing Procedure**

With respect to the proper state entity to conduct administrative adjudication of CID disputes, Mr. Lingl states that despite Department of Corporations' lack of enthusiasm, that is the entity the state has created to regulate corporations. Ms. Mullally would object to Department of Real Estate in this role — it is too closely linked to the managers.

#### **Submission of Controversy Without Action**

There is a typographical error in the First Supplement to Memorandum 2001-54. The statutes relating to submission of a controversy without action are found at Code of Civil Procedure Section 1138, not 1238. With respect to this procedure, Mr. Lingl suggests that the Judicial Council could promulgate forms and specialized temporary judges could work a "circuit", moving among counties to handle the hearings in order to avoid overburdening local court systems.

#### **Local Mediation or Arbitration of Disputes**

"Every county in California has some form of ADR center, funded at least in part by court filing fees and 'Garamendi' monies. They could be [and in many cases currently are] the venue for CID mediations and arbitrations." Exhibit p. 1.

#### **Assessment Increase in case of Emergency**

In Memorandum 2001-55 the staff summarizes existing Civil Code Section 1366(b), which allows a board to increase or levy an assessment without member approval in case of an emergency, on the board's adoption of a resolution. Ms. Mullally objects to this "proposal" to legalize an objectionable procedure.

The staff notes that the discussion in the memorandum is not a proposal to legalize that procedure. It is a summary of existing law. We will take Ms. Mullally's objection as a suggestion that the law be changed, and consider that suggestion in the course of our review of the Davis-Stirling Act.

### **Skepticism About CLRC**

Ms. Mullally expresses skepticism about the role of the Law Revision Commission in this project. "I'm just hoping you do no harm — it was always too much to hope CLRC would do good for us, the owners." Exhibit p. 2. And, "Something tells me CLRC is under the influence of CAI. In fact, I'm wondering where you got the assignment to explore this subject in the first place." Exhibit p. 3.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

Exhibit

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**NONJUDICIAL DISPUTE RESOLUTION UNDER CID LAW:  
ADMINISTRATIVE HEARING PROCEDURE (COMMENT LETTERS)**

From: LingLaw@aol.com  
Date: Tue, 26 Jun 2001 13:31:02 EDT  
Subject: Re: Dept. of Corporations and CID dispute resolution  
To: sterling@clrc.ca.gov

Thank you for including my comments in the Supplement to Memorandum 2001-54.

Please note a typo - not sure if it was mine or the Staff's. The Summary Proceeding provisions which might be used to dispose of CID disputes are found at CCP Sections 1138, 1139 and 1140, not 1238.

I am familiar with the Department of Corporation's lack of enthusiasm for becoming involved with community associations. They gave the same response in 1992 to AB 1251. They were equally unenthusiastic to the bill some years ago which required them to become the repository for specialized filings which require community associations to identify themselves as such as part of their annual filing requirements. But, ultimately, the Department of Corporations IS the entity which the State has created to regulate corporations.

Every county in California has some form of ADR center, funded at least in part by court filing fees and 'Garamendi' monies. They could be [and in many cases currently are ] the venue for CID mediations and arbitrations.

As for the judicial determinations under CCP 1138, it would be both possible and feasible for the Judicial Council to promulgate minimalistic forms and then for specialized Pro Tem judges to work a 'circuit', like in the historical past, moving from county to county to handle the hearings in order to avoid overburdening the local court systems.

June 25, 2001

California Law Revision Commission  
Attn: Nathaniel Sterling

VIA FAX: (650) 494-1827

RE: Nonjudicial Dispute Resolution

I haven't time to formalize this, but I thought I should comment that your plan for a Resolution declaring an extraordinary expense NECESSARY is ridiculous -- my association had zillions of those, all of them "extraordinary." This is just plain silly.

I also object to this going under DRE, because we all know how well they regulate their own (sarcasm!). If DRE has to refer cases to mediation, it will never happen. I think your own material showed problems with Maryland DRE oversight as being too closely linked to the managers.

I thought you might be interested in the following legal notice I happened to run across. I suspect its a portent of the future. Bruce Dilbeck, wife and family are one of the two largest real estate firms in this area, and, guess what, now they're opening a property management firm!! What a surprise!! So who will regulate them and who will send them to mediation, and how can a simple, poor, homeowner fight this?

I'm just hoping you do no harm -- it was always <sup>6</sup>much to hope CLRC would do good for us, the owners.

Sincerely,



Helen Mullally

**FICTITIOUS BUSINESS NAME STATEMENT**  
FILE NO. 01-05878882

The following person is doing business as: SOUTH ARROYO PROPERTY MANAGEMENT, 1000 N. Central Avenue, #201, Glendale, CA 91202. Ted Boyce, 439 E. Amherst Drive, Burbank, CA 91504. Kirk Dilbeck, 3740 Hollingsworth, Altadena, CA 91001. Regan Franklin, 453 S. Orange Grove Blvd., #7, Pasadena, CA 91105. Mark Dilbeck, 1858 N. Grand Oaks, Altadena, CA 91001. Bruce Dilbeck, 3128 Hollyburne, Glendale, CA 91206. This business is conducted by joint venture. The registrant commenced to transact business under the fictitious business name or names listed on May 1, 2001. Signed: Ted Boyce, Kirk Dilbeck, Regan Franklin, Mark Dilbeck, and Bruce Dilbeck. The statement was filed with the County Clerk of Los Angeles on June 7, 2001. NOTICE: this fictitious business name statement expires five years from the date it was filed in the office of the County Clerk. A new fictitious business statement must be filed prior to that date. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state or common law. (See Section 1400 et seq., Business and Professional Code).

Pub. Pasadena Weekly  
June 21, 28; July 5, & 12, 2001

June 26, 2001

CLRC

Attn: Nathaniel Sterling

VIA FAX: (650) 494-1827

RE: Nonjudicial Dispute Resolution

To clarify message I faxed you last night --

1) Re your proposal to amend Sec. 1366:

This is a page right out of CAI's book (I believe Sproul and Rosenberry must have written CAI's book). The Budget receives superficial, if any, review by owners, but it does tell owners what to expect during the year. With the amendment for "Resolutions", the Board can decide anything and everything is "extraordinary" and "necessary", thus can impose any assessments they want, for any reason...now you are making it LEGAL. My association did exactly this -- at the advice of a CAI attorney. Again, the owners are powerless to defend themselves. What's the point in giving a Board a way of going around a legal requirement, when that legal requirement is unenforceable to begin with. The Budget is meaningless when an owner has no way of challenging the Board's spending with or without "Resolutions?"

*(Something tells me CLRC is under the influence of CAI. In fact, I'm wondering where you got the assignment to explore this subject in the first place.)*

2) Re my discovery that major real estate firms are forming separate property management firms:

Wouldn't this setup allow Dilbeck, for example, to do anything they please without jeopardizing their Real Estate License? What other reason could they have for this?

Sincerely,

  
Helen Mullally