

First Supplement to Memorandum 2002-60

Nonjudicial Dispute Resolution under CID Law: Alternative Dispute Resolution (Draft of Tentative Recommendation)

We have received the following email comment (dated 12/2/02) from Carole Hochstatter, concerned that alternative dispute resolution, as proposed in the draft tentative recommendation, “is just another expensive hurdle for Homeowners”:

Homeowners Associations in California are the only taxing authority that does not have a democratic process for those who are taxed. Perhaps you consider an assessment that is approximately 30% of County tax not a tax. A rose by any other name. . . . When a Homeowners Associations Board of Directors are not in compliance with CC&Rs or Davis Stirling, Homeowners only recourse is a personal lawyer; ADR as proposed by your group is just another expensive hurdle for Homeowners. It is time for relief for Homeowners.

It is not clear what sort of relief Ms. Hochstatter proposes. Perhaps government oversight of CIDs.

The Commission’s tentative approach has been to work within standard judicial and nonjudicial processes, to see whether improvements can be made to help resolve CID disputes without creating new government bureaucracies. Ms. Hochstatter is undoubtedly correct that improved ADR will not resolve a situation of willful noncompliance by a board of directors. But improved ADR, while not a panacea, could take care of many disputes where bad faith is not involved. Based on input the Commission has received so far in this project, the great majority of CID disputes fall into the natural friction category.

As to Ms. Hochstatter’s suggestion that the draft tentative recommendation would interpose another expensive hurdle between the homeowner and ultimate judicial relief, the staff believes that is for the most part incorrect. (1) The internal dispute resolution process that would be mandated for an association is voluntary for the homeowner. (2) The proposed CID dispute resolution center would be available as a resource, but a homeowner would not be required to consult it. (3) The improvements proposed to the existing Davis-Stirling ADR

mandate would not add new requirements, although its application would be broadened to apply in a wider range of disputes than at present.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary