

Memorandum 2003-40

**Common Interest Development Law:
CID Information Center**

The Commission recommends that the Department of Real Estate maintain a common interest development ("CID") information center on its website, to provide CID homeowners with information that may help to defuse disputes between homeowners and their associations. See *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports ___ (2003).

The Department of Real Estate has written to explain why it cannot support the Commission's recommendation. The letter is attached as an exhibit.

The Department has two main objections. First, the Department objects to the provision requiring that the center include information on local dispute resolution programs:

The draft provides for the Information Center to include "contacts for locally available alternative resolution resources." This is risky as what criteria do we use to determine the legitimacy and/or competency of the providers? As you know, any information the government provides can be challenged at a later date if a problem develops. This provision should be deleted or revised.

See Exhibit p. 2.

The staff recommends that the requirement be revised to require: "A link to information provided by the Department of Consumer Affairs on its Internet website, relating to local dispute resolution programs." This eliminates any discretion as to the content to be provided, because it would tie into information that is already being provided by Consumer Affairs pursuant to its responsibilities under the Dispute Resolution Program Act (Bus. & Prof. Code §§ 465-471.5). If the Commission agrees, the recommendation will be revised accordingly.

More importantly, the Department objects to the cost of providing the service. It suggests that the cost to change its website and to answer consumer calls that will be triggered by the presence of CID information on its site will exceed the funding source that the Commission has proposed (\$2 per CID every two years,

collected as part of the requirement that CIDs register with the Secretary of State biennially). This could yield \$30,000 to \$35,000 per year in revenue. However, the Department notes that the CID registration requirement has no enforcement mechanism until 2006, making the amount of revenue to be derived from that source uncertain.

The Department suggests that the proposal be delayed until actual compliance with the registration requirement can be evaluated, and that a specific appropriation be included in the proposal, rather than relying entirely on fee income.

In an attempt to get a better appraisal of the cost involved in preparing a website consistent with the requirements of the Commission's recommendation, the staff added a similar page to the Commission's website. There is a link to the page on our home page, or it can be found directly at this address: <<http://www.clrc.ca.gov/cidinfo.html>>. This page will be a helpful addition to our website, as it will serve to redirect those looking for information that the Commission cannot provide.

The staff confirmed its sense that the cost of actual web design and maintenance associated with the CID information center would be minimal. The staff also learned that the Department of Real Estate already prepares an annual compilation of real estate statutes, which includes the Davis-Stirling Act and relevant parts of the Nonprofit Mutual Benefit Corporation Law. This means that the Department could comply with the Commission's recommendation by linking to files that already exist, rather than creating new content.

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

Memorandum

To : Brian Hebert
Assistant Executive Secretary
California Law Revision Commission

Date : October 28, 2003
By Email

From : Tom Pool
Assistant Commissioner, Legislation & Public Information

Subject : CLRC Legislative Proposal
CID Information Center

Brian, thank you for providing a copy of CLRC's legislative proposal regarding the establishment of a CID Information Center on the DRE's Web site. I have circulated the proposal among staff for review and comments. The consensus is the legislative proposal raises many concerns, and, as drafted, the Department would oppose the proposal should it make it into bill form.

In brief, the concerns are as follows:

- The Department does not have the resources to develop and maintain the information center. While the intent of the proposal is laudable, assigning the DRE with developing and maintaining the information center will take away from the resources necessary to perform its core responsibilities.
- The revenue source created by the proposal to maintain the information center is problematic, inadequate and unreliable. Although current law requires homeowner associations to register with the Secretary of State and pay a fee, penalties for failing to register are not effective until January 2006. Therefore, the needed revenue flow may not be available until 2006, while in all likelihood DRE would be required to implement the center in 2005. Also, the CID filing requirement is every 2 years. Given an estimated 32,000 HOAs statewide, the funds would amount to approximately \$32,000 per year. This would not fund the positions required to provide proper support and service.
- As stated in earlier correspondence, the Department does not share the view the cost of maintaining the information would be minimal. The Department has lost three positions in its computer section. As a result, we will probably have to contract out for the development, support and maintenance of the proposed Web site. In addition, past experience and common sense tells us that if a caller desires more information than the Center provides, or wishes to discuss their specific problem (as most do), the DRE as the host agency will receive the added calls. We do not have the staff to answer the calls we receive now, so we would need at least two more positions to respond to this added workload. As you may know, the next few years will not be conducive to

submitting BCPs for money or positions, therefore, in order to get the positions needed to maintain the information center, any bill proposed should include two deputy positions to respond to HOA calls and a dollar appropriation as seed money to fund the development of the Web site. And as noted earlier, a \$2 fee per HOA will not be adequate funding.

- The draft provides for the Information Center to include "contacts for locally available alternative resolution resources." This is risky as what criteria do we use to determine the legitimacy and/or competency of the providers? As you know, any information the government provides can be challenged at a later date if a problem develops. This provision should be deleted or revised.
- Finally, since currently there is no list of HOAs, relying on an unknown quantity for a funding source is very speculative. If this were to be the funding source, would it not make more sense to wait until 2006 when there is a more definitive list of HOAs? In this way, more reliable numbers would be available on which to make fiscal projections and we would have a better idea as to the extent HOAs are complying. It appears to me that this legislative proposal is putting the cart before the horse, if pursued in 2004.

We realize the CLRC has been involved in a multi-year study looking for ways to address the concerns raised over the years by consumers living in CIDs, as well as the HOA Boards who manage CIDs. We support the idea of a CID information center, however, given these fiscally challenging times, the Department cannot support an endeavor that would take away from our core responsibilities. It cannot be emphasized strongly enough that our current available resources are fully taxed, and without adequate funding and personnel, we cannot support the CLRC's proposal.

If you have any questions, please feel free to call me at 227-0771.