

Study H-853

April 14, 2004

**Second Supplement to Memorandum 2004-20****State Oversight of Common Interest Developments  
(Discussion of Issues)**

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We have received additional comments on Memorandum 2004-20. They are attached as an Exhibit. The first is an email and resume from Doug Christison, a community management professional. The second and third are letters from homeowner Bruce Osterberg. The fourth is from HOA attorney, Beth Grimm. Ms. Grimm had hoped to be able to testify before the Commission, but will not be able to attend the meeting

Respectfully submitted,

Brian Hebert  
Assistant Executive Secretary

Exhibit

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**EMAIL FROM DOUG CHRISTISON  
(WITH ATTACHED RESUME)**

Date: Fri, 9 Apr 2004  
Subject: April 15th Meeting

I plan to attend;

Comment, I am not persuaded by the information provided to date by the commission or the advocates (ECHO) that the interests of the public will be served through the institution of State oversight.

My experience with those States in which the government has taken a role in protecting the interests of the public have not afforded any result that could and would have not been provided without the state involvement.

Examples of State regulation abound. The intervention by the State does defer problem solving. The governmental perspective is driven by a need to comply with procedures at the expense of timeliness and appropriate results.

Please consider the above by taking into consideration my experiences with community association. See resume attached.

Doug Christison

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WEBSITE: [WWW.CASONLINE.US](http://WWW.CASONLINE.US)

## DOUG CHRISTISON

### PROFESSIONAL EXPERIENCE

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- **1981 – Present** Christison Company, Inc. – Owner of **Community Associations Services, Community Associations Consulting & Association Maintenance Services**  
Owner of Community Association Management Company with 60 employees and offices located in Pleasanton, Napa, Benicia, San Francisco, Oakland, San Jose and with future locations in Monterey California, Jackson, Wyoming and Kauai Hawaii
- **1977 – 1980** **Community of Harbor Bay Isle**
  - Executive Director of Master Association
  - Organized and brought into existence 3,200 home master associations with 17 sub associations. Developed on site management, maintenance and security programs.
- **1967 – 1977** **Management Analyst III Santa Clara County –**
  - Department of Public Works and Transportation Agency - San Jose, California - Budgets, Systems and Procedures for – Departments of Building Inspection, Land Development, Engineering, Architecture, Roads, Airports and Transit

### ADDITIONAL PROFESSIONAL ACTIVITIES

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**EXECUTIVE COUNCIL OF HOMEOWNERS (ECHO)** – Founder (1973), First President (1973-74), First Executive Director (1975-77)

**COMMUNITY ASSOCIATIONS INSTITUTE** – (CAI) 1978 to Present

- National Board of Trustees – 1978 – 1984
- National Co-Chair and Founder of “Professional Management Development Program – 1979-1980
- National Manager Licensing Committee – 1988-1990
- National Vice Chair and member of National Public Policy Committee 1988 – 1989
- National Leadership Round Table – 1980 – 2000
- State Chair of Manager Licensing Study – 1991
- State Chair – CLAC Committee of Association Financial Management Study – 1992
- Editor/Contributor – “Guide to Association Practitioners” (GAP) Reports for Selection of Management, Architectural and Insurance.
- Chapter President 1982
- Western Regional Chair – 1980-81
- State Vice Chair and Chair of California Legislative Action Committee - 1985 – 1989
- XML Task Force – 2000 – Present
- Best Practices Committee – 2000 – Present
- Select Task Force – FNMA Underwriting Task Force – 2002 - Present
- Select Committee – Insurance Standards – 2003 – Present

**CALIFORNIA ASSOCIATION OF COMMUNITY MANAGERS** – Member, Director and Officer – 1990 to Present

- Founder – 1990
- Chief Financial Officer 1990 – 1994

- Member of Executive Board 1990 - 1994
- Director – 2001 to Present
- Member of Legislative Committee – 2003 - Present

#### **PROFESSIONAL MEMBERSHIPS**

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- EXECUTIVE COUNCIL OF HOMEOWNERS
- COMMUNITY ASSOCIATIONS INSTITUTE
- CALIFORNIA ASSOCIATION OF COMMUNITY MANAGERS
- NATIONAL ASSOCIATION OF HOME BUILDERS

#### **ACCREDITATIONS**

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PROFESSIONAL COMMUNITY ASSOCIATION MANAGER – (PCAM) – 1990 – Issued by Community Associations Institute

CERTIFIED COMMUNITY ASSOCIATION MANAGER (CCAM) – 1999 – Issued by California Association of Community Managers

#### **AWARDS RECEIVED**

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Chairman Emeritus – California Legislative Action Committee

Man of the year – Executive Council of Homeowners

CAI Leadership Award

CAI President's Award

ECHO Founder's Award

#### **EDUCATION**

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1964-67 California State University at Long Beach

*Bachelor of Arts - Political Science/Public Administration (Majors) – History Minor*

Honors Society 1964

**MILITARY** U.S. Army /California National Guard – Enlisted – Honorable Discharge 1962 – 1966

Bruce Osterberg  
1809 Wintergreen Glen  
Escondido, CA 92026-4938

760.741-1940  
mw1809wg@nctimes.net  
Law Revision Commission  
RECEIVED

APR 12 2004

Brian Herbert, Asst. Exec. Sec.  
California Law Revision Comm.  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739



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650.494-1335 x16

Re: Memorandum 2004-20

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Brian Herbert,

April 9, 2004

I welcome the CLRC's decision to investigate establishing a state agency to oversee CIDs and suggest the following:

Educate and Encourage

The agency generate pamphlets explaining CID governance to homeowners in plain language. Then every Board member must state in writing that the pamphlet has been read and understood in order to have the legal power as a corporate officer. The agency recognize every Board member - in writing - and remind each of their responsibility, and thank each for volunteering (to work unpaid) to benefit their community and our society.

Revise and Explain the Reserve Study

The current Reserve Study format confuses and is frequently used as an excuse to increase assessments. It is not rocket-science but it is presented as though it is. Every homeowner understands the need to save for future expenses; the current complicated presentation is counter-productive.

These suggestions and others might be useful but the root cause of CID governance grievance would still exist, there must be fundamental change and I suggest the following:

Level the Field

The penalty for Board malfeasance must be as severe as the penalty a property lien is for nonpayment of regular or special assessments. I repeat to emphasize, the penalty for Board malfeasance must be as severe as the penalty a property lien is for nonpayment of regular or special assessments. The potential of such a penalty would be a very effective tool.

Protect the Weak

The homeowner must have a no-risk recourse to illegal Board action. Essentially, an illegal lien is equivalent to thief of an asset, a criminal act, and it should be treated as such.

The CID concept is positive to our society in many ways, it saves money for the city in which it is located, it moves neighbor-neighbor problems to the local level, and it may preserve homeowner property values. Those who wish to live in a structured community should be allowed to, and without fear of abuse.

As our nation's population grows with our borders remaining fixed, the governance of CIDs grows more critical with each development. The CID concept must succeed (there is no viable alternative) and to succeed it must be fair. Our society tolerates flawed governance for a limited period, then acts as a mob to correct the flaw. An informational only agency will not - by itself - change current CID governance from its path to self destruction.



Bruce Osterberg

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650.494-1335 x16

Re: Memorandum 2004-20  
Supplement #1

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Brian Herbert,

Again, I welcome the CLRC's decision to investigate establishing a state agency to oversee CIDs, and add another comment:

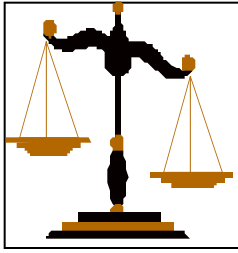
Access to Homeowner Neighbors

It must be clearly understood that the right of a homeowner to contact any or all neighbors concerning their neighborhood must be unrestricted, and that there is a real and serious penalty on a Board (or Management Company) for violating that right. Essentially, the right to an up-to-date copy of the name/address list of all homeowners in the development.

Secondly, if there is Association subsidized newsletter then a homeowner must be permitted to submit 'articles' to be included in or with the newsletter. (Of course, not any advertising.)

This concept is as American as free elections and should not have been permitted to be impeded.

Bruce Osterberg



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*Serving HOAs and HOs  
throughout the State of California*

April 14, 2004

California Law Revision Staff  
C/o Brian Hebert sent by fax 650 494-1827

**Re: Law Revision Studies and Publications - Subject of State Oversight of CIDs**

Dear Mr. Hebert:

I was planning to attend the hearing on April 15 in Sacramento; however, a family emergency is keeping me from attending. I am an attorney that represents both Associations and individual owners (most HOA attorneys stick to HOAs for various reasons). I know only of a very small community of knowledgeable attorneys that are willing to assist homeowners, and this is part of the problem. I am substantially involved in CAI and ECHO, and periferally in CACM. I have authored many publications and articles in this state to help homeowners, board members, realtors, managers and others understand the complicated laws and practical aspects of running a homeowners association.

I had hoped to get the opportunity to speak to the committee. I have previously testified before the Senate hearings on common interest development issues in 1992, 1996 and I believe the last time was in 1998. I served on the Senate CID committee formed by Assemblywoman Barbara Lee about 5 years ago, and met several times with the group, before she moved up to the Senate and the group was disbanded (in 1998 I think). I feel quite strongly that state oversight of CID issues could be a benefit if properly structured. However, in the 1992 hearings and again in 1996, and 1998, I suggested it would be wise to investigate whether and how a state oversight agency could be of any value.

**INVESTIGATION - TASK FORCE OR OTHERWISE:** In reading the 2004-20 Memorandum and Supplement, I note that the Committee has done a comprehensive study on what occurs in other jurisdictions and there are many ideas. However, I note that many of the programs were instituted AFTER a reasoned and specially commissioned study. What is lacking at this time in this state is *any real comprehension of what kinds of complaints will be raised in the large*



**scale, and whether they would justify intervention, or whether the bulk would simply based on a lack of education about what one purchases when buying property in a CID.** Lack of education is a critical piece of this picture. My own family members (3 different ones, brother, sister and nephew) each purchased property in a common interest development, and then bristled (and called me), to lodge their serious indignation that any Association could tell them what to do with their landscaping in their back yard, or require neighbors to sign off on a roof replacement. In all 3 cases the Association requirements were very reasonable and well thought out, and in my brothers case, prevented him from installing poorly designed landscaping that would slide into his house.

I have been intimately involved in many, many disputes sitting on both sides of the table, and even at the head of the table as a mediator. I have mediated as a volunteer in my County many neighbor to neighbor disputes, both as a volunteer for a low cost Conflicts Resolution Panel and as a Court appointed mediator. And for a while I even acted as ombudsman for my City for awhile in resolving public records request disputes.

It was my estimation in speaking before the committees on previous occasions that more than 90% of homeowner complaints are simply based on a lack of understanding of what the rights and obligations are for a homeowner in a common interest development. This estimate comes from my practical experience in representing owners, mediating disputes, speaking publicly, teaching a DRE approved course [called "**The Davis Stirling Act in Plain English**"] and authoring publications to help lay people understand the complicated documents in HOAs and the even more complicated laws. [two books: "**Finding the Key to Your Castle**" and "**The Davis Stirling Act in Plain English** and a bimonthly newsletter for the last 14 years **called "The California Homeowners Association Legal Digest.**"]

My last recommendation to a legislative committee was to commission a year long study done through the Office of the Attorney General. The purpose of the study would be to gather information and then to report back to the state the results of a studied process involving acceptance of telephone calls, intake related to the complaints, and followup including reasonable inquiry and investigation into the issues raised, and a log indicating what steps it took to resolve them. Normally, the AG function would be to write a perfunctory noncompliance letter based on a complaint or (as has been known to happen) to tell the owner filing the complaint that it is a civil matter and an attorney should be hired because the department does not have the resources to get involved.

Since the Attorney General's office has jurisdiction over homeowner associations that are incorporated as a non-profit mutual benefit corporation (which is the super majority of homeowner associations in this state), it would be a likely place to have such a study accomplished. I figured that some employees in the AG's office be specifically dedicated to receiving complaints about homeowner associations, and then with a specific task of investigating

matters that deserved investigation, and otherwise providing information about what the style of living requires of members to those whose main complaint is too much regulation by the association.

I suggested that at the end of the one year period, a report be written that would provide (to the California Law Revision Commission or any other entity that could benefit from the information) the findings. I believe one would find that many of the complaints that come in are simply based on lack of information and education, and the people making the demands are simply off base in their expectations. Truthful investigation of owner complaints might reveal that Associations in many cases have to deal with homeowners with a "Castle" mentality who intimidate and threaten volunteer board members. At any rate, this information would be helpful in structuring any oversight agency. Certainly, such a study might indicate evidence that there is justification and a critical need for a place for owners to call, but the data would help establish the best use of funds and most effective and efficient means of an oversight agency, or the number of ombudsmen that might be needed, or the benefit of moving functions to an administrative entity.

**BENEFIT OF ADMINISTRATIVE TREATMENT OF CLAIMS:** In your papers, one important point involves the power of an administrative entity to adjudicate matters on the disputes, and to adjudicate remedies, especially in the area of damages. If the study results showed that most of the problems needed resolution through declaratory adjudication (such as interpretation of the governing documents), or required injunctive relief (orders to do something or stop doing something), then the administrative entity idea is supported, without getting into the issue of damages. If the bulk of calls indicated education is the key, then that aspect could be dealt with via an ombudsman program with access to resources that provide answers. If the bulk of calls involved emotional disputes or neighborhood type of issues, then pursuing a mediation or arbitration track and providing funding for, or lists, for those type of services would make sense.

**EDUCATION PLUS INCENTIVE MAKES SENSE:** I have certainly seen cases where an Association board oversteps and unreasonably asserts its power but in most of those (I would estimate 9 out of 10 in my own experiences), the Board capitulates when the law is quoted in terms they can understand. Education coupled with some kind of incentive such as a fine or penalty, or perhaps a requirement of attending a compliance class such as happens with Fair Housing issues would likely resolve many cases. So the administrative mechanism might be the best way to go. (By the way, barring an owner from serving on the board, especially if they make a mistake and then "get educated" merely serves to decrease the "pool" of potential volunteers, and that pool is growing smaller and smaller as the obligations and risks grow larger and larger.)

**FUNDING:** The Memorandums identified various sources of funding for such an agency. I have been privy to and involved in - on a statewide level - discussions over prior legislation for oversight (bill sponsored by Attorney Jim Lingl several years ago, and discussions raised again by ECHO last year and the year before). At all times, the sticking point was finding an agency

that wanted this albatross. Those in the know **assume** that once the door is open to the public to lodge complaints, the floodgates will come down and lines will be jammed day and night. And those having been involved in these discussions also know that creating an agency involves considerable bureaucracy and funding at the outset. Money is an issue. Trimming of the State budget is a mantra. Charging a per unit fee might ultimately be determined the best choice; however, that really hits a 10,000-18,000 unit CID hard. Perhaps to fund a study and get things underway an additional fee of \$30 per CID (to be collected at the time the CID registration is filed, would help to fund a study. The deadline for filing the registration is, I believe, January 1, 2005, before an Association's corporate status can be suspended so one has to assume that the number of registered associations will double or triple this year (assuming the proper "education" is provided on a widespread basis). Calculated at \$30 with the estimated 30,000 or so associations raises \$300,000, for a study. If that is not enough, perhaps \$50 is better, or \$100.

I will be following this issue of CID oversight and will provide further input where I believe it might be helpful. I appreciate the work the Commission is doing and the bills that have been introduced after reasonable study. My experience in following legislation for the past 15 years is that the Commission's process is much preferred to the "knee-jerk" legislation that often has a seriously detrimental domino effect down in the trenches.

Very truly yours,

Beth A. Grimm  
BAG/mg