Study H-853 January 14, 2005

First Supplement Memorandum 2005-2

State Assistance to Common Interest Developments (Comments on Tentative Recommendation)

One comment letter (from Emerson Schwartzkopf) was inadvertently omitted from analysis in Memorandum 2005-2 (available at www.clrc.ca.gov). That letter is attached in the Exhibit. We also received new material from Mel Klein (attached) and phone calls from Robert Noonan of Lincoln, California and Jack Read of Sonoma County. The contents of the Exhibit are as follows:

NEED FOR ASSISTANCE

Robert Noonan strongly supports the proposed law and wants the Commission to understand that there is a need for state assistance in protecting CID homeowner rights. By way of example, he reports that his association's board increased assessments beyond the amount allowed by law, refused to provide homeowners with copies of the governing documents, attempted to nonjudicially foreclose to collect a punitive fine (in apparent violation of Civ. Code § 1367(c)), and ignored a petition signed by half of the membership to hold a recall election. Mr. Noonan and other owners within the CID investigated the possibility of filing a lawsuit, but determined that they could not afford to do so. Their problems went unresolved.

Jack Read also supports the approach underlying the proposed law. He reports that his association, which he serves as a director, is plagued by problems involving selective enforcement of rules, electoral irregularities, failure to provide required documents to members, and accounting improprieties. His CID is a senior community, where many live on a fixed income. Mr. Read is worried that a lawsuit or accounting problem will result in significantly increased assessments, which many will not be able to afford. Mr. Read is trying to use his position on the board to effect change but has had limited success.

LOCATION AND STRUCTURE OF BUREAU

Mr. Schwartzkopf questions whether the Department of Consumer Affairs is the best location for the proposed Bureau. The proposed bureau "should not be part of a consumer-affairs division; the problems with common interest developments are not the same as e-mail scams or badly built Buicks." See Exhibit at 2. His comments imply that the Department of Real Estate or the Department of Corporations might be better choices, given the interests involved. *Id*.

He also feels that the interests to be regulated are so important that decisionmaking should not be left to a civil servant. Instead, the Bureau should be organized as a multi-member Commission, with representation of a range of perspectives. "It should be noted that the examples cited for government oversight of common-interest developments in Montgomery County, Maryland and the state of Nevada involve appointed boards from the general public and others with specific knowledge and backgrounds — not hired civil servants." *Id*.

The advantages and disadvantages of a multi-member agency head, as opposed to a single executive officer, are discussed in Memorandum 2004-39 at 2-4 (available at www.clrc.ca.gov). There are arguments for either approach. However, the Governor's current efforts to reorganize state government include a very strong preference for bureaus over multi-member boards and commissions. A proposal to create a multi-member agency head is probably not politically feasible at this time.

RELATION TO ADR

Mr. Schwartzkopf makes two general comments on the relationship between the proposed law and existing ADR options:

(1) He feels that a board's internal dispute resolution process should be exhausted before the Bureau becomes involved. See Exhibit at 1. Note, however, that use of the internal dispute resolution procedure is optional under existing law. See Civ. Code §§ 1363.830(c)-(d), 1363.840(b)(2). A requirement that a homeowner exhaust the association's process before approaching the Bureau for assistance would be inconsistent with the existing policy in favor of letting the homeowner decide whether to make use of the association's process. **The staff recommends against requiring exhaustion of the association's process.**

(2) Mr. Schwartzkopf also suggests that the proposed law should not proceed until the ADR reforms enacted last year by AB 1836 (Harman) are given a chance to work. See Exhibit at 1. However, as noted in Memorandum 2005-2 at 11, the staff believes that the recent ADR reforms and the proposed Bureau are complementary improvements; creation of the Bureau should not interfere with the benefits to be realized through the ADR reforms.

EDUCATION ISSUES

Education v. Enforcement

Mr. Schwartzkopf feels that the proposed law does not demonstrate sufficient commitment to its stated educational objectives:

> [The proposed law] is not about education and enforcement. It is about *enforcement*. The difference is in two words: While enforcement procedures are prefaced with the word "shall," the main part of community association training (Section 1380.200) only includes the word "may." It might be done, if there's enough time and money.

See Exhibit at 2 (emphasis in original).

Mr. Schwartzkopf is correct that Section 1380.200 is not framed as a mandatory requirement. **The staff recommends that it be revised to make it mandatory** (like the website and telephone consultation requirements; see proposed Sections 1380.210-1380.220). The decision as to what resources to allocate to education would remain within the Bureau's discretion, but the function itself should be a mandatory part of the Bureau's overall mission.

Contrary to what Mr. Schwartzkopf suggests, the Bureau's proposed enforcement authority is not mandatory. Proposed Section 1380.310(b) provides that the "bureau *may* issue a citation" (emphasis added). The remaining provisions of that section describe what the Bureau must or may do when issuing a citation, but the question of *whether* to issue a citation in a particular case is a discretionary one. Such discretion is necessary to ensure that the Bureau has flexibility to allocate its enforcement resources appropriately.

Summary of Changes in the Law

Mr. Schwartzkopf also notes that the Bureau "is not required to even summarize the new laws before it begins enforcement." See Exhibit at 3. Mr. Read also expressed concern about how difficult it is to track changes to CID law.

In order to perform its other duties, the Bureau would necessarily need to analyze changes in CID law as they are made. **Should the Bureau be required to make its analysis available to the public, in the form of an instructional summary?** That would provide useful guidance to associations on changes to the law without imposing much of an additional burden on the Bureau.

Information of this sort is currently available from private sources. For example, the California Association of Community Managers provides a summary of changes to CID laws on its website (www.cacm.org). However, many homeowners may not be aware that these resources exist.

Certification that Governing Documents and Law Have Been Read

Mr. Schwartzkopf questions the efficacy of proposed Section 1380.230, which would require directors and managing agents to certify that they have read the governing documents and the Davis-Stirling Act. He favors educational requirements that "go beyond a signature." See Exhibit at 2-3.

It might eventually make sense to require that board members or property managers complete a training course provided by the Bureau (or by persons under contract to the Bureau). However, the staff is reluctant to put too much responsibility on the Bureau at the outset. Functions can always be added to the Bureau later, once basic operations have been established and fine tuned.

ENFORCEMENT ISSUES

Enforcement of Governing Documents

Mr. Schwartzkopf agrees that the Bureau's enforcement authority should be limited to enforcement of violations of law. The Bureau should not enforce governing documents:

> This is an area that's fraught with problems if dispute resolution expands beyond state law. Governing documents are limited only to the desires of the association as to content; CC&Rs, articles of incorporation and association bylaws can include issues as varied as insurance requirements, pool-and-pet rules, maintenance definitions and permitted colors of paint.
>
> The scope of the CIDB's authorization needs to be clearly defined to matters of California state law. The potential for nuisance complaints to clog the system and slow the process on larger issues is massive.

See Exhibit at 1.

Removal of Director

Mr. Schwartzkopf opposes the Bureau having authority to remove an association director from office. He feels this power would be inappropriate for an administrative agency. See Exhibit at 1-2.

Punishment

Mr. Klein sees the principal problem in CIDs as lawless behavior by boards. He feels that the proposed law should include stiff penalties for violation of the law. He questions why the Bureau should allow a violator to correct a violation voluntarily before taking any punitive action. See Exhibit at 4-6.

> That is the great, and unyielding, misfortune of this entire enterprise: no one seems (sufficiently) concerned about respect for the law. Instead, we are twisting every which way, to see how we can satisfy the needs of all parties without causing offense. Wrong: we have laws; *insist* that they be obeyed.

See Exhibit at 5 (emphasis in original).

The staff agrees that the law should be obeyed. However, securing obedience to the law does not necessarily require punishment. Some violations are innocent. An association board member or homeowner may not understand what the law requires. Education and a negotiated agreement to follow the law should be sufficient in these cases. For example, an association board member may not know whether a matter discussed in executive session should be described in detail in the minutes, summarized only, or entirely excluded. A good faith error on this point is not the moral equivalent of robbing a bank (see Exhibit at 5). Punishing innocent or trivial mistakes might well be counter-productive. Under a zero-tolerance regime, wrong-doers would resist admitting and correcting their mistakes, driving up enforcement costs. Volunteer service on boards would undoubtedly be deterred.

The goal of the proposed law is to promote harmonious and effective self-governance. A graduated response, aimed at solving the underlying problem rather than meting out punishments, is probably the most effective way to achieve that goal. That is probably also the way that most CID homeowners would like their associations' rules to be applied.

ALTERNATIVES TO ADMINISTRATIVE ASSISTANCE

Mr. Klein suggests that the Commission not table the proposed law without making a commitment to explore other ways in which CID law enforcement might be made more affordable to homeowners. He offers two specific suggestions:

(1) Revisit the idea of expanded small claims court jurisdiction. Concerns about the difficulty of the cases presented for adjudication could be reduced by limiting the court's jurisdiction to the enforcement of statutory law. See Exhibit at 6-7. Most cases involving statutory violations should be fairly straightforward. This limitation would avoid interpretation of governing documents by the small claims court. Interpretation of governing documents could affect the property rights of all members of the CID and should probably not be adjudicated under the informal small claims court process.

(2) Create special judicial procedures. A special department could be created in the Superior Court to handle CID disputes. Special rules of procedure could be created to simplify and expedite CID litigation.

Mr. Klein also advocates one-way cost shifting, with the association bearing all costs if the homeowner's complaint is borne out (but not vice versa).

If the Commission decides not to proceed with the proposed law, it will need to determine what area of CID law to explore next. These enforcement alternatives could be considered as part of that discussion.

FLORIDA PROGRAM

Memorandum 2005-2 briefly mentions that Florida has created an ombudsman program for condominiums. The staff has since examined the statutes creating that program. See Fla. Stat. Ann. §§ 718.5011-718.5014. The ombudsman has a range of powers relating to education and informal dispute resolution. Those powers are similar in scope to the education and mediation powers of the proposed Bureau. See Fla. Stat. Ann. § 718.5012. However, there are some interesting differences. Paragraphs (3), (5), and (9) of that section provide as follows:

> 718.5012 Ombudsman; powers and duties. — The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

…

(3) To prepare and issue reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division. The ombudsman shall make recommendations he or she deems appropriate for legislation relative to the division procedures, rules, jurisdiction, personnel, and functions.

…

(5) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred.

…

(9) Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors. The ombudsman shall appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

Paragraph (3) authorizes making reports and recommendations. That power is probably implicit in the proposed law, **but it might be useful to make it explicit.**

Paragraphs (5) and (9) relate to state supervision of elections in problematic cases. This would help to facilitate a political solution to an association's problems by guaranteeing that the election process is fair. **Should something along these lines be added to the proposed law?**

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

As the president of the board of directors for Saddlerock Gardens, a 43-unit condominium complex in Palm Springs, Calif., I read the tentative recommendations concerning the establishment of a Common Interest Development Bureau (CIDB). My comments are based on my five years of experience on the Saddlerock Gardens board, and as president for the last two years. Several specific areas concern me.

• One is in Article 4, Section 1380.300. The section refers to "dispute" resolution without any definition of what a "dispute" entails, although the accompanying note indicates that it likely refers to a disagreement by a homeowner. (The possibility that this process may also include violations of state law is referred to later in Section 1380.310.) Given that, there is a question posed on requiring the exhaustion of internal remedies before action by the bureau.

Common-interest developments, through the Davis-Stirling Common Interest Development Act, already offer alternative dispute resolution (ADR) for disputes. AB 1836, based on previous recommendations from the California Law Revision Commission, establishes a two-tier process, including some kind of pre-ADR process. These internal processes should be allowed to continue before any direct intervention by the new CIDB, unless invited to do so by *both* sides in a dispute.

AB1836 is an attempt to try and work things out informally before the use of outside parties, whether they be independent mediators or employees of a state agency. The commission thought it was a good enough idea to recommend a change in the law in 2004. It should be allowed a chance to work before changing the law again in 2005 to possibly put a state agency in the middle of dispute that may be settled informally.

• In Article 4, Section 1380.310, enforcement authority of the CIDB is limited to disputes involving violations of law. The commission invites comment on whether the CIDB should be authorized to adjudicate and resolve disputes involving an association's governing body.

This is an area that's fraught with problems if dispute resolution expands beyond state law. Governing documents are limited only to the desires of the association as to content; CC&Rs, articles of incorporation and association bylaws can include issues as varied as insurance requirements, pool-and-pet rules, maintenance definitions and permitted colors of paint.

The scope of the CIDB's authorization needs to be clearly defined to matters of California state law. The potential for nuisance complaints to clog the system and slow the process on larger issues is massive.

• Article 4, Section 1380.310 (b) also allows the CIDB to, in certain circumstances, order removal of a director or officer for violation of the law. The intent is obvious; it puts

meaningful enforcement powers with the CIDB. It also brings up one of two general points concerning the proposed legislation.

Common-interest development boards are not created out of the blue for eternity. They involve elections of and from a group of people with common ownership of a property. They also have governing documents that allow for removal of officers and directors; allowing a state agency to remove those elected officers and directors (with no delineated appeals process) of an elected body is a power that might be considered beyond the bounds of a state agency.

And, who makes the decisions at the CIDB? The director? The advisory board? A hearings officer? It should be noted that the examples cited for government oversight of common-interest developments in Montgomery County, Maryland and the state of Nevada involve appointed boards from the general public and others with specific knowledge and backgrounds – not hired civil servants.

The entire proposal on Article 4, Section 1380 is less of "State Assistance to Common Interest Development" and more of "State Regulation, Governance and Enforcement." If this is what is truly needed for addressing disputes with common-interest developments, so be it. But, it should not be a part of a consumer-affairs division; the problems with common-interest developments are not the same as e-mail scams or badly built Buicks.

Common-interest development ownership involves real estate. It also involves buying a pro-rated interest in (for most groups) a non-profit corporation. It involves common management and ownership of permanent assets. Given the importance of the investment and the number of residents living in common-interest developments, it seems that a full commission of citizens, much like Nevada's, is in order for California. The issues here can be serious and deep; the governance should be balanced and take into account a number of different perspectives.

• The other general point is, to be honest, rather pointed. The proposed legislation, although well-intended, is a prime example of the problem it attempts to address.

Article 4, Section 1380 is not about education and enforcement. It is about *enforcement*. The difference is in two words: While enforcement procedures are prefaced with the world "shall," the main part of community association training (Section 1380.200) only includes the word "may." It might be done, if there's enough time and money.

The certification section of Section 1380.230 also relates to this attitude. Directors and managing agents are required to read the governing documents, sign a paper to that effect, and send it in the CIDB. So, they certify that they've read the documents, but not that they understand them and know the impact of state law – the underlying need that's stated for the CIDB in the first place. And, if there's no specific mandate that the CIDB "shall" provide education, the bureau becomes a state agency that enforces laws on disputes that arise because of a lack of education that it's not really required to provide.

As an association president, I need to put on several hats nearly every day to deal with different laws from different parts of the California statutes, whether it's in real estate or corporations or public health or, well, whatever section that needs to be addressed. I could use help. I could also feel better if I knew a property manager needed to know more than how to read a document and sign a piece of paper.

The proposed legislation, in that regard, does **absolutely nothing** for me. What I see here is a complaint bureau with the power to intercede into matters and disputes that are complicated annually by new state laws. And, the bureau is not required to even summarize the new laws before it begins enforcement.

Frankly, I would welcome regulation to bring poorly run boards into line and guarantee a level of education among property managers. I would welcome certification for board members and managers that went beyond a signature, as well governance by an appointed board answerable to the governor and the assembly. The legislation currently being considered by the commission is nothing like this; it's another attempt to decry the piecemeal laws that govern common-interest developments – and then creates another piecemeal solution.

Thank you for your attention in this matter.

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EMAILS FROM MEL KLEIN (JAN. 10 & 12, 2005)

RE Comments on Tentative Recommendation - CID Assistance - MM2005-2
January 10, 2005

Watching this legislative proposal develop, I have long had a troubling sense that the focus was somehow misplaced.

Now, on reading the very reasoned and articulately crafted staff review of comments submitted by interested parties, I find that my sense of misplaced focus is illustrated and intensified.

Allow me to cite two items out of your report. First there is the situation described in the following:

> One extreme example described to the staff illustrates a situation in which state assistance would have been useful: an association board announces that it has forgiven overdue assessment debt, on a selective basis. A homeowner objects that this is misappropriation of association funds. The board then denies having forgiven any debt. The homeowner asks to see the accounting books and records (as permitted by law). The board refuses. The homeowner asks for membership address list in order to circulate a recall petition (as permitted by law). The board refuses to provide addresses. The homeowner collects necessary signatures for recall, but the board refuses to hold the election. The board then fines the homeowner $1,500 for legal costs it incurred in answering her demands and threatens to foreclose if the fine is not paid. The homeowner seeks legal counsel but cannot afford litigation. She pays the $1,500. In the course of this dispute, the homeowner sought assistance from the Attorney General, the Department of Real Estate, the Department of Consumer Affairs, and the Law Revision Commission, but none of these agencies had the jurisdiction or resources to resolve the problems.

The second citation concerns the potential oversight by the Department of Corporations:

> WHAT SHOULD AN INVESTOR DO IF THE CORPORATION HE OR SHE INVESTED IN IS FAILING TO COMPLY WITH THE CALIFORNIA CORPORATIONS CODE REQUIREMENTS OF SHAREHOLDERS' MEETINGS AND CONSENTS, VOTING RIGHTS, RIGHTS OF INSPECTION OF SHAREHOLDERS' NAMES AND ADDRESSES AND OF ACCOUNTING BOOKS AND RECORDS OR IF A LIMITED PARTNERSHIP FAILS TO COMPLY WITH A PARTNER'S RIGHT TO INSPECT AND COPY THE PARTNERSHIP BOOKS, TO HAVE TRUE AND FULL INFORMATION AND AN ACCOUNTING OF THE PARTNERSHIP AFFAIRS OR TO AFFORD OTHER RIGHTS GIVEN TO PARTNERS IN THE CERTIFICATE OF LIMITED PARTNERSHIP?
>
> Answer. An investor should seek private counsel and/or file a complaint with the California Attorney General's Office, as these matters are not subject to the jurisdiction of the Department of Corporations.

In both of these items, the overbearing and lawless conduct of a Board of a HOA is described, and there is offered suggestion for resolving the problem of the homeowner.

But it is not the problem of the homeowner(s) that needs to be addressed (primarily). The problem that needs to be addressed is the lawless conduct of these Boards. The problem is that the laws of the State are regularly being violated, and with complete impunity.

And for that matter, the issue is not the Directors or the HOA Boards. The issue is not whether, or how much, to punish violating Directors.

The issue is whether or not our laws have significance or meaning. As matters stand, they do not. You cannot set out a code of law, here to insure harmonious relations between neighbors, and expect it to be respected, if there are no consequences following on violation. You are only inviting violation.

What do you suppose the consequences would be if the only penalties imposed on bank robbers apprehended outside the bank were that they had to go back into the bank, return the money, and apologize to the bank manager?

Regular customers of banks would be consigned to making deposits and withdrawals at ATMs. The insides of banks would be clogged with lines of gentlemen toting machetes and UZI submachine guns, patiently waiting to reach the tellers windows to present notes demanding the contents of safes and cash drawers.

Yet consider this remark, on page 24 of the staff review:

> Before issuing a citation, the Bureau must attempt informal conciliation. At that point a wrongdoer would have an opportunity to correct a violation voluntarily, without *any* sanction being imposed.

The staff is close to apologetic at the suggestion that Directors might actually be expected to obey the law, without a gentle reminder once they are found in violation.

The Legislature, must, first of all, take seriously the matters they legislate, and that implies imposing forcefully deterring penalties when persons act in contempt of the legislation set out.

Until legislators show that they take these codes of conduct seriously, no one else will take them seriously either.

That is the great, and unyielding, misfortune of this entire enterprise: no one seems (sufficiently) concerned about respect for the law. Instead, we are twisting every which way, to see how we can satisfy the needs of all parties without causing offense. Wrong: we have laws; ***insist*** that they be obeyed.

Recognizing the possibility that the Commission might decide to table the proposal for creating a CID oversight agency, I trust the Commission will not lose sight of the fact that the problems with CIDs that motivated this endeavor will then be left unresolved. If it is indeed decided to put the current proposal aside, I hope the Commission will direct CLRC staff to set to work again, to attempt to develop some alternative approach to dealing with these problems.

Here (all but the first item) are some suggestions for alternatives, if it comes to that.

1. In a memo dated January 10, I expressed my view that it was essential that legislation (dealing with CIDs) not take a tolerant attitude towards violations. Yet in the staff review presented in MM2005-02, there were several comments expressing concern that if the laws for CIDs were aggressively enforced, there could be negative consequences, such as shareholders refusing to serve on the Board. Such concerns cannot be entirely ignored.

My point, however, is, that the absolute worst way to deal with such concerns is to minimize or ignore violations of the law, to adopt the attitude that the law really is not the law, and need not be obeyed. There is nothing so destructive to people's belief and confidence in justice as finding that the rules of the game are variable or not enforced… not to speak of the fact that laws presumably serve a purpose, which is lost when they are ignored. If there are concerns about side effects of a law, it is the side effects that are the problems to be addressed and resolved; either that, or go ahead and revise the underlying law. If, in the final analysis, it is decided that the law is necessary and worthwhile, then make sure it is obeyed.

Corollary to this, the issue of the correct level of punishment for violations is hardly an issue at all. The level of punishment is set to *at least* the severity necessary to deter violations, but certainly, no less.

2. On page 34 of the memorandum, the staff reports the comments of one correspondent as follows:

> Samuel M. Ross suggests, as an alternative to the proposed law, that the jurisdiction of the small claims court be expanded to include CID disputes, and that civil penalties be authorized. See Exhibit at 13. The Commission considered that approach and decided against making such a recommendation. See Memorandum 2001-43 (available at www.clrc.ca.gov).

It may be worthwhile revisiting that decision in light of the studies since produced by the staff in connection with establishment of a CID agency.

In that earlier memorandum, as I understand it, the decision against use of the Small Claims Courts to handle CID complaints was based primarily on

the belief that the diversity and complexity of HOA governing documents made such cases too complex to be dealt with in the limited confines of a Small Claims Court, together with a concern that the tools at times necessary to deal with such matters (e.g. injunctions) were too powerful to place in the hands of a Pro Tem Judge conducting hearings in a Small Claims Court.

But now note, in the recent memorandum from the Commission staff (MM2005-2, page 20), the staff writes:

> **Enforcement of Governing Documents**
>
> The proposed Bureau would have authority to investigate and correct violations of statutory law, but would not have authority to enforce an association's governing documents. That approach was based primarily on constitutional considerations, which are discussed below. However, there are also policy benefits to this limitation on the Bureau's enforcement jurisdiction. Statutory requirements are limited in number. The Bureau can quickly develop expertise in what the law requires, simplifying investigation and adjudication of complaints.

This is very much like reasoning you could use to justify use of a Small Claims Court to deal, *exclusively*, with violations of the law, which is (was) to be the principal function of the proposed CID agency. Just leave the governing documents out of it, and there might be no reason to rule out having decisions (about violations of law) made in a Small Claims Court.

3. As I understand the process, when Small Claims Court is used to settle a dispute, the defendant is permitted an appeal, and, when such appeal is filed, it is filed with the Civil Division of the Superior Court. We are then confronted with the possibility of a homeowner successful in Small Claims Court, ultimately being dragged into a more formal and expensive Civil Court proceeding nonetheless, and so what has been gained?

If this is a real concern, then I think it is completely reasonable, and I would propose, that once a Court confirms the legitimacy of the homeowner's view of the law, all subsequent attorney and court costs become the burden of the Association or the Board. The rationale might be that the homeowner acts in the service of the Association when he or she forces compliance with CID law.

Two additional thoughts, both of which are attempts to deal with disputes involving the governing documents of an association, follow.

I believe the basic concern has always been that litigation in the Civil Courts is too expensive for the individual homeowner. And yet the Commission staff has, for all practical purposes, determined that such matters *must* be dealt with in the Courts.

Here are two suggestions for maintaining such cases in the Courts, while minimizing the costs to the homeowner.

4. There are Departments in the Superior Courts for a number of specialized kinds of lawsuits: Family Law, Traffic Court, and Small Claims Court, to name the few that I know of. One of the features of these courts, at least to a degree, is the availability of simplified procedures for certain cases, procedures accessible to the layperson, sparing them the expense of hiring an attorney.

It might be worthwhile to consider establishing a Department in the Superior Court devoted to HOA cases, one that provides simplified access, at least for simple disputes.

5. Another alternative might be legislating some kind of preliminary test, whether in Small Claims Court, or in a mediation proceeding provided for in the Small Claims Court, or in a new Department as suggested above that deals with HOA cases, or in ADR (but that is already too expensive for many people), in which a hearing officer would decide little more than whether the homeowner's position passes some threshold, possibly in being affirmed as a reasonable claim, or perhaps requiring that it be affirmed in the opinion of the hearing officer as a dominant claim. If the threshold were passed, the Association would become responsible for all court costs and attorneys fees when the case goes to trial.

A rationale for assigning such costs to the Association is, again, that the homeowner acts in service of the Association when he or she establishes the intent and meaning of the governing documents, that all are bound by, and that all benefit by.

One must not forget, such disputes do not pit the homeowner's rights against the rights of the Association, or the rights of other members of the Association. Everyone in the Association signs on to these same documents. All that is involved is determining the meaning or interpretation of the governing documents. Even if the homeowner is right then there are no losers.