Study H-853 January 26, 2005

Fourth Supplement to Memorandum 2005-2

State Assistance to Common Interest Developments (Material Received at Meeting)

The following material was received by the Commission at the meeting on January 21, 2005, in connection with Study H-853 on State Assistance to Common Interest Developments, and is attached as an Exhibit:

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

Janet Anne Shaban, Ph.D.
Associate Editor, *The Crescent Review*
617 Woodside Sierra #1
Sacramento, CA 95825-7520
(916) 483-7669 escribir@jps.net

Date: January 21, 2005

To: California Law Revision Commission

Subject: Woodside Homeowners Association

Door knocker prohibition with no supportive rule (no rule banning knockers)

In August of 2003, I received Woodside property manager's instruction to remove the knocker that had hung on my door since 1986. When I inquired as to rationale, the manager directed me to a seasonal decorations rule ("Seasonally appropriate decorations may be hung on entry doors only except during the December Holiday Season when the entire house can be decorated"). I explained that my knocker was not a decoration, seasonal or otherwise, but in fact a functional object. (My letter to the Board of Directors went without reply.)

{Architectural committee's permission necessary for refinancing with no supportive rule (no rule requiring the passing of an architectural inspection)

Similarly, the newsletter, e.g., August, 2003, has erroneously presented the necessity of homeowners' units "passing inspection" prior both to selling and to refinancing: "When the unit passes inspection, all information will then be released to either your Title company or Mortgage company." No rule requiring "passing inspection" in the case of refinancing exits.

(As an aside, California Code 1368 says "Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items [e.g., a copy of the CC&Rs]." If Woodside refuses to provide any of the items specified in 1368 contingent on the unit passing inspection, then I believe Woodside is in violation of 1368, whether the homeowner wishes to sell or to refinance his/her unit. I believe Woodside charges one hundred dollars for "all information." Code 1368 says "An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer or title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b)," which refers to "reasonable cost to prepare and reproduce the requested items.")}

Homeowner inability to get item on association meeting agenda

In January of 2004, I learned that the impetus for the knocker-removal directive had been someone's dissatisfaction with someone else's knocker. I asked that the knocker issue be placed on the Woodside Association meeting agenda. (The Association meets monthly.) I was unsuccessful in this request and in repetitions of it of the Board president.

Homeowner inability to get ad soliciting homeowners' opinions into the newsletter

In May, 2004, another homeowner requested and was denied newsletter inclusion of a solicitation of homeowners' door knocker views. (That is, he was denied newsletter ad space routinely provided to others.) All Board members indicated the solicitation was a "criticism."

Board's forked tongue–Board says it offers chance for expression but meeting agenda item, newsletter ad space, and door-to-door solicitation off-limits

In June, 2004, I asked that "newsletter coverage" be an agenda item. The Board president refused, offering the justification she could not include seven hundred agenda items.

The July, 2004, newsletter claimed "The Board continues to try to meet its responsibility to provide an opportunity for **any** concerned resident to present an opinion, complaint, or recommendation . . . " (newsletter boldface). I believe the denial of the ad request and the rejection of agenda items belie this claim.

One person went door-to-door soliciting association meeting attendance. He received a violation notice. His violation was "soliciting."

Rules Hearing Committee's disinterest in the very rule homeowner was charged with violating

In July, 2004, I was charged with violation of a revision of the August, 2003, rule. The revision refers to "Seasonal decorations," "decorations," and "signage." ("Seasonally appropriate decorations may be hung on entry doors only except during the December Holiday Season 30 days before Christmas and 10 days after New Year's Day when the entire house can be decorated. No decorations or signage may be permanently affixed to a unit door." I did not believe I had violated the rule since my knocker was not a seasonal decoration, not a decoration of any sort, not signage. The committee appeared little, if any, interested in the rule. (I find this lack of rule interest appalling in light of the fact the committee's charge was–I presume–to determine if I had violated the rule.) Nevertheless, the committee determined that "After reviewing the evidence provided, the . . . Committee . . . found you to be in violation of [the rule]." The committee offered no justification for its finding. I was told to remove the knocker or face a fine.

Fines for deemed violations unclear and collection agency consequence uncertain

One set of Woodside rules indicates a fine of up to one hundred dollars a month is the maximum I can be levied, whereas another Woodside document indicates a fine up of to one hundred dollars a day can be levied.

I have asked the Woodside manager if, as I have heard, unpaid fines are sent to a collection agency.

The manager has consulted with Woodside's attorney. I'm waiting to hear.

Board's disinterest in the rule homeowner was charged with violating and dissemblance

In October, 2004, my attorney, Jerilyn Paik, represented me at the appeal to the Woodside Board of Directors. Once again, the rule did not seem important. Instead, the Association's president dealt, in my opinion, empty-handed, makeshift reasons for door knocker prohibition. (1. Door knockers were noisy, potentially disturbing. In fact, my knocker had hung for seventeen years without complaint from anyone. In fact, no disturbance substantiation was proffered. 2. Door knockers were costly, that is, when units with knockers are painted, the painters must first remove the knockers. In fact, homeowners could be told not only of upcoming painting–they must be so informed–but also of the necessity to take a half-minute or so to remove their knockers–or seasonal decorations.) Shortly thereafter, I was told to remove my knocker.

Request for homeowner membership list blocked by association attorney

Code 1363 stipulates "Members of the association shall have access to association records, including . . . membership lists . . . " Woodside's attorney informed me I must not only state the specific use to which I would put the membership list–"for Woodside issues" not sufficient–but also receive the Board's permission to have the list.

Legal protection for homeowners needed

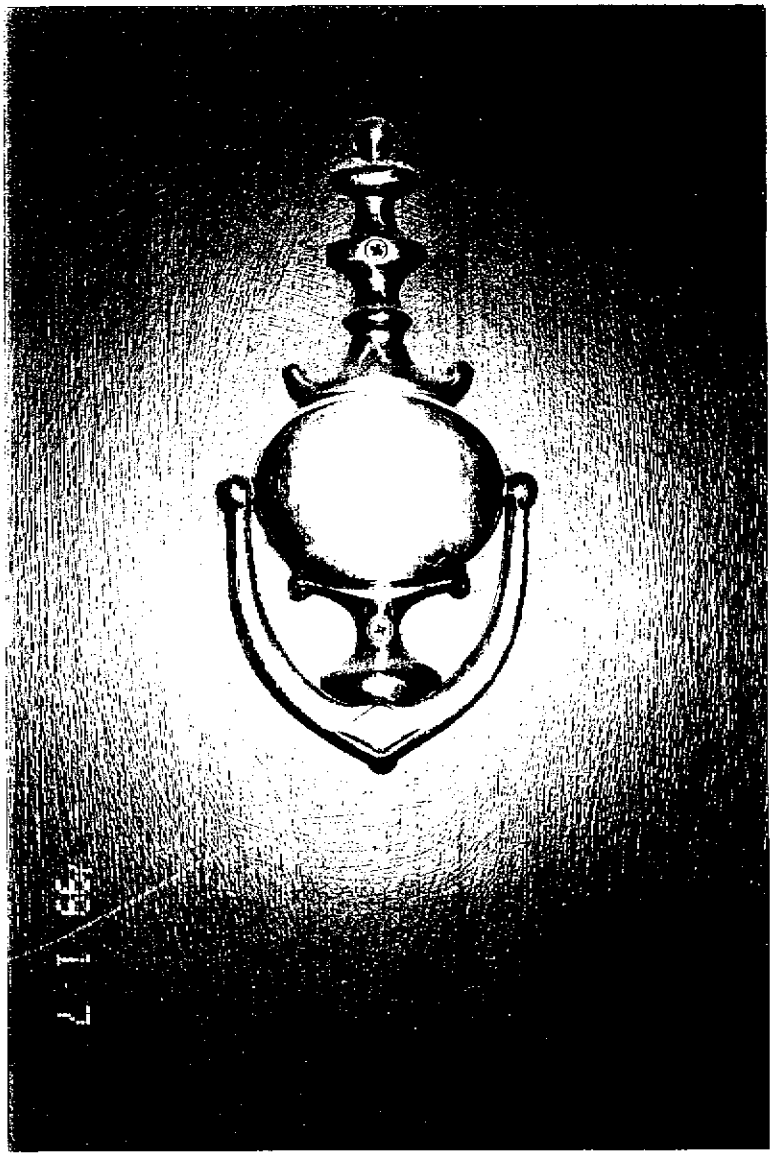
I would like the law to make provision for association homeowners to have a say via discussion and vote with regard to governing documents, which include rules.

I know the law provides for homeowner input with respect to some matters, but not to all. In light what I have observed at Woodside, I believe homeowners need all the legal protection and assistance they can get. (I've heard the Attorney General is not interested. Why not?)

Questions about the impact of AB 2376 and of 1360 on my knocker (and perhaps other architectural) matters

The digest says " . . . The [2376] bill would require an association to provide notice annually of any requirements for association approval of physical changes to property . . . " Does this mean the association must state explicitly that, for example, approval must be granted for door knockers? If no such notice is given, might I be "free and clear" to have a door knocker? Or am I "dead in the water," given that the Board has decreed I cannot have a knocker?

Code 1360 says "the owner of the separate interest may . . . Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development." A door knocker does not "impair the structural integrity . . . " Can 1360 help me–and possibly others?



EX 4