

Third Supplement to Memorandum 2007-4

Statutory Clarification and Simplification of CID Law: Member Elections

The Commission has received a letter from Karen Conlon, President of the California Association of Community Managers (“CACM”), commenting on the issues raised in CLRC Memorandum 2007-4 and its supplements. The letter is attached as an Exhibit.

COMMENTS ON PREVIOUSLY CONSIDERED MATTERS

Some of CACM’s comments relate to matters that were discussed and provisionally decided at the January meeting.

Election Inspector Standard of Care

CACM supports changing the statutory standard of care for an election inspector to an objective standard (rather than “to the best of his or her ability” as in existing law). See Exhibit p. 1.

The Commission accepted the staff’s recommendation that the existing standard be preserved. It is drawn from the Corporations Code and is not known to be causing problems.

Application of Secret Ballot Requirements

CACM expresses concern about the proposal to expand the application of secret ballot procedures. See Exhibit p. 1.

The Commission decided against making that change. See Minutes (January 2007), p. 5.

Association Member as Election Inspector

CACM supports revising the proposed law to make clear that a member may serve as election inspector. See Exhibit p. 1.

The Commission decided to make that change. See Minutes (January 2007), p. 5.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

Cumulative Voting Provision

CACM agrees with the language approved by the Commission on the right to use cumulative voting. See Exhibit p. 1; Minutes (January 2007), pp. 5-6.

COMMENTS ON PENDING ISSUES

The remainder of CACM's comments bear on points that have not yet been discussed.

Proxy Voting

CACM agrees that the Commission should not make significant changes to the law governing proxy voting in the context of the statutory reorganization project, but should instead study the issue separately. In particular, the Commission should look at whether proxy voting serves any useful purpose given recent changes in election law. See Exhibit p. 2.

"County Model"

CACM agrees that the existing requirement that associations look to county election procedures as a model for CID election rules is problematic. There is no single county model. *Id.*

In-Person Voting Procedure

CACM argues against adding the in-person voting procedure proposed by the staff in CLRC Memorandum 2007-4, at pp. 7-8. See Exhibit p. 2. However, if the procedure is included in the proposed law, the term "sealed" should be used to describe the condition of the ballot box, rather than "locked." *Id.*

Judicial Enforcement

CACM agrees that the Commission should not make significant changes to the law governing judicial enforcement of CID election law, but should instead study the issue separately. *Id.*

Respectfully submitted,

Brian Hebert
Executive Secretary

Exhibit

**LETTER FROM CALIFORNIA ASSOCIATION OF
COMMUNITY MANAGERS (1/24/07)**

January 24, 2007

TO: Brian Hebert, Staff Counsel, California Law Revision Commission

FROM: Karen Conlon, President, the California Association of Community
Managers

RE: Comments to the CID Study: Memorandum 2007-04

Brian,

The California Association of Community Managers (“CACM”) submits the following comments on the Commission’s latest memorandum on the Statutory Clarification and Simplification of CID Law. If you have any questions, please contact our legislative advocate, Jennifer Wada, at (916) 448-4000 or at Jennifer@wadawilliams.com.

- 1) Election Inspector Standard of Care on p. 3 - We believe that the Commission’s suggestion of an objective standard is appropriate.
- 2) Scope of Application p. 4 - Section 4640 proposes to require all matters requiring membership approval to be done via secret ballot. CACM has concerns as it would result in increased costs to an association. However, CACM does support the Commission's observation that procedural votes need not be done by secret ballot.
- 3) Differential voting power p. 5-6 - CACM supports the Commission’s proposed language to 4635(b) in the first supplement. We were initially concerned that the memorandum’s original language would prevent homeowners from serving as inspectors. The revision solves this concern.
- 4) Cumulative voting p. 6 - The language noted as the staff recommendation on p. 5 of the first supplement (revising proposed section 4640(f) to remove the limitation on cumulative voting) makes sense. This takes care of the need to announce intention to use cumulative voting and does not create a situation where mail in ballot procedures preclude cumulative voting.

5) Proxy voting p. 9 - CACM supports a separate study on this issue. Part of this study should review whether or not proxies are even necessary in light of the secret ballot process.

6) County Model on p. 7 - We agree with the CLRC's perspective that there is no "standard" model and based on the confusion it may create, it would make sense to delete this portion of the code.

7) In-Person Voting on p. 7 - Considering the recency of the law's enactment, CACM does not believe that there is enough feedback to determine if the CLRC's approach would be an improvement. On another note, we would suggest that the word "sealed" in stead of "locked" be used in subparagraph (e) of the Commission's proposed language, as most HOAs use a box sealed and marked for ballots.

8) Judicial enforcement p. 12 - CACM supports a separate study on this topic.

Thank you for the opportunity to submit these comments. We look forward to the Commission's work in this area.

Sincerely,

/s/

Karen Conlon, CCAM

President, CACM