

Admin.

October 29, 2008

First Supplement to Memorandum 2008-40

New Topics and Priorities

The staff has received correspondence from Bob Sheppard, advocating study by the Commission of specified CID issues next year. Mr. Sheppard's letter is attached as an Exhibit:

- Exhibit p.*
- Bob Sheppard, Berkeley (10/23/08)1

Respectfully submitted,

Steve Cohen
Staff Counsel

Walnut House Cooperative
1740 Walnut Street
Berkeley, California 94709

October 23, 2008

California Law Revision Commission
Attn: Steve Cohen (via email)

Re: Memorandum 2008-40

Dear Steve and Commissioners:

Walnut House Cooperative is a small limited-equity housing cooperative (LEHC); there are approximately 30,000 housing cooperative units in California. This letter presents our comments on Memorandum 2008-40. We appreciate that the staff has recommended that the Commission consider studying changes to current law that would benefit stock cooperatives (particularly LEHCs) and small homeowner associations (HOAs) such as co-housing communities. We urge the Commission to move forward to resolve these issues as set forth in Memorandum 2008-40. Please refer to First Supplement to Memorandum 2008-28, page EX 3 for background material from us.

Here are examples of concerns that we request the Commission address:

Education and enforcement

Two of the problems among some California HOA boards are lack of education and corruption. There is a dearth of training available specifically for directors of stock cooperatives. The primary enforcement mechanism for consumer protection is judicial. However, the legislature has been unable to promulgate recent reform in these areas. While we prefer such reform, it might be more advisable to wait for a more opportune time.

The nature of stock cooperatives

- There is a misunderstanding that a cooperative member's interest must have something to do with equitable servitudes (which would be part of a recorded "declaration"). Existing law should not require that a cooperative be created by a declaration, whether recorded or not. Condominiums require equitable servitudes, which must run with the land.
- The legislature has overreached by not understanding that a cooperative member's occupancy rights and duties are subject to California's landlord-tenant law (e.g. habitability, maintenance responsibilities). CID law for cooperatives should not interfere with existing landlord-tenant law, unless there are public policy issues applicable to cooperatives.

Limited-equity housing cooperatives

Unlike a purchaser of a condominium, an LEHC member typically risks a small percentage of the value of one's homes by buying a membership costing such an amount. We believe it would

be appropriate and beneficial to update existing laws to reflect this decreased exposure, by reducing or removing burdens on such cooperatives. Memberships in LEHCs are generally owned by low- or moderate-income members having very limited budgets.

Small, self-managed HOAs

Much of existing law imposes rules applicable primarily to large HOAs that have professional management companies, budgets for attorneys, etc. These laws should be changed to simplify procedures for small HOAs.

Community-oriented HOAs

Existing law may be too bureaucratic for those HOA communities which are formed to fulfill social/community needs that go beyond an investment in a home, such as co-housing communities, many limited-equity housing cooperatives and some traditional stock cooperatives. For example, some such communities employ consensus decision-making as opposed to secret ballot voting. Laws should be modified to support the social and community purposes of these HOAs.

The development of new stock cooperatives

- The development of new stock cooperatives is hampered by California's blanket encumbrance laws. These limitations should be eliminated and other consumer protections related to the disclosure of blanket encumbrance issues should be retained.
- Because of the limited risk of ownership of LEHC memberships, LEHCs should be subject to simplified development rules and possibly subject to the jurisdiction of the Department of Consumer Affairs, rather than the Department of Real Estate.

A new body of law for stock cooperatives

One way to resolve stock cooperative issues would be to create an entirely new body of law that would rationally integrate with existing corporate and landlord-tenant law. We would prefer this approach and we understand that Commission may have other equally compelling priorities.

We urge that the Commission authorize its staff to move forward to resolve the issues exemplified by those stated above. Please feel free to contact me if you have questions or require further information. Thank you for your consideration.

Very truly yours,

Bob Sheppard, Legislative Coordinator
Walnut House Cooperative

Contact: 510.644.2463