

Second Supplement to Memorandum 2008-43

2008 Legislative Program: AB 1921 (Saldaña)

This memorandum presents a letter from Kathleen Willoughby. Ms. Willoughby's letter was received on June 5, 2008, too late for consideration at the June meeting. It is presented now in connection with the discussion of the Commission's recommendation on *Statutory Clarification and Simplification of CID Law* (Dec. 2007).

Ms. Willoughby expresses a number of concerns about the existing law governing member elections in CIDs. She cites a number of ways in which an election inspector could abuse the power of that position to corrupt an election. Ms. Willoughby urges the Commission to include substantive reform of the election laws in its recommendation. See Exhibit.

Respectfully submitted,

Brian Hebert
Executive Secretary

**EMAIL FROM KATHLEEN WILLOUGHBY
(JUNE 5, 2008)**

California's Davis Stirling Common Interest Development Act is an unconstitutional law since homeowners have an absolute right to their constitutional rights. Davis Stirling creates unequal classes of real property [home]owners, such as the staff recommendation on today's CLRC agenda to add 1363.03 f to the civil code.

HOA election law under this revision promotes corruption and CLRC micro manipulation of a bad law, that offers only litigation in civil court as recourse, further violates homeowner constitutional rights to due process.

The granting a member who also is HOA manager, appointed by inspector of elections to print, mail, receive, store, reprint, reject, and now verify sealed envelopes before tabulation, confers to a member ability to manipulate the election. With no recourse, ballots received in the association's general mail delivery may be trashed or shredded instead of placed into the proper ballot box conversely a member may deposit multiple ballots into an open box on a shelf in an unlocked managers office when he /she is absent from the office.

Members request to receive a replacement ballot can be denied by a manager/member, similarly replacement ballots may be provided to non members or to the owner of the lot who did not initially mark and send the ballot. Davis Stirling violates the constitutional right for each individual to have his/ her vote counted. Davis Stirling reduces by half or third or fourth the vote by proscribing one ballot to emanate from multiple lawful owners who each should but cannot cast a ballot. Wives and husbands may choose to vote for different candidates. Whichever residential lot owner first completes the ballot, signs his/her signature and mail the ballot. Gender discrimination may influence Manager /Member denial for a requested replacement ballot. On this election point, does Davis Stirling presume legal persons living in jointly owned CID property agree on candidates in elections? Davis Stirling reduces constitutional voting rights through contract constantly under revision and therefore not reliable.

With this .03f revision, a member/ manager who verifies 'outer' envelopes by comparison to member directory by definition creates a document reflecting non voting members to date and may provide that document to selected incumbents or preferred candidates to use in telephone contact during multiple week elections.

Manager/Members do not maintain signature accuracy on the level of the County election offices, neither do they posses professional ability to accurately compare signatures that may be 'on file' with those on an 'outer' envelope, neither do HOA's maintain signatures of each individual listed on the deed. Manager/Member [or staff] access to ballots and sealed envelopes must be precluded.

Ballots should be printed, mailed, received, verified, tabulated by the inspector of elections at an address apart from the HOA. Does the CLRC propose to promote fair elections?

Inspector of elections should be CPA's; infractions should be reported to the California Board of Accountancy. CLRC should require this revision, not the 1363.03f.

These activities took place during an election in my HOA. Below I quote the Davis Stirling created CPA Inspector of Elections response to me dated May 31, 2008:

I find no merit in any of the issues you raise in your letter dated May 25, 2008. The election stands. Your request to void the election is denied.

Please provide this my electronic email letter to the commission in place of my testimony as I cannot attend today's meeting to speak to them.

Thank you,
Kathleen Willoughby