

Third Supplement to Memorandum 2008-43

2008 Legislative Program: AB 1921 (Saldaña)

The Commission has received two letters expressing support for the views stated in the June 5, 2008, letter from Kathleen Willoughby (which is attached as an Exhibit to the Second Supplement to Memorandum 2008-43). The two new letters are attached to this supplement.

Mr. Ed Weber shares Ms. Willoughby's concerns about the procedures used to conduct CID member elections. He urges the Commission to tighten election procedures. See Exhibit p. 1.

J. Alexander also agrees with the concerns expressed in Ms. Willoughby's letter, and goes on to state additional concerns about the cost of litigation against a CID, and general problems with self-governance in a CID. See Exhibit pp. 2-3.

J. Alexander wonders whether the input received by the Commission in conducting the CID study has been too slanted toward institutional interests, asking:

CID lawyers and managers have bombarded you with defense of their lucrative industry, as evidenced by the meeting you had with a group of lawyers (mentioned in this memorandum). Have you had such a meeting with a group of homeowners?

See Exhibit p. 2.

The staff is glad to hear from any person or group that has a serious interest in the Commission's work. In the context of the CID study, the staff has met with representatives of interested "trade groups," but has also met with those whose only interest is homeowner protection or empowerment. For example, the staff has met with representatives of the California Association of Retired Americans, AARP, the Center for California Homeowner Association Law, and representatives of individual homeowners associations, both large and small, and has participated in large town-hall style homeowner meetings in both

Northern and Southern California. The Commission has also received a large volume of written and telephone input from individual CID homeowners.

The staff is aware of the general risk, arising in any public participation process, that concentrated interests (like trade groups) will be better represented than diffuse interests (like individual homeowners). However, the Commission has received extensive input from homeowners and homeowner advocates and is well-informed about all perspectives on CID policy.

Respectfully submitted,

Brian Hebert
Executive Secretary

**EMAIL FROM ED WEBER, HORN BROOK
(8/27/08)**

Mr Hebert

I am writing to express my support of the HOA election procedures protest letter you have on file from Ms Willoughby.

My association, the R-Ranch Property Owners Association in Hornbrook CA, is on its way to court right now on charges of conducting a fraudulent election in February 2008. I believe two protections must be required by law in order to insure constitutional voting rights of members.

The need for explicit direction for the conduct of elections is vital. The law needs to recognize that HOA board members and managers often have little business or legal experience. Without explicit direction, they will fall back on natural impulses and biases and may create havoc and voter disenfranchisement where the law seeks exacting procedure to guarantee constitutional accuracy in elections, the nation's most basic right.

A third party Inspector of Election with absolutely no personal stake must be required, absolutely, especially in mail-in balloting. Only that distant and dispassionate mailing address of an impartial inspector can guarantee the security of member ballots. Fraud will occur where the opportunity exists, and current law (1363) has left the window wide open as an invitation to those who lack integrity to manipulate HOA elections. It is happening across the state.

Further, Ms Willoughby's demand for a CPA as Inspector may be broadened. Notary Public professionals, sworn officers of the state, have begun training their association members in HOA election inspection. I expect a lower fee from this profession and it presents a viable second option to a CPA. The point is that the law must demand a disinterested and disassociated professional as election inspector, without exception.

The absentee ballot forms and procedures need more security and more common sense. Currently, my association requires, as per 1363, they claim, that a member must mail in their ballot in a specific manner or otherwise be rejected. That form requires that I disclose my name, membership number, mailing address, and then, to affix my signature, all to the outer envelope. How insane is that in this era of identity theft? Yet, my ballot is tossed out if I add a more secure third, most outer envelope.

I am a retired journalist and have seen the solution in the ballot form used by the Siskiyou County Registrar's office. You may reach Registrar Colleen Setzer at csetzer@co.siskiyou.ca.us or by phone at (530) 842-8084. She can source the printing firm which is producing this truly secure envelope package for elections.

Thank you for your attention to this crucible in HOA administration which, as it stands, is causing duress, expense and disenfranchisement of voting members as the law stands.

Ed Weber

EMAIL FROM J. ALEXANDER, LOOMIS
(8/27/08)

To: Commission

Cc: Governor Schwarzenegger, Senator Sam Aanestad, Assembly Member Ted Gaines

Subject: Common Interest Development Law - abuse concerns

Dear Commissioners and elected government representatives,

I just read Ms. Willoughby's letter in Second Supplement to Memorandum 2008-43, and must wholeheartedly agree with her assessment. We have been involved with our own lawsuit against our homeowner's association for over two years, and finally settled late last year. We just concluded arbitration with our lawyer, and got a reduced bill from the arbitrator, who agreed we were overcharged. I've learned more than I ever wanted to know about CID's in this exhausting and infuriating process, have been receiving all of your emails about reforming the Davis-Sterling Act, and now feel compelled to contact you with our perspective. Please accept this for the plea for change that it is.

1) The deck is stacked against homeowners. CID lawyers and managers have bombarded you with defense of their lucrative industry, as evidenced by the meeting you had with a group of lawyers (mentioned in this memorandum). Have you had such a meeting with a group of homeowners? Judging by the dearth of homeowner lobbyists, I would assume not. ECHO and CAI are so very clearly advocating only for themselves. They have a huge vested interest in protecting and expanding CID projects, and as such must be seen as biased parties. They do not speak for homeowners. The group of CID lawyers in our area is so small that they not only have dinner and play golf, but attend each other's weddings. How can there not be improper conduct when the homeowner's attorney just had lunch with opposing council? Yes, this happened to us. This should send up red flags for everyone involved. If we ever have to go to court again, it will be with an attorney blessedly free of this CID fraternity.

2) The fact that a homeowner must pay to sue themselves is astonishing and indefensible. We claimed insufficient enforcement of the CC&R's, which the judge agreed was appropriate. It was our only recourse after trying to resolve issues for 5 years. Mediation results were ignored. A special assessment of \$1800 was assessed against all members, including us, making us obviously neighborhood pariahs. The fact that the judge did not rule against us, or throw out our suit, should automatically mean we are refunded any assessment. Only if a plaintiff loses should they pay to sue themselves. We could have lost our house if we didn't pay twice for our lawsuit. The kicker? Opposing council charged the HOA 4 times what we paid. HOA's are so lawsuit-prone that they could very well be seen as ATM's for lawyers.

3) Boards of directors often operate in secret, no matter what the law says. Elections are mishandled, members are harassed for speaking up, and the apathy of the majority lets it continue. This speaks to a fatal flaw in the broad reliance on CID's to govern

thousands of communities. You can't mandate participation, but you can mandate stricter controls, and most importantly, transparency, of boards and their managers. No one is enforcing guidelines for managers to ensure professional and fair practice either. Ours broke the law several times and her firm said they would do nothing. If the board likes what management is doing, even if it's contrary to homeowners' best interests, biased treatment continues. There are few management firms to choose from. Even worse, we now have a board president trying to eliminate outside management altogether so that he can have complete control. And our dysfunctional "family" is only one of many.

3) As a local government decision maker, I know all too well how much local governments and developers rely on CID creation. Both are able to push responsibility for the inevitable conflicts onto someone else at a future date. The government gets property tax money without providing service and the developer is off the hook for misdeeds, such as environmental damage, within a few years. For them, what's not to love? For the unwitting homeowners, who have no clue about the rights they're giving up, the exceedingly heavy ball drops in their lap. And yes, we read all governing documents twice before closing. On paper, everything seemed ironclad. Only later did we learn, from the judge no less, that our CC&R's were "poorly written and therefore legal remedies are limited."

4) Even state and federal government agencies, such as the Secretary of State, EPA, and Corps of Engineers, avoid dealing with HOA's, as they have learned the hard way that stepping in leads to quagmires. Who's left to stand up for homeowners trying to do the right thing? No one. Absolutely no one.

We've learned the hard way that life in an HOA can be a living nightmare. If we didn't love our house, that we lovingly built, and its ideal mortgage and property tax valuation, we would have been out of here long ago. We had hoped that the animosity would lessen and that we would never have to hire a lawyer again, but now it looks like the settlement agreement is being violated. And on it goes...

Thank you for your time and consideration. I know your job on this commission has been anything but breezy and carefree. I don't envy you that, but would I trade places with you? In a heartbeat.

Sincerely,

J. Alexander
Loomis CA