

Study H-857

April 23, 2009

Fourth Supplement to Memorandum 2009-19**Small Common Interest Developments
(Public Comment)**

The Commission has received a new letter from Elaine Roberts Musser. It is attached.

Respectfully submitted,

Brian Hebert
Executive Secretary

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April 21, 2009

California Law Revision Commission
Attn: Brian Hebert (via email)

Dear Mr. Hebert and Commissioners,
In regard to the April 16, 2009 and April 17, 2009 **First & Second Supplements to Memorandum 2009-19 Small Common Interest Developments: Member Elections**, I would like to offer my comment as an individual and volunteer attorney experienced in elder law issues, especially financial elder abuse matters.

Arizona has recently passed a law eliminating proxy voting altogether, because there has been so much election fraud with respect to this issue. I would suggest the commission might want to further investigate the possibility of banning the use of proxies in regard to **all** homeowner associations in CA.

I have grave concerns about and am strongly opposed to creating a two-tiered system under CA state law - that offers certain election protections for those in larger homeowners associations, but no such safeguards for homeowners in smaller associations.

I was involved in a tragic Yolo County foreclosure case concerning a debt that was not owed. My client, a frail elder, died of a massive heart attack before I could get her case into court. The HOA Board, resorting to strong-arm tactics, instituted an election to amend the governing documents in a way that would give the Board more power to make decisions without homeowner approval (in the area of increasing assessments/instituting special assessments). A lot of attempts at coercion were taking place, but this small association adhered to existing CID election procedures. Because of those existing procedures, **such as an elections inspector**, the Board was UNABLE to obtain their desired outcome. I shudder to think what would have happened had no such safeguards been in place.

While I applaud the commission's efforts to safeguard the rights of the disabled, by provision of a mail-in ballot option or other accommodation, I do not believe it goes far enough. As a practical matter, it would require a disabled person to know they must notify the HOA Board of their disability, and request an alternative voting method that would accommodate their

handicap. **It forces the disabled, such as a frail elder, to jump through an extra set of hoops in order to vote. AT THE VERY LEAST, there should be some language in the proposed statute requiring the HOA to notify its residents of alternative voting options for the disabled.**

Respectfully,

Elaine Roberts Musser

**Member Board of Directors, CA Center for Homeowners Association Law (CCHAL)
Executive Director, Building Bridges (elder abuse prevention)
Chair Triad Task Force, Yolo County Commission on Aging & Adult Services
Chair, Davis Senior Citizens Commission
Volunteer Attorney, Senior Legal Hotline & Yolo County Legal Clinic
Member, Yolo County Multi-Disciplinary Team**

cc file