Studies H-855 April 3, 2014

Fifth Supplement to Memorandum 2014-9

Common Interest Development Law (Public Comment)

Memorandum 2014-9 discussed public commentary on two recent Commission-recommended reforms of common interest development ("CID") law.[1] We have received another two letters on that topic.

Respectfully submitted,

Brian Hebert
Executive Director

1. 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.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

LETTER FOR PUBLICATION

January 28, 2014

MAR 10 2014

Mr. Brian Hebert, Executive Director
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303
Fax: 650-494-1827
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Dear Mr. Hebert:

After having read Ms. Vanitzian's column in the LA Times, co-written with Mr. Z. Levine, *"Attempt to Simplify California Condo Laws Ends in Confusion,"* I then happened to find published on your website "Memorandum 2014-9" misdated as 2013 (presumably meant to be January 27, 2014).

I am reminded of William Shakespeare's statement "methinks (thou) dost protest too much," and must question the clearly heavy expenditure of taxpayer money on the part of yourself and the Commission and the resources of your staff in finding fault with the comments of someone that you identify as a "critic" – Ms. Vanitzian. Worse, you then level charges that the article that Ms. Vanitzian co-wrote is not "accurate," and has "defects" and "erroneous factual claims," and cites "anonymous authority." Given the fact that the article is what it is meant to be -- an opinion piece -- and having read the article and your rebuttal, these "charges" made by yourself and the Commission, or on behalf of the Commission, appear to be absolutely vindictive and targets Ms. Vanitzian in a more personal attack than is warranted.

This appears to be an unprecedented smear on Ms. Vanitzian by a government entity at taxpayers' expense, and the attached "Mar West" letter that you cite only proves the point made by Ms. Vanitzian in her LA Times articles -- that the ones who are congratulatory and heaping of praise upon the Commission's work -- are the lawyers and the developers that will reap the rewards from its

enactment. Ms. Vanitzian half-jokingly referred to this as the "lawyers full employment act" as did the late Stephen Glassman, who wrote countless columns, but it seems ridiculous in the extreme to state that the new law will not or cannot have the effects that Ms. Vanitzian warns against, thus further making these personal attacks upon her perplexing in the extreme. For the Commission's Executive Director to "contact" an Editor at the Los Angeles Times to "correct" the record appears too heavy-handed and misplaced. Will you plan to reimburse the Commission for the time you and your staff have spent on this? The time that could have better spent actually looking at the Act from the side of homeowners, not developers and lawyers. Letters from homeowners to the Commission appear to have been largely ignored.

Ms. Vanitzian raises a rare and solitary voice in the midst of the dim of industry developers and lawyers, and is the lone voice in the wilderness looking at Common Interest Developments from the side of the people most affected – the homeowners themselves. Most do not understand the Davis-Sterling Act, or are able to fully access its impact given its constantly morphing nature. Thanks to the Commission, the Act is oppressive, one-sided, and demolishes freedom of choice for owners, thus diminishing every owners quality of life exponentially. "Simplification" was certainly not what appears to have been the intended outcome of the Commission's revisions.

Your claim that Ms. Vanitzian's article does not cite "examples of claims" in an opinion piece again seems to call to question exactly what is the Executive Director's mission in seeking to single Ms. Vanitzian out, as opposed to other "critics," and call to question her integrity, her professionalism, and most importantly her viewpoint, of which she is not alone.

Sincerely,

Art Horowitz

EMAIL FROM MARYLOU MANKOWSKI
(MARCH 10, 2014)

Honorable Edmund G. Brown, Jr.
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By Facsimile to: (916) 558-3160

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By Electronic Mail to:

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Re: Public comment 2014-9 response

March 10, 2014

Dear Governor Brown and Commissioners:

I write regarding Memorandum 2014-9 (Common Interest Development Law) specifically regarding the new iteration of the Davis Stirling act.

We need a state agency to enforce the law—the current primary course for enforcement requires a civil lawsuit preceded by an offer to participate in some form of alternate dispute resolution (ADR). While likely mandated with good intention, the process is costly and ineffective. It leaves resolution of most complicated HOA issues to an uninformed and disinterested judiciary. Instead of ADR, parties to a dispute should be required to first submit that dispute to an impartial commission (similar to the process for an EEOC complaint).

HOA members have a financial interest in our community and pay money for management of our community. However, current law requires that most significant disputes be removed from our community to be resolved with the assistance of expensive attorneys and/or an uniformed judiciary. The situation is stressful for title holders who must deal with abusive boards after a long day at work and pay for a costly attorney.

After a community interest development (CID) is approved, the chaos begins. CC&Rs are changed by unqualified board members—board attorneys go along with the changes in exchange for a large fee. Things can become so convoluted that attorney general's office wants nothing to do with a CID.

CID restrictions mandated by the Department of Real Estate should remain unchanged throughout the life of the CID. Similarly, a division for enforcement of CC&Rs should be implemented. Part of the responsibilities of such a division should be to adjudicate HOA complaints quickly and efficiently. Enforcement lawsuits should be barred absent

first submitting the issue to the above administrative process. The opinion of the Department should be afforded deference in any follow-on legal action. In this manner, abusive litigation by an HOA Board and vexatious litigation by an HOA member will be discouraged.

Sincerely,

M. Mankowski

cc: Das Williams, Assembly Member
Donnie Vanitzian, Reporter, Los Angeles Times