

Fifth Supplement Memorandum 2007-4

**Statutory Clarification and Simplification of CID Law:
Member Elections**

We have received follow-up comments from Bob Sheppard and Beth Grimm. They are attached in the Exhibit as follows:

	<i>Exhibit p.</i>
• Bob Sheppard (4/23/07).....	1
• Beth Grimm, Pleasant Hill (4/25/07)	4

Respectfully submitted,

Brian Hebert
Executive Secretary

Exhibit

**EMAIL FROM BOB SHEPPARD
(APRIL 23, 2007)**

Brian:

Here are my comments on the fourth supplement to Memorandum 2007-4. Because of time constraints, I have primarily focused on disagreements that I have with some parts of the Memo. I continue to value the work of the Commission and its staff.

- Door-to-door ballot collection. The legislature has gone to great lengths to set up an elaborate elections system with ballot boxes, double envelopes, etc. The Memo proposes to put a weak link in the chain by allowing self-interested parties to collect ballots. I know of several vulnerable homeowners who might easily be intimidated by a corrupt association member who could retaliate against them. Another example of potential corruption would be an unscrupulous member “forgetting”

to deliver the ballots of those known to hold certain opinions, etc. The only recourse would be a lawsuit, of which most such homeowners would not have the resources (both financially and emotionally) to pursue. As a minimum, I believe that only agents of inspector(s) of elections should be authorized to personally collect ballots. In such cases, perhaps the inspector should be required to carry around the locked ballot box and have the member personally deposit the ballot.

- Invalidation of Ballots. Identity theft is a serious problem, but only for those ballots sent through the mail. Members write checks to their association every month to pay their assessments. The checks are in envelopes, so the signatures are not readily visible from the outside of them. One solution for mail-in ballots would involve a slip of paper signed and placed in the outer envelope. The signature would not be visible from the outside and would also provide the requisite authentication. It could be removed and stapled to the outer envelope when the ballots were tabulated. Ballots placed in a ballot box would not need this protection, because the signatures would no longer be visible.

- Cumulative voting. I have strong objections to requiring an association to use cumulative voting if it is permitted by in its bylaws. I am aware of associations that have rarely used this provision and they would have to amend their bylaws to prohibit it. I believe this is an undue burden and would therefore be unfair. Further, it's possible that an association might want to keep the option of cumulative voting; in such a case, they might not want to amend their bylaws. Such associations are currently governed by Corporations Code 7615(b), which requires prior notice of the use of cumulative voting. Requiring such prior notice would address my concerns. I see no benefit from requiring an association to change this practice and would urge the Commission carefully consider the implications of this issue in light of my comments above.

- Revocation of proxy. I believe that a statement in the Memo is inaccurate. It says on page 6:

“Proposed Section 4655(f) provides that a proxy is revocable ‘until it is received by the election inspector.’ THAT CONTINUES THE RULE PROVIDED IN CIV. CODE SEC. 1363.03(d)(3).” [emphasis added]

I believe the second sentence is inaccurate. The rule in C.C. 1363.03(d)(3) says in part:

“The proxy may be revoked by the member prior to the receipt of the BALLOT by the inspector of elections as described in Section 7613 of the Corporations Code.” [emphasis added]

This is a big difference. I do not believe the Memo has justified applying the ballot rule to proxies. For example:

- A member may go on vacation or go to a another meeting, and find that the vacation or other meeting has been cut short, allowing the member to attend the association meeting and vote in person. I have seen many cases of this.
- A proposal at an HOA meeting may be complex and require extensive amendment at the meeting in order to garner passage. It would be very challenging to write proxy instructions to deal with such a case. I have also seen many cases of extensive amendments at a meeting. While proxies may be a “necessary evil”, encouraging a member to attend, deliberate and cast their vote at a meeting should be supported.

For these reasons, I would encourage the Commission to use the language in the existing Civil Code and only apply irrevocability after a ballot has been cast, rather than after the submission of a proxy. Unless an association's bylaws provide otherwise, the State should not require proxies to be irrevocable prior to the casting of a ballot.

- Election Without Vote. Thank you for considering my comments. I believe that the language at the bottom of page 7 would address my concerns.

Thank you for the the work of the Commission and its staff on these important issues.

Bob Sheppard

**LETTER FROM BETH GRIMM
(APRIL 25, 2007)**

April 25, 2007

Mr. Brian Hebert
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Study H-855; Memorandum 2007 and Four Supplements – CID Law
Reorganization And Current Subject: Elections

Dear Mr. Hebert and Members of the Commission:

I have corresponded with the Committee before.

Again, my background over the last 20+ years includes advocacy, mediations, teaching, authoring helpful books and speaking publicly about CID living and the law, involvement in legislative efforts and commentary on proposed laws, and representation of many owners, many self managed boards, and many professionally managed boards, and last but not least, service work in this industry.

Again, I am behind the proverbial “8 ball” - intending to come to a CLRC hearing on April 26 and getting diverted to an industry event, which is a national convention for Common Interest Development Managers. I would like so much to attend the hearings, but my schedule makes it very difficult. Again, I apologize for the late delivery.

That said, I just received a packet of the recommendation put together for this hearing and it leaves open some important areas of discussion with regard to the elections portion of the law.

I feel it important to provide more comment related to specific areas. In addition to my earlier comments, I suggest:

Type of Elections covered. The recommendation states that it is already clear that an association could elect to conduct all elections under the new law. I do not believe it is clear. I do not believe it should be **mandated that all elections are subject**, because some are not conducive - such as a motion to adjourn at an annual meeting, and set an “adjourned meeting.” However, if other elections are not specifically addressed as being optional under the new law, the question arises as to whether the quorum entitlement now existing (being able to count the return

ballots toward the quorum without any meeting involved) could be called into question.

In Person Voting At Meetings/Smaller Association Issues: Smaller associations - what a dilemma. Someone wrote in and suggested that having different election standards for different associations would be some kind of travesty. Not so - the Corporations Code has had regulations for larger corporations (5000 or more) for many years.

Here are some real dilemmas:

Boards in smaller associations do not have a budget for professional management or expensive legal services. So they have to figure these things out for themselves. It is much simpler to “require” a secret ballot process with a ballot box at a meeting than to require onerous pre-meeting timelines and prescribe complicated procedures fraught with the chance of technical difficulties. Why push these associations into expensive, complicated processes?

In the really small associations, 10-15 owners or less, it is very hard to find candidates. And limiting those associations to using “independent” inspectors of election to collect and count ballots can become ridiculous. If a board of 5 or 3 is prescribed, and all 5 or 3 are refusing to run again (the job is becoming ludicrously complicated after all), that means 6 or 10 of the members cannot be involved in the inspection process. If meeting attendance is not unanimous, who is going to do the work of receiving and counting ballots? Do members generally want ballots mailed to their homes? The answer is no.

The expense. Do you think that the members are comfortable with the board spending more than a few hundred dollars just to set up an election where there are few to no new candidates? The answer is No. If a small association can conduct an election at a meeting using a ballot box for secrecy, that should suffice. If someone wants to challenge that practice, they only need file a small claims action.

If the CLRC does not recognize that there is a serious issue festering in the “HOA world”, then it is either in denial, turning a blind eye, or focused on the wrong problem. Apathy is a **MUCH BIGGER PROBLEM** than election fraud. Board members in HOAs in California are a big target for complaints, a magnet for threats of a lawsuit, a volunteer body expected to run a business without compensation of any kind, and expected to know and understand more than 50 pages of complicated laws written in a manner that some attorneys cannot understand. If you do not give serious consideration to excluding the smaller associations from this election law, or giving them a reasonable alternative, you are contributing unnecessarily to an already almost unbearable burden. Granted,

you did not bring that burden to bear, but you as a body have much more accountability than the legislator who proposed the elections process. Many, many problems have surfaced because of the new law, some of which were anticipated, some of which were not. Please do something constructive and either exclude the smaller associations, or relax the rules and do not make them more complicated.

Respectfully submitted,

A handwritten signature in cursive script that reads "Beth A. Grimm". The signature is written in black ink and is positioned above the printed name.

BETH A. GRIMM

Bg:mg