

## First Supplement to Memorandum 2008-43

**2008 Legislative Program: AB 1921 (Saldaña)**

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This memorandum provides additional information about the status of the Commission's recommendation on *Statutory Clarification and Simplification of CID Law* (Dec. 2007).

## ORGANIZATION OF PROPOSED LAW

The Commission received two letters from Samuel L. Dolnick, commenting on an organizational issue raised in Memorandum 2008-43 (a proposal that provisions relating to the creation of a CID be placed first in the proposed law, before provisions relating to governance of the association). Mr. Dolnick opposes that proposal. See Exhibit.

## MEETING WITH ATTORNEY GROUP

Memorandum 2008-43 presented a letter of opposition to AB 1921 that was signed by an ad hoc group of 25 attorneys who specialize in the practice of CID law ("Attorney Group").

On August 4, 2008, Commissioner Edmund Regalia and Executive Secretary Brian Hebert met with eight representatives of the Attorney Group: Sandra M. Bonato, Paul N. Dubrasich, Mary W. Filson, Mary M. Howell, F. Scott Jackson, Duncan R. McPherson, Deon R. Stein, and David M. Van Atta.

The purpose of the meeting was to discuss how the Attorney Group and the Commission could work together to address the Attorney Group's concerns about the Commission's recommendation on *Statutory Clarification and Simplification of CID Law* (Dec. 2007). The meeting was congenial and productive.

Paul N. Dubrasich indicated that the Real Property Section of the State Bar was forming a working group to review the recommendation and offer technical criticism and suggestions. The Attorney Group representatives indicated that they would work with or through the working group established by the Real

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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](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

Property Section, in order to provide input to the Commission on its recommendation. The group also expects to develop a list of substantive proposals that it would submit to the Commission for possible study.

Although specific details remain to be resolved, it is expected that Curtis Sproul, who is currently co-chair of the CID Subsection of the Real Property Law Section of the State Bar, will serve as liaison between the Real Property Section and the Commission.

The Attorney Group agreed, as a provisional goal, that it would analyze the most recently amended version of AB 1921, and the points raised in Memorandum 2008-43, and provide the Commission with its complete analysis of the proposed law by the end of this calendar year.

Respectfully submitted,

Brian Hebert  
Executive Secretary

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July 17, 2008

Mr. Brian Hebert, Executive Secretary  
California Law Revision Commission  
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**VIA e-mail**

Re: AB 1921 (Saldana): "Location of Governing Document Provisions.

Dear Mr. Hebert:

In response to the query posed on page 8 of [www.clrc.ca.gov/pub/2008/MM08-43.pdf](http://www.clrc.ca.gov/pub/2008/MM08-43.pdf):  
"Should the proposed law be reconstructed to move the governing document provisions to the front of the proposed law"? **The answer of this CID homeowner is an unequivocal NO!**

As a senior condominium homeowner for 40 years (30 years in California and 10 years in Chicago, Illinois) and who has conducted monthly Homeowner Roundtable discussion groups since 1992, I object strenuously to the Attorney Group's request "...that governing document provisions should be located at the beginning of the proposed law and that it is illogical and confusing to place them at the end of the proposed law, as the Commission proposed." (p. 11).

It is extremely logical and absolutely non-confusing to keep this provision in AB 1921 as written. The CID homeowners will be eternally grateful to be able to read what affects them most at the beginning of the law, not at the end.

To continue "...the group is concerned about 'attorneys who advise developers,' who are less concerned about 'ongoing operations of existing communities' than they are about 'their origination and creation.'" These attorneys evidently are not concerned about the homeowner governance of CIDs for the 20 to 50 years that the associations will be in existence after the developer leaves.

The developers and their attorneys, after writing the Declaration of Covenants, Conditions and Restrictions (CC&Rs), under the guidelines established by the Department of Real Estate (DRE) and Bylaws, are involved with the subdivision only until control of the association resides in the board of directors composed of homeowners. Once the first unit/lot is sold the association is formed, but is under control by the developer and its attorneys. It may take a few years for sufficient units/lots to be sold so that the owners are able to elect their own board of directors. Once all the units/lots are sold the DRE is no longer involved and has no interest in the association; the developer has to respond, for one year, to queries about construction and warranties but has no responsibilities for the operation of the association.

One of the main reasons prospective buyers in CIDs do not read the CC&Rs is because the first half is composed of "real estate property principles" which is boring and of little consequence to the prospective owner. They never get far enough to read membership

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issues of governance and/or operations which are vital to the association's future well-being. Controversy rears its ugly head because the owner never gets to read those items that affect him/her to the greatest degree.

If the CC&Rs followed the format that is suggested in AB 1921 about governance and real property issues, prospective buyers would be for more knowledgeable about what they are buying into. Since both the Davis-Stirling Act and the CC&Rs would be in parallel with each other homeowners would have less difficulty in understanding each. [It may be that the services of attorneys would not be as necessary in interpreting the Davis-Stirling Act and the CC&Rs.]

It is most important that this section of the revised Davis-Stirling Act remain as presented in AB 1921.

Thank you for your kind attention to this matter and for the opportunity to offer comments.

Sincerely yours,

Sam Dolnick, Senior Condo Owner

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July 22, 2008

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**VIA e-mail**

Re: Addendum to July 17, 2008 letter on AB 1921 (Saldana): "Location of Governing Document Provisions.

Dear Mr. Hebert:

After sending the prior letter it occurred to me that the attorneys who comprised the Attorney Group are mostly attorneys whose clients are corporate entities. . I did not recognize one attorney's name that represent homeowners.

The attorneys represent the developers and the associations which are also corporate entities. It is extremely difficult for a homeowner, who wishes to file a lawsuit against his/her association to hire an attorney who specializes in CID law. When these attorneys are contacted, the answer almost always is, "I can't represent you as it would be a conflict of interest." This excuse is used although the attorney may not represent the homeowner's association or the management firm and has no relationship with the vendors servicing the association.

It is the opinion of the homeowners, who have attempted to hire CID attorneys that the attorneys go where the money is. Associations have deep pockets; homeowners do not and that is why it is difficult for them to get representation.

Therefore, it is most important that AB 1921 continue to have "property rights" at the end of the Davis-Stirling Common Interest Development Act rather than at the beginning. This will afford homeowners some equity in an uneven playing field.

Thank you for your kind attention to this matter and for the opportunity to offer comments.

Sincerely yours,

Sam Dolnick, Senior Condo Owner