Study H-850 February 7, 2001

Second Supplement to Memorandum 2001-19

Common Interest Development Law: Scope of Project (Background Study)

Memorandum 2001-19 and its First Supplement review correspondence commenting on the background study prepared for the Commission by Professor Susan F. French of UCLA Law School, *Scope of Study of Laws Affecting Common Interest Developments* (November 2000). This supplemental memorandum presents additional correspondence commenting on the background study, received at or before the Commission meeting on February 1-2, 2001.

We do not reproduce attachments to these letters here. We will consider them during the course of this study in connection with the specific issues to which they relate.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

January 28, 2001

Nathaniel Sterling, Executive Director
California Law Revision Commission
4000 Middlefield Road, Suite D-1
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

Re: Memorandum 2001-19

I am not in favor of the Uniform Law for homeowner associations brought before you. This letter and the attachments represent ***my opinion.*** I have concluded Community Assn. Institute, CAI, is not an upstanding organization and I formed a firm bias against them. CAI has been in a dominant position to influence and train their members to look out for the homeowners in accordance with Davis-Stirling. They have corrupted this Act. I am opposed to the Uniform Act because CAI is fighting hard FOR it, and that means it can't be good for owners.

Changes need to be made in state law, but, as Professor French indicates, this should be done with care. It could include a review of the Uniform Law for structure, but a remote and untouchable national law is not what homeowners in California need.

As I mentioned to you, Section 8216 of Corporations Code indicates the Attorney General has oversight authority in this section, titled "Non-profit Mutual Benefit Corporations." It gives the Attorney General authority to intervene or bring suit to protect homeowners. (Their Public Inquiry Unit responded that there was no budget to pursue this discretionary duty.) The responsibility for overseeing this billion-dollar industry affecting the homes and well-being of millions of Californians should be with Consumer Affairs, not with a more remote national law, enforced by no one.

Ask CAI about these other items promulgated on the unsuspecting and unknowing homeowners by CAI managers:

1. Union Bank's Homeowner Association account which "reimburses" managers for using their bank as a lockbox. Southern Californians mail their dues toS. F., Stockton or Oakland where they are trucked to Sacramento and centrally processed in a "database" (program provided, courtesy of a CAI accountant). Managers are privy to all sorts of information about owners. (I believe it is the intention to set up a "mailing list" to be sold to vendors and others.)

2. Payment through Managers who hire the contractors (& lawyers), pay them, after scooping off their percentage, thereby hiding their "kickbacks."

3. The WORST of the dirty deeds is the more recent practice of allowing "absentee ballots", returned to, and completed by, the managers, to replace the Proxies required in the Corporations Code. This scheme assures CAI managers of ruling in perpetuity, by rigged election of *their* favorite Boardmembers. My documents stated Board members would be elected "by secret written ballots...at the meeting" -- instead, there were no nominations, the ballots were mailed out with a select list of those running and they were mailed back to the Manager...so much for secrecy, or "at the meeting" votes, or an in-person quorum. (**Attachment A is an L. A. Times column by Jan Hickenbottom**, past president of CAI, now with CACM, explaining this scheme -- and I thought practicing law without a license was illegal.)

Take a look at the "Caionline" website and its links to verify some of what I'm saying. I can furnish some of my own documents and details if anyone is interested.

Homeowner Reserves now total approximately $40 BILLION nationwide. Any percentage of that amount is gold to the managers, accountants, and lawyers who populate CAI. Check CAI's legislative record. Do you find anything beneficial to owners there? Davis-Stirling can be strengthened, but the **Managers must be licensed and regulated**, and wayward Boards punished, and owners educated. A Uniform Law will not help homeowners learn the law. (Most of us cannot read the Vehicle Code, but we manage to drive within the law.) Note: Over 50% of new homes are in associations.

I am not affiliated with any organization related to your study.

Sincerely,

Helen Mullally
325 South Madison, Apt. 1
Pasadena, CA 91101
Ph: (626)795-1665

Attachments: Hickenbottom column; Jud. Comm. Analysis AB2031; Ltr/ Swedelson
Enclosures

cc: Professor French
Jack Scott, and others
Consumer Affairs; CSLB

Comments on "Introduction" to the study in **Memorandum 2001-19**:

Community Association Institute (CAI) -- This is a PAC spreading its largesse, derived from homeowner dues, to those politicians who sponsor its bills which support only its managers and lawyers and is inevitably detrimental to owners. A look at CAI's "amicus" briefs list shows where they spend money; check on what they consider "favorable" and "unfavorable" rulings of the appellate courts -- these labels refer to the effect on their members, not owners. Every amendment to Davis-Stirling Act has been sponsored by CAI; NONE are favorable to owners. All except two specifically **overrule** the governing documents. This is in opposition to the original intent of the Act and the legislature to **supplement**, but **uphold** the documents (i.e., remnants of the original Act Secs. 1355.5, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1363.2, 1363.5, 1364, 1365, 1365.5, 1367 **all specifically defer to the CC&R's**.). Yes, the Davis-Stirling Act interferes with those trying to extract every last penny from owners -- that is what it is **supposed** to do! CAI succeeded, with their insurance company allies, in getting the director and owner liability insurance requirements increased from $1million to $2million. Their curriculum is heavy on Risk Management courses. CAI goes under several names including the California Association of Community Managers (CACM), created by the same folk who run CAI. Apparently, ECHO plays in concert in northern California. CAI killed the Nakano bill, as they have killed any bill which would cause them to perform legally. Ask Jackie Spier what happened to her homeowner-friendly bill. These managers & CAI are the last people who I want entrusted with my personal information, yet I am forced to furnish it to them...the privacy issue was a concern they voiced to Nakano as a reason to deny owners access to documents. They aren't bonded or insured, yet I must trust them with my money, but I cannot examine the books! This is an outrage.

Uniform Law -- There is no federal law involved -- but, it would be the fondest desire of CAI, and an ultimate goal via these "uniform laws" to have only one bill to amend to achieve their ends. Additional reasons for wanting this uniform bill is to remove the nuisance of complying with state codes, such as Corporations, PCC, etc., assuring ease of amending, so that potential amendments would *glide* through without the bother of several departments exercising a review. CAI does not want the Attorney General tampering with their *national* law. Does this mean lien-placing rules would be written by CAI, at their whim? Notice the extreme efforts CAI has pressed to assure the federal bankruptcy laws are amended. How would DRE or our courts operate under this? How would owners amend a Uniform act? Only CAI could amend it. Owners have never succeeded in amending Davis-Stirling. Under this logic, ALL state laws should be uniform with the rest of the country for the convenience of the lawyers. NONSENSE.

Ombudsman -- This was a suggestion raised in a "study group" CAI created (they called it a "Task Force"). This is just another diversion to delay anyone thinking seriously of regulating CAI's managers. CAI claims they regulate their managers -- ha.

Managers -- They are unlicensed and unregulated. Some are unspeakable, greedy, lawless, deceitful, frauds. They often perform as "general contractors" on maintenance and replacement projects, scoop off 15% or more from all projects, including monthly maintenance contracts; "arrange" to see their favorite contractors submit the low bid by seeking higher priced bids from competitors. Even if contracts forbid such kickbacks, the vendors are sworn to secrecy because their licenses would be in jeopardy with the state if kickbacks were acknowledged. CAI wants managers licensed under the Department of Real Estate -- as a last resort, however, the Dept. of Consumer Affairs, Contractors State License Board, would be the more appropriate and effective agency to regulate them. I see this report and your Commission as a wonderful DELAYING tactic for CAI while millions of owners continue to be defrauded. Managers cannot be sued, cannot be insured, yet, managers sue owners all the time. They call those who complain about their rule, "dissidents." Their "method of operation" is similar from one end of our state to the other, so there can be no doubt of collusion, conspiracy and coordination statewide. Managers apply the same set of "dirty tricks" against owners, in the same manner, all over the state (I found exact step-by-step actions taken against 2 owners in Orange County as were taken against me in L.A.). While CAI "winks", managers threaten, torment and terrorize owners, while the owners are forced to pay their salaries for these dastardly deeds. Documents are withheld by managers, not only from owners, but from Board Members, as well. **(See enclosed letter, Attachment C, from a prominant CAI attorney to me in response my final request, after several attempts I had made over a 2 year period.** They were daring me to file suit, then to try to get my costs paid. An owner needs $2500 to get a case filed to obtain documents, then CAI attorneys step in, for a fee, to claim the owner has no need to see them.) Managers and Boards falsify documents, regularly lie, and furnish incomplete and misleading Minutes, all in secrecy from owners. The Nakano bill brought out this same testimony from others. **See Judicial Committee report on the Nakano bill, Attachment B.**

Lawsuits -- In fact, owners cannot sue Managers, their Board or their Association. A case costs a minimum of $75,000, and if they should prevail in lower courts, CAI backs an appeal, and what owner is prepared for that event? Of course, the Association foots the legal costs against the owner, enriching lawyers. Local judges are often supported by Managers, so that even Small Claims Court can be tainted against owners. The requirement for Dispute Resolution is a muddled failure -- suits under $5,000 don't go to Civil Court, so it is used to delay Small Claims cases. (Mgrs. and Bds. won't participate.) Further, there is no incentive for Managers to prevent lawsuits, just the opposite -- they profit from extra charges to the associations for their time, receive kickbacks from accountants and lawyer referrals, etc. Managers have nothing to gain by keeping the Associations on the straight and narrow -- just the opposite is true. HM

Monday, January 29, 2001

Dear Secretary,
California Law Revision Commission
4000 Middlefield Rd
Palo Alto, CA 94303-4739

Re: Community Development revision

I am not merely interested in the national police piracy of property rights in America, I am writing a book about it.

How can any Patriot fail to realize the number one crisis in America today is not the energy shortage but the hopeless fate of 42 million citizens lured into police state gulags with the promise of security and comfort for control and tax discrimination?

If you read David Russell's heart breaking article, A Wolf In Sheep's Clothing, you realize Robert Weaver, Chief of Dept of Housing and Urban Development sold the American Housing out in 1966 for land use and land control to convert the land of liberty to a socialist nation!

The founding fathers turn in their grave as citizens die of heart attack stress, shoot each other down(Arizona) commit suicide to escape a homeless life living in a car, overload the courts with bankruptcy, enrich the lawyers, and
face a middle hopeless middle age as the new class of homeless refugees while officials violate every public trust at the hands of trial lawyers who line their pockets to close their eyes to the conflict of interest, etc.

If you think the energy crisis is our number one problem wait till the internet unites the millions of victims robbed by their own officials udner oath to uphold the constitution?

I began my research in California in 1985 and I have watched the nightmare worsen as Congress was misled into FHA, VA and Fannie Mae financing under
the cash cow guidance of CAI and CLAC!

The country cannot recover until there is a hearing in Congress to reform this piracy stealing American homes, peace of mind, equity and mental health.

I wish you luck and the courage to walk in the shoes of our founding fathers who always put the good of the citizens first...thank God there was no hard money or soft money when they wrote the Constitution!

I shall be watching this hearing and holding a chapter to cover your findings....in the end, you will write a story of hope or a story of sell out, for your actions are your choice. God be with you.

Willow Vance,
Civil Rights Advocate

Date: Thu, 01 Feb 2001 07:25:55 -0800
From: Ross Family 6 <NoHOAs@home.com>
Organization: "Only those who dare truly live!"
To: nsterling@clrc.ca.gov

Subject: Re: Hostile Housing Environments - privileged and confidential

Dear Mr. Sterling: Privileged and Confidential

I am forwarding my story to the CLRC to be included for the record in the HOA study hearings tomorrow. I am unable to make it to the hearing as we are financially strapped, and can not afford the trip up there, nor do I have anyone to watch my children. I am very disappointed as I have waited a long time to see this happen. I was able to afford to drive to the the National Senate hearings held in Las Vegas and submitted what I referred to as my "HOA Package of Hate". This package has also been delivered to Senator Ross Johnson's office, Senator Jackie Spiers Office and will soon be delivered to newly elected Assembly member John Campbells office (he is a member of our HOA) as well as the media and other foreign and national organizations.

I have not included in this email the scores of letters and flyers that back up what I have written here. However, in the near future, I will forward that to you via special delivery as it is quite large.

I am drowning in some $80,000 dollars in lawyers fees. Had I known what I was getting into and the risk I was taking, I would have never pursued this. No one explained it to me. I have been sucked into the HOA litigation vortex and can't seem to find my way out. Chubb Insurance Group is fighting viciously against us to take away our right to even reasonable access to our common area pools that we pay for.

Recently, our former lawyer, Jefferey B. Lurner, who we had to drop after we found out that our HOA management companies daughter worked in his offices, is chasing us for the remainder of his fees after he agreed to write them off over a year ago. He very cleverly did not send us a bill for over a year. We assumed he had written the bill off as he had agreed to do and were grateful that we did not receive another bill. Now it appears that the only thing he was doing was waiting for the statute of limitations to pass for us to be able to file a malpractice against him and then picks up the phone to demand the remainder of his fees when he felt it was safe for him to do so.

It is sad, but I am no longer surprised by the slick moves of the litigation industry.

It is my understanding that a representative from the American Homeowners Resource Center will be there to speak on behalf of

homeowners. I am ever grateful to this organization for their support and assistance. Two years ago, I had a hard time believing that what was happening to my family in our HOA was happening right here in this great country. After locating this Center, I quickly realized that I was not alone with my problems. That this was happening to people across the country. I NEVER would have believed it. Representatives of AHRC spent hours providing emotional support and valuable advice when I could not find help anywhere else.

I once contacted the Community Associations Institute after I was led to believe that they were some sort of a support group. When they sent me their package of information, I quickly realized I would have been putting myself right in the belly of the beast. All they wanted was my money. Here were the very people that I was engaged in a war with pretending to help me? By the way, they never answered any questions about my concerns regarding the HOA board dividing the common areas to their benefit. They instructed me to hire a lawyer and would "be happy to refer me to one". The ONLY answer I ever got to that effect was the HOA/CAI lawyer saying "The board has the right to make decisions", like a robot, over and over.

We hope that this study being conducted will finally put an end to this erosion of the American Dream of Home Ownership. There are many communities divided because of this inherently flawed housing model that pits neighbor against neighbor. It does not foster a sense of community (CAI rhetoric). Elections are swung like swings at recess. Year after Year after Year you have to be the HOA police. Hoping that those who are "elected" are doing the proper job. There is no accountability to the constituents. BOD are being 'counseled' by the industry lawyers and managers down a treacherous path that leads directly to the industry's pot of gold, where the homeowners just turn their pockets inside out to keep it filled for them.

It is up to you. The fate of the American Dream of Homeownership for nearly 7 million homeowners rests on your shoulders. Who will you hear in the long run? The industry who makes money off of this regime or the human beings who live in them?

Thanks for your time and for your efforts. We truly appreciate all of this! Following this email will be a letter I sent to Chubb Insurance CEO, Dean O'Hare.

Respectfully,

The Ross Family

From: Editor <ahrc@home.com>
Date: Thursday, February 1, 2001 8:54 AM
Subject: FW: CID project - Hearings to revise homeowner association laws in California - Version 2

Revised copy

From: Editor <ahrc@home.com>
Date: Thu, 01 Feb 2001 01:13:05 -0800
To: Nathaniel Sterling <sterling@clrc.ca.gov>, Susan French <french@mail.law.ucla.edu>, ahrc <ahrc@ahrc.com>

American Homeowners Resource Center communications with California Law Revision Commission Administrator Nathaniel Sterling

on 1/29/01 4:43 PM, Nathaniel Sterling at sterling@clrc.ca.gov wrote:

> In response to various questions you have asked or comments you have made:
>
> (1) Yes, homeowners will be allowed to speak at the Commission meeting.
> Anyone who is interested in speaking will be allowed to speak. The
> Commission is interested in hearing from everyone who has anything to
> contribute. The meeting is open to the public. It is not necessary to sign
> up in advance. I have informed the Commission chair that a number of
> people, representing various viewpoints, including homeowner viewpoints,
> have asked to be heard at the Commission meeting, and that I have told them
> all they will be heard.

AHRC responses are shown in red:

You are holding hearings/ discussions on three topics this Friday.

Only one affects homeowners. You will have limited time.

There could be 10 CAI lobbyists and 30, or even a hundred others wanting to speak in addition to the committee members.

Experts and representatives of homeowners should be given adequate time to speak on behalf of homeowners.

They spend their own time and money preparing studies and fly up to Sacramento to represent thousands of homeowners .

We asked you for time to speak on behalf of homeowners.

Please put us on the agenda and guarantee us the time to present our report .

This information we present should be incorporated into the studies along with industry input (you already have

most of theirs through Susan French) .

Industry representatives have always had an inside track . Their views seem to have no trouble getting into the reports of "consultants" and then misidentified as "academic" and "unbiased reports".

So far you have requests from Skip Daum the CAI paid lobbyist, and Katherine Rosenberry.

At past hearings the chairs have let Rosenberry , who pretended to be an unbiased CID academician, take over public meetings and sell them on CAI lawyer interests .

> (2) You have evidently misunderstood what I told you about compensation of
> Commission consultants. Commission consultants typically receive as little
> as $1,000 or $1,500 and as much as $9,000 for preparing a background study
> for the Commission, depending on the size and complexity of the project. A
> simple overview such as the one prepared by Prof. French would be at the
> low end of that scale.

What did this report cost the California taxpayers?

>
> (3) The Commission's staff does record Commission meetings, but for the
> sole purpose of accurately preparing Minutes; we thereafter recycles the
> tapes. There is nothing to preclude any interested person from making a
> permanent recording of the meeting. It is a public meeting.

Can you make copies of this tax funded tape recording available for purchase ?
Please don't destroy this. We have found minutes for CID meetings often massaged to favor industry.

>
> (4) I have attached a copy of Prof. French's article on a homeowner bill of
> rights.

Susan French's Bill of Rights has some good points but it is anemic.

Homeowners around the country helped write a Homeowner Bill of Rights which AHRC presented to the California Housing Committee at a Sacramento public hearing in November 1996.

Copies were sent to the governor , every legislator , media and posted on the web:

http://www.ahrc.com/HOAorg/Legislation/GH_GovtHearings/GH_McMahon_121296.html

http://www.ahrc.com/HOAorg/BillRights/bill.html

We will incorporate rights we may have overlooked into this Homeowner Bill of Rights on the web.

Latter has been used by people in many States to work on legislation affecting the public.

Susan French writings on CIDs rely heavily on Wayne Hyatt , a CAI evangelist, and a lawyer with a financial stake in the CID lawsuit industry.

You need more than the courthouse technician's (lawyers) and lawsuit industry evangelist - lobbyist's input when recommending regulations affecting other people's homes and families.

We received Susan's resume. It lists her employment , courses she taught and academic articles.

Susan and you told me Susan had written many CID articles in the general media and I requested to see some of these . I have not received any. You said you would send her a followup request. Please do.

What organizations did Susan belong to?

Was she ever a member of CAI or any other trade related organization?

What kind of cases did she handle during her private practice?

Who were her clients - insurance companies, homeowner associations or consumers?

> (5) I am not a Commissioner of the National Conference of Commissioners on
> Uniform State laws; I am an Associate Member of NCCUSL. Associate Members
> do not have the duties Commissioners have. In any event, the statute
> establishing the California Law Revision Commission requires the Commission
> to receive and consider proposed changes in the law recommended by NCCUSL.
> See Gov't Code § 8298(b).

>
Sounds like double talk, Nathaniel.

You are a member of NCCUSL .

The Members of the NCCUSL Conference consist of Commissioners, Associate Members, Life Members, and Advisory Members.

You are required to be members of the Bar Association.

The purpose of the NCCUSL Conference is to" promote uniformity in the law among the several States on subjects as to which uniformity is desirable and practicable. "

NCCUSL records show the following Commissioners for California:

California Commissioners

Beverly. Robert G.
Burke, William M.
Chin, Pamela G.
Cornell, Robert H.
Gregory, Bion M.
Harris, Elihu M.
Phillips. Ronald F.
Rae, Jr., Matthew S.
Richter, Jr., George R.
Sher, Byron D.
Sterling, Nathaniel
Wayne, Howard
Williams. Robert
Willoughby, W. Jackson

California taxpayers hired you as a lawyer and administrator of the California Law Revision Commission. They pay you

for protecting their interests. You have an allegiance to them

In the shadows you are a member of a group of lawyers calling themselves National Conference of Commissioners on
Uniform State laws whose stated purpose is to pass laws they want in every state, regardless of what the citizens of that state want.

How do you reconcile this conflict of interest?

> ---

> (3) Our engagement of Profs. French and Bernhardt indicates that they are
> to identify and take into account the perspectives of interested
> individuals and groups in preparing the report. The report lists input they
> received. At the outset I sent them a list of all persons known to us at
> the time to be interested in this matter. Part of our objective in
> retaining consultants is to help us identify others who might be interested.

Did she "help us identify others who might be interested." before she put out her first report?

How did she miss American Homeowners Resource Center?

ABOUT American Homeowners Resource Center (AHRC):

http://www.ahrc.com/HOAorg/horgmain.html

California Legislators have asked AHRC members to represent Homeowners on all the panels and hearings for the past decade.

Legislators and legislative counsels have called and consulted with AHRC to review effects of past bills and for input on pending bills.

AHRC initiated and provided significant input to pass the only consumer initiated California CID law for association homeowners. AB1317 by Senator Jackie Speier .

Legislators , including Bill Morrow, and others refer CID victims to AHRC.

AHRC has been helping homeowners for eleven years.

http://www.ahrc.com/HOAorg/Media/ma_073097.html

AHRC is quoted . written about, and used by national and international publications Wall Street Journal, Los Angeles Daily Journal, U.S. News, Los Angeles Times, Register, USA News, Ashai News, Dutch papers, San Francisco Chronicle, CAI's Condo Management and many more.

http://www.ahrc.com/HOAorg/Media/ma_AHRC120194SM.html?story=ten

http://www.ahrc.com/HOAorg/Media/ma_091994.html

Homeowners, legislators, lobbyists, academicians, and media nationally and internationally routinely ask AHRC for input, referrals and resources .

AHRC is the first CID homeowner website on the web and has since linked nationally and internationally with pro-homeowner groups and homeowners.

The AHRC website gets 2500 hits a day from thirty countries.

Here's what one homeowner wrote AHRC last week:

"I thought Nathional Sterling was prejudiced in favor of the Uniform Law. The complaints should be addressed to the State Bar Assn. in San Francisco

I plan to write them.

In reading thru the letters I was startled at the ignorance expressed by so many of their hand-picked commentors. (I couldn't bear to read most)
No wonder you weren't notified of the hearing and report.

This is an attempt by CAI to go around the law -- again. ".

I faxed you the names of homeowner leader, writers, publishers and academicians. Some tell me you have contacted them - thank you. I forgot to include the following person:

Douglas Rosner:

Doug Rosner<rosnerlaw@earthlink.net>

This taxpayers funded study should not be another expensive CID lawyer collusion exercise.
Homeowners need protection from this Davis-Stirling induced litigation flood.

"Hi neighbor! Let's meet in Court"
By US World News
http://www.ahrc.com/HOAorg/Media/ma_103000USN.html

The Davis-Stirling Act was schemed up and written by a group of lawyers with intentional loopholes to allow them to steal rights and homes .

http://www.ahrc.com/HOAorg/Legislation/CCGfolder/CCG_hauser2_122593.html

These lawyers now have the power to send any of seven million people they trapped in Davis-Stirling CID prisons through CHUBB - CAI lawsuit mills.

The California Law Reform Commission has a responsibility to reform California's home snatching laws and stem the litigation flood it precipitated.

Thousands more are now reeling in California courts and lawyers offices - victims of scorched earth tactics of the same CHUBB-CAI lawyers.

Homeowner Association Insurance, A Sword, Not Shield

http://www.ahrc.com/HOAorg/News/keyreports/kr_chubb.html

(California is the largest producer of lawsuits - 9 million lawsuits filed in 1999 in a population of 35 million. The lawyers are marketing to other countries under the guise of free trade and democracy.)

Thousands have lost their life savings and homes. Many have contemplated violence and suicide. Some have died from the stress or killed themselves. These victims and their survivors are due restitution.

Eulogy - Jim Troutman - September 22, 1994
http://www.ahrc.com/HOAorg/Legislation/eulogy.html
Homeowners blame Senator Bill Morrow's refusal to do his job as Jim's elected representative for Jim's death

Please study the entire issue and fashion legislation which incorporates all these concerns, and make all this part of California's public records.

Thank you.

Elizabeth McMahon
Director
American Homeowners Resource Center
http://www.ahrc.com

> Nathaniel Sterling
> Executive Secretary
> California Law Revision Commission Voice: 650-494-1335
> 4000 Middlefield Road, Suite D-1 Fax: 650-494-1827
> Palo Alto, CA 94303-4739 Email: sterling@clrc.ca.gov

PAPER

ON

CALIFORNIA COMMON INTEREST DEVELOPMENTS

PRESENTED TO

THE CALIFORNIA LAW REVISION COMMISSION

BY

ARNOLD A. McMAHON

SACRAMENTO, FEBRUARY 2, 2001

This paper addresses the consideration of common interest development (CID) law being undertaken by the California Law Revision Commission (CLRC).

A. PRELIMINARY CONSIDERATIONS:

In order to understand why this revision of the law is even needed, it is essential to have some understanding why CID's arose in the first place. The following remarks are necessarily made with a broad brush.

1. CIDs have existed in the U.S. for approximately 100 years. They were located primarily on the East Coast. They were few in number, inhabited by upper income Americans, and were generally designed to be exclusive in nature, racially, socially and economically.
2. CIDs as a mass phenomenon did not emerge until after World War 2. Three central forces drove this movement.
    a. The pent up demand for new housing caused by returning G.I.'s and the resulting baby boom
    b. Increased post-war prosperity. The U.S. economy was virtually the only economy not shattered by the war.
    c. The application of mass production techniques to the housing market and the consequent dramatic rise in profits. At Levittown, they built on average 2 houses a day.
3. Developers recognized that, in order to attract buyers to their new product, they had to build not only bigger and better equipped homes, but to offer features that would – at least initially – dazzle the eye and tempt the pocketbook. As the new homes were generally in suburban areas, inconveniently far from the traditional amenities of the city, developers decided that they had to include such items as swimming pools, club houses, golfing facilities and park areas.

4. In order to manage these facilities after they departed from the scene, developers realized that they had to create some on-going structure. Thus homeowner associations were formed. This necessitated the imposition of assessments to pay for the upkeep of the facilities, provisions to collect the assessments from those who did not pay – including such enforcement mechanisms as non-judicial foreclosure. Gradually, other provisions were added to take care of alleged aesthetic blight. Soon, homeowners found themselves swaddled with a host of restrictions.
5. Municipalities, always claiming that they were short of cash, realized that they could shift the tax burden from their coffers, to the pocketbooks of homeowners. The cost of installing and maintaining streets, lighting and sewers could now be transferred to private mini-governments. Many cities made it mandatory to build new developments as CIDs. Of course, this was not the only avenue open to cities, but the temptation to shed some of their responsibility apparently proved too much.
6. CIDs received a powerful boost when other interests realized that there was a lot of money to be made from CIDs.
    a. The legal industry recognized that where there is complexity of regulation and deep pockets (CIDs became flush with cash from all the assessments), they could make a lot of money. They also realized that the more they became involved, the more indispensable they could make themselves, and as a consequence, they could make more money. Hence, they often frightened the lay volunteer board members with all the legal complexities in running an association, and the consequent necessity of having a lawyer to handle them. Lawyers got themselves on state bar committees dealing with homeowner associations and legislative task forces both to craft more laws in order that their claim of the necessity of associations be further validated, and also to ensure that laws were passed which protected and advanced their economic interests. As one simple example of this, lawyers here in California got a bill passed to allow the reserve monies of homeowners to be used for their fees in litigation. Hence, the result was that lawyers by and large took over homeowner associations.
    b. Other vendors, such as management companies, CPA's, gardening companies, plumbing companies and many more, saw that homeowner associations were rich resources to be abundantly mined. They saw that the preservation of homeowner associations was to their clear economic interest, and they saw that buttering up to boards of directors was one of the best ways to do it – even if the rights of a homeowner were trampled on.
    c. These vendors – lawyers, management companies etc. – quickly realized that there was great strength in organizing a trade group. The granddaddy of these is Community Associations Institute (CAI), founded in 1973 in Virginia. Its name was to set a strategy for all future trade groups – make it sound like an educational

institution and consumer friendly – in order to mask its true nature as a self-serving trade group. (In 1993, part of its true nature was exposed when it entered into a consent decree with the FTC – it agreed that CAI management companies would cease practices which maintained the high prices of their services. CAI management companies had agreed among themselves not to solicit business from an association which was being managed by another CAI management company.)

d. In the past 25 years, CAI and other trade groups such as CLAC and ECHO here in California, have exercised their considerable financial muscle to advance legislation which furthers their own interests. For example, when Dan Hauser was chairperson of the Assembly Housing Committee, CAI and CLAC would wine and dine him the night before and then present him with awards. The following day during hearings, Hauser would steer legislation their way. Hence, this Commission should exercise more than ordinary scrutiny when it receives suggestions from vendor spokespersons such as Curtis Sproul and Tyler Berding.

B. **FUNDAMENTAL CONSIDERATIONS:**

1. The task before this Commission is incredibly profound, daunting and challenging because it deals with one of the fundamentals of a person's life – his home. A home is not just a commodity, a collection of concrete, wood and stucco. A home is where a citizen breathes, lives and has his being. It is a place which is uniquely his. It is a place where a citizen lives with those most dear to him, his family. It is a place where he dreams his fondest thoughts and shares his most precious moments. The photographs which he puts on the walls, the flowers which he plants, are an extension of who he most truly is.

Hence, when a home becomes surrounded by a thicket of laws and regulations, when it becomes a target of intrusive fingers which seek to penetrate its sacred space, it touches a profound nerve which extends to the center of a person's being. Human beings strike back when they are so threatened. The letters attached to the Memorandum of Nathaniel Sterling (Memo. 2001 – 19) poignantly and eloquently testify to the truth of this statement. When Alisa Ross testifies to the profound horror which she has had to endure and states that "I will never, ever give up" (p. 80), this should send to you, the members of this commission, a message that will ring in your ears and haunt you down the nights and days.

What you are dealing with in this revision of CID legislation is nothing less than the fundamental fate and nature of a nation. If one wants a nation of citizens who are strong, proud, free, creative and caring, then fashion legislation that fosters that, not destroys it. Fashion legislation that does not cabin, crib and confine, but legislation that ennobles, uplifts the human spirit and sets it free. The ideals of this country are not to create servile denizens who are crimped at every turn.

The ideals of those who shaped our constitution (flawed though it may have been in its implementation) should be the same ideals which fashion the housing environment of the citizens of the 21st. century. The goal should be the maximum of freedom consistent with living in an organized society. Would the framers of the constitution even have considered CIDs if they were alive today – or would they have rejected this mountain of rules and regulations as incompatible with the goals of a free nation?

Interestingly, and significantly, Tyler Berding in his letter to this Commission on page 93, lists some of the various facets of CIDs (he describes as them as "hodgepodge entities".) Only at the very end does he list them as "people's homes". I believe it is seriously unacceptable to place last on the list that CIDs are people's homes. Before and above anything else, we are dealing with people's homes. It is the profound failure to recognize and appreciate this simple but compelling fact that lies at the heart of the deeply flawed legal structure that strangles CIDs.

2. The second fundamental fact about CIDs is that people did not ask for CIDs. CIDs were foisted on them. They were presented with glowing images until they bought the home, and then they were handed the heavy tome of rules, regulations and restrictions.

It has been argued that as over 40 million Americans currently live in homeowner associations, they must have wanted them. The fallacy of this argument is clearly seen in the following analogy. Nobody wants to buy a smog producing car, but if that is all you are offered, you have no choice.

Susan French in her article THE CONSTITUTION OF A PRIVATE RESIDENTIAL GOVERNMENT SHOULD INCLUDE A BILL OF RIGHTS (27 Wake Forest L. Rev. 345) states:

> "Increasingly, Americans have been willing to give up some degree of freedom to secure the advantages of ownership in common interest communities."

Ms. French provides no empirical data for this claim. My interviews with homeowners lead me to conclude that purchasers of CID homes primarily and predominantly focus on the house, and simply accept the rest as an adjunct which they cannot avoid, because there are few, if any, alternative non-CID houses.

In parts of this state, - for example, south Orange County - over 80% of homes are in homeowner associations. In San Clemente, as Cara Black in her letter to this Commission points out, over 5,500 new homes are being built and all are in homeowner associations (p.47). The hard reality is that today most home buyers cannot literally buy anything which is not in an association.

Hence, if government is going to impose a legislative scheme on association homeowners, it has a solemn obligation to ensure that it is completely and unequivocally for the benefit of these homeowners. The interests of vendors – lawyers, management companies, accountants etc. – can never be considered when the interests of homeowners are at stake.

This has not been the history of legislation in this state. In fact, the opposite has been the case. Time and time again, homeowners have unearthed the existence of powerful economic forces behind anti-homeowner legislation. In fact, this disease is prevalent throughout the entire system. When I served on the Homeowner Association Task Force for the Department of Real Estate – and I was the only non-industry representative on it – I repeatedly pointed out that the CC&R's of an association should be provided to a potential purchaser at the beginning of escrow, not a few seconds before closing. The Department of Real Estate – whose mandate is consumer protection – refused to enact this provision on the grounds "that it would hurt sales".

In light of the above, this Commission faces a profound, painful and crucial choice. Should it determine that CIDs are a legislative Frankenstein of Orwellian proportions for which the only remedy is abolition? Cosmetic tinkering may improve their face, but does not fundamentally change their heart.

This is a choice that cannot be lightly dismissed. Of course, the transition to a non-CID state, especially for associations consisting only of single family homes (condominiums may require modified treatment) will not be easy, but it is possible, and the proclamation of individual liberty may send a powerful message to all citizens that our society is serious about freedom, and not just pay it lip service and knife it in the back. As California prides itself on being on the cutting edge, other states may re-think their own legislative schemes. This decision, of course, is not a light one to make.

In the event that the Commission chooses to take a middle of the road position (remembering that when you travel in the middle of the road, you can be hit by cars coming in both directions), I would like to address specific recommendations.

C. **SPECIFIC CONSIDERATIONS**:

As other letter writers have made abundant suggestions for the welfare and protection of homeowners with which I agree, I do not wish to cover the same ground, but in the interests of the economy of time to focus on other key issues.

1. Ms. French in her background study suggests that consideration be given to the

" - - extension of law to developments where lots or units are subject to an obligation to fund enforcement of CC&R's even if there is no common area" (Memo. Page 6.)

This type of idea is fundamentally at odds with both the letter and spirit of the constitution. It is a taking of property pure and simple. Owners are entitled to settled expectations when they purchase a property. Retroactive applications of new laws which alter property rights is one of those pernicious laws which raise the ire of citizens. As the CAI lawsuit industry wants to extend CIDs to every piece of property in the land, homeowners wonder whether Ms. French is in reality a CAI spokesperson. If 100% of the affected property owners voted for it, it would be a different matter, but forced CIDization is unconstitutional and unethical.

In Corona del Mar (near Newport Beach) an eighty year homeowner has spent years and over $35,000 trying to stop CAI attorney, Richard Fiori, from forcing his association under the Davis Stirling act. Many homeowners, who have lived there for many years, fought the forced CIDization, but to no avail.

Two industry lawyers (Glenn Youngling, p. 48, and Curtis Sproul, p.91) advocate that when a majority of owners in a non-CID development wish to come under Davis Stirling, they should be allowed to compel everybody to do so. This is ironic and interesting, because it was CAI lawyers who convinced the California legislature to require a 100% vote to disband a CID association. Once again, the clear bias of industry interests is at work.

2. The fiction that CIDs are private contracts should be finally laid to rest in any new legislative scheme. For years, the CID industry has shuttled back and forth when it suits them between the claim that CID's are private contracts and therefore government should not intervene, and then, with no compunction, the same industry lobbies its favorite legislators to pass laws which benefit them. When I joined my association in 1983, the CC&R's stated that assessments could not be raised by more than 5% a year. Before I knew it, CAI lobbyists got a law passed raising the limit to 20%.

Any new legislation should unequivocally state that associations are a form of government, and that they are subject to the appropriate government codes, for example, the election code. This is imperative for the protection of homeowners. In my association, the CC&R's clearly require that elections be conducted by secret ballot. They never have been. At the last election, I raised the same objection, and a member of the board – a judge no less – contemptuously waved his hand.

3. Over the years in California, CID industry lobbyists have got the legislature to require associations to purchase large amounts of insurance – including D&O insurance for board members. This has turned into a double-edged sword for homeowners.

a. One insurance company, Chubb Insurance, has gained a national monopoly on this market, approximately 80%. They have done so by promising to defend board members no matter what, and by bribing them with $100,000 in A & D insurance for $100 a year. Furthermore, Chubb has changed management companies into their sales agent as they promise to cover the management company for a nominal extra sum, - paid for by the association members. Hence, members are paying to defend the management company even when the management company is doing wrong against the very same homeowners.
b. Board members are now protected by the insurance equivalent of the missile defense shield. If a homeowner sues the board, the board simply calls Chubb. The board can sit back while a squadron of highly paid industry defense lawyers go on a savage attack against the homeowner. Such is legal heaven.

Once again, a person's home becomes a pawn in the clutch of powerful economic interests. But a citizen does not buy a home in the expectation of getting a lawsuit. Revised legislation should require that insurance companies in the CID context owe a fiduciary duty to homeowners as well. Homeowners pay the premiums, and this is not a commercial context. Contrary to some assertions in the letters presented to this Commission, CIDs are not primarily businesses. They are places where people live, play and raise their families. Consideration should also be given to requiring insurance companies to offer homeowners insurance coverage for suits against them by the association.

4. Regulatory Oversight. CID's are now so massive, so invasive of a citizen's right to privacy, so caught up in an incredibly tangled web of laws, rules and regulations, that the citizen is essentially helpless in the midst of these superstructures. Homeowners urgently need the protection of a government agency which is truly dedicated to their protection.

The Department of Real Estate is definitely not the agency to accomplish this task. Its appointed officials are all from the real estate industry, and over the years, they have demonstrated a clear bias for that industry. The appointed DRE commissioners in the past 15 years have lobbied legislators against proposed legislation that would have extended protections to homeowners.

Homeowners strongly prefer a separate agency that focuses on the unique needs of homeowner associations. It should be funded by a small charge on each homeowner. It needs a forceful dispute resolution department with the regulatory power to nip abuses in the bud and keep errant boards in line. If there is an advisory board, homeowners should be in the clear majority. Florida has a special agency for homeowner associations. While I do not know how it is functioning in any great detail, I have heard generally positive reports.

5. Boards of directors should not have the power to fine homeowners. They cannot equitably be prosecutor, judge, jury and executioner. There should be independent mechanisms to accomplish this. Homeowners should also be able to use these independent mechanisms when board members and vendors violate the CC&R's in specified circumstances. Appropriate fines for board members and vendors such as lawyers and management companies will be a powerful incentive for them not to overstep their bounds.

Lawyers and management companies quite often become politically involved. For example, the CAI law firm of Peters and Freedman actively sought the ouster of a director when that director questioned some of the activities of fellow board members. Richard Fiori, another CAI attorney, did the same in another association. Management companies have been known to run out the door with a ballot box when the election tally was questioned. There should be a complete ban on all such activity, and stiff penalties levied when it does happen.

As the granting of immunity breeds corruption, immunities should not be allowed for board members. It has been argued that this will discourage homeowners from running for the board. No empirical data has been presented to support this argument. On the contrary, there are many documented instances where a board clique moves mountains to prevent homeowners who challenge their running of the board, from being elected. It is probably more true to say that the absence of immunity will not deter those of good conscience, but will deter those of a different conscience. If so, that is a desirable result. The law should always err on the side of openness and accountability. It is cockroaches that like the dark.

6. As the CC&R's represent a restraint on property, and as the settled law of this country is that such restraints have to be strictly interpreted, failure by the association to follow its own required procedures in this regard should mean that the homeowner is freed of those restraints. The scales have to be tipped in favor of freedom, and those who seek to restrain part of that freedom must be held to the rigorous obligation of complying with all applicable procedures. For example, if the association is required to have a certain number of people on its architectural review committee and the association fails to do so, then a homeowner should not be under any compulsion to submit plans.

7. Associations should not be allowed to foreclose on homes for unpaid assessments any earlier than counties can for unpaid taxes. The vast majority of homeowners dutifully pay their assessments, and only a very, very small percentage are dead beats. However, every homeowner is subject to the vicissitudes of life – sickness, loss of employment, a catastrophe. They should not have the trauma of losing their home within 90 days as well. Because an association, especially a small one, may not have the same financial clout as a county to withstand loss of revenue for a lengthy period, small claims actions should be open to them. An association should have the legal right to exercise compassion in appropriate circumstances. Express foreclosures for unpaid

assessments are cash registers for CAI lawyers. One bragged in an L.A. Times article that he handled 250 foreclosures a month.

Mr. Sproul currently finds himself in a position of attempting to foreclose on a man on the basis of a law which he himself helped to write. The man is fighting for his life. He has had 30 pints of blood transfusions in the past 2 months. The man owns a simple cabin and would be homeless if it were foreclosed on. He has not been able to pay about $1,400 in back assessments. Fortunately, at the urging of many homeowners from around the state, Mr. Sproul said recently that the foreclosure would be stayed pending a resolution.

8. There should be caps on attorney fees. Association lawyers mushroom legal fees over the most trivial of matters. All disputes should go through a rigorous alternate process. With wisdom and fairness as a guide, most disputes can be resolved without resort to all out war.

9. As part of their contracts with service personnel, especially lawyers, associations should require them to agree that they will not make any campaign contribution to any legislator if they are lobbying for a particular bill dealing with CIDs. The contract should specify that violators will be required to pay the association an amount double of the campaign contribution.

In California, the bribing of politicians is blatant. Of course, it is called a campaign contribution, but in reality, everybody knows what goes on. Recently, homeowner advocates were puzzled when a legislator reneged on a promise to introduce a pro-homeowner bill, and instead said that she were contemplating a bill for a pro-industry source. The puzzle was solved when it was discovered that the industry source had made a campaign contribution to the legislator.

Politicians have sold out the rights of California homeowners to the CID industry. The Davis Stirling act is largely a product of the CID industry. The only effective way to eliminate this sell-out is to eliminate the payments. Homeowners have consistently resisted the urging by many that they hire a lobbyist in Sacramento. Homeowners believe in democracy, not lobbyocracy. They believe that they have already paid for lobbyists – the representatives whom they elect and whose salary they pay. They do not believe that they should pay twice.

Homeowners are incessantly dismayed at the level of control that the CID industry has achieved at all levels of government in Sacramento. The "Davis" of Davis Stirling Act is Governor Gray Davis. His current housing consultant is former assembly woman, Julie Bornstein. She was the author of a CAI sponsored bill, AB 1545, which sought to place homeowner association assessment liens even before first trust deed liens. Homeowners successfully fought that bill, but they shuddered at the temerity and audacity which lay behind its introduction.

Homeowners on the political level have felt that their pleas have generally fallen on deaf and unsympathetic ears. In one case, it was tragic. Jim Trautman, homeowner and board member in the Loma Vista homeowner association located in San Juan Capistrano, approached then assemblyman, Bill Morrow, for help in fighting corruption and the illegal use of homeowner money. He received no help, and as the hounding by the other board members reached fever pitch – he was being sued by them right, left and center – he cracked one day and committed suicide. I knew him as a person who had a simple, deep-seated love of his country and the freedom for which he believed it stood. He could not fathom how an American's home could have become the prisoner of venal special interests. We hope that his faith and belief in his country will not be wasted on the desert air.

10. If any legislative scheme is enacted for CIDs, it has above anything else to embody an ironclad Bill of Rights to protect homeowners. This Bill of Rights has to go far beyond the minimum proposal of Susan French in her above referenced article. Homeowners need to be protected from the arbitrary and malicious exercise of power by power-hungry boards. They need to have the ability to quickly and decisively bring deviant boards into line. They need to be able to live the American dream of freedom, peace and security. The official website of the American Homeowners Resource Center (www.ahrc.com) lists many suggestions from homeowners around the country.

11. Finally, but not least, serious consideration has to be given to providing reparations to those homeowners who have lost homes and life savings because of the unjust application of CID laws. Losing a home under any circumstances is a wrenching experience. Losing it unjustly is one of the most profound blows to the human spirit. This Commission can be provided with witnesses who have gone through that.

D. CONCLUSION

The above suggestions are not intended to be exhaustive, but to hit some of the highlights. In a way, they also highlight one of the fundamental dilemmas of CIDs. As a free society, we should live with a minimum of restrictions. In order to defend homeowners in CIDs however, it seems necessary to erect a complex regulatory scheme. These two goals seem to be contradictory.

In addition, considerable time, energy, effort and money is being spent to handle CIDs. This hearing is an example of how taxpayer money is being used because of CIDs. As Mr. Sterling anticipates that the entire process may take several years, the taxpayer bill mounts. The many efforts to pass legislation on CIDs consumes further resources.

CIDs are thus an expensive proposition to society at large. As the prospect of finding a satisfactory legislative solution is not very bright, this raises further questions about the validity of CIDs.

In 1990, the California Assembly appointed a Select Committee on Common Interest Developments. In its final report, it quoted Richard Louv, America II:

> "Sometime during this decade, the shelter revolution will be complete. It will have happened quietly. No shot will have been fired, but the American notions of private property, privacy, local government – and that part of the American dream symbolized by the single-family suburban home – will have been permanently altered."

The Report goes on to state:

> "The "shelter revolution" refers to the rapid proliferation of common interest developments (CIDs) and the implications for the ways in which people house and conduct themselves at the neighborhood level. These private, quasi-democratic governments wield the kind of control over people's personal lives and tastes heretofore unknown in California or the nation. The danger is that current problems will escalate, that homeowners will throw up their hands in frustration at their inability or unwillingness to cope with the imposed behavioral, financial and social responsibilities of community associations, and that CIDs will become little more than failed ghost towns." (pages 2 – 3)

That decade has come and gone, and contrary to prediction, shots were fired and 3 people were killed in Arizona allegedly by a homeowner who had had enough from his association. More shots were fired in Michigan.

The problems which the Report identified have not been solved – if anything, they have been made significantly worse. This should be a sobering reality for this Commission.

A nation defines itself in significant part in the way that it addresses its housing and the value that it gives to the sanctity of its homes. Many third world countries may have more freedom in their homes than do Americans who live in homeowner associations. As one such person said to me recently, "In my country, your home is your home and nobody tells you what to do. I cannot understand what you are doing in America."

These words should haunt everybody who engages in this legislative task. If wisdom does not inform these deliberations, the consequences could be monumental.

Thank you for your attention.

Issues Homeowners Have With Common Interest Developments

Distinguished members of the CLRC:

Thank you for allowing *me*, an investor, to have input into proposed changes to common interest development (CID) law. I am a shareholder, of sorts. But the "share" I own, is my home — and the CID, being contemplated, is my neighborhood.

I. Housing Choice

I bought my home because of its location. My daughter, will attend California's best high school — University High School — because I intentionally bought my home where the resident children go to *that* high school.[1] All of the homes, in this area, are in CIDs with homeowners associations (HOAs). I am a member of an incorporated HOA, but it is no ordinary corporation.

A. Segregating the MLS

Homes in HOAs should be segregated in the MLS, because some homebuyers are merely seeking a home — but not necessarily one in an unaccountable, totalitarian regime, commonly associated with "horror stories." HOA homes are specialty products that are being unloaded on unsuspecting housing consumers and *not* ones that express a desire to purchase something different than a simple residence, to assume the risks of ownership, and to assume a complex bundle of rights and obligations.
http://www.consumersforhousingchoice.org/

B. Local Planning Mandates

"In some regions of the country, homebuyers have few other options. Gilbert, Ariz., a town of 107,000 southeast of Phoenix, is one. The fast-growing town has zoning laws that all but require new homes to be built in associations. And most homes in the Orlando area are being built in planned communities."
http://www.usnews.com/usnews/issue/001030/nycu/homeowners.htm

A woman from Arizona reported to me that in Glendale, Arizona, "the mandate is for HOAs in all new subdivisions WITH common areas. The catch is that ALL new subdivisions have common areas. All new subdivisions have at least 1 water–retention area to collect rainwater run–off." "This may be the only common area for the community. (For this, an HOA is mandated.)"

Ask the seven million people that live in CIDs in California if this is not what is happening here. Ask the people of south Orange County *just* how many homes are not in HOAs there.

[1] That is, if those that rule our HOA don't succeed in running me out of the neighborhood.

II. Justice for home and condo owners/ Lack of Affordable Recourse

If you don't have a six-figure bank account that you're willing to gamble on trying to buy justice from superior or appellate courts, you can't afford justice.

How much justice can you afford?

Plus, HOAs have much more money than the homeowners — and, as OJ proved — if you have enough money, you can get away with murder.
http://www.propertyrightsnc.com/CAI_Farce.htm

III. Horror Stories/ Abusive HOAs (a symptom)/ Neighborhood Cleansing/ Dissidence Suppression (Gulag)

Horror stories are closely associated with HOAs. When incorporated, these "fictitious" or "legal persons" are abusive to the real ones in HOAs. Yet the attorney general claims he doesn't have the money to enforce the corporations code? How much money do y'all think the average homeowner has to enforce the law in the courts?

"Board confrontation usually ends in a power struggle..."
http://realtytimes.com/rtnews/rtcpages/20001018_hoasilverlining.htm

"Homeowners wish to just end the confrontation, whatever it may be, and just live in peace."
http://propertyrightstexas.com/HTMLarticles/toliveinpeace.htm

"'Hobby Board members' that have their own agendas, can cause the biggest problems for the majority of communities."
http://groups.yahoo.com/group/CAISLA/message/150

Why?

In many board confrontation cases, neighborhood cleansing http://propertyrightstexas.com/News/news3.htm is the result. In common interest developments, you find homeowners — whose board confrontation led to a power struggle — selling their homes and moving.

In Texas, "HVCA's directors existing unaccountable, have acted intentionally and recklessly causing the Solcichs to move from the subdivision."
http://www.ahrc.com/HOAorg/Lawsuits/Steve_Tx1.html

Targeted homeowners are incurring thousands and thousands of dollars of transaction costs in selling their mini-fiefdom shares (their HOA homes) and moving, but — compared with the opportunity costs these people have forsaken, the transaction costs of moving pale in comparison.

Board members are "the ultimate untouchables" http://www.ahrc.com/HOAorg/Media/ma_Reg091200_Bob.html and have insufficient reason to *ever* stop harassing neighbors they don't like. Neither HOAs, nor property managers, are regulated or accountable to any higher authority, save a prohibitively expensive court system — and *that's* the way they like it.

The homeowners, don't! ☹

Consequently, "community associations still suffer from conflict." http://www.caionline.org/news/detail.cfm?PRNumber=65111798
"Petty back–fence arguments can escalate into fines, liens and lawsuits. And frustrated homeowners — who didn't realize ... are screaming for attention." http://www.kiplinger.com/magazine/archives/2000/September/managing/hoa2.htm

And because of the way HOAs suppress innocent dissenters, homeowners are beginning to call them "gulags".

A. Civil, Constitutional, Human, and Property Rights Violations

1. Nonjudicial Foreclosure

Homebuyers are not informed that they are entering into contractual arrangements, when they buy homes in CIDs, and are signing away their rights to due process and equal protection. Homebuyers shouldn't even *have* to do this!

Using homebuyers' homes as collateral to assure the viability of a corporation run by amateurs is unreasonable.
http://loan.yahoo.com/m/ten.sm.html#over

B. Racketeer Influenced and Corrupt Organizations/ CAI/ HOAs/ State Actors

1. Treason

Legislators enacted the laws that are causing the trouble I'm describing. They allowed Caring Attitude Impostors to push laws — and kill homeowner–friendly legislation — and the legislators took money from them via the Consumer Attorneys of California. Legislators have failed to deal with the homeowner's plight, even though they are aware of it, while Caring Attitude Impersonators grow rich off of loopholes that I believe were *deliberately* left in CID law. Ask Corrupt, Apathetic and Indifferent CAI lobbyist Skip Daum if enforcement of CID law should be taken out of the courts, where the lawyers make their money? Go ahead! Ask him!

Turning your back on 7 million serfs living in CIDs, and taking money for it, is treason.

2. Cliques, New Gangster In Town, and the Good Ol' Boys and Girls Network

http://fcam.tripod.com/articles/617HomeownersClicks.html
http://www.ahrc.com/HOAorg/News/keyreports/kr_gangster.html
http://groups.yahoo.com/group/prf/message/83

a) Collusion

Collusion is a problem. Less than one percent of an association can entrench itself and the HOA's vendors, via collusion. Board tyrants with domineering personalities can almost always get their way. What volunteer would want to oppose one of these vindictive bullies? What makes it worth it? The board meets one a month, maybe — often with a property manager — so *they* all have an incentive to get along.

The system *inspires* collusion.

Cliques that form thusly don't *have* the same incentive to get along with the other homeowners.

Sometimes, the collusion gets out of hand. Embezzlement is common in HOAs.

b) Organization as Client

I believe the California Rules of Professional Conduct – State Bar of California state, "In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement."

In other words the association supposed to be the client acting through the board of directors. ***This is fantasy!*** Vendors know what side the bread is buttered on and rogue multi–billion–dollar insurers back delinquent HOA cliques up.

You can't tell an HOA property manager, lawyer, gardener, or pool man that the association is his or her client. The board picks the vendors, so — as far as the vendors are concerned — the board members are their clients. No one else.
http://groups.yahoo.com/group/hoanet/message/2212

3. Selective Enforcement of Governing Documents

"There is no vehicle, no avenue, no means of effective redress of grievances when it comes to a homeowner making legitimate claims that an HOA board has failed to conduct themselves as required by state law:

- To act in good faith,
- As a prudent person would in a similar situation."

http://starman.com/HOA/statement.htm

4. Targeting Homeowners

Homeowners are targeted with the multi–million dollar resources of HOAs, if they dare to question the operation of their HOA — or even question the inconsistent enforcement of the CC&Rs that can be used to harass them. Sometimes a homeowner is targeted just because a rogue board member doesn't like the homeowner.

5. Self–dealing

Board members "work for nothing but get compensated in other ways."
http://loan.yahoo.com/m/ten.sm.html#compensated

6. "Frame and Blame"

"Frame and blame" is the board member's motto.

These people are very gifted in smearing people to destroy them to protect their territory," claims Willowdean Vance, of the now–defunct American Homeowners Association. "They like their perks. The homeowner is just a little old lamb to be slaughtered."

Unaccountable homeowners association BODs and their vendors create victims that are in active opposition to this de facto government and Caring Attitude Impostors label them as "disgruntled malcontents" to discredit them and keep them from getting anything changed that might cost HOA vendors money.

"The industry has audaciously laid the blame at the feet of its very customers. 'You should have read the documents;' 'You should have gotten more involved or tried to get on the board;' etc. etc."

How arrogant to blame the victims! How callous.

7. Intentional Infliction of Emotional Distress/ Targeting "Disgruntled Troublemakers"/ Ruling by Fear/ Hostile Housing Environment

HOA cliques with criminal mentalities target homeowners that make trouble for them and intentionally inflict emotional distress on them. "Homeowners wish to just end the confrontation, whatever it may be, and just live in peace. There is fulfillment in being left alone no matter what's the price. Conceding to gangster board whims is the way out. As it happens, these frequent circumstances build a totalitarian Gangster visibility throughout each community."
http://propertyrightstexas.com/HTMLarticles/toliveinpeace.htm

Sometimes BODs that rule by fear go overboard and actually create hostile housing environments for the "troublemakers".
http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=12001-13000&file=12955-12956.1
http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=12001-13000&file=12980-12989.3

IV. Reform vs. Abolition

A. Do we want to build common interest developments?

As Evan McKenzie notes in Privatopia, 'the rise of CID housing is a unique, ad hoc form of privatization carrying with it significant social and policy considerations that never have been adequately considered by government or academics.'

We should be asking the legitimate public policy question of whether we should continue down the road of privatizing local government, or not!

B. Can CIDs be "fixed"?

Before we decide if we want to try to reform them, we must determine if they are fixable. Are you familiar with the expression, "Start with excrement? End with excrement."

1. Inherent, Systemic, Pathetic Flaws

The HOA system of privatized governments is flawed and should be eradicated.

a) Signing Contracts that Deprive Citizens of Constitutional Rights

This is un–American.

(1) Contracts of Adhesion

As more and more CIDs are built in California, relative to the amount of total housing being built, consumers like me find themselves without any choice!

If I wanted my daughter to attend California's best high school, I *had* to enter into the infamous "contractual arrangement". It's *unconscionable* that my wife and I had to sign away our Constitutional rights, or move into an apartment, to get our daughter into California's best high school. In areas with nothing but HOAs, in my opinion, the "contractual arrangements" are *adhesion contracts*.

(2) HOAs: Corporations? Governments? Both? Neither?

The CID industry has muddied the waters.

(a) Associations have the statutory power to adopt rules, allege a violation by a member, and levy fines.

This ignores a VA Supreme Court decision that found fines to be a sovereign power which cannot be delegated and that opined that fining by associations violated both the US and VA Constitutions. — Unit Owners Ass'n of BuildAmerica-1 v. Gillman, 292 S.E.2d 378, 384 (Va. 1982)

(b) Unfair Debt Collection Practices

The CAI argues that the Fair Debt Collection Practices Act should "be amended so that: the definition of debt does not include fees, assessments or other charges due or alleged to be due a ... community association;

"The term 'transaction' is added to the Act and defined to ... ensure that assessments of community associations are not within the purview of the Act"
http://www.caionline.org/govt/advoc/fed/debtsum.cfm

Without getting into the question of whether or not the *homeowners* want their HOA vendors to be allowed to engage in unfair debt collection practices, I'd like y'all to consider something else.

When homeowners ask the government to enforce *its own laws* — the CID industry argues that government shouldn't meddle with private contracts.

And the CID industry makes campaign contributions.
http://www.caionline.org/govt/caipac.cfm

(3) Separation of Powers/ Checks and Balances

Ramona Ripston was the Executive Director of the American Civil Liberties Union Foundation of Southern California, one of the largest ACLU affiliates in the nation. She wrote, "The historical reality is that the people who wrote the Constitution and the Bill of Rights recognized that one of the most important objectives of any American government would have to be limiting the ability of a majority to impose tyranny on all."
http://www.pbs.org/wnet/federalist/opinion-prop.html
http://starman.com/HOA/majority.htm

For seven million Californians, their government has become that which the United States was formed to get away from — a tyranny.

But this time, it's worse. It's on the home front.

"What is government itself", asked James Madison, in The Federalist # 51, "but the greatest of reflections on human nature?

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself."

So he argued, *successfully*, that "the structure of the government must furnish the proper checks and balances between the different departments", to "oblige it to control itself." http://www.pbs.org/wnet/federalist/paper51.html

Corporations have no checks *or* balances. They are run by boards of dictators — I mean, directors — that are the executive, legislative, and judicial branches all rolled into one. As long as HOAs are classified as "corporations", they will have no checks or balances. As long as our legislators fail to institute any form of government oversight, something the Industry is opposed to, the boards of directors will continue to be unaccountable. These "corporations" aren't causing problems as fictitious persons. It is the people on the ***BOARDS*** that are. Not all boards, but enough to make it worth the time for those legislators of ours — that are not afraid of losing Homeowner Control Industry campaign contributions — to ***do*** something about it!

Homeowners associations have no limitations on the ability of a majority — *or tiny minority* — to impose tyranny on all, yet seven million Californians live in them.

There is a ***lot*** of frustration with this form of government.

(4) Due Process

Forcing homeowners to look to the superior and appellate courts for due process — except in the case of nonjudicial foreclosure, in which the homeowner gets ***no*** due process — is a fundamental flaw in the HOA system of governance.

Often, HOA boards just serve as judge, jury, and executioner.

(5) Double Taxation/ Tax Discrimination

According to author Evan McKenzie "Sooner or later, [CID] owners will realize that local and state governments are balancing their budgets on the backs of CID residents. That could open up a full public policy debate over the role of CIDs that should have happened 20 years ago."
http://www.uchastings.edu/plri/96-97tex/cidhome.htm

That debate, should start, now.

b) Dependence on Member Participation

The system depends on member participation, and the members *aren't interested.*
http://starman.com/HOA/alexander.htm

V. Food for Thought

Now, before you call me "disgruntled" — or try to paint me as part of a "gripe show" — I just ask that you answer two questions first:

Are these things to be *"disgruntled"* about? Are these legitimate *"gripes"*?

This is what the Davis–Stirling CID Act wrought. Should we now go back to the CID industry for another law (UCIOA)?

How stupid is that??

Thank you for the opportunity to provide you with input.

Sincerely,

Robert Lewin, MARCT

February 02, 2001

Nathaniel Sterling, Executive Secretary
California Law Revision Commission
Room 437
State Capitol Building
Sacramento, California

Dear Mr. Sterling and Ladies and Gentlemen of the Commission:

Thank you for the opportunity to address you, since I was unable to submit testimony to the commission during the first public comment period ending January 15.

Summary:

I am Marjorie Murray, a shareholder in a small, mutual benefit water association called Snowshoe Springs in the Sierra Foothills near Calaveras Big Trees State Park. The water company was incorporated under the California Public Utilities Code and the state's Corporations Code in 1957. My husband and I have been shareholders in this association for 25 years.

Today, I want to tell you the story of my neighbor, David, a disabled person, whose home the association has been trying to confiscate through its first-ever foreclosure. I bring you his story, because it focuses for me several issues I hope the commission will investigate during its study of California laws affecting common interest developments.

The confiscation of David's home is for non-payment of $1359 in association water dues. In its 44-year history, the association has never before used foreclosure as a tool for collecting delinquent water assessments. The by-laws of the water company are quite clear that the first debt collection tool is shutting off a property owner's water. If that doesn't settle the debt, then past practice has been for the association to take the owner to small claims court or to file a lien on the property and then collect the debt when the property changed hands.

Despite the fact that we are a privately-held water company, and despite the fact that the association's legal documents haven't been revised since its incorporation in 1957, the board was recently advised by legal counsel that it had the power to foreclose on David's home under California's Davis-Stirling Act. The board was not advised by legal counsel to amend its bylaws and to submit this new policy to a vote of the membership. Nor was the board advised to consult the membership about the political wisdom of using this new collection tool on its neighbors.

Nor was the board advised that any policy it did develop could or should be tempered with compassion in order to avoid potential liability under the California Fair Employment and Housing Act and civil rights statutes.

Not until news stories on David's crisis were published two weeks ago in the Sacramento BEE, the Stockton Record, and the Angels Camp Ledger-Dispatch was the association board publicly forced to call a halt to the foreclosure proceedings. Without this publicity David would today be homeless: his modest, A-frame cabin was to be put on the auction block last week.

I bring David's story to you because, for me, and for other Snowshoe water company shareholders, it raises important issues that we urge this commission to study. Among them are:

1. Because Davis-Stirling defines CIDs so broadly, did the legislature truly intend for the law to encompass even rural mutual benefit associations established solely for the limited purpose of providing a public utility (in Snowshoe's case: water)?

2. In situations where California laws governing associations conflict, which law takes primacy?

3. Did the legislature truly intend to give absentee owners of second homes the right to foreclose on the first home of an indigent person?

4. Did the legislature truly intend to give my neighbor – that is, the board of directors – the right to foreclose on my home – even when I own it free and clear?

5. What legal or administrative safeguards are there to protect an individual homeowner from a board exercising unchecked power?

6. Are there no limits to the amount of charges/late fees/interest an association can charge a homeowner?

7. Did the legislature intend for a property owner to look to external agencies – e.g. fair housing agencies and HUD – for recourse?

8. What incentives – or penalties -- does California law provide for a board to enforce state and federal fair housing and civil rights laws?

But first: some background:

Background:

Snowshoe Springs is a small association: we have 360 parcels, 280 of have cabins on them. The development is located in Dorrington, a spot in the road, three miles above Calaveras Big Trees State Park. It is not a gated community. In fact, if you drove by on Highway 4, you would barely know it exists as a community at all: local realtors market it to prospective buyers as a place to buy your "cabin in the woods." We were not set up as a "homeowners' association" as that term is now commonly understood. Our CC&Rs, for example, do not dictate what color our cabins must be or whether basketball hoops are allowed. We have no clubhouse, no swimming pool, no golfing greens; we don't even have an association office for storing records. Board meetings take place at members' homes.

What we **do** have is a water system: We maintain four large redwood storage tanks, holding enough water for each household, and thirty miles of underground piping. [Issue: We're a water company, not a conventional association.] The association has two part-time staff. We are long-time members of the California Rural Water Association, which partners with the California Dept. of Health Services in providing us with technical assistance to manage the company.

The cabins are second homes; fewer than 20 are occupied year-round. Most of the owners are from the Bay Area and the Central Valley. [Issue: Absentee owners] The current board is comprised of absentee owners; after closing his CPA practice, the association treasurer moved only recently to Dorrington from Los Angeles.

In July 2000 Snowshoe Springs began foreclosure proceedings against David Donnell, a 46-year-old disabled person, who has been living full-time in Dorrington for 11 years. His parents built his home with their own hands 33 years ago. David inherited it from them, when they died. His name is the only one on title; there is no mortgage on the property. He supports himself with occasional seasonal work as a janitor at Bear Valley Ski Resort 18 miles up Ebbetts Pass. Otherwise, he lives on food stamps, unemployment checks from his Bear Valley job, MediCal, and the compassion of friends and neighbors. Unlike the absentee-owner board members, David has no other home.

Since he was a teen-ager, David has suffered from epileptic seizures, for which he takes Dilantin. He had major surgery last year at UC, Davis for pancreatitis. Since November 11 of last year he has been hospitalized six times and given a total of 34 pints of blood to combat unexplained internal hemorrhaging.

The Snowshoe board originally wanted to confiscate David's home in order to collect payment of $1359 in water company dues. Since July, however, his bill has ballooned to about $3200, because the association has added to his bill the charges imposed by its Sacramento law firm and charges imposed by a foreclosure firm hired by

the attorneys. [Issue: Extraordinary fees.] According to local realtors, Mr. Donnell's home is valued at about $80,000.

David has acknowledged both in writing and in person to the Snowshoe water company that he owes the money. He came to the association's October board meeting and tried to work out a payment plan, but the board refused to negotiate. "It's too little too late," said one board member, a past president of the association, adding "I've been sick before, but that never stopped me from paying my bills." I personally witnessed this episode.

The board did not tell David at the October 21 board meeting that the Notice of Default against him had already been filed in Calaveras County on October 19, two days before. Nonetheless, after the October meeting David sent a cashier's check for $50 to the treasurer, who deposited the check in the bank. Despite cashing his check, the board refused a second time at its November board meeting to negotiate with him again saying "it's too little too late; it'll take forever for him to pay off this bill."

So, why did the board pursue foreclosure when David was clearly ill and when he had offered to work out his debt?

Individual board members, including its president and treasurer, said openly at board meetings and in e-mails that the purpose of foreclosing was to practice on a couple of property owners in order to learn how foreclosure worked and then to publish a collection policy later to the membership. They also said they wanted to "set an example to the other property owners" and to get them to "pay up." My speculation is that David was probably singled out, because he was perceived as defenseless: financially, physically, and emotionally.

Whatever its motives, the board did not apply its policies evenly to all, as a review of board minutes, treasurer's reports, and other records will show. The July 2000 treasurer's report listed a total of 46 other property owners who were delinquent in dues. Seven owners, including David, were put in a separate category of "past due," though it is not clear why. Some owed as little as $500. At the July meeting, the board re-stated its intention to foreclose on David and on the owner of a vacant lot.

As I have already stated, Snowshoe has never before used foreclosure as a tool for collecting dues. Whether it even has the legal right to use this tool is questionable. California Corporations Code Section 904(a) and (b) governing mutual water companies states that any amendment to a water company's legal documents which "would authorize remedy by action for the collection of an assessment" must be approved by all the outstanding shares.

Shareholders in the Snowshoe Springs Mutual Water Company clearly never voted on foreclosure as a new collection tool. The association has never had any written policies on foreclosure – until after it started foreclosing. It started to seize David's home

in July. Then on November 23, 2000, David sent a formal petition letter to Snowshoe asking to negotiate a payment plan. In it David identified himself as a disabled person. A copy of the letter went to Sentinel Fair Housing to which David was referred by the Civil Rights Division of the Department of Housing and Urban Development, Region IX. After it got the letter, the Snowshoe board hurriedly put together a "collections policy" and mailed it to the membership on November 29, 2000, a week later.

Even if we grant – purely for the sake of discussion – that possibly Snowshoe has a right to foreclose under Davis-Stirling for nonpayment of dues, I believe that same law also requires that a homeowner board send its members an annual statement describing its collection policies – including foreclosure. I believe that the Speier law (AB 1317) also requires that homeowner associations inform owners of their rights under the 1997 provisions of Alternative Dispute Resolution. The Snowshoe board took neither of these steps until months after it began the process for seizing David's home. Why not? I believe it's because there are no built-in penalties imposed on runaway boards for not following the law.

Where do things stand now for David?

The Sacramento BEE article evoked legal help from a generous attorney who agreed to take on Dave's case pro bono. The attorney has succeeded in getting the foreclosure put on hold for 60 days. Had it not been for the publicity, however, Dave would now be homeless. As an indigent homeowner he was facing a board whose power is unchecked and whose bank accounts are, in comparison, unlimited.

Friends of David banded together and sent the BEE article – at their own expense -- to every Snowshoe homeowner scattered over the state. Most were shocked that the association was waging this campaign against him. And many asked: "Does the association really have the right to foreclose on my home? I don't remember voting on that....

In a rapid about-face, the Snowshoe board sent its own letter last week to the membership stating that, until its January 20 meeting, it had "no idea" David was so sick. I am unable to comment on this clear distortion of the facts given his November 23 petition to the board.

Today I am here to urge the commission to study the issues embedded in this story. Can an association exercise unlimited power in the same fashion as this board has? Does a defenseless person like David have no rights? Must a property owner look to other state and federal agencies for protection against a runaway board?

For me David's story crystallizes many issues about the role of California law in associations. Snowshoe was established as a Mutual Benefit Association, whose very name indicates that its members are to be helping one another. Is California law designed

to protect our mutual interests? Does it operate to preserve our mutual benefits? If David's story is any indication, the clear answer is "No, at the present time it does not."

Sincerely,

Marjorie Murray
1321 Holman Road
Oakland, California 94610 and
Shareholder in Snowshoe Springs Association
PH: 510.272.9826
e-mail: writzy@aol.com

cc: Michael Johnson, Esq.
Senator Jackie Speier

Feb. 2, 2001

To: California Law Commissioners
State Capitol, Sacramento, CA
Ste, 257

From: Karon D. Cave
California Resident/U.S. Citizen
P.O. Box 886
Soda Springs, CA 95728
(530) 426-1855/HM or *(530) 268-3036
*where I'm temp. staying this winter

Regarding: My homeowner's association denying me access to my home on the ('common area') only access road to my home.

Dear Sirs and Madam Commissions,

My name is Karon Cave, I'm a 31 year old, disabled, homeless mother of 4 young children. My husband of nearly 15 years built us a 4 bedroom/2 bath home in a beautiful community named "Pla-Vada Woodlands", located in Kingvale, CA (just below Donner Summit off I-80). This is our very first home, we always lived in tiny apartments, my husband John is a carpenter and built our

family a beautiful home from the ground up with his own two hands. Sounds like a 'dream come true', right? Well it should be a time of happiness but my homeowner's association, named "Pla-Vada Community Association" has turned our life into a nightmare.

Presently my husband and I our living apart due to emotional / physical stress of living in our home. This is the third winter / year that the 4 children and I have become homeless, we've stayed in my van, in homeless shelters and with various family members. Why? How could this happen?

My H.O.A. refuses to plow the snow from my access road, they want it for snow-mobilling (recreational desires of some very rich non-fulltime residents. We <u>all</u> pay for snow removal with our $870. a year assessments (for developed property), but the Board of Directors refuses to <u>all</u> the roads. I've made <u>many</u> attempts to resolve this with the Board. I told them that I am disabled and we have a baby with health problems. They told

me that "If you are disabled then you shouldn't have moved here!" Said by board member Amy Wright and others on the board commented similar discrimmitary remarks. This was said during the June '98 Annual Meeting, when I went to find out why they aren't going to plow my part of the road. Amy Wright told me previously on the phone that they don't plow our road and actually close it off for the purpose of snow-mobiling. She even indicated the Mr. Fisher and another neighbor on my road are the main reason they keep it closed. The Wright's, ~~and~~ the Anderson's; the Sevier's are also ~~the~~ snow-mobile buddies with Mr. Fisher. Mr. Fisher is a wealthy man and has some financial interest in "Polaris" snow-mobile manufacture and I was told he owns a Casino. Well this explains his power, but what about my family's health, safety and happiness and enjoyment of our home?

The board told me that this wasn't true. They said it was time and cost. I offered to hire & pay a Licensed Snow-Removal Contractor (& Insured) and the board told me I can't and if I do they will sue me.

I have made a "Request for Reasonable Accomedations", under the Americans with Disabilities Act, on Jan. 2, 1999 both verbally and written at a regular board meeting. (Exibit A). A day later I recieved a notice that the Board of Directors issued (Exibit C). During the Jan. 2, 1999 meeting I also filed a complaint with the Board regarding the assault and abuse of power during an incident involving the Caretaker assaulting and intentionally intrapping my husband on the road in Nov. '98. More detail on that you can read in my letter to the Attorney General (Exibit B).

Anyhow the notice the board sent out indicated that vehicles other than snow-mobiles or ATV's driving on the closed road will be

fine you $500.00. The notice also said that they decided to install some type of barrier/ gate at the entrance of the closed sections of the road.

So of course when my husband went home the following day and found two huge snow packed walls placed across the road he had manually cleared [redacted] snow from the rodd the evening before and to make things even worse there was 3 cables stretched across the entrance that the board had installed. My husband came to where I was and told me and we both began to panic then we started shaking and crying saying they win I guess we loose our home. Then I got it together and said, "No! We aren't going to give up, this is against my civil rights!" I called the Nev. Co. Sheriff's Dept. and explained what was happening and they said that if this threatens our health & safety then we have the right to remove ~~them~~ it. So we did. We began getting

harassed by the Board; they put me down for being disabled; they encouraged others not to like us. I believe the were spreading rumors and until Spring and Summer of '99 when I was able to visit some neighbors to get to know them, etc. people were gossiping saying we were the reason for the speed bumps; people were rude to us; comments were made that we we getting a divorce, etc. Once people got to know us, there hasn't been any problems except with Board members and their snow-mobiling buddies. ✱

After my attempts to resolve this (before the next winter came) failed to change anything, my family was in for our 2nd winter with no snow-removal by the Association orders. During this 2nd winter the snow-mobiling group would continually stop their snowmobiles in front of

us. Tell us that we didn't have a right to be there call and make false police reports.

Then the Board told me about their own recreational excursions down my road being interfered with by my husband or my family clearing snow from the road. They said this during a meeting to me. Mr. Fisher was also there.

Next meeting I went to was on April 1, 2000. During this meeting the issue of "the Cave's clearing snow from the road" was addressed. One member suggested fining us $500.00 fine. Another member agreed. Then the first one, (Ms. Lyons) added that they should charge 500.00 for each day we used our road. I raised my hand but they changed the subject and ignored me. I asked if I could speak they said at the end. At the end of the meeting they ajourned and seconded and got up. I

wasn't sure what to do. I felt pain in my chest and could hardly breath. This continued all weekend and I even went to the doctor.

On or About April 18, 2000, I recieved a nasty letter from the board along with another fine, this time it was $34,500.00 $500.00 per day X 69 days.

Well after going into a deep depression, I decided to fight back. I can not afford an attorney, which I made the mistake of telling the Board, so I spoke with the Sacramento Bee and other newspapers in hopes of finding legal help.

Following my article someone called the Sac. Bee to tell them that I should file a Discrimmination case with the United States Department of Housing and Urban Development which I have and my case is currently under investigation.

Summary:

I just want to live in my home. But again I'm homeless with 4 children, please make a law to protect my Civil Rights. If something like this happens there should be a way to resolve such an [redacted] issue easier and effectively. Who does a homeowner go to when the H.O.A. is operating against the law, against my Civil Rights.

Karon Caye
Karon Caye
P.O. Box 886
Soda Springs, CA
95728

(530) 426-1855
home temp. (530) 268-3036

To: Nat Sterling
From: Roger Bernhardt
Re: Common Interest Development Study
Date: Jan. 30, 2001

Circumstances have made it impossible for me to attend the Commission Meeting on Feb 2 as I had earlier planned. In lieu thereof, I am writing this letter giving you my opinions concerning Susan's Report.

Let me say at the outset, before I turn to details, that I find it a truly thoughtful and comprehensive report. There is really nothing of substance in it that I would criticize or oppose.

1. The Overview (Part I) sets forth a rich menu of statutes which bear upon common interest developments. Obviously, if changes in the laws affecting CIDs are being contemplated, all of these code sections should be reviewed in order to eliminate inadvertent discrepancies. While Susan has included all of the major statutes which ought to be considered, you might also wish to consider Civil Code sections 1460 – 1471 (covenants running with the land), and various cases which may have a special impact of CIDs, e.g., Villa Milano Homeowners Association v. Il Davorge, 102 Cal.Rptr.2d 1, 84 Cal.App.4th 819, 2000.

2. Susan's history of the Davis-Stirling Act (Part II) is useful in that it reveals a flawed process from the start, one almost certain to invite the criticisms, which now beset it. I have not independently studied those original proceedings, but there is absolutely no reason to doubt the historical summary she has given you.

3. The Criticisms of the Act (Part III) are set forth lucidly and persuasively. Susan's examples show how complicated, incomprehensible, illogical, misleading, and mislabeled many of the sections are; that the Act too often concentrates on details rather than general principles and fails to treat other important matters; that there are no satisfactory enforcement or compliance mechanisms available to owners and very little protection of owner rights against board arbitrariness or oppressiveness. From my own,

more limited, experience, I can concur in many of these criticisms; and I do not believe that Susan has overdramatized the situation.

4. The Recommendations (Part IV) made by Susan are so rational as to be almost self-evident. Given the genesis and subsequent amendments to the Act, a complete fresh start is clearly an approach that should be considered. With both UCIOA and the Restatement available to serve as models, a comprehensive act combining the best features of them with those parts of David Stirling deemed with preserving is an obvious goal to consider at the outset, even if it is not ultimately adopted. Additionally, the further questions raised by Susan as to whether the rules would be mandatory or mere gapfillers, whether homeowner protections should be improved, and whether more extensive DRE involvement should be included are all major issues that should be dealt with in any new legislation.

5. Because common interest developments are not a major component or my own legal experience, I cannot say whether the points made in the Feasibility Section (Part V) are accurate or faulty. Most strong legislation invites strong reactions, but accomplishments do sometimes occur anyway.

Overall, I think you have been very well served by Susan's Report to your Commission. If the decision is made to go forward it is clear that she could be extremely valuable to you in that regard.