
Study H-850

October 5, 2001

First Supplement to Memorandum 2001-63

**Common Interest Development Law
(Materials Received at Commission Meeting)**

Attached to this supplemental memorandum are materials relating to Common Interest Development Law submitted to the Commission at its September 20-21, 2001, meeting in San Francisco. The materials concern a CID Homeowner Bill of Rights.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

September 21, 2001

Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303

RE: CID Homeowner Bill of Rights

Dear Mr. Sterling and the Commission:

Thank you for the opportunity to speak to you again. I am here with Steve Cogswell of Sentinel Fair Housing to represent a coalition of consumer, fair housing, and advocacy groups, who are bringing you a CID Homeowner Bill of Rights. We respectfully urge the commission in its deliberations today and in the coming months to ensure that any revisions to California law governing CIDS be measured against the principles stated in this document.

Why a Bill of Rights – and why now?

The idea for such a document is not new. Industry groups, lobbying for federal support of CIDS on a national scale, brought the first version to Congress thirty years ago. However, next Monday, September 25th, marks the 210th anniversary of the ratification of the Federal Bill of Rights. We think this creates a unique opportunity to re-state what we believe must be the basic principles for any future CID initiatives in the California legislature.

Each member of the coalition, in its own work, has witnessed the toxic effects on the individual and on community life, when civil rights are violated. My husband and I, for example, have this year witnessed tyranny – there is no other word for it – which deprived an individual of due process, of his right to protest, of his right to vote. My husband and I have also been the targets of retaliation for exercising our First Amendment rights of free expression, free speech, the right to protest, and the right to participate in the governance of our association. These experiences make us, as individuals and as members of this coalition, determined to fend off any assaults against basic civil liberties.

Let me briefly explain.

The David Donnell foreclosure is over. You will recall he is the disabled man whose home our association, Snowshoe Springs, attempted to seize through its first-ever foreclosure. He was given no due process let alone speedy due process, specifically:

- The board was advised by legal counsel to seize his mountain cabin even though the association had no policy for collecting back dues, let alone a policy to foreclose.
- The board rejected David's protest of the foreclosure and his offers to pay. The board did not advise him of his legal right to Alternative Dispute Resolution.
- Board members were advised in writing by Sentinel Fair Housing that they were in possible violation of state and federal fair housing laws, health and safety laws, and the Americans With Disabilities Act, but they forged ahead anyway with the foreclosure process.

- The board had the sheriff file criminal charges against David even though it has no policy for calling in the sheriff.
- It took six months for the board to admit that David owed, not the \$3300 originally claimed, but only \$1050.70, and another three months to rescind the notice of default. "Nine months" is not "speedy."
- David's debt was paid in April, but in May, the board denied him the right to vote on legal documents affecting his future property rights, saying he was still not a member in good standing. However, brand new members of the association, who purchased lots in June, July, and August were sent election ballots and urged repeatedly to vote.

David was rescued, not by due process, but by having the foreclosure reported in the Sacramento BEE. The BEE article in turn evoked pro bono legal help: not novice legal help, but the veteran skills of Michael L. Johnson, senior trial counsel for Union Pacific Railroad. He was the one who stopped the foreclosure and got the notice of default rescinded.

There's more to this story, however.

In January, the Friends of David Donnell – his support group – began publishing special bulletins and newsletters to advise association members of the foreclosure and to protest its legality. We also distributed the Sacramento BEE article. Every newsletter story we published was well-researched and well-documented with public records and whatever association records we could access. Personal opinion in the newsletters was limited to clearly labeled editorials.

We enlisted the help of the California State Attorney General's office to try to get association records, especially financial records, because the board stopped publishing treasurer's reports in February.

What was the board's response to exercising our First Amendment right to speak, to write, to publish and to our right to protest?

- In April the association attorney sent me and my husband a letter threatening to take legal action against us for publishing our newsletter.
- The same day, the attorney wrote Michael Johnson saying the newsletters contained "defamatory statements" and that we had falsely ascribed statements to Mr. Johnson.
- The association lawyer also sent the Attorney General's office copies of the newsletters, saying they comprised a "vendetta" against and a "campaign to discredit" the board.
- In July, the board president opened the association's annual meeting with a half-hour denunciation of my husband and me before 100 of our neighbors. He said repeatedly that we had filed "frivolous lawsuits" when we had filed no lawsuits whatever. He called our letter to the AG's office a "frivolous lawsuit" forcing the association to expend money for legal fees. The speech was followed by a motion that we be required to reimburse the association \$7800 in attorney's fees. The motion was tabled in order to see whether we cause any more "trouble" in the future.

Nathaniel Sterling
California Law Revision Commission
September 21, 2001
Page 3 of 3

Let us step back for a moment from these particular events at Snowshoe Springs.

The commission has been bombarded with testimony from CID homeowners, who feel powerless when they tangle with their association board. The first staff report of the commission in March acknowledged this sense of powerlessness" and impelled the commission to find a way to equalize this balance of power.

May we respectfully submit to the commission that the issue here is deeper than restoring a political balance of power? The coalition we speak for today thinks there are constitutional issues at stake. I myself have now witnessed a total disregard for due process by a board determined to deprive David of his property. There was no policy to foreclose; he was denied a fair hearing; he was not advised of his rights under the law; and even though he had paid his debt he was denied the right to vote on documents, which will affect his future property rights.

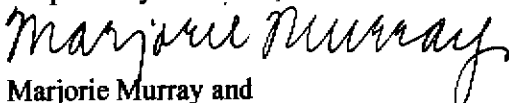
For trying to help David, for exercising our right to protest and our First Amendment rights of free expression, my husband and I have been publicly excoriated by the board. We have also been threatened with future retaliation if we cause any more "trouble."

We are here, therefore, to present to the commission a CID Homeowner Bill of Rights reaffirming the civil liberties guaranteed every American citizen by the federal Constitution. Our document was drafted with the advice and counsel of the Constitutional Law Clinic of Rutgers University Law School.

This Bill of Rights has been endorsed by the Consumers Union, the American Association of Retired Persons, Sentinel Fair Housing, the Congress of California Seniors, the Older Women's League, the Gray Panthers, the American Homeowners Resource Center, and individuals. This statement of principles is also being reviewed for endorsement by other civil rights, community organizing, and advocacy groups.

Again: We urge the commission in its deliberations today and in the coming months to ensure that any revisions to California law governing CIDS be measured against the principles laid out in this Homeowner Bill of Rights. Its language and ideas are drawn from another governing document we all know well: the U.S. Constitution.

Respectfully submitted,


Marjorie Murray and

The Consumers Union
American Association of Retired Persons (AARP)
Sentinel Fair Housing
Congress of California Seniors
Gray Panthers
Older Women's League of California
American Homeowners Resource Center

cc: Senator Jackie Speier
Assembly Member Carole Migden

BILL OF RIGHTS

On September 25th we will celebrate the 210th anniversary of the ratification of the federal Bill of Rights. To honor this occasion, we the undersigned have ratified ten resolutions comprising a Common Interest Development Homeowner Bill of Rights. Modeled on the Preamble and the Amendments to the U.S. Constitution, this document is meant to inspire public confidence in the concept of the CID, to ensure that this local government institution pursues benevolent goals, and to prevent abuses of power. Any changes to California law governing CIDS must conform to these inviolable principles. We resolve *THAT*,

- I* **Since** living in a common interest development (CID) requires an individual citizen to enter into a contract with a governing association, the prospective homeowner must give written informed consent to the terms of the association's rules and governing documents, but most especially to the Codes, Covenants, and Restrictions (CC&Rs) ten days before close of escrow. The governing documents comprise the contract between the association and the buyer.
- II* **No** CID board shall abridge a citizen's freedom of speech or of the press either through direct order or through intimidation or any kind of public abuse; that no board shall abridge the right of homeowner citizens to assemble peaceably or to petition the board for a speedy redress of grievances. No CID board shall abridge freedom of religion.
- III* **Boards** give a full, true and accurate accounting in writing of all association actions. No actions shall be taken in secret.
- IV* **Homeowner citizens** shall be entitled to speedy access to all association records, particularly to financial records, contracts, and records of governance at any time without exception.
- V* **Homeowner citizens** shall not be deprived of liberty or property, without speedy due process of law. Nor shall private property be taken without just compensation, specifically, there shall be no non-judicial foreclosure. .
- VI* **Homeowner citizens** shall have the absolute right to vote on any changes to the terms of the original contract, i.e. changes in rules and amendments to governing documents or fines they are expected to pay. No fine shall exceed the true costs of the remedy.
- VII* **If accused** of violating rules, homeowner citizens are entitled to a speedy and public hearing by an impartial body not selected by the board; the impartial body shall determine the guilt or innocence of the accused and determine what fines, if any, be imposed; that the accused be informed of the nature and cause of the accusation; be confronted with witnesses; and have a compulsory process for obtaining witnesses, records, and advocates. Use of this system does not cancel a citizen's rights of appeal in the courts.
- VIII* **Residents** shall be treated equally, and not in an arbitrary fashion, without reference to age, race, gender, cultural lifestyle, sexual orientation, national origin, marital status, disability or familial status as established by both state and federal laws and regulations.
- IX* **Rules** enacted by a CID association and amendments to its governing documents must conform to all state and federal fair housing and health, safety and welfare laws.
- X* **Elections** shall be in the hands of the homeowner citizens, not the CID board: ballots shall be secret; no homeowner citizen shall be denied the right to vote for failure to pay any fine or tax, including assessments; directors shall serve no more than two terms and be held accountable for their decisions; the makeup of the board shall reflect the makeup of the association membership. *September 21, 2001 Draft.*

Consumers Union

Publisher of Consumer Reports

September 18, 2001

Nathaniel Sterling
Executive Secretary
California Law Revisions Commission
4000 Middlefield Road, Room D-I
Palo Alto, CA 94303

Re: Common Interest Developments

Dear Mr. Sterling,

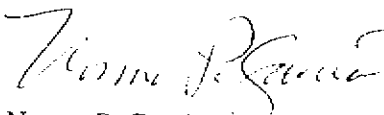
Consumers Union, the nonprofit publisher of *Consumer Reports*, respectfully urges the California Law Revision Commission to consider revisions to existing laws to protect homeowners from losing their homes to foreclosure when homeowners associations use the non-judicial foreclosure process to collect small amounts of unpaid homeowners' association dues and fees.

While it is true that buyers and sellers can enter into collateral agreements when buying and selling property, there should be safeguards against provisions that would result in someone losing their property simply because they cannot afford to pay or have a dispute about outstanding dues or fees. Homeowners should be protected from arbitrary actions by homeowners' associations that act without checks and balances and that fail to provide adequate due process for those facing foreclosure.

Consumers Union supports the "Bill of Rights" that Ms. Marjorie Murray will present to the California Law Revision Commission on September 21, 2001. The "Bill of Rights" presents reasonable and modest protections for those homeowners living in Common Interest Developments. These protections are necessary to protect the dignity and ownership interest of those living in Common Interest Developments, particularly those who are elderly, sick, disabled or poor, and promote the preservation of existing homeownership in California.

Please feel free to contact us if you have any questions.

Sincerely,



Norma P. Garcia
Senior Attorney
Consumers Union
West Coast Regional Office

cc: Ms. Marjorie Murray

Subj: **Common Interest Development Bill of Rights**

Date: 9/8/2001 2:32:30 PM Pacific Daylight Time

From: joanblee@juno.com (Joan B Lee)

To: writzy@aol.com

Gray Panthers California is pleased to lend it's support to the CID Homeowner Bill of Rights. We believe that the stated principles are a simple matter of justice for the common interest development homeowner who often feels their freedom trampled on the governing associations. Please list us as being in the strongest support of this document.

Unfortunately I will be out of town at the time of the September 21st meeting, but best of luck at the hearing.

Joan B. Lee
Legislative Liaison
Gray Panthers California

916-3332-5980

FAX same

----- Headers -----

Return-Path: <joanblee@juno.com>

Received: from rly-yd05.mx.aol.com (rly-yd05.mail.aol.com [172.18.150.5]) by air-yd04.mail.aol.com (v60.17) with ESMTP id MAILINYD45-0908173230; Sat, 08 Sep 2001 17:32:30 -0400

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Received: (from joanblee@juno.com)

by m1.boston.juno.com (queuemail) id GEUJTXJR; Sat, 08 Sep 2001 17:32:24 EDT

To: writzy@aol.com

Date: Sat, 8 Sep 2001 14:34:42 -0700

Subject: Common Interest Development Bill of Rights

Message-ID: <20010908.143959.-4088419.0.joanblee@juno.com>

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X-Juno-Line-Breaks: 4-5,7-14

X-Juno-Att: 0

X-Juno-RefParts: 0

From: Joan B Lee <joanblee@juno.com>



Older Women's League of California
 926 J Street #1117, Sacramento CA 95814
 • (916) 444-2526 - Fax (916) 441-1881

VOICES OF MIDLIFE AND OLDER WOMEN

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 Jean Stala,
 San Diego

September 18, 2001

Marjorie Murray
 1321 Holman Road
 Oakland, Ca 94610

Dear Ms. Murray:

The Older Women's League shares your concern for the unjust treatment some residents in common interest developments have received. We believe that your Common Interest Development Homeowners Bill of Rights is an appropriate action, and we join with others in supporting this. The document points out many important issues which affect Common Interest Development owners.

We urge the California Law Revision Commission to approve the CID Homeowners Bill of Rights.

Yours truly,

Betty Perry
 Public Policy Director
 Older Women's League of California

National Office, 666 Eleventh St., N.W., Suite 700, Washington, DC



CONGRESS OF CALIFORNIA SENIORS

September 10, 2001

Marjorie Murray
1321 Holman Road
Oakland, CA 94610

Dear Ms. Murray:

On behalf of the Congress of California Seniors, I am pleased to advise you that our organization heartily endorses the draft Bill of Rights for common interest development (CID) residents.

We wish you well in your struggle for equity for all CID residents.

Sincerely,

William Powers
Legislative Director

WP:ef

