First Supplement to Memorandum 2008-12

2008 Legislative Program: AB 1921 (Saldaña)

Assembly Bill 1921 (Saldaña) would implement the Commission's recommendation on *Statutory Clarification and Simplification of CID Law* (Dec. 2007). AB 1921 has been approved by the Assembly and is pending consideration in the Senate.

We have received four letters expressing concern about the bill, which are attached in the Exhibit as follows:

The letter from Sandra Bonato was individually signed by 25 attorneys altogether (hereafter the "CID Attorney Group"), and originally included a separately signed signature page for each. In the interests of conserving paper, the staff asked Ms. Bonato whether it would be acceptable to reproduce only the list of signatories (See Exhibit pp. 17-18), rather than each of the 25 individually signed signature pages. She agreed. The staff appreciates that flexibility.

These letters and other recent developments on AB 1921 are discussed below.

COMMENT LETTERS

Complaints About Existing Law

Many of the concerns raised in the comment letters are complaints about what AB 1921 **does not** do, rather than what it **does** do:

- George Staropoli objects to the lack of any substantive extension of homeowner rights. In particular he objects to the lack of any provision addressing the relationship of CID law to the state and federal constitutions. See Exhibit p. 1. As indicated at Exhibit p. 2, Mr. Staropoli first raised these issues in 2005 and was informed at

that time that they were beyond the scope of the recodification project.

- Ravi Kapoor objects that AB 1921 does not include more substantive improvements to existing law. In particular, he regrets that the bill does not include penalties for violation of CID law. See Exhibit p. 8.
- Patricia Gomez objects that AB 1921 does not include an affordable mechanism for the enforcement of CID law. See Exhibit p. 53.

Considering the strong resistance that has developed to even modest substantive changes in this bill, it would not be politically possible to expand its scope in the ways these commenters suggest. Nor would it be consistent with the general approach taken in this project, which is aimed primarily at improving the expression of existing law, rather than its substance.

CID Attorney Group

On April 18, 2008, we received a letter from a group of 25 prominent CID attorneys (seven of whom are co-authors of the principle practice treatises in the field of California CID law). For the most part, they expressed general concerns about the bill and urged Assembly Member Saldaña to withdraw it and refer the matter to the State Bar Real Property Law Section for redrafting.

The only specific concern raised in the letter, relating to the definition of "exclusive use common area," has been addressed in an amendment. This is discussed below.

When AB 1921 was heard by the Assembly Committee on the Judiciary (April 29, 2008), the Committee Chair admonished the CID Attorney Group for raising concerns after the bill had been introduced, rather than during the Commission's deliberative process, and directed the group to submit a specific and detailed list of its concerns to Assembly Member Saldaña by mid-May. The purpose was to reduce the group's concerns to concrete terms so that they could be addressed through discussion and amendment. The list of concerns has not yet been provided.

GENERAL RESPONSE TO CONCERNS ABOUT THE BILL

Memorandum 2008-11 described the general response that AB 1921 had received from CID interest groups. Many of those groups expressed new concerns about the bill, that had not been raised during the Commission's two and a half year deliberative process. A few of the new concerns involved

technical errors in the bill, which have been corrected. Most involved policy objections to substantive changes from existing law that were included in the Commission's recommendation.

In developing the recommendation, the Commission had a clear practice of excluding any substantive change that *might* be controversial in the legislative process. Consistent with that practice, the staff made a general commitment to the various interest groups, to reverse any substantive change that *actually* turns out to be controversial. That general approach was ratified by the Commission at the April 2008 meeting, along with a number of proposed amendments that would implement the approach. Minutes (April 2008), p. 2. Those amendments were made on May 7, 2008.

In continuing to work with the affected interest groups, more amendments were proposed. Those amendments were reviewed by the Commission's Chair, without any objection. They were made on the Assembly Floor, on May 22, 2008. **Those amendments are presented below, with necessary Comment revisions, for Commission review and approval.**

It seems very likely that at least one more round of amendments will be needed before the bill is approved by the Legislature, for three reasons:

(1) The bill conflicts with a number of other bills that would affect CID law, and will need to be amended to resolve those conflicts.
(2) The staff is working with representatives of a number of those groups to discuss perceived problems with the accounting terminology used in the bill.
(3) It is expected that the CID Attorney Group will provide a list of specific concerns about AB 1921. Once those concerns are known, amendments may be required.

AMENDMENTS

The amendments below have already been made. They all result in closer adherence to existing law. **The staff recommends that they be ratified, along with any proposed revisions to the corresponding Comment language.**

Application of the Davis-Stirling Act

Legislative staff pointed out that existing law governing the application of the Davis-Stirling Act specifically limits the application of the act to a CID after it is "created." Civ. Code § 1352. The proposed law does not continue that timing

rule. To faithfully continue existing law on this point, it should. Accordingly, proposed Civil Code Section 4015(a) was amended as follows:

> 4015. (a) This part applies to a common interest development that is created pursuant to Section 6000.

Definition of "Board Meeting"

The proposed law would have included an executive session in the definition of "board meeting." Consequently, meeting notice requirements would have applied to any part of a meeting that is held in executive session. This was opposed by the California Association of Community Managers ("CACM") as an unwarranted and burdensome new requirement.

AB 1921 was amended to reverse that change. The following Comment revisions are required to conform to those amendments:

> **Comment**. Section 4090 restates part of the substance of former Section 1363.05(j) without substantive change~~, with two exceptions: (1) The~~ except that the number of directors required to establish a meeting has been changed from a majority to a number constituting a quorum. This reflects the fact that a board may have a quorum that is different from a simple majority. See Section 4510. ~~(2) The exception for matters considered in executive session is not continued.~~
>
> …
>
> **Comment**. Subdivision ~~(a)~~ (b) of Section 4560 ~~is drawn from Corporations Code Section 7211(c).~~
>
> ~~Subdivision (b)~~ continues part of former Section 1363(i) without substantive change.
>
> …

Definition of "Exclusive Use Common Area"

The CID Attorney Group expressed concern that the proposed restatement of the definition of the term "exclusive use common area" would result in a substantive change in meaning. See Exhibit p. 14. After reviewing the group's argument, the staff agreed that the restatement could have an unintended effect. The definition was amended to restore existing language. No Comment revision is required.

Definition of "Governing Documents"

The Community Associations Institute ("CAI") objected that the proposed restatement of the definition of "governing documents" might result in a subtle

shift in meaning. Rather than debate this minor point, AB 1921 was amended to restore the existing definition, verbatim.

Use of "Association" and "Board"

CAI expressed concern that some provisions of the proposed law require action by the "association," while others require action by the "board." This was seen as inviting a distinction that might lead to misunderstanding or disputes. Rather than debate this minor point, AB 1921 was amended to add the following subdivision to proposed Section 4405, which discusses association powers:

> 4405. …
> (c) Except as otherwise provided by the governing documents, any power of the association shall be exercised by the board, and any provision of this part that requires action by an association may be satisfied by the board, acting on behalf of the association.

That provision states a *default rule* that the board shall act for the association, subject to a different arrangement in the governing documents (some associations have other entities that exercise specific powers for the association, such as an architectural review committee).

The Comment to Section 4405 should be revised as follows:

> **Comment**. Subdivisions (a) and (b) of Section 4405 ~~restates~~ restate former Section 1363(c) without substantive change.
> Subdivision (c) is new.
> …

Open Meeting Requirements and Committee Meetings

Existing law states a number of "open meeting" requirements for CID board meetings. Those requirements do not expressly apply to a meeting of a committee, whether created by the board or the governing documents.

The proposed law would have extended the open meeting requirements to committees created to exercise board powers.

That substantive change was opposed by CAI, which expressed concern about the burden placed on committees to exercise relatively minor board powers (e.g., selecting a color of paint).

The bill was therefore amended to revert to existing law on this point. Proposed Section 4560 (governing the application of the board meeting provisions) was amended as follows:

4560. ~~(a) This article applies to a board meeting or a meeting of a committee that exercises a power of the board.~~

~~(b)~~ If two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, the meetings of the joint organization are governed by this article.

The Comment to that section should be revised as follows:

Comment. ~~Subdivision (a) of~~ Section 4560 ~~is drawn from Corporations Code Section 7211(c).~~

~~Subdivision (b)~~ continues part of former Section 1363(i) without substantive change.

Meeting Location

The proposed law included provisions governing the location of a board or member meeting, which were derived from Department of Real Estate Regulations. CAI raised objections to those provisions and suggested that they be modified to grant greater discretion to association boards. Rather than make a change that would likely engender opposition from other groups, AB 1921 was amended to delete those provisions (proposed Sections 4530 and 4575(c)). The Comment to proposed Section 4575 should be revised as follows:

Comment. Subdivision (a) of Section 4575 is comparable to Corporations Code Section 7510(b).

Subdivision (b) is comparable to part of Corporations Code Section 7510(e). See Section 4600.

Subdivision (c) ~~is new.~~

~~Subdivision (d)~~ restates former Section 1363(d) without substantive change.

…

Executive Session

Under existing law, certain matters *may* be considered by the board in closed executive session (at the board's discretion) and other matters *must* be considered by the board in closed executive session. Under the proposed law, a member who is the subject of an executive session would be given the choice of whether to have the matter considered in open or closed session.

CAI objected to allowing a member to choose to have these sensitive matters considered in an open session. The bill was amended to restore existing law on that issue. In addition, language referring to a board "adjourning to" executive

session was restored to more closely track the substance of existing law. Proposed Section 4540 was amended as follows:

> 4540. (a) The board may ~~meet in~~ adjourn to executive session to consider litigation, matters relating to the formation of contracts with third parties, or personnel matters.
>
> (b) Except as provided in subdivision (c), the board may consider all of the following matters in executive session:
>
> (1) An assessment dispute.
>
> (2) A request for a payment plan.
>
> (3) A decision to foreclose on a lien.
>
> (4) A hearing pursuant to Section 5005.
>
> (c) A member who is the subject of a matter described in subdivision (b) may submit a written request to the board (Section 4035) that the matter be considered ~~in an open meeting or~~ in executive session. The board shall comply with the member's request.
>
> (d) Notwithstanding Section 4525, if the board ~~meets in~~ adjourns to executive session, a member who is the subject of the matter under consideration may attend and speak during consideration of the matter.

The Comment to that section should be revised as follows:

> **Comment**. Subdivision (a) of Section 4540 continues part of former Section 1363.05(b) without substantive change. See also Section 4525(a) (executive session closed).
>
> Subdivision (b) continues board discretion to consider certain matters in executive session. See former Section 1363.05(b). It supersedes former law mandating that certain matters be considered in executive session. See former Sections 1367.1(c)(3), 1367.4(c)(2).
>
> Subdivision (c) is new. It gives a member the choice of whether a matter directly involving that member will be considered in ~~an open meeting or~~ executive session.
>
> Subdivision (d) generalizes part of the substance of former Section 1363.05(b) that allowed a subject of disciplinary action to attend an executive session at which the disciplinary action is considered. The right of a member to attend an executive session under subdivision (c) is limited to the matter of which the member is the subject.
>
> See also Sections 4085 ("board"), 4160 ("member").

CAI also opposed a change to the law governing the preparation of minutes for a closed session. The proposed law would have eliminated the rule that minutes for a closed session are presented as part of the minutes for the *next*

scheduled meeting, rather than the meeting at which the closed session occurred. AB 1921 was amended to restore the existing rule.

The Comment to proposed Section 4550 should be revised as follows:

> **Comment**. Subdivision (a) of Section 4550 continues part of the first sentence of former Section 1363.05(d).
>
> Subdivision (b) restates former Section 1363.05(c) without substantive change. ~~Language addressing the timing of the preparation of the minutes for a meeting held in executive session is not continued.~~
>
> Subdivision (c) restates the substance of the second sentence of former Section 1363.05(d). The second sentence of subdivision (c) makes express what is implicit in former Section 1363.05(d), that a member has an absolute right to inspect minutes and is not required to state a permissible purpose in order to obtain a copy.
>
> Subdivision (d) restates former Section 1363.05(e) without substantive change.
>
> See also Sections 4085 ("board"), 4090 ("board meeting"), 4160 ("member").

Meeting Adjournment

Proposed Section 4585(c) provides a mechanism for adjournment of a meeting at which a quorum has not been achieved. CACM found the section ambiguous and asked for a clarification. The provision was amended as follows:

> (c) If a quorum has not been established at a member meeting, the meeting may be adjourned by affirmative votes equaling at least a majority of the votes cast <u>by those present at the meeting</u>, but no other business may be transacted.

No Comment revision is required.

Election Rules

The California Association of Retired Americans ("CARA") objected to changes to the existing law on the adoption of operating rules for conducting member elections. The existing provision lists the matters that must be covered by the rules. In some cases, those matters state mandatory substantive rules.

The proposed law did not continue those mandatory rules as matters that must also be included in the operating rules, as to do so would be redundant.

Nonetheless, CARA sees value in requiring that rules be adopted on those points. This builds community understanding of those requirements.

AB 1921 was amended to restore those specific requirements, by reference to the provisions where the specific requirements would be continued. The election

rule provision was also amended to make terminological changes requested by CAI and CACM. Taken together, the amendments were as follows:

> 4630. The association shall adopt operating rules to address all of the following matters:
> (a) Any rule required to implement this article.
> (b) Any qualification to serve in an elected position.
> (c) The ~~loss~~ suspension and restoration of a member's voting privilege.
> (d) The calculation of voting power.
> (e) If the governing documents ~~permit~~ require the use of proxies, procedures for the use of proxies, in compliance with the requirements of Section 4660.
> (f) A method of selecting an election inspector, in compliance with the requirements of Section 4635.
> (g) Nomination of candidates, in compliance with Section 4665.
> (h) Use of association media and meeting space for campaign purposes, in compliance with Section 4670.

The Comment to that section should be revised as follows:

> **Comment**. Section 4630 restates part of former Section 1363.03(a)(3)-(5) without substantive change. ~~The provision of former Section 1363.03(a)(3) that relates to procedures for nomination of candidates is continued in Section 4665.~~
> See also Sections 4150 ("governing documents"), 4160 ("member").

Election Procedure

CACM objected to a provision of the proposed law that would require that the association pre-print election envelopes to show the name and voting information of the member who would use the envelope. Under existing law, the member is required to write that information on the envelope. AB 1921 was amended to restore the existing rule. No Comment revision is required to reflect this change.

Ballot Counting

CACM objected to a change in existing law that could be read as requiring that ballots cast in a member election be counted at a meeting that is open to anyone, including nonmembers.

AB 1921 was amended to restore the exact language from existing law on that point. No Comment revision is required to reflect this change.

Record Inspection

Existing law provides for member inspection of "interim unaudited financial statements, periodic or as compiled…." The meaning of that phrase is not clear. Proposed Section 4700(a)(5) would have recast it in clearer terms ("any record of the types described, regardless of whether the record is interim or final, audited or unaudited, prepared pursuant to a fixed schedule or on an ad hoc basis").

CAI objected to that restatement, believing that it would inappropriately expand the scope of existing law to include many sorts of interim documents that should not be subject to inspection.

AB 1921 was amended to use the exact language from existing law. To conform to that amendment, the following language would be struck from the Comment to proposed Section 4700:

> ~~Subdivision (a)(5) does not limit the inspection of financial statements to those that are "interim," "unaudited," and "periodic or as compiled." All financial statements of the types described are subject to inspection.~~

At CARA's request, proposed Section 4700(a)(6) was also amended, to restore existing language, as follows:

> (6) An invoice, purchase order, receipt, cancelled check, credit card statement <u>for a credit card issued in the name of the association</u>, statement for services rendered, or reimbursement request.

No Comment revision is required as a result of that change.

In addition, CARA asked that reference to the minutes of a committee meeting in executive session be stricken from proposed Section 4700(b)(1). That change was also made, and is consistent with the general deletion of provisions extending the open meeting rules to committee meetings that was discussed above. No Comment revision is required as a result of that change.

Court Ordered Record Inspection

Proposed Section 4735 provides a judicial remedy for a member whose record inspection request has been denied by an association. In addition to compelling the production of records, the court could also order the appointment of an inspector or auditor and could charge the cost of the inspector to the member or the association.

CARA objects to that change, due to the possibility of the member being assessed the cost. In order to strictly continue existing law, AB 1921 was amended to limit proposed Section 4735(d)(4) to an association that is incorporated, thus:

> (4) The appointment of an investigator or accountant to inspect or audit association records on behalf of the requesting member. The cost of investigation shall ordinarily be borne by the requesting member, but the court may order that the association bear or share the cost. This paragraph applies only to an association that is a corporation.

That change does not remove CARA's opposition, but does restore the proposed law to existing law on the issue. No Comment revision is required as a result of this change.

Reference to "End of the Fiscal Year"

CAI finds a reference to the "end of the fiscal year" in proposed Section 4800(a) to be confusing. Rather than dispute this minor point, the bill was amended to make the following change:

> 4800. (a) Between 30 and 90 days before the ~~end of the fiscal~~ beginning of the next fiscal year, the board shall prepare an annual budget report.

No Comment revision is required as a result of this change.

Respectfully submitted,

Brian Hebert
Executive Secretary

Citizens for Constitutional Local Government, Inc.
supporting principles of democratic government

5419 E. Piping Rock Road, Scottsdale, AZ 85254-2952
602-228-2891 / 602-996-3007 (f)
info@pvtgov.org http://pvtgov.org

April 11, 2008

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

SENT BY EMAIL

Dear Mr. Hebert,

This email letter contains my comments on the proposed bill, AB 1921.

Respectfully submitted,

George K. Staropoli, Pres.
Citizens for Constitutional Local Government, Inc.

Cc: California Legislators

Summary of recommendations for Member Bill of Rights

1. Withdraw AB 1921 until Chapter 2, Member Bill of Rights, has been defined, and condition the approval of any proposed rewrite of the Davis-Stirling Act law on the approval of a homeowners' bill of rights.
2. Explicitly state that the California Constitution is the supreme law of the land and any conflict between the Constitution and the law of servitudes shall be decided in favor of the Constitution.
3. Include a statement that CIDs and all governing documents are subject to Article 1, Declaration of Rights, of the California Constitution, and in particular sections 1, 3(b)(4), 7, 17, 19 and 24.

4. Include a statement that the judicial scrutiny of any covenant, bylaw or rule be the same as would be required according the nature of the constitutional question, and not that blanket rule of reasonableness.
5. Include a statement that, as a matter of good public policy, the state has a compelling legitimate interest in the enforcement of violations by the governing bodies of CIDs, and shall provide appropriate penalties against such violators as both a punishment and a deterrent to future violations.
6. CLRC must include as part of its approach to the revision of Davis-Stirling the non-existent, to date, perspective of protecting the individual liberties of homeowners as it seeks to regulate CIDs in a fair and just manner.
7. CLRC has a duty to examine, under its mission to rewrite Davis-Stirling, the sources given herein, in addition others, to assist its members in understanding the constitutional requirements of due process and the equal protection of the law in order to protect individual homeowner liberties and freedoms.

Discussion of AB 1921

Protecting the individual rights and freedoms of homeonwers

In its July 1, 2005 memorandum (MM05-25) for Study H-885, "Statutory Clarification and Simplification of CID Law", CLRC proposed its first draft of changes to the CID laws. Under the "Scope of reorganization" section, only the Davis-Stirling Act and relevant parts of the Corporation Code and the Department Real Estate regulations would be considered (p.22). However, the proposed Chapter 2, "Rights and Duties of Members", was placed on the backburner for later consideration. It is important to note that this chapter also proposed, among other things, a "Bill of Rights" under the proposed Article 1. The memorandum concluded with a comment on Chapter 2, "That material [Chapter 2] should be substantively and politically more challenging."

In response to my letter of July 6, 2005 commenting on MM05-25, CLRC released its July 16, 2006 First Supplement (MM05-25s1) stating, in part (emphasis added),

> The issue raised by Mr. Staropoli — the extent to which a CID should be subject to the sorts of constraints that apply to a governmental entity — is an important one. However, it is beyond the scope of the current project. The Commission will consider the issue in a later stage of its general study of CID law. (p. 2).

It is also important to note that Chapter 2, now renamed, "Member Bill of Rights [Reserved]", was included in the proposed "reform" legislation of AB 1921, but as an empty placeholder without any substance. I am astonished by this action by CLRC in proposing that affects the governance of CIDs across California, that regulates and controls the property rights, privileges, freedoms and liberties of its citizens living in CIDs as a separate and distinct body of law. Under the proposed AB 1921 legislation, private governments are permitted to operate outside the restraints and prohibitions of the 14th Amendment to the US Constitution; outside Article 1, Declaration of Rights, under the California Constitution, Sections 1 (inalienable rights), §3(b)(4) and §7(a) (due process and equal protection of the laws), §7(b) (revoking any privileges and immunities granted by the legislature), §17, as pertains to CID foreclosures, (cruel and unusual punishment), §19 as pertains to a taking of private property under this ACT, §24 (rights retained by the people); and outside the California laws governing local communities, thereby creating, in reality, independent city-states or principalities under the "charters" granted by the Davis-Stirling Act.

This action by CLRC stands in sharp contrast to the approach taken by our Founding Fathers, although they had their differences, which conditioned the approval of the constitution upon the approval of the Bill of Rights. This Commission has proposed AB 1921 without even considering, under its empty "Member Bill of Rights", the rights and freedoms of California citizens who are subject to the Davis–

Stirling Act. One could well ask, what was the basis for CLRC's decision to proceed in this manner? Surely it could not have felt confident in the fact that the Act is already in existence, and that there is a reasonable legitimate government interest in so regulating CIDs, as evidenced by the Legislature's statement of intent in the bill,

> The Legislature further finds that covenants and restrictions, contained in the declaration, are an appropriate method for protecting the common plan of developments and to provide for a mechanism for financial support for the upkeep of common areas . . . . If declarations terminate prematurely, common interest developments may deteriorate and the supply of affordable housing units could be impacted adversely. The Legislature further finds and declares that it is in the public interest to provide a vehicle for extending the term of the declaration if owners . . . . § 6040(c).

The restatement of equitable servitudes does not protect individual rights

Perhaps, CLRC felt that the doctrine of equitable servitudes prevails, as stated in § 5125(a)

> The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development.

And that, under the Restatement Third, Property (Servitudes), the current expression of servitudes and common interest development common law holding that the common law of servitudes prevails of the constitutional law, see "comment h" below, CLRC need not be concerned (as to relevant parts, emphasis added). The tremendous impact of the Restatement on the denial of homeowner rights and freedoms cannot be overstated.

> **Chapter 3, Validity of Servitude Arrangements**
> **§ 3.1 Validity of Servitudes: General Rule**
> A servitude . . . is valid unless it is illegal or unconstitutional or violates public policy
> Servitudes that are invalid because they violate public policy include, but are not limited to:
> (1) a servitude that is arbitrary, spiteful, or capricious;
> (2) a servitude that unreasonably burdens a fundamental constitutional right;
> (3) a servitude imposes an unreasonable restraint on alienation under § 3.4 or § 3.5;
> (4) a servitude that imposes an unreasonable restraint on trade or competition under §3.6; and
> (5) a servitude that is unconscionable under § 3.7.
>
> **§ 3.7, Unconscionability**
>
> A servitude is invalid if it is unconscionable.
> ....
> [Comment c, p. 485]. Unconscionable transactions contain an element of overreaching, unfairness, surprise, or harshness that leads to the conclusion that the servitude should not be enforced, even though the disadvantaged party could have protected him- or herself through the exercise of proper precautions.

Unfortunately, (2) above is clarified by,

> **[comment h, p.359]. The question whether a servitude unreasonably burdens a fundamental constitutional right is determined as a matter of property law, and not constitutional law.**

It appears that the property law of servitudes has been rewritten in this third version to supersede the Constitution. A reading from the introduction to the Restatement leaves one with the clear picture that the revisions to equitable servitude laws were designed to accommodate and promote planned communities with their mandatory homeowners associations, as they currently exist and operate under state laws.

> Servitudes are extensively used to provide the underlying structure of real-estate developments that include shared amenities or facilities and services financed by assessments against individual owners. . . . (p.3).
>
> By freeing servitudes law from some of the encrustations accumulated over the centuries, it is designed to retain and enhance their utility to meet the needs of American society in the first part of the 21st Century. (p.4).

I call the commission's attention to the warning offered in the ULI document for the creation, development and mass merchandising of planned communities, its 1964 "bible", *The Homes Association Handbook* (aka TB # 50)[1]. It provides a good understanding as to why equitable servitudes were required to control the laws as applied to planned communities,

> 12.22 FUNCTION OF A RECORDED DECLARATION OF COVENANTS AND RESTRICTIONS*.*
> The function of a declaration of covenants and restrictions is to subject the land situated within the area described in the declaration to certain obligations which will be legally enforceable against every owner or occupier of the subject land.

This foundation in servitudes law, and especially the "tailoring" of the law to protect planned communities, may have been necessary for private, business organizations to promote the acceptance of homeowners associations, but is entirely short on any protections of individual rights and freedoms. This lack of protection for homeowners has carried across these past 44 years to today, in California and in all other states.

Why didn't CLRC investigate these dramatic legal views expressed by the Restatement that render the US and California constitutions subject to property laws, and no longer the supreme law of the land? These citations, alone, warrant the need to include a homeowners' bill of rights as the law of servitudes does not provide for an effective level of protection of individual rights and liberties, and is more concerned with the establishment and protection of common interest properties.

I am not a lawyer, but I have discovered and questioned these views regarding the sanctity of CIDs, this state protectionism of CIDs, and I wonder why didn't CLRC recognize the impact on the California Constitution, namely its Declaration of Rights to protect the rights, liberties and freedoms of the people of California? The law of servitudes must not be allowed to dominate the California Constitution and deny the people living in CIDs the privileges and immunities granted to all the people of California. This would have been a good start to Chapter 2 for CLRC to have asserted the supremacy of constitutional law over the common law of equitable servitudes. And, furthermore, to require in Chapter 2 a compelling and necessary government interest when asserting the validity of any covenant, servitude or state law that violates the Declaration of Rights under the California Constitution. The simple tests of reasonableness, as contained in the Restatement, or a reasonable government interest is inadequate to deny or to disparage individual rights for those living in a CID.

<u>The restatement of equitable servitudes justification for CC&Rs: the freedom to contract</u>

The Restatement, under § 3.1, Validity of Servitudes: General Rule, Comment a, adopts the presumption of constitutionality doctrine with respect to claims of invalidity. *"The party claiming invalidity of a servitude [has] the burden to establish that it is illegal or unconstitutional, or violates public policy."* It refers to *"the <u>modern</u> [emphasis added] principle of freedom to contract to creation of servitudes"*, and quotes, not contract law, but the Restatement of Contracts as a defense,

> In general, parties may contract as they wish, and the courts will enforce their agreements without passing on the substance…. The principle of freedom of contract is rooted in the notion that it is in the public interest to recognize that individuals have broad powers to order their own lives.

We hear this mantra almost everyday form CAI, and other supporters and protectors of CIDs – no interference with the freedom of contract. Yet, has anyone considered the fact that Davis-Stirling is itself an interference with CID "contracts" by means of California's right to regulate for the health, safety and general welfare under its police powers? But, when it comes to holding CIDs accountable to the state, or placing restrictions on the acts and actions of CIDs and their boards, or granting the homeowner certain rights and freedoms we hear the cry of "contract interference". This biased use of contract interference by the special interests must be put to an end, as Clint Bolick[2], Director of the Goldwater Institute's Sharf-Norton Center for Constitutional Litigation, and co-Founder of the Institute for Justice, notes,

> Special-interest groups across the political spectrum engage in vicious battle with the sole operational principle that the ends justify the means (p. 19). . . . "the families realize how few rights they have and how easily those rights can be taken away by voracious governments acting on behalf of favored special interests. . . . the government is not taking their house, it's taking their home (p. 157) [comments on a movie to illustrate his point].

Another important question that should have been addressed by CLRC is that of a claim of a freely given and fully informed contractual agreement, repeatedly heard by the CID protectors. This weak argument is susceptible to attack under numerous alternatives, including the sufficiency of constructive notice for the surrender of fundamental rights and freedoms. A "secondary" argument advanced by CID protectors, that should have also been addressed by CLRC, is that the homeowner has consented to be governed under the CID regime by the fact that he freely chose to live in a CID and has remained under CID jurisdiction. This consent to be governed is challenged by several scholars below.

The regulation of CIDs under AB 1921 and Davis-Stirling

With the prerequisite restoration of a concern for the protection of individual rights and freedoms, CLRC can now proceed with an analysis of the proposed AB 1921 impact on homeowner rights, and act in accordance with the principles of American government. To fail to so act would only affirm the societal and political changes that support a New America and a New California, no longer concerned with preservation and protection of individual rights and freedoms as did the Founding Fathers.

I believe constitutional scholar Randy Barnett[3] makes the argument for protecting individual rights, in general, even under majority rule:

> For a law is just and binding in conscience, if its restrictions are (1) necessary to protect the rights of others, and (2) proper insofar as they do not violate the preexisting rights of the persons on whom they are imposed.
>
> Every freedom restricting law must be scrutinized to see if it is necessary to protect the rights of others without improperly violating the rights of those whose freedom is being restricted. In the absence of actual consent, a legitimate lawmaking process is one that provides adequate assurances that the laws it validates are just in this respect.

It is not my intent to detail my views of questionable constitutional statutes or those that affect the individual rights of homeowners. My intent is to have CLRC approach the revision of Davis-Stirling from the non-existent, to date, perspective of protecting the individual liberties of homeowners as it seeks to regulate CIDs under the proper exercise of California's police powers. In addition to the Declaration of Rights, and issues raise as a result of the Restatement of servitudes law, there are other works by constitutional scholars and political scientists well versed in common interest community issues. CLRC can utilize, and should have utilized, these resources as a guide to its efforts to regulate CIDs and the people living within who are the member-owners of CIDs. They are given below.

AARP Homeowners Bill of Rights

A very good first source and one directly on point with the development of a homeowner's bill of rights is the 2006 David Kahne study for the AARP Research Policy Institute[4]. Kahne proposes a 10-point Homeowner's Bill of Rights and offers a model statute for consideration by others, such as CLRC. There is a "need to protect rights of homeowners as individuals, and the governmental aspects of associations, suggest consideration of a bill of rights." And, to the very heart of the CID legal model,

> Associations differ significantly from other nonprofit corporations. Homeowners cannot quit the association without moving, a choice often precluded by practicalities. Moreover, members typically make small economic commitments to nonprofits, whereas the commitment to an association can be substantial, even without considering home equity. (p. 10).
>
> From a consumer protection standpoint, the core issues revolve around the fact that the governing documents of an association are generally non-negotiable, were originally drafted by the developer's attorney, and can be lengthy (sometimes hundreds of pages) and frequently incomprehensible to a nonprofessional. (p.1)

Trust and Community

Political scientists Steven Siegel and Paula Franzese also address the need to protect the rights of homeowners in their 2007 article in the Missouri Law Review[5]. Concerned with healthy marketplace forces, the authors write,

> A well-functioning marketplace usually requires some rough equality of bargaining power between the market players, or, in the alternative, a strong governmental role in protecting the consumer. (p. 1113).
>
> A healthy marketplace depends on some modicum of equal bargaining power between its players, or, in the alternative, a meaningful governmental role in protecting the consumer. A well-functioning marketplace finds its players sufficiently armed to make informed decisions. (p. 1124).

With respect to a consent to be governed under the CID regime, the authors are quite clear that,

> This voluntary consent theory holds that residents consent to the rules and restrictions when purchasing, and that those who do not wish to subject themselves to CIC rules are free to buy elsewhere. . . . The complex CIC servitude regime that buyers 'assent' to is more akin to an adhesion contract than the product of informed, meaningful choice. (p. 1125).
>
> Traditional contract theory assumes not only the ability of both parties to engage in effective bargaining, but also presupposes that both parties have reasonable access to the information that becomes the basis of the bargain. . . . empirical research suggests that even rudimentary informed consent is lacking. (p. 1126).

"Consent to be governed" based on remaining under the CID jurisdiction

Another pro-CID argument for homeowner consent, when the contractual argument is not accepted, is the consent to be governed theory as used with respect to political jurisdiction. This theory rests on the decision to live and remain in the jurisdiction in which the homeowner resides, thereby giving tacit acceptance to be governed under the laws of the town or city. CID supporters apply the same reasoning to a homeowner's decision to buy and remain in his CID, making the CID equivalent to public governance

while ignoring the legal reality of the private, contractual CC&R arrangement to be governed (Which is it? Is the CID equivalent to a public government or is it a private business arrangement under the CC&Rs?)

This "consent to be governed" theory is criticized with respect to public governance by constitutional scholar Randy Barnett, and applies equally well under the CID regime. Does this argument rise to the level of judicial scrutiny to permit the loss of rights and freedoms? Barnett points out that this "love it or leave it" argument is ambiguous,

> Simply remaining in this country, however, is highly ambiguous. It might mean that you consent to be bound by the laws . . . or it might mean that you have a good job and could not find a better one [elsewhere] . . . or that you do not want to leave your loved ones behind. It is simply unwarranted that to conclude from the mere act of remaining . . . that one has consented to all and any of the laws thereof.[6]

California Common Interest Development – Homeowner's Guide

This Thomson-West treatise[7] on California CID law is a first, because *"the majority of common interest development publications appear to be geared to represent 'associations'"*, and the author, Donie Vanitzian, JD, was determined *"to protect homeowner rights in any way I could*." While Ms. Vanitzian is an outspoken critic of the Davis-Stirling Act, her 1055-page plus treatise is another direct source of information and experience to warrant study by CLRC in its efforts to rewrite the Act, and in preparing the missing Member Bill of Rights.

Earlier homeowner rights material

Additionally, there are several earlier, but well-known sources of CID problems concerning homeowner rights. These include:

1. Barton and Silverman, *Common Interest Communities: Private Governments and the Public Interest*, Institute of Governmental Studies Press, Univ. of California, Berkeley, 1994.

2. Evan McKenzie, *Privatopia: Homeowners Associations and the Rise of Residential Private Government*, Yale University Press, 1994.

3. Robert J. Dilger, *Neighborhood Politics: Residential Community Associations in American Governance*, New York University Press, 1992.

4. Steven Siegel, *The Constitution and Private Government: Toward the Recognition of Constitutional Rights in Private Residential Communities Fifty Years After Marsh v. Alabama,* p. 461-563, William & Mary Bill of Rights Journal, 461 (1998) Volume 6, Issue 2, Spring 1998.

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[1] *The Homes Association Handbook*, Technical Bulletin 50, The Urban Land Institute, 1964. (Available from the research division of ULI).
[2] Clint Bolick, *David's Hammer: the case for an activist judiciary*, Cato Institute, 2007.
[3] Randy E. Barnett, *Restoring the Lost Constitution: The Presumption of Liberty*, Princeton University Press, 2004, p. 19.
[4] David A. Kahne, *A BILL of RIGHTS for HOMEOWNERS in ASSOCIATIONS: Basic Principles of Consumer Protection and Sample Model Statute,* AARP Public Policy Institute, #2006-15, July 2006. (The efforts of this writer is acknowledged, and his book, *The Case Against State Protection of Homeowners Associations* is cited in footnote 104).
[5] Paula A Franzese and Steven Siegel, *Trust and Community: The Common Interest Community as Metaphor and Paradox*, p. 1111-1157,The Missouri Law Review, vol. 72, 2007.
[6] Supra, note 3, p. 44-45.
[7] Donie Vanitzian, *California Common Interest Development – Homeowner's Guide*, The Expert Series (Thomson-West 2006). (This writer's efforts are acknowledged in the Preface).

Ravi Kapoor
15000,Downey Ave, #220
Paramount, CA 90723
(562)-630-2444

April 15 Th, 2008

Honorable Chairperson Senator Ellen Corbett,
Senate Judiciary Committee,
State Capitol, Room 2187,
Sacramento, A 94249

Respected Honorable Senator,

Humble Request to RECORD PROTEST to Assembly Bill 1921

As an affected Homeowner, I am submitting respectfully to record my strong protest to AB 1921 in response to CID living which is due for hearing on 04/22/2008 on the way to your Honorable desk soon. I strongly feel the bill in my opinion with due respect are not in the interest of Homeowners, The Concerned People. Based upon the understanding California Law revision Commission has been endeavor their best to REWRITE Davis -Sterling Bill on the subject to propose incorporation of concerns of Homeowners wherever necessary.

It has also been stated by CLRC staff memo 2008-11 wherein they have agreed in principle that some concerns do exist and need to be looked into. This has been stated broadly based upon the said memo.

Moreover the existing laws have not been able to address basic issues viz elections, reserves, assessments regular and special, liens etc to name few and no meaningful mandated penalty for associations for non-compliance for one reason or other. The call of the time is COMPLAINCE AND ENFORCEMENT HAVE THE STATUES for which humble request is being made to Honorable lawmakers to have corrective necessary steps in the interest of the Concerned People.
Honorable Senator as you may be aware that California Law Revision Commission under project H-455 had proposed the said bill CID law reforms with clarifications and simplifications of Civil code but IN PART ONLY AND HAS AMPLE ROOM TO ADDRESS SEVERAL OTHER ISSUES. I also strongly feel that your Highness can also impress upon CLRC to explore possibilities to incorporate changes wherever needed in the manner deem fit.

Ravi Kapoor

EX 8

Recommendations to the California legislature on common interest development-related legislation, may include MEANINGFUL and EASILY ENFORCEABLE penalties against boards who are involved in wrongdoing if any; fines and criminal liability statutes over agents, third party vendors, management companies and their personnel; titleholder protections against association, boards of directors, attorneys and agents of the association, and their use of owner personal information and identifying factors; financial Code statutes to prohibit any association from allowing or waiving the commingling of association bank accounts and assets of Homeowner if any. In case such cases occur if any, these may be dealt severely by the State.

In the absence of no cost-effective way for the affected owner to enforce a penalty against the concerned that acts unlawfully if any with the protection against liability insurance shield. And in view of so many complexities and restrictions in CID living, the very purpose of such living has been lost. For the growth of state and economy, CID living plays an important role as it has great impact on the State infrastructure and cannot be ignored as I feel.

Honorable Senator may also consider that such bills places automatic contingency on the purchase and sales directly or indirectly with extra financial burden in present real estate market and may have impact of deal for one reason or other. I also feel it also has impact on the growth and economy of the state. And also our equity is at stake.

Under the circumstances, it is strongly felt that if deem fit corrective steps may be taken at the earliest to ratify the existing laws for COMPLIANCE AND ENFORCEMENT of such laws with mandated penalties if needed along with state regulating agency such as FCC/FTC/Attorney General office/IRS with extra powers etc to be read in context In my opinion with due respect the bill may be put on hold for the time being in the interest of the homeowners till basic issues are addressed.

However it is strongly felt that the under noted comments are submitted for your sympathetic review and active consideration. Sir you shall agree that you are doing a Herculean task for making CID laws more transparent as part of fiduciary duty to all concerned directly and indirectly involved in such living.

Moreover the existing laws have not been able to address basic issues viz elections, reserves, assessments regular and special, liens etc to name few and no meaningful mandated penalty for associations for non-compliance for one reason or other. The call of the time is COMPLAINCE AND ENFORCEMENT HAVE THE STATUES for which humble request is made to Honorable lawmakers to have corrective necessary steps in the interest of

EX 9

the Concerned People and PROTECT OUR HOMES AND EQUITY THAT VESTED INTERESTS HAVE MADE NON-PROFIT CORP TO ONLY FOR PROFIT ENTITIES WITHOUT HAVING ANY VESTED PERSONAL INTEREST AS I FEEL.

Sir you may also agree that such opportunity shall not come time and again to re-do once again. Honorable Senator and CLRC can review once again in the present state of affairs AND CAN MAKE DIFFERENCE.

As you may be aware that we as homeowners and vested groups/industry have already been exposed to recent bad judgments due to foreclosures/credit /mortgage mess /recessions etc to name a few for one reason or other. It is the time to arrange to take corrective steps so that this unfortunate situation does not arise again. It is strongly felt that it is also time to restore confidence, faith among the communities in my opinion to be read in letter and spirits as of the people, by the people and for the people in the interest of all concerned for the time to come if any.

To sum-up affairs and concerns of HOA needs to be more transparent and more creditability in my opinion has ample room for improvement in the interest of Homeowners.

Honorable Senator it is humbly respectfully submitted to impress upon CLRC to review the subject once again and may endeavor their best to incorporate changes to the extent possible ONCE FOR ALL in the interest of all concerned if deem fit.

I am also submitting a copy of this letter to CLRC for information please.

With kindest regards,
Truly yours,

(Ravi Kapoor)

Cc: CLRC

April 18, 2008

The Honorable Lori Saldaña
California State Assembly
Sacramento, CA 95814

The Honorable Dave Jones, Chair
Assembly Committee on the Judiciary
1020 N Street, Room 104
Sacramento, CA 95814

California Law Revision Commission
c/o Brian Hebert, Executive Secretary
3200 5th Avenue
Sacramento, CA 95817

Re: AB 1921 (Saldaña)

Dear Assembly Member Saldaña, Assembly Member Jones, and Commission Members:

The attorneys signing this letter have extensive experience representing developers of common interest real estate developments and the community associations established to manage such developments. Collectively, we have very serious concerns about the proposed restatement of the Davis-Stirling Common Interest Development Act (California Civil Code sections 1350 et seq.) as set forth in AB 1921 (Saldaña). We applaud the effort undertaken by the California Law Revision Commission to improve the organization and presentation of the existing Act, but we fear adoption of the bill in its present form will result in extraordinary expense and confusion for all groups and organizations that have interests or constituencies regulated by the Act, including real estate developers, community association board members, homeowners, their associations, the Department of Real Estate, and other governmental agencies.

Historically the legislature has, in connection with the adoption of a sweeping act that revamps an entire body of existing law, obtained the considered input of the California State Bar, and we urge that this be done again.[1] To enhance the chance that the work already undertaken to restate the Act will be as clear and consistent as possible, we strongly urge that AB 1921 be

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[1] Seeking State Bar review is not a new idea, nor are select committees of the legislature which, along with staff and experienced legal consultants, are assigned to review the development or restatement of major bodies of law. The Nonprofit Corporation Law was built on the original work of the California Law Revision Commission and furthered by an Assembly Select Committee on Revision of the Nonprofit Corporations Code. According to a report from that Select Committee, it regularly prepared and submitted reports to a State Bar Committee comprised of attorneys experienced in drafting the General Corporation Law and familiar with problems arising in the representation of a wide variety of nonprofit entities. Numerous administrative agencies of government also participated.

By way of further example, the original Davis-Stirling Act (a very slim body of law) was also the work of a Select Committee that included members of the State Bar. This Select Committee was tasked with locating, organizing and consolidating in the Civil Code the numerous statutes and laws that regulated real estate subdivisions that are now known as common interest developments.

withdrawn and referred to the State Bar for critical review, analysis and comment so that it can be re-introduced in 2009.

Introduction

The Davis-Stirling Common Interest Development Act became effective in 1986. In the years following its adoption, sections of the Act have been added, repealed and amended nearly 200 times. Some amendments were "clean up" legislation, others reflected political concerns. Together, the Act and its amendments have resulted in a level of complexity the legislature believes does not serve the public interest.

The CLRC's current effort is intended to be a non-substantive "simplification and clarification" of the Act. While the CLRC has graciously received, fairly considered and sometimes adopted recommendations from homeowners, trade groups and others affected by the legislation (including attorneys offering comment on particular aspects of the Commission's work), no thorough and comprehensive analysis has been invited or undertaken by attorneys whose practice and experience afford them a unique view of the Act and existing case law. In far more than theory, thousands and thousands of existing associations' governing documents will be affected by the proposed restatement's many changes and the resulting substantive and significant changes to the Act. The nature of these changes, the financial consequences of adoption, and the sheer volume of the new restatement warrant a non-partisan study to ensure that the laudable goals of the CLRC - simplification and clarification - can be implemented. As in the case of the Select Committee appointed by the legislature to assist in drafting the original 1986 version of the Act, it would also be beneficial to include in the proposed non-partisan study representatives from the Subdivisions Section of the DRE, representatives from the title insurance industry, and persons representing financial institutions that routinely make loans to finance the development and/or acquisition of separate interests in common interest developments.

Many of the individuals signing this letter have assisted in the drafting of legislation or testified before legislative committees with respect to the initial adoption of the Act and its many subsequent amendments. It is natural and reasonable for you to ask what benefit is sought by persons seeking to implement or defeat proposed legislation. In this case, the attorneys who collectively urge deferral of this legislation represent a broad range of client constituencies whose interests are often in opposition, one to the other. The confluence of input from such divergent constituencies can only result in improvements to an ultimate legislative proposal to clarify the Act. Regardless of whether we represent developers, community associations, association members, trade groups, managers or contractors, we *all* agree that this law will wreak havoc with existing law, create new drafting problems into the future, generate legal uncertainty, and result in a significant amount of unnecessary expense for the very owners of homes in, and developers of, common interest communities that the legislation is intended to benefit. Saying that the restatement does not require associations to amend their documents is one thing, but to attorneys in the trenches who prepare original governing documents or those practitioners who endeavor to assist boards and managers in the application of antiquated and out-dated governing documents, the reality is quite different. While those signing this letter and our respective client bases may disagree about many things, we *all* agree this legislation will be costly and should be

deferred until the intent and effect of the law are clear and more consideration is given to the manner in which necessary revisions to DRE regulations and to the content of existing governing documents can be implemented to conform to the restated Act.

To illustrate our concerns, we have selected a few examples of how the proposed legislation can create uncertainty and confusion for all affected by the Act.

Partial Incorporation of Nonprofit Corporation Law

The sometimes complex interplay between a corporate association and the real property it manages has in the past suggested that a better amalgam of laws in the Davis-Stirling Act might be possible. The CID Open Meeting Act (Civil Code section 1363.05 [2]) and recent legislation regarding voting and elections (sections 1363.03 and 1363.04) and records access (section 1365.2) are examples of one approach, i.e., where competing law on the same subject in the Corporations Code simply gives way to the newer law within the Act to the extent they conflict. Another approach is to decisively import all related provisions into one self-contained body of law rather than incorporating provisions by reference. This avoids the necessity of consulting two bodies of law to determine which statutory scheme prevails. It would also avoid the problems raised by inconsistent terminology and concepts. A third concept would be to leave the two bodies of law separate, acknowledge their different purposes, and focus on making clear statements in the Act on subjects that are covered in both, including clear directives in the statute as to which body of law prevails in the context of a particular subject.

Our aim here is not to point out specific inadequacies in the corporate and governance provisions in the proposed restatement of the Act. Rather, what we do observe is that there appears to have been a compromise approach chosen by the CLRC and that it is inordinately difficult to read, review and comprehend. Particularly confusing are sections 4010 and 4025 which contain, among other things, basic rules of construction and priority principles (because competing law would still exist in two different codes). These sections are unhelpful in description, complex, and we believe will result in much misunderstanding for a long time since these concepts echo throughout the restatement. Much paraphrasing or incomplete importing of tightly written corporate statutes is also evident.

Risks of Paraphrasing

Court Approval of Document Amendments

The following example illustrates the concerns of those signing this letter with respect to the bill's inclusion of provisions that paraphrase existing law. Section 1356 of the current Act and Corporations Code section 7515 each address similar subjects but have significantly different wording and structure. One applies to court-ordered approvals of revisions to existing declarations of CC&Rs affecting ownership in real property, the other applies to authorized court-ordered interventions in the internal affairs of nonprofit corporations and their members under circumstances where it has proven impractical or unduly difficult for the corporation to take action in the manner required in its articles of incorporation or bylaws. In the new Act,

[2] Unless otherwise specifically noted, all statutory references herein are to the California Civil Code.

these two diverse statutes would be shortened and blended together (section 4620), with uncertain results. In addition, both of these statutes have been considered by courts in a number of published cases that examine and apply the existing language. That would necessarily change, at the cost of lost precedent.

The power of an association to petition a court to approve CC&R amendments or to facilitate corporate decision-making when owners and members do not vote is an important legal tool to protect for associations. If the language of new section 4620 is adequately protective of this right, it should be endorsed. However, in these and all other places in the restatement where existing law is simply paraphrased, the practice invites lawyers and judges to speculate that a change had a substantive purpose, which could produce unintended readings of the law. Conversely, keeping the language unchanged where possible and appropriate allows those using the restatement to benefit from its new organization as well as existing judicial interpretations. It would allow the proposed new Act to be easier for attorneys who use the Davis-Stirling Act to more confidently familiarize themselves with the new Act and advise their clients. It would also help associations and homeowners minimize costs and disputes over interpreting massive language changes.

The use of paraphrasing in the restatement is extensive. Everywhere it occurs without opportunity for State Bar review and comment, this concern exists.

Drafting Choices

Definitions – "Exclusive Use Common Area"

A drafting style employed in the restatement is to turn a longer sentence into two or more shorter sentences. The (dubious) premise seems to be that shorter sentences are easier to understand. However, removing important modifiers or dropping conjunctives in deference to simpler English has legal consequences.

Many drafting concerns that we have observed can be exemplified in the proposed new definition of "exclusive use common area." The current Act (at section 1351(i)) defines "exclusive use common area" in terms of five concepts strung together, *all of which must be true* in order to create an exclusive right to use common area as defined. In the current Act, these concepts form a list, separated by commas and one "and."

The proposed new Act (at section 4145) drops the final "and" and converts the remainder of the original single sentence into an imperative. The meaning of the original sentence, now made into two, is substantively changed by the simplification, shifting from the abiding principle that "exclusive use common area" is created *if* it is appurtenant to a separate interest, to declaring that such exclusive use *is* appurtenant to that separate interest.

Developers routinely include in their CC&Rs varying degrees of rights in common area for owners, many of which are intended to be appurtenant but some of which are personal (i.e., *not* attached to the owner's title to property in the development), and that are transferable among the owners of separate interests, the association and/or the developer. Breaking up the sentence

as proposed has the effect of sweeping *all* exclusive rights to use common area in the CC&Rs within its definition (e.g., including rights reflected in assignments, licenses, and easements in gross) and then declaring all of them to be appurtenant to title, effectively halting the free transfer of use rights among authorized parties.

The new definition as drafted then introduces a whole new concept - *later* grants of exclusive rights in common area made pursuant to current section 1363.07 (new section 5900). Presently, grants approved pursuant to section 1363.07 do *not* create "exclusive use common area" because they do not meet the existing definition. These rights are not described in CC&Rs, thus are not required to be recorded, and are generally not appurtenant, all of which are required in section 1351(i). In practice, such grants are more akin to licenses. Including section 5900 in a newly worded definition of "exclusive use common area" overlooks these inherent substantive differences and, moreover, deems the rights appurtenant despite the lack of recording. And, because section 5900 would now be part of a *defined term*, all other references in the new Act to exclusive use common area would thereafter apply to these grants - e.g., provisions such as who maintains it and what can be displayed from it - notwithstanding any different maintenance, insurance, expense, use or other terms about which a developer, association, voting members or the owner are currently free to contract.

The new Act would add a definition of "member" where none now exists (associations currently rely on their own unique bylaws, a practice that works). The proposed definition is broad and substantive and includes classes of members of some associations (largely resort or club types) who do not necessarily own any property within the common interest development. Because the new definition of "exclusive use common area" now refers to "members" having exclusive rights, not "owners," an interpretive problem exists. If exclusive use common area includes lesser grants and is deemed appurtenant by operation of law, to what property will future appurtenant rights attach for *non*-owner members who might be part of a group of fewer than all members who enjoy exclusive use of some portion of common area?

If nothing particularly warrants changing an *existing* statute (and no suggestion has been made that the existing single-sentence definition of "exclusive use common area" is inadequate), if it is comprehensible and capable of being applied, then the words of a statute do not need to, and should not, be altered. When they are altered for no good reason, the affected statute and all that connects and is integral to it is threatened. Where there are liberal but unnecessary changes in terminology, the law distances itself even further from formerly parallel provisions in existing governing documents, at a potentially enormous cost.

CLRC Notes and Comments / Annotations

> "Only when the language of a statute is susceptible to more than one reasonable construction is it appropriate to turn to extrinsic aids, including the legislative history of the measure, to ascertain its meaning." (*Granberry v. Islay Investments* (1995) 9 Cal. 4th 738, 744; further cited in *Diamond Multimedia v. Superior Court* (1999) 19 Cal. 4th 1036, 1047.)

The CLRC's December 2007 final recommendation contains numerous notes and comments, to help interpret and apply the new Act. As a basic legal principle, however, the unabridged language of the law must be respected wherever it is unambiguous. Evidence in sidebar notes and comments offered to show that the Commission did not *mean* to make a particular substantive change is unusable if what the Commission writes is clear. Those who have read the raw bill language for impressions report finding unambiguous substantive changes.

Because substantive changes were not the intent of the Commission, yet they do exist and are clear, we think these changes must be comprehensively identified in a systematic State Bar review. Provisions that need correcting could then be re-cast in non-substantive fashion as was intended (or returned to their current wording) before re-introduction in bill form. Clean-up legislation is not an appropriate mechanism for insuring the accuracy of the law that directly affects one-fourth of California's population.

We respectfully urge you to withdraw AB 1921 and refer it to the California State Bar for review, study and comment. Thank you for considering our collective concerns and our request that further consideration of this bill be deferred until the State Bar's review is complete.

Very truly yours,

Sandra M. Bonato
BERDING & WEIL LLP
3240 Stone Valley Road West
Alamo, CA 94507
sbonato@berding-weil.com

cc: Elaine M. Andersson, Chair, Real Property Law Section, California State Bar
Lisa A. Runquist, Chair, Nonprofit and Unincorporated Organizations Committee of the Business Law Section, California State Bar
Jeff Davi, Real Estate Commissioner, DRE
Chris Neri, Assistant Commissioner, Subdivisions, DRE
David Warner, Managing Deputy Commissioner III, Subdivisions, DRE
Robert D. Gilmore, Managing Deputy Commissioner IV, Subdivisions, DRE

LIST OF ATTORNEYS

[in alphabetical order]

Marianne Adriatico
Hecht Solberg Robinson Goldberg & Bagley LLP

Sandra M. Bonato
Berding & Weil LLP

Helene Z. Fransz
Adair & Fransz LLP

Wayne S. Guralnick
Guralnick & Gilliland LLP

John Paul Hanna
Hanna & VanAtta

A. John Hecht
Hecht Solberg Robinson Goldberg & Bagley LLP

Mary M. Howell
Epsten Grinnell & Howell

Bruce R. Inman
Inman Thomas, LLP

F. Scott Jackson
Jackson, DeMarco, Tidus & Peckenpaugh

Duncan R. McPherson
Neumiller & Beardslee

Peter T. Saputo
Little & Saputo

Curtis C. Sproul
Sproul Trost LLP

Deon R. Stein
The Law Offices of Deon R. Stein

Jay R. Steinman
Dzida Carey & Steinman

David M. VanAtta
Hanna & VanAtta

Jeffrey G. Wagner
Law Office of Jeffrey G. Wagner

Steven S. Weil
Berding & Weil LLP

[not in alphabetical order]

Nancy T. Scull
Luce Forward Hamilton & Scripps LLP

Jeffrey A. Barnett
Jeffrey A. Barnett, A Professional Corporation

R. Martin Bohl
Law Offices of R. Martin Bohl

Giselle A. Jurkanin
Little & Saputo

Neil S. Hyytinen
Hecht Solberg Robinson Goldberg & Bagley LLP

John D. Garvic
Law Office of John D. Garvic

Kenneth D. Little
Little & Saputo

Adrian J. Adams
Adams Kessler PLC

ADRIAN J. ADAMS, J.D., M.B.A.
2566 Overland Avenue, Suite 730
Los Angeles, California 90064
(310) 945-0280, (310) 945-0281 fax

Areas of Expertise

Standards of care for boards of directors and managers of community associations, including issues involving water intrusion, mold remediation, rules enforcement, CC&R drafting and interpretation, maintenance responsibilities, fiduciary duties, etc.

Education

- Juris Doctorate, Southwestern University School of Law, Los Angeles, California
- Masters in Business Administration, University of California at Los Angeles
- Bachelor of Arts, with great distinction in Psychology with minors in chemistry and biology, San Jose State University, four-time University Scholar and past member of the Phi Eta Sigma, Psi Chi and Phi Delta Phi academic societies

Designations

- former Certified Property Manager (CPM) through the Institute of Real Estate Management
- former Professional Community Association Manager (PCAM) through the Community Associations Institute

Affiliations

Past and present affiliations

- Institute of Real Estate Management
- Community Associations Institute
- California Association of Community Managers
- Executive Council of Homeowners
- American Society of Association Executives

Experience

Ten years managing large-scale common interest developments, including highrise, equestrian, lake associations and gated communities. Currently advise community associations as corporate counsel.

Professional

- Instructor for UCLA Extension on Association Management & Law
- Panelist for Continuing Education of the Bar on Common Interest Developments
- Panelist for the National Business Institute on Legal Aspects of Condominium and Homeowners' Associations in California
- Legal advisor on condominium law and smoke-free housing issues to the Technical Assistance Legal Center, a project of the Public Health Institute
- Served on the boards of directors of the Orange County and Los Angeles chapters of the Community Associations Institute

Biographical Information
MARIANNE F. ADRIATICO

DESCRIPTION OF PRACTICE AND INTERESTS

Marianne Adriatico practices in the areas of common interest development, land use, planning and zoning, commercial lending and real estate transactions. She has extensive experience assisting clients with their master planned, mixed use and condominium projects. That experience ranges from assisting developers obtain entitlements for their projects from various governmental agencies, including compliance with the California Environmental Quality Act, to documenting and negotiating purchase and sale documents between developers and merchant builders, and to working with and obtaining approval from the California Department of Real Estate for the governing project documents and purchase documents to be used for the sale of homes to members of the public. Ms. Adriatico assists clients with structuring their projects as well as with ancillary aspects including preparing leases, easement agreements, licenses, joint use agreements and construction contracts.

EXPERIENCE AND PROFESSIONAL ASSOCIATIONS

Hecht Solberg Robinson Goldberg & Bagley LLP	May 2004 – present (Associate)
Gray Cary Ware & Freidenrich LLP	1999 – 2004 (Associate)
United States District Court, Honorable Fern M. Smith	Spring 1999

Member of the Real Property and Environmental Law Sections of the California State Bar, the Real Property and Environmental/Land Use Law Sections of the San Diego County Bar Association and the Urban Land Institute.

EDUCATION AND BAR ADMISSIONS

Law School:	**University of California**, Hastings College of Law San Francisco, California J.D. (1999)
Undergraduate:	**University of California**, Los Angeles Los Angeles, California B.A. (1995) (*magna cum laude*) Geography and Environmental Studies
Bar Admissions:	California (1999)

PROFESSIONAL AND COMMUNITY INVOLVEMENT

Ms. Adriatico is currently serving as the Co-Chair of the Common Interest Subsection of the Real Property Section of the California State Bar and is involved with the CBIA/DRE Subcommittee as well as various other civic organizations. She also works *pro bono* with Habitat for Humanity on its residential projects in San Diego County.

SANDRA M. BONATO

AREAS OF PRACTICE:

Sandra Bonato is a partner in the law firm of Berding & Weil, LLP. In her practice, Ms. Bonato represents community associations in day-to-day operations and transactional matters and in real property, title and land use issues. She has broad experience in working with community associations, their boards of directors and managers and in applying California's highly regulated statutory scheme for common interest developments.

Ms. Bonato has been with Berding & Weil LLP since 1991 in a variety of capacities, including as Director of Client Services, as head of the firm's assessment collection department, as an associate attorney and now as a partner in Berding & Weil's corporate legal department. Her work includes effectively helping associations fill their financial needs, interpreting governing documents, drafting mediation briefs, easements, licenses, document amendments and operational policies for association clients, detailed title and land use analyses, and in-depth studies of fair housing laws, federal telecommunications regulations, director fiduciary duty issues. She is an experienced legislative analyst and tracks pending legislation and regulatory law on both the federal and state levels on behalf of the firm's association clients.

Ms. Bonato has been legislative columnist for the Executive Council of Home Owners' monthly magazine, the *ECHO Journal*, and has published articles in both local and statewide publications on topics that include bank loan financing, effective member communication in community associations, association disclosure obligations in real estate transactions, and how federal and state fair housing laws and the Americans With Disabilities Act impact community associations and disabled members. Ms. Bonato authors the firm's annual Disclosure Checklist and related materials, produces Berding & Weil's annual *Community Association Statute Book*, and is a regular contributor to the firm's newsletter, the *Community Association ALERT*.

EDUCATIONAL HISTORY:

Ms. Bonato received her *Juris Doctor* in December 1998 from John F. Kennedy University School of Law in Walnut Creek and her Bachelor of Arts degree in English in 1970 from the University of San Francisco.

BAR/PROFESSIONAL MEMBERSHIPS:

Ms. Bonato is a member of the State Bar of California and its Real Property Section and Subsection on Common Interest Developments. From 1998 through 2005 she served as chair of the Legislative Committee for the Executive Council of Homeowners (ECHO), remains active on the Committee today, and was honored in 2001 as ECHO's Volunteer of the Year. Before joining Berding & Weil, Ms. Bonato worked as a community association manager for condominium and townhome properties. She is a member of the California Association of Community Managers (CACM), holds the Certified Community Association Manager (CCAM) professional designation and, as an attorney, is a member of CACM's statewide faculty instructing manager certificate candidates in community association law. In July 2007, she was awarded CACM's Vision Award for Excellence in Education. She is a past director of the California North Chapter of the Community Associations Institute (CAI) and has served on several committees for CAI's San Francisco Bay Area Chapter.

Helene Z. Fransz

Ms. Fransz' practice focuses on development and sale of residential and commercial properties. Ms. Fransz represents both typical developers of standard subdivisions, planned developments and condominium projects and master developers of large communities. Ms. Fransz has acted as a consultant assisting in the establishment of planned communities in other states, including Nevada and Utah. Ms. Fransz has coordinated the legal work for conversion of over 40 different community apartment, stock cooperative and cooperative trust projects to condominium projects.

- **Education**

Georgetown University Law Center (J.D. *cum laude*, 1985)
Boston College (B.A., *summa cum laude*, 1982)

- **Affiliations**

State Bar of California, Building Industry Association

100 Pacifica • Suite 130 • Irvine, CA 92618
Tel: 949.442.0123 • Fax: 949.442.7610

Helene Z. Fransz

Publications

Chapter 6, "Financing Sales of Units in Common Interest Developments,"
Forming California Common Interest Developments
CEB (Continuing Legal Education of the Bar) (annual update author and original author)

Chapter 7, "Declaration of Covenants, Conditions, and Restrictions,"
Forming California Common Interest Developments
CEB (Continuing Legal Education of the Bar) (2008 update author)

"Three-Dimensional Subdivisions: A Way to Increase Development Options"
California Land Use Reporter, March 1997

"Thoughts About Incentive Programs"
Home Builders Council Newsmagazine, Winter 1992

"Apartment Conversions"
Home Builders Council Newsmagazine, Winter 1991

"3360 Condo Phasing: A Viable Alternative"
Home Builders Council Newsmagazine, Summer 1991 (co-author)

"Everything You Need to Know About Mechanics Liens"
Home Builders Council Newsmagazine, Winter 1990

"From Co-op To Condominium: Creating Your Own Market"
Apartment Association Magazine, July 1990 (co-author)

"Some Things to Consider Before Arbitration"
Home Builders Council Newsmagazine, Spring 1990

"News About Warranties"
Women in Commercial Real Estate Newsletter, Winter 1989

"What you Need to Know About Mechanics' Liens"
Women in Commercial Real Estate Newsletter, Fall 1989

100 Pacifica • Suite 130 • Irvine, CA 92618
Tel: 949.442.0123 • Fax: 949.442.7610

Helene Z. Fransz

Speaking Engagements

2007

Legal Aspects of Condominium and Homeowners' Associations (Lorman Educational Services) presented August 28, 2007

Subdivision, DRE & HOA Issues (Conference on Academic Workforce Housing) presented June 19, 2007 in Santa Ana, California

Good, Bad or Ugly? New Developments in the Area of CIDs (California Association of Community Managers) presented January, 2007 at the Annual Law Seminar

Common Interest Developments From the Ground Up (Southern California Program) presented in 2003, 2005 and 2007 by CEB (Continuing Education of the Bar)

2006

Developer Transition (California Association of Community Managers) presented July 28, 2006 at the 15th Annual Statewide Expo and Conference

Homeowner Associations & Public Agencies Working Together (CALAFCo University) workshop for LAFCo staff, commissioners and public agency staff presented July 25, 2006

Fundamentals of Real Estate Development (Pasadena Program) presented March 23, 2006 by Sterling Education Services

Establishing And Operating Common Interest Developments in California (Pasadena, Long Beach, Orange County and San Diego Programs) presented in 2005 (Lorman Educational Services)

2005 and 2004

Establishing And Operating Homeowners' Associations: Understanding The Legal Issues (San Francisco Program) presented in January 2005 (Lorman Educational Services)

Legal Aspects of Condominium Development and Homeowners' Associations (Orange County Program) presented in January 2004 (National Business Institute)

100 Pacifica • Suite 130 • Irvine, CA 92618
Tel: 949.442.0123 • Fax: 949.442.7610

Attorneys

WAYNE GURALNICK, Partner

Mr. Guralnick received his undergraduate degree from Villanova University and his law degree from Pepperdine University. He is past president of the Coachella Valley Chapter of the Community Associations Institute (CAI) and is a representative on the California Legislative Action Committee for CAI, a lobbying group working for community association interests in Sacramento. He is a member of the American, California, Riverside County, and Desert Bar associations. Mr. Guralnick has spoken at numerous national conventions for CAI and throughout the State. He is also a faculty member of the California Association of Community Managers and has provided the Legislative Update for the Coachella Valley since 1985. He is qualified as an expert on the fiduciary duties of boards of directors and litigation involving community association affairs.

BIOGRAPHY – JOHN PAUL HANNA

JOHN HANNA was born New York, N.Y., July 12, 1932 and raised in Palo Alto since his youth as the son of Stanford faculty members. He is a practicing lawyer with the law firm of Hanna & Van Atta located in downtown Palo Alto.

John Hanna was admitted to the California bar in 1960, and to the U.S. Tax Court. He is a graduate of Stanford University receiving his BA degree in 1954 and his J.D. degree in 1959.

Fields of Legal Concentration: Real Estate (Property) Law; Land Use and Development Law; Community Association Law.

Mr. Hanna is the author of numerous legal works, including:
"Subdivisions: Conditions Imposed by Local Government," Santa Clara Lawyer, Spring, 1966, p. 172; "Compulsory Dedication of Subdivision Land May Be Illegal," California Builder, August, 1964; Comment, "Protecting Builders' Rights", The Voice of the Home Building Industry, December, 1964; "The Complete Layman's Guide to the Law", Prentice Hall, Spring, 1974; "California Condominium Handbook", Bancroft-Whitney Company, Summer, 1975; "Current Condominium Practice Problems", Pepperdine Law Review, Vol 3, p. 5136, Symposium, 1976; "California Condominium Handbook II, Law and Practice, Residential and Commercial Common Interest Development", Bancroft-Whitney, 1986; "Homeowners Associations; A How-To Guide For Leadership and Effective Participation", Hanna Press, 1988;Hanna & Van Atta, "California Common Interest Development Law and Practice", West Group, 1999.

He has been a lecturer in the real property legal field on many occasions: Visiting Lecturer in Law, Stanford Law School on several occasions since 1981 and was a member, Board of Visitors, Stanford Law School, 1983-1986. He has lectured on Common Interest Subdivisions for the California Continuing Legal Education California State Bar on various occasions.

Member: Palo Alto and American (Member, Real Property, Probate and Trust Law Section) Bar Associations; The State Bar of California (Member, Condominium, Cooperative Housing and Subdivision Committee of the Real Property Law Section, 1980-1981); Building Industry Association of Northern California (Member, Department of Real Estate Committee, 1982-; Member, Board of Directors, West Bay Division); Department of Real Estate Homeowners Association Task Force; College of Community Association Lawyers; American College of Real Estate Lawyers.

Mr. Hanna is also a member of the Bohemian Club, the Palo Alto Club, the Menlo Circus Club and the Elks Club.

Biographical Information
A. JOHN HECHT

DESCRIPTION OF PRACTICE AND INTERESTS

John Hecht practices in the area of real property transactions, emphasizing condominiums and other common interest developments, purchase and sale agreements, master planned communities and other aspects of residential development law.

EXPERIENCE AND PROFESSIONAL ASSOCIATIONS

Hecht Solberg Robinson Goldberg & Bagley LLP	1973 – present (Partner)
Jenkins & Perry	1971 – 1973

Member of the Real Property Law Section of the California State Bar (past Member, Real Property Planning Committee, Continuing Education of the Bar), and the Real Estate Law Section (Chairman, Real Property Section, 1974) of the San Diego County Bar Association; Lecturer, California Continuing Education of the Bar.

EDUCATION AND BAR ADMISSIONS

Law School:	**University of Southern California** Los Angeles, California J.D. (1970)
Undergraduate:	**University of Southern California** Los Angeles, California B.S.B.A. (1967)
Bar Admissions:	California (1971)

PROFESSIONAL AND COMMUNITY INVOLVEMENT

Mr. Hecht has been actively involved with Continuing Education of the Bar, the California Building Industry Association's DRE Committee, and various other committees and organizations relating to the building and development industries.

Mary M. Howell

Mary Howell graduated from the University of California, San Diego in 1972 with a B.A. in biology. She is a 1976 graduate of the University of San Diego School of Law. In practice in San Diego since December of that year and now a shareholder in the law firm of Epsten Grinnell & Howell, APC, Mary is primarily involved with the representation of homeowner associations. Clients include associations and developments in San Diego, Riverside, and Orange counties. In addition to counseling associations on interpretation and enforcement of governing documents, Mary's case work on behalf of associations encompasses litigation of CC&R enforcement cases, appellate representation, defense of homeowner associations (e.g., breach of fiduciary obligation, wrongful termination, failure to maintain) and actions for declaratory relief. She has also been an adjunct professor of law at Thomas Jefferson School of Law, and has authored texts for attorneys on federal and state law relating to senior communities, as well as numerous articles and handbooks for homeowner associations, including "Small Claims Court for Homeowner Associations," and the "Resource Manual for California Senior Communities." Mary has also served as a Judge Pro Tem for San Diego County's Municipal and Small Claims courts, and has appeared in various cases as an expert witness on homeowner association issues. In 1994, 1996, 1997 and 1999, she was recognized for her practice in this area by her appointment as an instructor for the California State Bar's Continuing Education of the Bar series on Homeowner Associations. Mary is also a past president of the San Diego Chapter of the Community Associations Institute, a member of the College of Community Association Lawyers and a past member of the Board of Governors of the College of Community Association Lawyers, and of the Editorial Board of the Journal of Community Association Law.

Bruce Inman is a founding partner of the firm Inman • Thomas, LLP, which is located in Roseville, California. Mr. Inman's law practice focuses on creating common interest developments and advising community associations. He has assisted clients in creating hundreds of developments, including master planned communities, attached, detached, mixed-use, and commercial planned development and has extensive experience creating a variety of residential and commercial condominium projects. Mr. Inman is the chair of the California Building Industry Association/Department of Real Estate Subcommittee, and a former board member of a regional chapter of the Community Associations Institute. He received is Bachelor of Arts degree from St. Mary's College of California, Teaching Credential from California State University Stanislaus, and Juris Doctorate from the University of the Pacific, McGeorge School of Law.

Jackson | DeMarco | Tidus
Peckenpaugh

A LAW CORPORATION

Profile | F. SCOTT JACKSON | Shareholder

e-mail	sjackson@jdtplaw.com
Office	Irvine
Tel	949.851.7427
Fax	949.752.0597
Practice Areas	Real Estate, Common Interest Subdivision

F. Scott Jackson concentrates in real estate law and is a founding Shareholder of Jackson DeMarco Tidus Peckenpaugh. Mr. Jackson was admitted to the California State Bar in January, 1972 (50811). He chairs the common interest subdivision group of the firm, consisting of twelve of the firm's eighty attorneys. The group has created over 1,200 community associations for homebuilders and land developers.

Mr. Jackson has authored several books and articles including three chapters in *Forming California Common Interest Developments*, published by the California State Bar. He also co-authored the book entitled *Condominiums and Cooperatives* with the Assistant Attorney General of the State of New York and he co-authored the textbook *Business Condominiums* published by the National Association of Home Builders. He also edited three chapters for the California State Bar in the book entitled "Advising California Common Interest Communities."

Mr. Jackson is a past president of the National Community Associations Institute, a member of the American College of Real Estate Lawyers and a charter member of the Board of Governors of the College of Community Association Attorneys. He is also a member of the California Building Industry Association and a member of the CBIA Liason Committee with the California Department of Real Estate. He is a member of the Boards of Directors of the Lennar Charitable Housing Foundation and the Orange County Affiliate of Habitat For Humanity. Mr. Jackson is an "AV" (Martindale Hubbell) rated attorney, and was included among the Southern California Super Lawyers for 2008, as chosen by his peers and through independent research of Los Angeles Magazine.

Mr. Jackson is described as "a leading commentator" by the California Court of Appeal and his writings were cited with approval in Davert v. Larson, 163 Cal.App. 3d 407 (1985); Ruoff v. Harbor Creek Community Association, 10 Cal.App. 4th 1624 (1992); and Nahrstedt v. Lakeside Village Condominium Association, 8 Cal. 4th 361 (1994).

Education

University of Denver College of Law (J.D., *cum laude*, 1971)
United States Air Force Academy (B.S., 1967)

Affiliations

American Bar Association
Orange County Bar Association
American College of Real Estate Lawyers
College of Community Association Lawyers (Board of Governors, 1994–97)
Community Associations Institute (President, 1982–83)
California Association of Community Managers
California Building Industry Association
Urban Land Institute (Full Member)

F. SCOTT JACKSON (continued)

Publications

- "Commercial and Mixed Use Developments," "Condominum Conversions," and "The Homeowners Association," Forming California Common Interest Developments, Continuing Education of the Bar (1984, 2008)
- "Affordable Housing Endowments," American College of Real Estate Lawyers News; American Bar Association (1999).
- "Strategies to Avoid Construction Defect Claims," RAM Digest, NAHB (1996).
- "Staying Ahead of a Hostile Residential Market," American College of Real Estate Lawyers Papers, American Bar Association (1995).
- "How to Protect Yourself From Construction Claims," Building Community (Spring, 1993).
- "Strategies for Successful Enforcement of Rules and Deed Restrictions," Community Associations Institute Research Foundation, Rev. Ed (1992)
- "Is Converting to Condos the Answer for Stock Cooperatives and Community Apartments?" California Builder (August-September, 1990).
- "Vertical Subdivision: New Approach to Mixed-Use Development," California Builder (June-July, 1990).
- Business Condominiums, National Association of Home Builders and Community Associations Institute (1985).
- Condominiums and Cooperatives, 2nd Ed., J. Wiley & Sons (1984).
- "Commercial and Mixed Use Condominiums and PUD's," Practicing Law Institute (Spring, 1982).
- "Discovering Commercial Condominiums," The California Lawyer (Fall,'81)
- "Condo and Homeowners Associations," National Center for Continuing Legal Education (Spring, 1981).
- "The ABCs of Commercial Co-Ownership," Real Estate Review (Fall, 1980).
- "Condominium and Cooperative Conversions," Practicing Law Institute (Spring, 1980).
- "The Uniform Condominium Act from a Local Government Perspective," The Urban Lawyer (Summer, 1978).
- "A Developer's Guide to Homeowners Associations," Real Estate Review (Fall, 1977).
- "Homeowners Associations: Remedies to Enforce Assessment Collections," 51 Los Angeles Bar Journal 423-37 (March, 1976).
- "Lenders: What Your Attorney Should Check in Condominium and PUD Documentation," The Lending Law Forum (August, 1976).

Speaking Engagements

American Bar Association, American Law Institute
and Real Estate Sections of OC & LA Bar Associations
American College of Real Estate Lawyers
Building Industry Legal Defense Foundation
Building Industry Show
California Building Industry Association
California Association of Community Managers
California Association of Realtors
California Certified Engineers and Land Supervisors
California Community Colleges
California Continuing Education of the Bar
California Department of Real Estate
California Escrow Association
Community Associations Institute (Chairman)
Consulting Engineers and Land Surveryors of California
Los Angeles County Bar Association
National Association of Homebuilders
National Center for Continuing Legal Education
National Center for Professional Education (Chairman)
Orange County Bar Association
Practicing Law Institute (Chairman)
Sales and Marketing Council of Southern California
San Diego County Bar Association
State Bar of California
University of California, Irvine
University of Southern California
University of Miami Law School Institute of Cluster Housing
Urban Land Institute
Western Building Show (PCBC)

N&B

DUNCAN R. MC PHERSON

Duncan R. McPherson is a principal of Neuniiller & Beardslee. He has been practicing law since 1964 and has extensive experience with residential and commercial subdivision development and documentation, common interest subdivisions and master planned communities, community associations, subdivision regulation and sales, real estate brokerage law and regulations, real estate sales, leasing, the organization of real estate and development entities, and real estate finance.

With his long-standing involvement in land development, real estate, and community association law, Mr. McPherson is actively involved in a number of organizations related to these practice areas. He currently belongs to the California Building Industry Association's Department of Real Estate Committee, the Community Associations Institute, and the Urban Land Institute. He is a member of the American Bar Association, Real Property, Probate and Trust Section, where he has been Co-Chair of the H-1 Committee (development, operation, and management of community associations) and H-6 Committee and a delegate to the Community Association Institute's California Legislative Action Committee. He is also a member of the State Bar of California and the San Joaquin County Bar Association. Mr. McPherson is rated "AV" (the highest possible rating) by Martindale-Hubbell, the standard directory of attorneys in the United States.

Mr. McPherson holds a BA and JD from the University of California at Berkeley. In 1964, he was admitted to practice in California and before the U.S. Court of Military Appeals.

Peter T. Saputo

A partner in the law firm of Little & Saputo (1983-present) with a practice limited to real estate development, emphasizing the preparation of Declarations of Covenants, Conditions and Restrictions and related documentation for common interest developments.

Member of the Task Force on California Subdivision Law which resulted in the enactment of the Davis-Stirling Common Interest Development Act; consultant to California Department of Real Estate Common Interest Homeowners' Association Management Study; past chair of the California Building Industry Association Real Estate Committee; past chair of the Common Interest Development Subcommittee of the California State Bar.

CURTIS CUTTER SPROUL

Professional Profile
(Revised 2008)

EDUCATION

Undergraduate: University of California at Berkeley (Honors, A.B. degree, 1970).

Law School: University of California, Boalt Hall School of Law (J.D. degree, 1973).

EMPLOYMENT

Morrison & Foerster, San Francisco	1973-1976
Downey Brand Seymour & Rohwer, Sacramento	1976-1978
Weintraub Genshlea Chediak Sproul, Sacramento	1978-2005
Sproul Trost LLP, Roseville	2005-present

LEGAL PUBLICATIONS

Books:

Co-author, (with Prof. Katharine Rosenberry), Advising California Common Interest Communities, C.E.B. (1991; republished in 2003).

Consulting Attorney, California Condominium and Planned Development Practice, C.E.B. (1984)

Co-author, Advising California Nonprofit Corporations, C.E.B. (Mr. Sproul wrote the chapters of this book which discuss the duties, responsibilities, and liability protections of directors and officers of nonprofit organizations and the rights and obligations of members of such organizations.

Co-author and Co-editor (with Palmer Brown Madden), The Law of Politics, C.E.B. (1977)

Co-author, Common Interest Communities; Private Governments and the Public Interest, US Berkeley Institute of Governmental Studies Press (1994)

C.E.B. (The Continuing Education of the Bar) is a nonprofit corporation established and operated under the auspices of the Board of Governors of the State Bar of California and the Regents of the University of California. C.E.B. conducts an ongoing series of seminars and law courses for practicing attorneys and is one of the principal publishers of legal treatises and reference books on California law.

Articles: "Drafting Governing Documents That Work", CIA 2001 Law Seminar.

"Using State Nonprofit Corporation Laws As An Effective Tool For Community Association Governance", CIA 1999 Law Seminar.

"Drafting Governing Documents for Master Planned Communities", CIA Law Seminar (California) 1998

"Common Interest Community Associations and Their Management Structure", California Real Property Journal (1994).

"Director and Officer Liability in the Nonprofit Context", State Bar Business Law Section News (1993).

"The Constitutionality of California's Mortgage Broker Law", Real Estate Law Journal (1975).

"Recent Developments in Federal Election Law", The Practical Lawyer (1978).

"Corporations and Unions in Federal Politics: A Practical Approach to Federal Election Law Compliance", Arizona Law Review (1980).

Co-author, "Report of the Committee on Corporations Regarding Legal Opinions in Business Transactions", Business Law Section of the State Bar of California (1982).

"Is California's Mutual Benefit Corporation Law The Appropriate Domicile For Community Associations?", University of San Francisco Law Review (1984).

LAW-RELATED TEACHING

I have been a frequent lecturer for the Continuing Education of the Bar in the fields of real property law, nonprofit corporation law, political law, corporate organization and tax planning, and limited partnership law. I have also spoken on numerous occasions before various trade association groups representing real estate developers, land planners, homeowner associations, realtors, and related organizations, including the Community Associations Institute (both national seminars and local chapters), the California Building Industry Association, the California Association of Community Managers, the State Bar Real Property Law Section and the Sacramento County Bar Real Property and Business Law Sections.

STATE AND LOCAL BAR COMMITTEE MEMBERSHIPS

California State Bar Real Property Law Section Committee on Condominiums and Planned Developments	1985-Present; Chairperson, 1985-1986 Nor. CA Chair currently
California State Bar Business Law Section Executive Committee	1992-1996; I served as Chair of the Section in 1996
California State Bar Business Law Section Committee on Nonprofit Corporations	1989 - Present; Chairperson, 1991-1992
San Francisco Bar Association Committee on Political Law and Campaign Financing	Chairperson, 1975-1976
California State Bar Committee on Partnerships and Unincorporated Associations	1976-1978
California State Bar Committee on Corporations	1978-1980

CALIFORNIA LEGISLATIVE TASK FORCE ON COMMON INTEREST REAL ESTATE LAW REVISION

I served as a member of a Special Task Force appointed by the California Legislature in 1984-1985 to draft legislation for a comprehensive revision of the California laws relating to common interest subdivisions (condominiums and planned developments). The work of this Task Force resulted in the introduction of comprehensive new legislation in this field during the 1985 legislative session, which became effective January 1, 1986, as the Davis-Sterling Common Interest Development Act. In 1997 a new Task Force was appointed by the State Senate Committee on Housing and Land Use to re-examine the Davis-Sterling Act and to make recommendations to the Legislature for further improvement of that statute. I was also a member of the 1997 Task Force. As a result of my participation on the Davis-Sterling Task Force and my authorship with Professor Rosenberry of *Advising California Condominiums and Homeowners Associations* I am often consulted by the California Law Revision Commission with respect to issues pertaining to common interest and community association law.

OTHER PROFESSIONAL ASSOCIATIONS

Member, American College of Real Estate Lawyers 2006

Member, Sacramento State University Community Advisory Board 2002-2005

Member, Community Associations Institute; 1984-present.

Chair, Board of Directors, Sacramento Urban League; 1993-1994.

President, O.K. Alumni Club of Sacramento; 1992-1993.

Member, Board of Directors, Capital Radio (Sacramento's National Public Radio Station); 1989-present. Chair of the Board 1995-1997.

Member, Board of Directors, Boalt Hall School of Law Alumni Association; 1986-1990.

Member, Board of Directors, United Way of California; 1992-present. Chair 1995

Chair of the California State University, Sacramento Community Advisory Board, 2002 – present.

Chair, Capitol Public Radio Endowment – 2001 to 2005.

LEGAL EXPERIENCE RELATING TO REAL ESTATE DEVELOPMENTS

During the past 15 years, the focus of my law practice has been on real estate development, land use planning and the unique legal issues and problems facing master planned communities. Much of this practice has been concentrated in the area of residential and commercial common interest real estate developments. Presently my firm represents approximately 60 planned communities, and approximately 100 real estate development companies.

In representing developers I have been active in all aspects of the planning and development process including appearances before planning commissions, city councils and boards of supervisors regarding land use issues, site development problems and special district formation. I have also negotiated development agreements and have extensive experience in dealing with the Department of Real Estate in connection with the preparation of master management documents and applying for subdivision public reports. As my practice has evolved, my focus has shifted to master planned communities and resort/recreation common interest developments which often include golf courses, ski areas, and a mix of commercial uses, interval ownership programs, and conventional common interest planned developments and condominium projects. The greater Sacramento region is currently seeing an increase in condominium conversions.

In the context of mature, post-developer, planned developments I have counseled boards of directors of community associations with respect to complex reorganizations, including comprehensive revisions of the original plan of development to respond to critical development problems not anticipated by the project developer (such as the failure of on-site waste disposal systems and the effective integration of neighboring CIDs when annexation rights have expired), the merger of multiple community associations within a single development and the creation of community services districts to provide an alternate means of financing and administering local community functions. Finally, I have represented planned developments when conflicts have arisen with local and State government agencies involving the competing demands of the private development and obligations under development agreements relating to public access, open space and wet lands preservation.

LEGAL EXPERIENCE RELATING TO NONPROFIT CORPORATIONS

As noted above, I participated in the State Bar project, which resulted in the legislation, which became the 1980 Nonprofit Corporation Law. In subsequent years, I have remained active in monitoring and proposing legislation of interest to nonprofit clients, and, in 1991, I served as chairman of the State Bar Committee on Nonprofit Corporations. As a member of the State Bar Committee, I have taken a lead role in drafting legislation to offer greater liability protection to directors and officers of nonprofit corporations.

In addition to the many nonprofit mutual benefit corporations I represent, my clients include a number of local and national charities which are classified as public benefit corporations, including the United Way of California, the United Way Sacramento Region, the Foundation of the State Bar of California, Pride Industries, Families First, Inc., the California Musical Theatre, Capitol Public Radio and the California Urban Water Conservation Council. Services to these clients include general corporate counseling, employment law matters, tax exemption issues, tax-exempt bond financing, litigation services, corporate reorganizations and Attorney General regulatory matters.

PERSONAL

I reside in Newcastle, Placer County, California with my twin sons and assorted pets. Interests include horseback riding (Tevis Cup 100 mile race, four times), long distance running (former Race Director and three time participant, Western States 100 Mile Endurance Run), and skiing (both snow and water).

CONTACT INFORMATION

CURTIS C. SPROUL
Attorney at Law

Sproul Trost LLP
3721 Douglas Blvd., Suite 300
Roseville, CA 95661
(916) 783-6262 tel
(916) 783-6252 fax
csproul@sproullaw.com
http://www.sproullaw.com

DEON R. STEIN

Deon Stein is the owner of **The Law Offices of Deon R. Stein** in Sacramento. He has represented residential and commercial community associations, other non-profit corporations, businesses, individuals and residential and commercial real estate developers throughout California since 1988.

Mr. Stein advises boards of directors in the day-to-day operational aspects of community association law, including the interpretation and enforcement of governing documents, real estate disclosure and reserve fund requirements, assessment collections, voting and other corporate compliance matters, loan transactions, developer transition issues, and contract negotiation and administration. He also has extensive experience in drafting major revisions of governing documents for post-developer community associations.

Mr. Stein has substantial experience with the California Department of Real Estate (DRE) in the initial formation of new residential subdivisions which gives him a wide understanding of the forces behind the creation of common interest developments, including their budgets and reserves, original governing documents, and various legal requirements that the DRE imposes on real estate developers and home builders.

Mr. Stein received his *Juris Doctor, cum laude,* from the University of California, Hastings College of the Law in San Francisco and his Bachelor of Arts degree in Political Science from the University of California at San Diego. He is the recipient of American Jurisprudence Awards in Bankruptcy Law and Federal Government Contracting Law. In 1988, Mr. Stein was an extern for the late Honorable David N. Eagleson of the California Supreme Court.

Mr. Stein is actively involved with many community association industry organizations. He is a member of the Teaching Faculty of the California Association of Community Managers (CACM). He has served on the Board of Directors of the California North Chapter of the Community Associations Institute (CAI-CNC), and was the Chapter's President in 1998. He has served on the Board of Directors of the Executive Council of Home Owners (ECHO). He belongs to and frequently speaks before various chapters of CAI, CACM, and ECHO. He has authored articles on community association legislation and operations for CAI-CNC, CACM and ECHO.

Mr. Stein has also lectured on community association, non-profit corporation and common interest development issues for Continuing Education of the Bar (CEB), the California Association of Realtors (CAR) and the Superior California Chapter of the Building Industry Association (BIA-SC).

Jay Steinman JD University of Southern California, 1977
BA California Polytechnic University 1973

Jay Steinman is a partner with Dzida, Carey & Steinman in Irvine, California. His practice emphasizes all aspects of negotiating, structuring and documenting the sale, leasing and financing of residential and commercial real estate developments and the planning and development of residential and commercial common interest subdivisions.

Mr. Steinman represents numerous private and public developers in the purchase and sale of improved and unimproved land, including the sale of development sites in master planned communities to merchant builders; the planning and development of residential developments (which have ranged in size from 4 to 30,000 residences); drafting of covenants, conditions and restrictions and other common interest subdivision organizational documents; formation of homeowners associations; preparation of sales documents, disclosures and other documentation used in the sale of residences to members of the general public and working with local governmental authorities on issues related to the subdivision, entitlement, development and sale of residential real estate developments. He has provided similar services in the development of mixed use, industrial, retail and office planned developments and condominium projects. Mr. Steinman also represents clients in the processing of applications with the California Department of Real Estate for Preliminary, Conditional and Final Subdivision Public Reports authorizing the sales in residential developments; compliance with the DRE Regulations as they relate to the sale and marketing of residences and the intrastate regulation of residential sales. Mr. Steinman conducts annual training sessions at the Department of Real Estate Los Angeles Office attended by DRE Deputies and supervisors; has participated on various panels discussing real estate development and has lectured on real estate development in extension programs at the University of California Irvine. He also provides pro bono assistance to charitable groups including Families Forward, a non-profit organization that provides housing and assistance to families in Orange County and Habitat for Humanity.

Jay R. Steinman
Dzida, Carey & Steinman

BIOGRAPHY - DAVID M. VAN ATTA – PARTNER – HANNA & VAN ATTA:

DAVID M. VAN ATTA, born Berkeley, California, 1944; admitted to bar, 1970, California, *Education:* University of California at Berkeley (A.B., 1966); Hastings College of Law, University of California (J.D., 1969). Author: "Current Income Taxation Issues Related to Real Property Development", First Annual Institute on Advanced Tax Planning for Real Property Transactions, California Continuing Education of the Bar, 1982; "What Every Developer's Successor Should Know", 6 Practical Real Estate Lawyer No. 3 (pt. 1) and No. 4 (pt. 2), 1990; "Using Letters of Credit as Credit Enhancement for Real Estate Loans", 5 The ACREL Papers 109 (1992); Update to Guide to California Sales Law, Continuing Education of the Bar, July 1992; "Potential Problems with Shelf Condominiums" 17 CEB Real Property Law Reporter 141, April 1994; "Reciprocal Easements, Restrictive Covenants, and Airspace Developments in Mixed Use Developments", Planned Communities: Ownership Options and Development Formats, THE ACREL PAPERS 99 (1995); Hanna & Van Atta, "California Common Interest Development Law and Practice", West Group, 1999. Note and Comment Editor, Hastings Law Journal, 1968-1969. Law Lecturer, University of California Extension, 1976-1987. Adjunct Professor, Real Property Secured Transactions, Golden Gate University School of Law, 1982-1983. Chairman, Condominium Cooperative Housing and Subdivision Committee, 1981-1983 and Vice Chair, Executive Committee, 1982-1986, Real Property Law Section, State Bar of California. *Member:* Bar Association of San Francisco; American Bar Association (Member, Section of Real Property, Probate and Trust Law); Building Industry Association of Northern California (Past Chair, Department of Real Estate Committee); Community Associations Institute; Urban Land Institute (member, District Council Executive Committee; Chair, Program Committee); Lambda Alpha International Land Economics Society; College of Community Association Lawyers; American College of Real Estate Lawyers; Anglo American Real Property Institute. ***Concentration:*** Real Estate (Property) Law; Land Use and Development Law; Real Estate Finance; Community Association Law.

BACKGROUND IN SUBDIVIDED LANDS ACT AND SUBDIVISION MAP ACT:
An area of Mr. Van Atta's legal expertise is practice under the California Subdivided Lands Act and the Subdivision Map Act. He was employed as Assistant General Counsel at Boise Cascade Corporation from 1970 to 1973 with responsibility for registration and compliance of the company's projects with the Subdivided Lands Act and the federal Interstate Land Sales Full Disclosure Act. From 1973 – 1987 he was an associate attorney and partner at Miller Starr & Regalia, where among his specialties he represented clients regarding the Subdivided Lands Act and the Subdivision Map Act, and was the primary contributor to the CEB book on Subdivided Lands Act Practice. He has also presented courses on the Subdivision Map Act as well as the Subdivided Lands Act for CEB and other legal education providers. From 1987 to 1993 he was a partner in the San Francisco firm of Graham & James, practicing all aspects of real estate and real estate development law. Since 1993 Mr. Van Atta has been a partner in the firm of Hanna & Van Atta, in Palo Alto, California, which features among its specialties an extensive legal practice under the Subdivided Lands Act and the Subdivision Map Act for clients. He is the co-author with his partner, John Paul Hanna, "California Common Interest Development Law and Practice" published by West Group.

For more information, see www.hanvan.com.

JEFFREY G. WAGNER

Law Office of Jeffrey G. Wagner
1777 N. California Blvd., Suite 200
Walnut Creek, CA 94596-4180

(925) 952-9021
Fax (925) 952-9109
email: jwagner@jwagnerlaw.com

PRACTICE

Specializes in residential and commercial development, including the preparation of CC&Rs and other owner association documents for condominiums, planned developments, senior housing, stock cooperatives, co-housing projects and reciprocal easements and other land-sharing agreements and the representation of homeowners associations.

EDUCATION

UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW, J.D., 1973
Magna Cum Laude
Number one in class
Editor-in-Chief, *University of San Francisco Law Review*

UNIVERSITY OF SANTA CLARA, B.S., 1967

PROFESSIONAL/CIVIC ACTIVITIES

State Bar of California, Real Property Section
- Member Real Estate Law Consulting Group (2004)
- Advisor to the Executive Committee (1998-1999)
- Member, Executive Committee (1996-1998)
- Co-Chair, Common Interest Development Subsection (1992-1994)

Contra Costa County Bar Association

California Building Industry Association
- Chair, DRE Committee (1997-1998)
- Chair, DRE Legislative Subcommittee (1992-1993)
- Chair, Northern California Department of Real Estate Committee (1991)
- Vice Chair, Northern California Department of Real Estate Committee (1990)

PUBLICATIONS

Author, *The Unique Characteristics of Commercial and Mixed-Use Condominiums,* Real Property Journal Vol. 25, No. 4 (2007)

Coauthor, *Forming California Common Interest Developments,* (CEB 2004)

Author, *SB 800: Builders' Right to Repair v. Homeowner's Right to Sue*, California Real Property Journal Vol. 21, No. 2 (Spring 2003)

Author, *New Natural Hazard Disclosure Requirements*, California Real Property Journal Vol. 16, No. 3 (Summer 1998)

Author, *Senior Housing Laws: Recipe for Heartburn*, California Real Property Journal, Vol. 14, No. 2 (Spring 1996)

Coauthor, CEB annual updates to the *California Condominium and Planned Development Practice* Book (1985-2003)

Author, *Condominium Common Area: Property Unreasonably Restrained?* 5 J.F.K.L., Rev. 30 (1992-1993)

Coauthor, *Insurance and Damage and Destruction Provisions for Condominiums and Planned Developments*, California Real Property Journal, Vol. 11, No. 2 (Spring 1993)

PRESENTATIONS

Participant in a number of educational panels and seminars on common interest developments

BERDING | WEIL

Steven S. Weil
Attorney

email: sweil@berding-weil.com

AREAS OF PRACTICE

Steven Weil is one of the founding principals, former managing principal, and current member of the firm's executive committee.

He has practiced community association law since 1984 and has dealt with virtually every kind of challenge facing directors, managers and community association members.

These have included analyzing board and member duties under the Davis-Stirling Common Interest Development Act and other state and federal laws, helping communities deal with CC&R amendments and director recalls and campaigns for large special assessments to fund capital improvements or major repairs.

LEGAL HISTORY

Mr. Weil is one of the most well-known authors and lecturers on matters relating to community associations in the state.

He has lectured before groups of attorneys, accountants, owners, directors and managers at numerous functions sponsored by the Community Associations Institute (CAI), the Lorman Group, the Executive Council of Homeowners (ECHO), the Council of Condominium Homeowner Associations, the Building Owners and Managers Association and the California Association of Community Managers (CACM). Mr. Weil is the Recipient of 2005 CACM's Vision Award for Excellence in Education and is a member of the nationally recognized College of Community Association Lawyers.

He presently serves on the ECHO board of directors and the Legal Steering Committee and Faculty Committee for CACM. Mr. Weil has taught classes in corporate, property management and community association law to hundreds of residential and commercial managers throughout the state. He has also taught Civil Procedure at San Francisco Law School and is the Past President of the Bay Area Chapter of Community Associations Institute.

Mr. Weil has testified numerous times before the California Legislature regarding community association legislation and has written many articles on topics such as financing major repairs, allocation of political authority, fiduciary duty, disclosures, free speech issues, proxies, recalls and a host of other matters relating to the operation of non profit corporations and homeowner associations.

EDUCATION HISTORY

Mr. Weil received his *Juris Doctor* from the University of San Francisco in 1980 and his Bachelor of Arts degree in History from the State University of New York at Binghamton in 1976.

LUCE FORWARD
ATTORNEYS AT LAW • FOUNDED 1873

600 West Broadway
Suite 2600
San Diego, CA 92101-3372
619.236.1414
619.232.8311 fax

2050 Main Street, Suite 600
Irvine, CA 92614
949.732.3700
949.732.3739 fax

www.luce.com

Nancy T. Scull

nscull@luce.com
Phone: 619.699.2457
Fax: 619.645.5310

Nancy Scull's focus is on the representation of commercial, industrial, retail and residential developers in all real property transactions. Ms. Scull has developed a special expertise in mixed use projects, condominium projects and Department of Real Estate regulatory matters. She represents numerous publicly held developers, urban high-rise and mixed use developers, and developers of master planned communities in developing and processing projects and implementing programs to minimize liability. Ms. Scull has worked with many master developers of major communities and urban town centers, advising them with the planning, development and long-term governance of their communities and the sale of parcels for merchant builders. Ms. Scull also represents national, commercial, industrial and retail developers with high-rise office, commercial and industrial projects and retail shopping centers throughout the State of California and has created governing documents for major retail centers in Northern and Southern California.

Fast Facts

Partner in the San Diego and Orange County offices

Practice Areas: Real Estate, Common Interest Subdivision Group

Bar Admissions

California

Education

JD, University of Southern California, 1982

BA, Trinity College, Cum Laude, 1970
M.Ed., Smith, 1973

Memberships

Former Chairperson, Downtown San Diego Partnership

Executive Committee Member, Downtown San Diego Partnership

Member San Diego Center City Development Corporation – Educational Task Force

Member, Building Industry Association, Department of Real Estate Committee

Member, California Building Industry – Urban Council

Member, Committee for Downtown Education

Member, San Diego Building Industry Urban Council

Member, Department of Real Estate Committee – Condominium Conversion Taskforce Committee

Former Chairperson of California Building Industry Association – Department of Real Estate Committee

Former Chairperson, Department of Real Estate Master Planned Communities Committee

Recognition

The Best Lawyers in America® - Listed for more than 10 years.
Most Recent Listing: 2008 – Real Estate Law.

Southern California Super Lawyers – San Diego
Most Recent Listing: 2007 – Real Estate
Ranked among the Top 25 women for this honor.

Selected as one of the 500 lawyers in America as "New Stars" for 2006 by *Lawdragon*.Selected as one of the "Top San Diego County Attorneys" for 2005, 2006 and 2007 by *The Daily Transcript*.

Selected as one of the "Women of Influence" for 2004, 2005 and 2006 by *Real Estate Southern California*.

Presentations

Moderator, "Mixed-Use Development," IncreMentalAdvantage Seminar: "Commercial Real Estate Due Diligence," March 25, 2008

"Residential Mixed-Use in California: Tip-Toeing Through the Department of Real Estate's Regulatory and Budget Process", CLE International Conference, January 2008

"From the Ground Up: Lessons Learned in Developing and Managing Mixed-Use Vertical Projects", CLE International Conference, January 2008

Program Co-Chair, "Mixed-use Development: From Breaking Ground to Cutting Ribbon", CLE International Conference, January 2008

"Mixed Use Projects: The Odd Couple: Learning to Live Together in a Mixed Use World", International Conference of Shopping Centers Legal Conference, January 2008

"Making a Mixed-Use Building Work," Law Seminars International Presentation: Development Agreements, Easements and CCRs, December 5, 2007

"Buying or Leasing in a Mixed-Use Project: What You Need to Know", Commercial Lease Conference, November 2007

"Suburban to Urban: Understanding the Challenges", Pacific Coast Builders Conference, June 21, 2006

Panelist, "1st Annual Hospitality Law Conference." Topic: "Condo Hotels: The Product and the Plumbing", February 2, 2006

"A Condominium Is Still A Condominium: Using Condo Techniques to Retain Control and Avoid Liability", February 2006

Panelist, "Have Condos Gone Crazy?" RealShare Conference Series: "RealShare San Diego Looks at Hot Condo, Investment Sales, TIC and Debt & Equity Markets", October 27, 2005

Real Property Section of the State Bar of CA: "Inside Counsel's View of Outside Counsel: The Real Story", April 2005

"Breakfast of Champions," forum presented by the Building Industry Association of San Diego, March 15, 2005

"Guide to Reducing Litigation Risk," Pacific Coast Builders Conference, 2004

"Bound by the DRE; The Business of Subdivision Sales," Real Property Section of the State Bar of California Annual Retreat, 2004

"Bound by Your Imagination; Advanced Topics in Subdivision Sales," Real Property Section of the State Bar of California Annual Retreat, 2004

Presentation to Centex Homes: "High-Rise and Mixed-Use Projects, Lessons Learned – Lessons Shared", February 2005

Real Property Section of the State Bar of CA: Bound by the DRE: "The Basics of Subdivision Sales", April 2004

Presentation to KB Home: "San Diego Division: Developing and Processing Condominiums and Single Family Projects Through the Department of Real Estate", November 2003

Presentation in Las Vegas: "HOA's Start to Finish", June 2003

Publications

Co-Author, "The Odd Couple: Learning to Live Together in a Mixed Use World", ICSC Lease Conference Program Materials.

Author, "Minimizing Liability: A Guide to Creating Your Liability Avoidance Program", May 26, 2006

Co-Author, "Insurance and Damage and Destruction Provisions for Condominiums and Planned Developments", *California Real Property Journal*, Spring 1993

Resume of Jeffrey A. Barnett, Esq.

Mr. Barnett is a Phi Beta Kappa graduate of the University of California, Berkeley (1971) and received a J.D. degree magna cum laude from the University of Santa Clara, School of Law in 1974. He has practiced law continuously in San Jose, California from 1974 to the present, specializing in association law, handling both transactional and litigation matters. He has served on the Board of Directors of ECHO (two terms), and is a member of the Legal Advisory Committee of the California Association of Community Managers. Mr. Barnett serves on the South Bay and Central Coast ECHO Regional Panels, and is a member of the ECHO Legislative Committee. He has written numerous articles on issues affecting common interest developments, and is a frequent speaker on homeowner association topics. Further detailed information is available on Mr. Barnett's website, hoa-law.com.

Biographical Information
R. MARTIN BOHL

DESCRIPTION OF PRACTICE AND INTERESTS

Marty Bohl represents a broad range of property owners, users and developers in all aspects of real property law, with particular emphasis on common interest subdivisions, real estate transactions and real estate development. He has extensive experience in major real property sales, leasing and financing transactions, condominiums and other common interest developments, land use and entitlements, subdivisions, redevelopment projects, construction, endangered species, wetlands, environmental regulation, and related litigation. He has assisted clients with real estate assets ranging from corporate headquarters to undeveloped tracts of land, from a college campus to a coastal resort, and from a transit-oriented mixed use development to a county sanitary landfill system. He has represented clients before a wide variety of governmental agencies in obtaining land use entitlements. He has extensive expertise with common interest subdivisions, working with developers of master planned communities, high-rise, traditional and detached condominium projects, mixed use projects and planned developments to obtain subdivision public reports from the California Department of Real Estate.

EXPERIENCE AND PROFESSIONAL ASSOCIATIONS

Before starting his own firm in 2004, Marty Bohl practiced real estate, land use and environmental law in San Francisco, Palo Alto and San Diego with McCutchen, Doyle, Brown & Enersen; Cooley Godward Castro Huddleson & Tatum; Gray, Cary, Ames & Frye; and Hecht, Solberg, Robinson, Goldberg & Bagley.

Mr. Bohl has served as Chair of the San Diego Building Industry Association's Department of Real Estate Committee since 2001 and is actively involved in the DRE committee of the California Building Industry Association. He is Co-chair of the State Bar of California Real Property Section Common Interest Developments Subsection for Southern California. He is a member of the Real Property Section of the State Bar of California and the Real Estate, Land Use and Environmental sections of the San Diego County Bar Association.

EDUCATION AND BAR ADMISSIONS

Law School:	**Stanford Law School**, Palo Alto, California J.D., 1983
Undergraduate:	**Kansas University**, Lawrence, Kansas B.S. with highest distinction, 1980 (Civil Engineering) Honor Graduate, School of Engineering Summerfield Scholar; *Tau Beta Pi*
Bar Admissions:	California, 1983

PROFESSIONAL AND COMMUNITY INVOLVEMENT

Mr. Bohl is a past member and Chairman of the Belmont, California, Planning Commission. He is a 1992 graduate of LEAD San Diego. He is a member of the Board of Directors of Summerbridge San Diego. He has served as a Councilmember, Call Committee Chairman, and Endowment Committee Chairman of St. Peter's by the Sea Lutheran Church.

He has made presentations to business groups on a variety of real estate, land use and environmental law topics. He has frequently been an instructor of *Advanced Course of Study: Major Real Property Acquisitions* for the California Continuing Education of the Bar (CEB) and *the California Subdivision Map Act* for the University of California Extension.

JISELLE A. JURKANIN

A partner in the law firm of Little & Saputo (1984- present) with a practice limited to real estate development, focusing on the preparation of legal documents creating and governing common interest developments.

Founding member and past chair of the HBA DRE Committee. Past member of the Commissioner's Subdivision Advisory Committee. Member of the California State Bar Real Estate Section.

Biographical Information
NEIL S. HYYTINEN

DESCRIPTION OF PRACTICE AND INTERESTS

Neil Hyytinen practices in the areas of land use, planning and zoning, environmental and municipal law, and common interest developments.

EXPERIENCE AND PROFESSIONAL ASSOCIATIONS

Hecht Solberg Robinson Goldberg & Bagley LLP	October 2002 – present (Associate)
Gray Cary Ware & Freidenrich LLP	2001 – 2002 2000 (Summer Associate)
City of San Diego, Councilmember Christine Kehoe	1993 – 1998 (Chief Policy Aide) 1995 – 1996 (PS&NS Committee Consultant)
City of San Diego, Councilmember John Hartley	1993 (Chief of Staff) 1992 (Council Representative)

Member of the Real Property and Environmental Law Sections of the California State Bar, and the Real Estate and Land Use Sections of the San Diego County Bar Association.

EDUCATION AND BAR ADMISSIONS

Law School:	**University of San Diego School of Law** San Diego, California J.D. (2001) (Order of the Coif, *cum laude*)
Undergraduate	**University of Minnesota** Minneapolis, Minnesota B.A., Political Science
Bar Admissions:	California (2001)

PROFESSIONAL AND COMMUNITY INVOLVEMENT

Mr. Hyytinen is active with the San Diego Chamber of Commerce Housing Committee and various other civic organizations. He is also a graduate of LEAD San Diego (2004).

Kenneth D. Little (SBN 71705)

Admitted to practice 1976. Practice has emphasized real estate development with transactional and litigation experience in land use, Subdivision Map Act, project approvals from local governmental entities, CEQA, and other state and federal environmental law. Represented municipalities and special districts as well as private developers. A partner in Little & Saputo (1983 - present) with a practice focusing on the preparation of documents for real estate developments (standard and common interest subdivisions) and issues involved in the formation and management of homeowner associations.

Member of the California State Bar Real Estate Section, former director of the Contra Costa County Bar Association and member of its real estate section, member HBA DRE Committee, and former city attorney.

Patricia M Gomez
3667 Carrigan Cmn
Livermore, CA 94550-4858
Ph: (925) 443-3058
Email: pmgomezlvk@sbcglobal.net

Mr. Brian Herbert
California Law Revision Commission
Palo Alto, CA

May 2, 2008

Dear Mr. Herbert:

I thought I lived in a democracy, where ordinary people ruled themselves. At least that's what the founding fathers had in mind when they wrote the constitution. I have been taken aback by the reality of this so-called democracy. It does not exist in CIDs and the proposed rewrite of the Davis-Striling Act does not help. There are no checks and balances as there are in our government. It seems to be a ploy for the 'industry', lawyers, management companies, to take even further advantage of homeowners. In the Statutory Clarification and Simplification of CID Law (Dec. 2007) there is a section allowing the board/management company to charge for looking for documents. What if it takes them two days to find something right under their noses? Or can this be used as another excuse to deny homeowners the right to see documents? CAI favors this, CARA does not, and I, as a homeowner, do not favor any more expenses to see what are basically my own documents. It is just an opportunity for the managing agent to make more money from an already tapped-out homeowner.

I notice that these CLRC documents are published for the public comment and that public comment is invited. Yet whenever I read the comments on CID law, very few comments come from individual homeowners like myself appear. Do homeowners ever see these documents? Do they know they exist? Are there adds in the paper? In our mailboxes telling us about these absurd proposed changes? I have sent written comments, others I know have also sent written comments. Why don't I see them? It seems this document is being rushed thru the legislature before anyone has a chance to really study the bill. I certainly have not had sufficient time to read and study the 300+ pages of the proposed CID law.

Is as though this is being pushed thru legislature, flawed as it is. In one of your comments you say that the public has been involved thru the entire process. Why didn't I find out about it until the document was finished and ready for comment? When I requested the documents be sent to me, one document was sent and I had to ask a second time to receive the documents in the mail. That did not allow me anywhere near sufficient time to study and compare the re-write of CID law. Now it's before the legislature!! Seems kinda fast don't you think? What's the hurry?

The law and proposed changes still do not address the major problem with CIDs, which is a lack of <u>reasonable</u> remedy for the homeowner/member of the association.

First, in many cases, the only remedy, where such remedy is allowed, is civil action in superior court. I have become well aware of the influence of certain industry groups on legislators, judges and courts. The individual homeowner has no ready access to the specialized attorney necessary to proceed with civil action against the Association (the governing body of the CID) Often the item involved may be much less than the cost of the attorney, not worth the loss of $30,000 in attorney fees. Provided a homeowner can find such an attorney. Should the homeowner prevail in civil action, the Association often has the resources to appeal and further bankrupt the homeowner. So many homeowners have no choice but to allow transgressions of the law.

Secondly, when a homeowner, a member of the association, chooses to take civil action against the association since he is a member of the association, he is suing himself. It makes no sense.

Thirdly, homeowners need to be educated as to their rights, few that they are.

Most needed in CIDs is a penalty for transgression of the law by the association and their managing agents, such as fines, rather than civil action, built into the law and a state agency to oversee and enforce the provisions of the law. As it stands now, associations are free to ignore the law knowing there is very little a homeowner can do. Even this is flawed because it is the members of the association who eventually pay any fines assessed.

Why are there no alternatives for the homeowner in these documents? There are no attorneys for a homeowner who chooses to challenge his/her association and the proposed new law is still flawed so why bother with all the work and expense of a rewrite if the basic flaw is not addressed?

It is stated in CLRC Memorandum 2008-11, page 2:

"As it turns out, many of the concerns that have been raised are actually objections to existing law. Those concerns are often well-founded, but the problems are not created by the proposed law. **Complaints about existing law are not actually complaints about AB 1921 and do not require any amendment of the bill."**

"…objections to exising law…" This should tell the commission something, that flawed laws are being rewritten with no thought to an actual fix.

I am a reasonably well-educated person and in general find the current laws somewhat difficult to navigate, but understandable, even the obvious conflicts between civil and corporate codes. It is a waste of time and money to rewrite the Davis-Stirling Act.

Sincerely,
Patricia M Gomez

Cc: Marjorie Murray CARA

Barbara Gaal
Catherine Bidart
Steve Cohen
Debora Larrabee
Victoria Matias

Assemblyman Guy Houston
Senator Don Perata