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Fourth Supplement to Memorandum 2008-43

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

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The Commission has received an email from Lester H. Thompson of Costa Mesa, regarding problems in CIDs and the need for legislative reform. The email is attached as an Exhibit.

Respectfully submitted,

Brian Hebert  
Executive Secretary

**LESTER H. THOMPSON, COSTA MESA**  
**(9/1/08)**

REGARDING STAFF MEMORANDUM OF AUGUST 29, 2008  
Third Supplement to Memorandum 2008-43.  
Legis. Prog., H-855

Mr. Hebert:

The letters attached to your memorandum were interesting especially the remarks of J. Alexander of Loomis, CA.

My name is Lester H. Thompson and I own a condominium in Brookview Condominium Owner's Association in Costa Mesa, CA. Our association requires professional management. That "management" is supposed to be provided by PAS, Co.,Inc. of Costa Mesa, CA and is owned by Ms. Doris Hope. We have had several attorneys who have worked for our Association. Presently Fiore, Racobs & Powers of Irvine, CA who has assigned Daniel B. Smith as the designated attorney.

First of all we MUST recognize the fact that both ECHO and CAI (Community Associations Institute) both are helpful in many ways for the ASSOCIATIONS. We must also recognize that both of these organizations allow associations to "belong" as well as individuals to belong BUT are organized for the benefit of those who provide services to the associations and primarily for the benefit of the attorneys and managing agents. The attorneys CONTROL both of these organizations. The associations are the "goose" laying the golden eggs that association attorneys and managing agents rely on for their income. Naturally their interest is to protect that income. Not complying with the laws of the State of CA is one of the major problems. Not by all but in my opinion a majority of the attorneys and managing agents. WHO WE ASK IS PROTECTING THE OWNERS OF THE ASSOCIATIONS? Certainly not the Board of Directors who are in most cases not knowledgeable regarding CID laws and in many cases have not read their own legal documents. Many Board members are handpicked to follow the leader. They depend on their managing agents and attorneys to insure they are complying with the laws. The Boards refuse to allow any member (owner) to look at a copy of an attorneys opinion as the attorney claims ALL are not available for the owners to view. Ask the managing agent what the law means you get the reply "I'm not an attorney!" so ask the attorney and they won't answer as they only answer to the Board. Where can an owner go for help? Ask Mr. Saldana??? I see he gained the support of ECHO and CAI (the attorneys) when any authority to enforce CID law was removed from the Bill. Once again the OWNERS have no place to appeal to for laws that are made for attorneys and their followers. The owners have no OVERSIGHT! You don't agree.....lets take a look!

What do the attorneys and their followers do when you want to transfer the responsibility for the cost of "exclusive use common area" defined under Civil Code

Section 1351 (i)? Amending the Projects legal documents are too difficult in their opinion. So the attorneys claim that the legal documents and the owners stated ownership is simply not valid. So that leads us to Civil Code Section 1364. This section states that the owners are only responsible for “maintaining” the exclusive use common area. That presented a problem for the transfer of responsibility although the EUCA remains as “common area” and there is no change in ownership. NO PROBLEM....you simply change the meaning of repairing, replacing, and maintaining to all mean the same thing! In the face of dictionaries and including Black’s Law Dictionary! I refer you to an article in ECHO’s “ECHO JOURNAL” of October 1999 titled “Who maintains what” written by Roy Helsing, PRA, CCAM which states and I quote “When we use the term “maintenance” in this article, we mean the responsibility to maintain, repair, replace or restore. These terms are used interchangeably both in this article and in the California Civil Code.”. That is the way it is recognized by the majority of association attorneys. SO MUCH FOR THE DICTIONARIES AND THE LAW!

In the “O. C. Review” of May/June 2001 the senior attorney of our association is included as agreeing to the statements in the article. I’ll quote a couple. “We just made up as we went along” referring to laws and CC&Rs in the late 60’s and in my opinion that has continued to this date and the reason is to protect their interest in the “golden goose associations” as I quote their remarks “ During the later 70s when the economy had downturn, lawyers had two places to turn: family law and HOA law. We learned then that to a large degree HOA law was recession proof. With many more firms concentrating on HOAs now it may not be quite as recession proof - but it’s close.”. NOW ARE YOU STARTING TO SEE WHY ATTORNEY’S DON’T WANT OVERSIGHT? THE SIMPLY ANSWER IS THAT THE ATTORNEYS ARE PROVIDING THE OVERSIGHT BUT NOT FOR THE OWNERS. The attorneys are running the “show” with NO OVERSIGHT OVER THE ATTORNEYS! THEY CONTINUE TO MAKE UP and not comply with the law. ABOVE ALL THEY DON’T WANT THE STATE TO ENFORCE CID LAW!!!!!!!!!!!! THAT TAKES MONEY OUT OF THEIR POCKETS AND TAKES AWAY THEIR ABILITY TO NOT COMPLY WITH THE LAW.

The Governor, Legislators, and from my view the Commission (CLRC) are have refused to consider the needs of owners of CIDs in CA. The lawyers, managers, and other members of organizations simply follow the laws of their choosing. Many Associations are going bankrupt for failure to comply with the law, and the Directors of the associations feel they are in good financial shape because a false impression is given to budgets not following the law but by using a cash flow method without proper operating costs to provide for year in and year out needed maintenance, repairs and replacement. The Governor thinks the laws are complied with obviously when he stated that dispute resolutions are the answer. I hope you don’t think that the new operating rules or the internal dispute resolution laws Civil Code Section 1363.810 would help. Brookview’s attorney Mr. Smith claims that prompt deadlines don’t have to be provided and that the use of available local dispute resolution programs involving a neutral third party be provided at with no fee charged to the owner. NO NO the attorney states. I had to pay \$900.00 to go to JAMS which is the only dispute resolution the association would accept on the advice of our attorney. The retired Judges at JAMS know very little regarding CID

law so they take the word of the attorney who brought them the business. Once again money seems to make the laws complied with. The Judge stated to me that I should respect and accept the judgement of our association attorney. Mr. Smith stated that his law firm represented hundreds of Associations and they all accept their opinion. Just think of the attorneys and managing agents taking away the rights of the law that has been provided. I'm sorry I don't agree with the attorney or of the tainted opinion of JAMS retired Judges. I also don't have \$5,000.00 as a retainer and more funds down the road for a lawyer to go to court. The \$900.00 was our Christmas that provided nothing. Most owners don't have the money to dispute the injustice. I as other owners await the day we are recognized as the true provider of the money that the attorneys and managers are stealing from us by not complying with the law. Hopefully soon the owners will have an association truly representing them and with the numbers growing daily the voting power will be something to think about. WHY CAN'T THE LAW PROVIDES THE OVERSIGHT THE OWNERS NEED. WHY ARE THE ATTORNEYS WHO ARE COMPLYING WITH THE LAW REMAINING SILENT? ARE THERE NO ATTORNEYS WITH THE GUTS TO STAND UP AND OBJECT TO THIS CORRUPTION?

Sincerely,  
Lester H. Thompson