Study H-855 January 30, 2009

Memorandum 2009-12

Statutory Clarification and Simplification of CID Law (Status Report)

In 2007, the Commission finalized a recommendation on *Statutory Clarification and Simplification of CID Law* (Dec. 2007). The purpose of the recommendation was to restate and reorganize existing common interest development ("CID") law so that it would be easier to understand and use. Some minor substantive improvements were included in the recommendation, but the Commission decided early on to exclude any substantive reform that would draw significant opposition to the proposal. Such reforms were noted for possible future study.

In 2008, Assembly Bill 1921 (Saldaña) was introduced to effectuate the Commission's recommendation. The bill drew numerous comments from interest groups, and a handful of minor amendments were made. Most of the amendments reversed substantive reforms that the Commission had believed to be noncontroversial, but that turned out to be controversial once the bill was in print.

As amended, the bill passed the Assembly. However, the process of analyzing and responding to comments in the Assembly was very time consuming. As a result, when the bill reached the Senate there was little time left to analyze and vote on the very large bill. That timing problem was compounded by a lengthy and strongly worded opposition letter submitted to the Senate by an ad hoc group of 25 attorneys whose practice involves CIDs.

Due to those complications, it was not feasible to proceed with the bill in the Senate. It was withdrawn from consideration.

On August 4, 2008, Commissioner Edmund Regalia and Executive Secretary Brian Hebert met with eight representatives of the ad hoc group. The purpose of the meeting was to discuss how the ad hoc group and the Commission could work together to identify and address the group's concerns about the proposed law.

It was agreed that a committee would be formed under the auspices of the State Bar Real Property Section (the "CID Advisory Committee"). That

Committee would review the Commission's recommendation, as expressed in the amended version of AB 1921, and offer constructive criticism. Originally, it was hoped that the Committee's work would be completed by the end of 2008. They are now predicting completion of their work by March 31, 2009.

Once the Commission receives the report of the CID Advisory Committee, the staff will analyze that report and present it to the Commission. The Commission will then need to decide how to address any concerns that are raised in the report.

If changes are made to the Commission's recommendation, a revised draft will be circulated for public comment. After considering the public comment, and making any further adjustments necessary to address concerns raised by the public, it is expected that a final version of the recommendation would then be approved and submitted to the Legislature.

The purpose of this memorandum is to provide an update on the status of this study.

ORAL REPORT

In a January 7, 2009, letter, Commission Chair Pamela L. Hemminger requested that the CID Advisory Committee send a representative to the Commission's February 2009 meeting, in order to provide an oral report on the status of the Committee's work. The staff was later informed that Curtis Sproul plans to attend the meeting on behalf of the committee. Mr. Sproul has been acting as liaison between the Commission and the Committee.

AUTHORITY OF CID ADVISORY COMMITTEE

It was the staff's understanding that the CID Advisory Committee was formed to provide an organized way for the ad hoc group of CID attorneys to analyze the Commission's recommendation and convey their collective concerns to the Commission.

That understanding informed the staff's description of the Committee at the December 2008 meeting. See CLRC Memorandum 2008-64; Minutes (Dec. 2008), p. 4.

In response to that description, Sandra Bonato, a member of both the ad hoc group of attorneys and the Committee, requested that the authority of the Committee be stated more precisely. Specifically, she asked that it be made clear

that the Committee represents the State Bar only and does not speak for any of the individuals who make up the ad hoc attorney group. Curtis Sproul has confirmed that general description of the Committee's authority.

With that clarification in mind, the staff requests that any member of the ad hoc attorney group whose conclusions regarding the proposed law differ from those of the CID Advisory Committee submit their own individual comments to the Commission. If the Committee does not speak for individual members of the ad hoc group, those individuals are encouraged to speak for themselves.

CRITICISM OF THE CURRENT PROCESS

On December 12, 2008, Donie Vanitzian sent an email criticizing the Law Revision Commission generally and this study in particular. The email was sent to over twenty persons and organizations, including various press outlets and government officials.

(Ordinarily, the staff would not discuss a written communication without reproducing it as an exhibit, but in this instance Ms. Vanitzian concluded her email with the following statement: "The aforementioned text is copyrighted and not intended for republication or reprint without the author's prior written consent." The staff doubts that an email sent to dozens of people, including government officials and the press, can be copyrighted in this way. Nonetheless, the staff decided to honor Ms. Vanitizian's request that her email not be reproduced.)

The main thrust of Ms. Vanitzian's email was that the Commission is colluding with CID attorneys in order to rewrite the CID statutes in a way that would be harmful to homeowners. She also claims that the Commission is excluding homeowner input from its process. She concludes by claiming that the current study is a sort of Trojan Horse, used to secretly enact parts of the Uniform Common Interest Ownership Act ("UCIOA").

The claims Ms. Vanitzian made in her email are untrue:

- *The Commission is not granting any privileged status to CID attorneys.* As with public comment from any interested person or group, the Commission will analyze the points raised by the CID Advisory Committee and exercise its own judgment in deciding whether they have merit and if so, how to address them. (For an example of this sort of independent analysis, see CLRC Memorandum 2008-43, in which the staff disagreed with many of the points raised by

the ad hoc attorney group in its letter to the Senate regarding AB 1921.)

- *The Commission has not excluded homeowner input.* We have solicited and considered input from every affected interest, including a considerable amount of input from homeowners and homeowner advocates. (In fact, we have previously reproduced and discussed 17 letters submitted by Ms. Vanitzian herself.) The Commission is always open to constructive feedback from anyone.
- *The Commission is not enacting UCIOA.* In an earlier phase of the CID study, the Commission openly discussed whether it would be appropriate to adopt UCIOA in California. It recommended against doing so, due to the extensive differences between UCIOA and California law. See CLRC Memorandum 2003-37. Despite repeated claims that the Commission's recommendation would somehow import parts of UCIOA, Ms. Vanitzian has never provided any concrete example to support her claim. Nor has she ever explained why she finds UCIOA objectionable.

Ordinarily, the staff would not respond to this sort of criticism. However, there are times when it might be helpful to set the record straight. To that end, the staff sent an email to the recipients of Ms. Vanitzian's message, refuting her claims. See Exhibit p. 6.

After the staff sent its emailed response, we received a letter from George Staropoli of Scottsdale, Arizona. See Exhibit, p. 1. Mr. Staropoli shares Ms. Vanitzian's concerns that the Commission is biased toward CID attorneys and is intent on enacting UCIOA. See Exhibit p. 1. He also appends a comment written by Ms. Vanitzian, which she posted to the comment page of the website of the Central Valley Business Times. See Exhibit p. 7. The comment was not reproduced in the print edition of that periodical.

Proposed Study Topic

In addition to expressing support for Ms. Vanitzian's claims, Mr. Staropoli renews a suggestion he has made to the Commission twice before. See First Supplement to CLRC Memorandum 2008-12, Exhibit p. 1; First Supplement to CLRC Memorandum 2005-3, Exhibit p. 6.

Specifically, he believes that the law should deem a homeowner association to be a public entity, for the purposes of federal and state Constitutions. See Exhibit pp. 3-4. He urges the Commission to make that proposal its highest priority.

While Mr. Staropoli's idea appears simple on its surface, implementation of the idea would be very complicated. Many constitutional provisions are irrelevant to or incompatible with the homeowner association governance model.

For example: "The right to vote or hold office may not be conditioned by a property qualification." Cal. Const. art. 1, § 22. That rule makes sense in a public election, but would be nonsensical if applied to a CID election, where the right to vote is expressly conditioned on owning property within the CID.

Figuring out how to apply or limit each provision of the federal and California Constitutions (and all of the court decisions construing those provisions) to homeowner associations would be a huge project, and the staff's intuition is that the result would be unenactable.

Alternative Approach: Homeowner Bill of Rights

A more practical possibility would be to create a statutory "Homeowner Bill of Rights" to protect certain specified liberties from being impaired by a homeowner association.

The Commission has already given preliminary consideration to that possibility. In fact, the Commission's proposed recodification of CID statutory law reserves a chapter for a homeowner Bill of Rights. The Commission intends to study that topic in the future, when such a challenging project would be a good fit with the Commission's workload and resources.

There is one new development on this issue that is worth mentioning. In 2008 the National Conference of Commissioners on Uniform State Laws approved a final draft of the Uniform Common Interest Owners Bill of Rights Act (UCIOBRA), as a companion to UCIOA. When the Commission begins a study of a possible homeowner bill of rights, it should look to UCIOBRA as one source of ideas.

Respectfully submitted,

Brian Hebert
Executive Secretary

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

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December 13, 2008

EMAIL delivery

Brian Hebert
Executive Secretary
California Law Revision Commission
3200 5th Ave
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Re: Your reply email of December 12, 2008 to Villa Appalling! (Donie Vanitzian) et al regarding Clarification of CLRC project and process

Dear Mr. Hebert:

Your email (see Appendix A) to Ms Vanitzian of December 12th has come to my attention. Ms Vanitzian, if you are not entirely aware, is a long-time outspoken California homeowner rights activist holding a JD, and author of the 2006 Thompson West legal treatise, *California Common Interest Development — Homeowner's Guide*. Her complaint focused on the domination of CLRC by real estate lawyers and the national business trade lobbying group, Community Associations Institute (CAI) in the presence of its California state chapter, the California Legislative Action Committee (a joint committee of eight CAI state chapters). And that homeowner advocates have been excluded from any meaningful consideration of this Davis-Stirling rewrite that affects them, personally.

I must agree with Ms Vanitzian that there appears to be a bias in favor of these outsider attorney interlopers, these legal-academic aristocrats, claiming to represent the interests of the CID homeowners, and supported by the CAI national trade group that does not have any HOA membership category, just HOA management members. (As with any corporation, there is a distinct class difference, and duties and obligations, between management/HOA board and employees/members). For example, the Real Property Section of the State Bar has nine members according to Mr. Sproul's letter to you (See CLRC MM08-64s1), three of whom, including Mr. Sproul, are CAI members and members of its College of Community Associations Lawyers (CCAL). CAI LAC informs you (MM08-64s1) that it has nine attorneys looking at submitting amendments without identifying if any of these nine attorneys include the three, or all nine, members on the State Bar committee.

Yet, in your email you refer to (emphasis added)

> An **independent group** of CID attorneys opposed the bill on the grounds that they had not had enough time to review it and feared that it might contain drafting errors. Once they have completed their review, the Commission will analyze their input . . . .

And you stated in MM08-12s1 that, *"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)."* But, you did not indicate that, of this "CID Attorney Group" of 25 that urged Assemblyman Saldana not to hear AB 1921, there were 12 attorneys who were members of CAI. Half of these also held membership in an HOA management vendor association or ECHO. See MM08-12s1, EX 17 - 52.

It is interesting to note that on March 24, 2008 Ms Vanitzian's Letter to the Editor appeared in the Central Valley Business Times, in which she not only criticized AB 1921, but CLRC as well (see Appendix B). On April 11th I emailed CLRC my criticisms of AB 1921 and CLRC's failure to address Chapter 2, Member Bill of Rights, which was just an empty placeholder in the bill. And then we witness an April 18th letter to all concerned parties, Assemblyman Saltana and CLRC included, requesting that the bill not be heard (CLRC MM08-12s1, EX 11 -16) in order "to refer the matter to the State Bar Real Property Law Section for redrafting." You continue with, "*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 . . . ."*

Did you invite MS Vanitzian to submit her concerns to CLRC for deliberation? Have you specifically informed others who have contacted you outside the CLRC public process to send their concerns to CLRC?

It certainly appears that CLRC is awaiting their "version" for its recommendations. It certainly appears that CLRC has fallen in line with the HOA/CID establishment across the country that has, as its common element, the presence of CAI. For example, recent attempts to adopt a version of UCIOA in New Jersey, Texas and Colorado show CAI's presence. Texas also revealed that the promotion of TUPCA, the Texas UCIOA, was by the real estate lawyers at the Texas state bar.

Furthermore, the claim in your email that CLRC rejected UCIOA in 2003 is not completely accurate (emphasis added).

> The Commission decided against recommending the adoption of UCIOA at this time. As the Commission's study of common interest development law proceeds, **it will look to UCIOA as a source of ideas**. CLRC Minutes, November 21, 2003.

No state has adopted UCIOA per se since it's a model act. "A rose by any other name is still a rose."

In addition, these omnipresent CAI legislative action committees, this CAI "Central" juggernaut, carryout CAI policies that include (emphasis added),

1. Community Associations Institute (CAI) supports and recommends consideration and adoption of the one or more of the **Uniform Community Association Acts** by all states.

In those states where it is not appropriate, practical or possible to adopt one or more of these uniform acts in their entirety, CAI supports and **recommends consideration of appropriate portions of these laws**. (Support for Uniform Acts, p. 62, Public Policies, as of 12/13/08).

2. "**the unwise extension of constitutional rights** to the use of private property by members". (CAI amicus brief to the NJ Appellate court in CBTW v. Twin Rivers HOA).

With respect to my own submissions as a nationally recognized homeowner rights advocate, I, too, have been pushed aside. Your email comment about not "diminishing any right of a homeowner has under the existing act" is misleading since the CLRC recommendations contained an empty "Chapter 2. Member Bill of Rights." There are no due process and equal protection of the laws rights in your recommendations. My letters to CLRC regarding the inclusion of constitutional protections of homeowner rights were dismissed with a simple (emphasis added),

> 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.** CLRC MM08-12s1.
>
> 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. CLRC MM-05-25s1.

CLRC apparently wrestled with what to do about a bill of rights and presented a perplexed state of mind to the public:

> However, a bill of rights would probably go beyond the substantive rights that are currently provided in the law. What might those additional rights be? . . . How would these rights apply in a CID context, where the governing body is a private association rather than the state? CLRC MM05-03.

In the Exhibit to MM08-12s1, I had a summary of recommendations that included,

> 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.

My second recommendation is of particular concern for homeowner rights in California and across the country, and exposes a serious attack on the US Constitution that does not seem to concern the legal-academic aristocrats who rewrote the Restatement of Servitudes. This third

edition also removed the word "equitable" from the traditional doctrine of "equitable servitudes", and is supportive of this New America of HOA privately governed communities. **Sections 6.14 and 3.1 (comment h, in particular) argue for the supremacy of servitude law over conflicts with contract and constitutional law, respectively.** The respected Goldwater Institute has recommended to the Arizona legislature that private constitutions be used to protect people from government, and that land use regulation by means of "privately enforced restrictive covenants" replace local government functions. (See its Policy Report for 2009, "100 Ideas in 100 Days", #22 and #41). One cannot help but perceive these developments as arguments for the continued secession of HOAs from local government as presented by Robert H. Nelson (*Private Neighborhoods and the Transformation of Local Government*, p. 431- 433, Urban Institute Press, 2005), emphasis added:

> Creating a private neighborhood association [HOA] is an act of local secession by an altogether different route. . . . The rise of the private neighborhood association . . . amounts to a powerful new movement of local secession in American life. . . . **In the future, more complete forms of secession may become possible**.

And yet, CLRC sees no need for a Members Bill of Rights. It has fallen right in line with the proponents of a New America of top-down special laws for the governance of a segment of the population living in HOAs. Special laws that ignore the US Constitution with its concern for individual freedoms and liberties, for justice, and for protections against government abuse, whether public or private. It is not surprising that the CLRC study is bereft of any serious investigation into the governmental aspects of HOA legal scheme, when all that CLRC has been exposed to has been the one-sided CAI and real estate lawyer position that HOAs are a property law issue and nothing else. And that HOAs are businesses and not a de facto governments that control and regulate the people within territories within the State of California.

While CLRC is not required to accept all or any public input, its members exercise discretionary judgment in the performance of their responsibilities, not to their "boss" or "business", but to the public as public servants holding a public trust. Sadly, this discretionary judgment appears to be biased in favor of the special interests, the real estate lawyers and the CIA national lobbying organization and not for the people of California — the homeowners living in CIDs. CLRC must not ignore the voices of the homeowner rights advocates who have appeared before CLRC and who have written CLRC in the past.

> In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. (Decl. of Indep.).

In your email you recite procedures for public participation in the rewrite of Davis-Stirling. You invite participation without any reassurance that indeed the voice of the people will be on an equal footing with the special interest aristocrat lawyer-academics. Or does CLRC feel that only these lawyers are capable of understanding the issues that affect the lives of the everyday, common people?

I ask, once again, that my recommendations be considered in any rewrite of the Davis-Stirling Act. If you have difficulty in obtaining a committee on constitutional law as the supreme law of the land, and on how to protect individual property rights, I can recommend several outstanding attorneys to assist CLRC in its deliberations.

Respectfully submitted,

George K. Staropoli
President

PS. I wrote this letter in full awareness that I'm that little boy in the Hans Christian Andersen fairytale, *The Emperor's New Clothes*, who shouted to the crowd, *"But, he hasn't got anything on!"* With all due respect, hopefully, instead of the fairytale ending,

> **The Emperor himself had the uncomfortable feeling that what they were whispering was only too true**. 'But I will have to go through with the procession' . . . . and the courtiers held on to the train that wasn't there at all.

CLRC will not continue to hang on to the non-existent train.

Appendix A.

From: Brian Hebert

Sent: Dec 12, 2008 2:44 PM

To: Villa Appalling! et al

Subject: Clarification of CLRC project and process

Apologies in advance for anyone who isn't interested in this exchange, but given the wide distribution of the email from Ms. Donie Vanitzian (villaappalling), I thought it might be helpful to quickly set the record straight:

The California Law Revision Commission works in an open, public process. All of our common interest development ("CID") study documents are available on our website (www.clrc.ca.gov), are distributed to a mailing list of nearly 500 individuals and groups, and are subject to the Public Records Act. All Commission meetings are open to the public and subject to the Open Meeting Act. We routinely invite and consider public comment on everything we do.

For three years, we have been working on a proposed recodification of the Davis-Stirling Common Interest Development Act. The existing act is poorly organized and hard to use. We developed the draft of our proposal in a series of public meetings, in which we considered hundreds of pages of public comments (much of it from homeowners). A bill to implement our proposal was introduced this year (AB 1921 (Saldaña)).

An independent group of CID attorneys opposed the bill, on the grounds that they had not had enough time to review it and feared that it might contain drafting errors. The bill was withdrawn to provide more time for their review and input. Once they have completed their review, the Commission will analyze their input and correct any technical errors that they have found. The Commission has no intention of diminishing any right a homeowner has under the existing act.

If we do make any technical corrections in our proposal, we will circulate the revised draft for another round of public review, inviting comment and criticism from any interested person or group.

Any revised proposal approved by the Commission would have to be enacted by the Legislature and the Governor in order to have any effect on the law. That creates another opportunity for public review and comment, as well as providing direct legislative oversight of the Commission's work.

We encourage anyone who is interested in following the Commission's work on CIDs to visit our website and subscribe to receive our materials.

One final point: the Commission is not working to promote the enactment of the Uniform Common Interest Ownership Act (UCIOA) in California. Back in 2003, the Commission publicly discussed whether UCIOA would be a good fit for California and concluded that it would not. We recommended against enacting UCIOA in California.

Thank you,

Brian Hebert

California Law Revision Commission

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Appendix B.

Central Valley Business Times

(http://www.centralvalleybusinesstimes.com)

Assembly bill 1921 could shatter the American Dream

Submitted by Donie Vanitzian, JD
3/24/08

California is presently cash and income strapped to the tune of at least $14.5 billion dollars with proposed cuts to be made in every State Department. Keeping that in mind, nothing is laudable or applaudable about Assemblyperson Saldana's Assembly Bill 1921, just as nothing is commendable about the countless "paid" hours expended by the California Law Revision Commission in bastardizing the Davis-Stirling Act.

Assembly Bill 1921 complicates an already problematic statute. I am on the record demanding a moratorium on any Davis-Stirling Act rewrites until a "credible" study of the problems can be, and has been, accomplished. AB 1921 is the full employment act for special interest parasitic industries and California's legislators. It is shameful that the remaining few protections for the titleholder's vested property interests are dangerously diluted by the cumulative effect of this bad legislation.

Though they may fancy themselves oracles of legislation, California Legislators are instead, masters of self-delusion. While in the Sacramento Holiday Camp, these public sector parasites are rarely held accountable for the disasters they cause. Once their paychecks end, their pensions begin. For the past three decades or so, California statutes have resulted in a battle-scarred minefield memorializing the delusions of self-congratulatory legislators wanting their names in books of California law--at any cost. The bigger the special interest payments--the bigger the name in the books.

If ABomination 1921 is signed into law, the end game for titleholders is prohibitively expensive litigation.

Heavy on Sweetheart Deals But No Checks and Balances

Assembly Bill 1921's caption reads, "This bill would revise and recast the Davis-Stirling Common Interest Development Act." In other words it is the "rewrite" of an entire Civil Code Title of law.

Assembly Bill 1921 is voluminous in print and anemic in its practicality. It amounts to a wholesale rewrite of law already in force, interpreted by the courts, and relied upon for well over two decades. Notably, the proposed rewrite is short on substance and lacks justification for shredding laws already in place. AB 1921 purports to sacrifice the Davis Stirling Act by codifying vacuous Legislative oratory. Hiding reality under the guise of "legis-speak" lest their

intent be exposed, the cumulative outcome of AB 1921 if passed, amounts to condemning owners to subjugate their rights to the whim of their rulers, be they boards, legislators, vendors, attorneys, judges, arbiters, or the like. It is an "implicit submission" to forces outside the homeowner's control.

A sober look at this preposterous legislation--devoid sufficient public input and competent research-- reveals the imposition of unilateral substandard lawmaking. Assembly Bill 1921 consists of bad law: rife with loopholes, titleholder disenfranchisement, and remarkably poor drafting. Without adequate substantiation, one hundred seventeen sections, "Title 6," an entire Chapter consisting of Civil Code sections 1350 through 1378, are hacked out and rewritten in a matter of months by the few, with virtually no meaningful input from the many.

Misleading the Public

Much of the public is unaware that these shenanigans are taking place right under their nose. What homeowner has the resources on such short notice, let alone the time and knowledge to pour over 300 pages of newly conceived laws and then sit down and attempt to craft a letter to their Legislator explaining their views on the matter? I tried to do that and was told the Legislators and the Legislature are only interested in "groups." My letter was not even admitted into the record, so intentionally ignored that the record baldly claimed there was "no opposition."

The level of scrutiny that should have gone into this massive rewrite was, and is, missing. What part of "fiscal impact" does this California Legislature not understand?

Our Legislature has a far higher duty to the public than it is practicing. Without delay, the Legislature should place full-page advertisements in major California newspapers for one year as well as notify every common interest development titleholder that laws profoundly affecting their ownership are in play.

To claim that the Internet provides "notice" is a self-indulgent fantasy. Not every homeowner is computer literate, or has a computer, or has affordable access to the Internet and a printer. And rare indeed is the Internet-enabled titleholder who searches daily to see if the Legislature is tinkering with his property rights. Let alone understanding the bloated Commission's purpose few homeowners have heard of the "California Law Revision Commission." Yet that Commission's dangerously misguided authorship of the proposed Assembly Bill 1921 will effect the lives, property rights, and personal assets of millions of homeowners in this state.

Indifference to Statutory Integrity

Statutory changes tend to be of two types, renumbering-reindexing when societal change renders the current placement inadequate, and substantive changes in the law itself. By doing both simultaneously in Assembly Bill 1921 the Legislature renders impotent the public's ability to understand and comment on it.

Anyone who has ever had to find or follow the law knows the importance of stability of cross-referencing and the agony and cost wholesale renaming and reindexing impose. Moreover this renders much of case law unusable to all but the most sophisticated, well-funded researchers. Nonetheless, under the banner of "simplification" the California Law Revision Commission masks the enormous scope substance of its changes. In its enthusiasm for musical section

numbers to cover its tracks, once again the CLRC excises "Title 6" from the Civil Code.

The initial heading of the former Title 6, “Wills”, enacted in 1872 consisting of sections 1270 to 1377 was repealed by Stats.1979, c. 373, sec. 484 to make way for the present version of the Davis-Stirling Act monster. It should be noted that the purpose of moving "Wills" was to place it in Probate Code statutes.

Title 6 "Common Interest Developments" was hatched in 1985. Now its 117 Civil Code sections are littered by the detritus of the CLRC's self-aggrandizing musings also known as "Comments" throughout the Code's annotations. Here, "Common Interest Developments" stays in the Civil Code statutes but changes it numbering and alters text substance.

In 2007 the California Law Revision Commission reported that it would be "several years" before this "project" would be presented to the Legislature. Worth mentioning, is the fact that titleholders did not ask the Law Revision Commission to do this in the first place, but the Law Revision Commission was advised that the owners were against this rewrite of laws in the manner it was occurring. Having slipped this soporific to the public, the CLRC speedily cobbled together AB1921 to be introduced in less than a year.

Moreover, attempting to slip even alert observers another "mickey," it purported to address only "technical and conforming changes," shamelessly mischaracterizing an intentional revision bastardized of form and substance.

"Recast" is Just a Fancy Word for "Rewriting Law" While Bypassing the Democratic Process

The audacity, let alone unmitigated arrogance that somehow the California Law Revision Commission is above the law and can perform such functions that are beyond its mandate, is unnerving. The Commission categorized their so-called "Statutory Clarification and Simplification of CID Law" as the panacea to problems plaguing such developments. What could possibly be "simple" about 300 pages consisting of some 85 cross over laws and no beta test as to its applicability?

Assembly Bill 1921 is not a revision; it is instead a rewrite of the LAW. A legalized pork barrel packed with goodies for the parasitic association industry and its vendors. It is an ill-conceived pork-barrel project that is proceeding without shame and accountability, with no end in sight.

If residential deed-restricted titleholders were ever under the mistaken belief that their Legislator could be an ally--by now they should know better. The public must understand that this cavalier rewrite will detrimentally affect the lives of millions of titleholders and prospective titleholders. Owners, who have dutifully spent decades coming to grips with understanding the Davis-Stirling Act, will be forced to start all over again. Frankly, some may not live long enough to figure it out. Others will likely employ a costlier route, that of hiring lawyers to explain an untested code to them with "on the one hand, on the other hand." Others still, may merely rely on the word of third parties whose interpretation of the codes may be slanted or just plain wrong.

The California Legislature Should Abandon Assembly Bill 1921

While the text in Assembly Bill 1921 may look good on paper, it lacks useful application.

This massive, untimely project has far-reaching consequences for millions of titleholders. For all its pages of paper, and all the rhetoric, pomp, and circumstance, save the back-patting, the hundreds of pages of slop miserably fails to protect titleholder assets. It fails to eliminate longstanding problems of imbalance pertaining to mediation, arbitration, and litigation and the attendant costs thereof. And there are numerous problems related to those issues. Instead, it merely provides a laundry list of statutes as its prelude to a newly created mess with utter disregard as to its implementation in terms of "real life."

Apparently the only people throwing their hands up in disgust at the utter waste of “time,” “resources,” and “excess” in California’s Legislature, are deed-restricted titleholders who lack adequate and meaningful representation in Sacramento. The millions of deed-restricted titleholders are left paying the price for bad laws, interference by special interests, and excess spending created by our legislators. It is scandalous the laws that are passed because some special interest entity wants it and can afford a lobbyist, rather than analyzing and researching laws that are necessary, and then proposing their introduction genuinely subject to public comment.

While the many problems with Assembly Bill 1921 are impossible to adequately address, here's a breathtaking example. Consider this newly hatched phrase slated to become law under Assembly Bill 1921: "An affidavit of delivery of a notice, which is executed by the secretary, assistant secretary, or managing agent of the association, is prima facie evidence of delivery."

Prima facie evidence!!! Might as well say "self-interested and unrebuttable evidence." It matters not what horse the drafter of that provision fell off of, what matters is that with the stroke of a pen something as egregious as what otherwise seem to be an innocuous "phrase" will become law--let alone prima facie evidence to be used against the titleholder with no viable avenue for rebuttable evidence. [FN1]

Imagine a third party vendor who contracts with the association, signing their name to an affidavit stating they did something when in actuality they did not. Imagine the board director secretary trying to cover his or her behind in a breach of fiduciary duty lawsuit for taking a person's home away from them, or instituting litigation against them, or penalizing them--merely by signing an affidavit. How can one disprove dishonesty if it is enshrined in the presumption of truth?

Imagine the same scenario if it were applied to fines, penalties, interest and late charges. The potential for abuse is overwhelming. Phrased alternatively, the venerable certified letter is replaced by the unsubstantiated claim from someone who has nothing to lose and everything to gain. [FN2]

Far-reaching problems with Assembly Bill 1921:

• Assembly Bill 1921 has expunged the word "property" as it relates to the titleholder's vested interest.

• Other than to clarify "escrow" proceedings; define "claimants;" ownership of pets; roof repair or installation; survey questionnaires pertaining to defects; the term "homeowner" is mentioned little, and where it is mentioned it is wholly devoid legal significance rendering the term non-

existent as it applies to the titleholder.

• Award of "attorney's fees" are mentioned over twenty-five times and not to the benefit of the titleholder.

• The titleholder is not provided with realistic redress and an avenue for providing penalties against associations, third party providers and advisors, and boards of directors. Assembly Bill 1921 fails to direct the benefits of any such penalties directly to the affected titleholder(s).

• Assembly Bill 1921 fails to provide a "Victims Fund" for any titleholder who is a victim to the bad laws and who suffers at the hands of the association, its third party vendors, providers and advisors, and boards of directors who break the laws.

• There should be no creation of an ombudsman department or agency because of the drastic fiscal impact it will have on the entire state and the owners. No such agency should be funded by residential deed-restricted taxation alone.

• Assembly Bill 1921 fails to provide per se penalties against third-party management companies and their employees and it fails to provide per se penalties against recalcitrant boards. Moreover, it fails to per se assist titleholders in protecting their assets, fails to provide a viable avenue of redress, other than prohibitively expensive litigation, for the mounting problems associated with common interest developments, and homeowner associations. Every avenue the titleholder attempts to pursue for "fairness" is a costly dead-end--thanks to California's obtuse Legislature.

• Assembly Bill 1921 fails to address a huge problem that is created by the lump sum rewrite that did not exist before. That is, the culmination of intersecting procedural demands such as Request for Resolution, mediation and/or arbitration causing a cumulative effect that often costs more and lasts longer than litigation itself. [FN3] Needless to say, there are no guarantees that once initiated, any of those alternatives, ie, request for resolution, mediation, arbitration, will result in a viable resolution. [FN4] Assembly Bill 1921 will only exacerbate these inherent statutory problems.

Law Revision Interference with Legislation

The Commission's time has come and gone. It is no secret that on more than one occasion I have written the Governor imploring him to pull the Law Revision Commission's funding and/or altogether disband it.

Though paid handsomely while the rest of the State suffers great economic loss, cutbacks, and unemployment, the California Law Revision Commission no doubt believes they are only doing their job. That, however, should be a topic for debate. Often patronizing and condescending toward those in disagreement with its agenda, the Legislature not unlike the Commission, appear to side with, if not coddle the special interest industries. The standard response to the non-special-interest public is, "the staff recommends against that change."

Presently, the graveyards of repealed code sections caused by the Law Revision Commission's chainsaw approach in attempting to substantiate its grant money should be investigated. The Commission and the Legislature have created mass confusion for California consumers where none need exist. A first step to clarity and filling the $14.5 billion deficit would be to zero out the

CLRC budget and to thoroughly investigate the laws proposed by the State Legislature prior to passage.

For these reasons and much, much more, I oppose Assembly Bill 1921 in toto.

[FN1] See Vanitzian, Expert Series: Common Interest Developments--Homeowners Guide (Thomson-West)
[FN2]: See Vanitzian, Homeowner Associations: Dynasties of Dysfunction]
[FN3] See Vanitzian, Expert Series: Common Interest Developments--Homeowners Guide (Thomson-West)

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