Study H-855 August 19, 2010

Third Supplement to Memorandum 2010-29

Statutory Clarification and Simplification of CID Law: Comments on Preliminary Provisions

The Commission has received a letter from Donie Vanitzian, commenting on the tentative recommendation on *Statutory Clarification and Simplification of CID Law* (Feb. 2010). The letter is attached as an Exhibit.

Ms. Vanitzian opposes the proposed law. Most of her comments are very general and are unsupported by explanation or examples. Her more specific objections are summarized below:

- The Commission has bad motives for pursuing the proposed law. See Exhibit pp. 1-3, 6.
- The proposed law would confuse CID homeowners. See Exhibit p. 1.
- The proposed law would somehow make it easier for boards to violate open meeting and document disclosure requirements. See Exhibit p. 7.
- Public notice of the Commission's process has been insufficient. The Commission should take out full page ads in every major California paper for a month and mail notice to the owner of every California CID separate interest (currently estimated at 4.8 million units). See Exhibit p. 5.
- The proposed law does not include reforms that Ms. Vanitzian believes are needed. For example, the proposed law does not impose penalties on errant board members, establish a victims' restitution fund, or require statutory warnings to new purchasers. See Exhibit pp. 6-7, 8.

Ms. Vanitzian also objects to the use of the phrase "voluntary waiver" in the proposed law, which she insists must be removed. See Exhibit pp. 8-9. The staff does not understand this objection. The proposed law does not include the phrase "voluntary waiver." The terms "waive" and "waiver" are only used in two sections of the proposed law. See proposed Sections 4525, 6000. In each case,

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

the language used in the proposed law continues existing law. In neither case does the usage have any apparent negative effect on the rights of homeowners.

Respectfully submitted,

Brian Hebert
Executive Secretary

August 12, 2010

Via facsimile and United States Postal Service Mail

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Attention: Mr. Hebert

THE TEMPLE OF BLAME AND THE HOA ATTORNEYS FULL EMPLOYMENT ACT

Re: Statutory Clarification and Simplification of CID Law

TABLE OF CONTENTS

VIII. Warning: "the staff recommends against that change"

Dear California Law Revision Commission, and Mr. Hebert:

When are you finally going to get it?

As I have written to you before, there's nothing "simple" about this project of yours, but there's everything "complicated" about it. A project this massive has ***far-reaching consequences for millions of titleholders and is unnecessary.***

In actual fact, the word "disappointment" hardly comes close to describing the California Law Revision Commission's so-called efforts to change the Common Interest Development statutes and its bogus so-called "clarification" nonsense. And that's exactly what it is, a total "make work" project meant only to confuse titleholders that are subject to covenants, conditions, and restrictions (CCRs), and/or "deed-restricted" properties and keep homeowner association attorneys in a full employment paycheck for years to come. That is after all, what they've all been doing isn't it? Keeping you, the California Law Revision Commission "up on all the laws," keeping you "informed," helping you out, and so the special interests continue to infiltrate our statutes and control owners more than ever before.

There was absolutely no reason to masticate that body of laws as the statutes presently in place are sufficient.

What's the rush? Could it be that because of the present economic disaster claiming more homes than ever before in our history, preventing mortgages, and refis at a record pace, and homeowner associations foreclosing and collecting their windfalls because owners simply do not have the funds to fight the well-oiled, well-financed "take my property" machine, attorneys need another bastion of free money to dip into to. I mean, after all, the homeowner association boards BY LAW can assess at will; your so-called Statutory Clarification and Simplification of CID Law doesn't stop that does it?

This blatantly obvious push for pork-barrel legislation is scandalous. Homeowners are so barraged with trying to stay afloat they are unable to fight you (the CLRC) the legislature, and their boards simultaneously let alone individually.

In addition to the letters I receive from readers of my book "Villa Appalling! Destroying the Myth of Affordable Community Living," my co-authored "Associations" column appearing in the Los Angeles Times Business section receives thousands of letters from deed-restricted titleholders who are exasperated with the California laws shackling them as property owners and sabotaging them from protecting their assets. They are fed up with their homeowner association boards and management companies and association attorneys. They are tired of the rising fees and unchecked spending. They are especially disgusted with receiving inadequate responses from the California Law Revision Commission and being discounted by their legislators.

Make no mistake, my letter to you is representative of at least One Thousand (1,000) deed-restricted titleholders who are unaware of, or who do not know what you are doing will so detrimentally affect their standard of living, quality of life, and

bank accounts, do not have the time or knowledge to write you, and/or are busy fighting to keep their jobs, homes, and health, to put pen to paper.

Its been a good year for you and the Commission Mr. Hebert, you've all collected another year's worth of salaries, while the rest of California residential deed-restricted titleholders have been paying, paying, paying, with no end in sight. Now, with your so-called S-i-m-p-l-i-f-i-c-a-t-i-o-n nonsense, they will keep paying, but the difference will be that they will be paying ***more and they will be paying for a much longer period of time!***

Typical of the California Law Revision Commission, rather than concentrating efforts in cleaning up the Probate Code, Evidence Code, Court Gridlock, Code of Civil Procedure, you now float to the surface of the shallowest of ponds whose laws encompass Common Interest Developments. You dig the biggest hole, as the Commission did in 2000, and then throw the statutory-financers, that is, the "Titleholders" into that hole to sink or swim on their own. You do this with no quantifiable result of your **past** projects and with criticism of such past projects gaining momentum.

Typical of the California Law Revision Commission, it has trivialized its latest project called "Statutory Clarification and Simplification of CID Law."

Typical of the California Law Revision Commission reports to the public that it will be several years before this is presented to the Legislature, now you have ratcheted up the speed in the fast lane and signal right and turn left and are preparing to wrap your monstrosity with a neatly tied ribbon and hand it to the California legislature on a plate.

I respectfully submit to you that the cow dung you term "laws" are meant to shackle deed-restricted titleholders like they can't ever imagine. As your laws grow more bloated and more convoluted with your arrogance driving that statute, owners are predictably doing what you want and expect them to do -- nothing. Unsophisticated buyers have no idea what's in store for them. Their letters are met by legislators and the CLRC with an undercurrent of "well this is the way it is, thank you for your letter, we'll take it under submission." The typical government rhetoric that makes the public loathe you and your commission along with those do-gooders filling up their resumes with boastings that they "were part of the CLRC's Statutory Clarification and Simplification of CID taskforce." Big deal! Other than bolster those attorneys' chances of getting hired on some unsuspecting homeowner association board's perpetual payroll--where checks never bounce--or by some insurance defense team with a guaranteed paycheck, how does that help my neighbors? Seniors? and other such titleholders who naively look to their homeowner association boards as purveyors of truth, and justice, and fairness. None of which they are of course.

As I wrote to you before, I'm really interested in exactly HOW this entire project of yours came to be in the first place and exactly **who's** idea it was. To date, no satisfactory answer has been provided. NO! The owners didn't and don't want it. The "Owners" wanted fairness and help in protecting their personal assets from corrupt and out-of-control boards, special interests, management companies, and homeowner association attorneys. They want to be "left alone and free from threats, harassment, and homeowner association attorneys serving them with stupid lawsuits

and restraining orders and threatening fines and penalties and use of facilities privileges" turning this type of living environment in a jail not a home. That so-called "fairness in the CID body of laws" was and remains an unmitigated FAILURE--it is as elusive today as it was when the Davis-Stirling Act first took place.

Where's the HOPE for these deed-restricted titleholders?

Where's the CHANGE for these deed-restricted titleholders?

Where's the TRANSPARENCY for these deed-restricted titleholders?

Where's the ACCOUNTABILITY for these deed-restricted titleholders?

The California Law Revision Commission's work isn't about fairness for deed-restricted titleholders.

The California Law Revision Commission's work isn't about considering avenues for titleholders in these common interest developments to protect their individual assets.

It now appears clear; that the California Law Revision's so-called "fairness" campaign was nothing more than a ruse meant to create havoc in order to substantiate your bigger paycheck protection program titled the "Statutory Clarification and Simplification of CID Law." An appropriate analogy would be the litigant who creates both a case and a defense for himself before he has either, and is thereby free to sue--even where no such case existed in the first place! In other words there was no problem so let's create one! This situation plays itself out in homeowner association after homeowner association, board after board against unsuspecting and innocent titleholders. Nothing in your work protects these titleholders from board scams buttressed by industry smart alecks all too ready with tried and true machinations and an eye toward implementation.

My opinion is that this make-work project of yours is nothing less than a calculated fraud perpetrated on the public for no other reason than to rewrite a law that has existed for two decades, that people have come to know, and that the Legislature refuses to amend properly prior to its and the many other Chartered amendments.

It appears that it is easier for the California Law Revision to ***rewrite*** than to ***do*** it ***right*** in the first place. As I wrote you before, your so-called LAWS in this project are half-baked and ill-thought out, leaving all homeowners to fend for themselves or attempt their own litigation to obtain fairness and to protect themselves. There is nothing in your Statutory Clarification and Simplification of CID Law that gives titleholders who fund their associations any RIGHTS.

Just like the Federally implemented Miranda warnings the owner has the right to remain silent and Anything he says can and will be used against him in a court of law. But, unlike Miranda, the owner has the right to HIRE HIS OWN ATTORNEY. Unlike Miranda, if the owner cannot afford an attorney the homeowner association does not appoint one for him, instead the association realizes it has hit a windfall consisting of a naive or skint titleholder. They therefore put the pedal to the metal and speed in the fast lane to the extent the game may be over for the owner before he understands the light changed and he missed it.

I.
"DUE NOTICE" TO ALL COMMON INTEREST DEVELOPMENT TITLEHOLDERS

The California Law Revision Commission has a higher duty to the public than it is practicing.

If the California Law Revision Commission ***really*** wants the input of **owners**, and not just industry lawyers and industry in general, then immediately without delay, **purchase and place full page advertisements in major newspapers throughout California for one year and simultaneously send them to EVERY common interest development titleholder informing them that you are going to be altering said laws, that means ALL the laws that pertain to this type of deed-restricted property ownership.**

It is not enough to claim that because the California Law Revision Commission has an Internet website that is sufficient "notice." It is not.

Every owner is not computer literate.

Every owner does not have a computer.

Every owner cannot afford a computer.

Every owner cannot afford Internet access.

Every owner is not aware of the California Law Revision Commission, what you are doing, what you do, what your import is on their ownership, and who pays your salaries; but more to the point, they are absolutely unaware that your actions will detrimentally affect the lives of millions of titleholders and prospective titleholders.

I am appalled at the California Law Revision Commission's ill-conceived project and the speed and momentum this so-called Agency is generating for its personal project. The wholesale rewriting and revamping of a substantial statute, i.e., the Davis-Stirling Act (Civil Code Sections 1350 through 1378) should be better thought out and in a sense, "beta tested" prior to deciding which ***laws*** will become incorporated into the present code, and which ***laws*** will be amended.

The California Law Revision Commission needs to take into account that millions of titleholders in California are ***unaware*** of the CLRC's existence and/or import. While the California Law Revision Commission may receive ***some*** letters from titleholders, the **majority** of the public is absolutely unaware of:

(a) what the California Law Revision Commission has in store for them and are therefore unable to comment or participate in any meaningful way;

(b) what the California Law Revision Commission's **purpose** is, and **what** it **does;**

(c) that the California Law Revision Commission has an unprecedented influence in the statutes and laws governing how this segment of residential deed-restricted titleholders will buy, sell, own, and rent, within the confines of common interest developments throughout this state.

Those who are aware are not quite sure that they fully understand the effects of the CLRC's wholesale rewrites.

II.
FISCAL IMPACT ON THE STATE OF CALIFORNIA

If ever there is a time to cut back on expenditures in California, it is now.

California is presently cash and income strapped to the extent of millions if not billions of dollars in debt with proposed cuts to be made in every State Department. One can only hope that one of the departments that will be faced with budget cuts will be the California Law Revision Commission.

Perhaps the reason you appear to be impetuously pushing this project through is precisely because of those budget cuts and your fear the project will be axed. The public should be so lucky.

The proposed changes, i.e. "Statutory Clarification and Simplification of CID Law" are complicated with far-reaching consequences for those who will be bound by them.

III.
MAKING NEW LAW(S) UNDER THE GUISE OF "SIMPLIFICATION AND CLARIFICATION."

There is NOTHING SIMPLE ABOUT THIS SIMPLIFICATION statute.

There are too many changes the California Law Revision Commission proposes to incorporate into said text that were already posed to the California Legislature to no avail. I know this because I proposed the changes and brought those and other issues to the attention of Legislators, Legislature and the Governor. Now, as then, I was ignored. In my possession are documents and correspondence to Assemblypersons and Senators attempting to bring legal flaws inclusive of various statutory loopholes to their attention **prior to** passing certain provisions and amendments to sections--but went unheeded--and they are unheeded today.

Still, in the hundreds of proposed pages of text generated by the California Law Revision Commission, **the bad laws, including loopholes, remain**.

But, it is not just the loopholes and bad laws that are at issue, it is the fact that you are making new law under the guise of "simplification and clarification. "

The Commission is doing what the drafters of the initial Davis-Stirling Act did: Sloppy work.

The results of sloppy work equates to bigger problems and higher costs for those purchasers of property **and** existing owners, than had existed prior to the wholesale rewrite you are conducting right now. It also costs the State of California money.

IV.
CLRC'S CIRCUMVENTION OF ONGOING PUBLIC COMPLAINTS

In my opinion and the opinion of others, the California Law Revision Commission, whether artful or not, IS circumventing the real issues surrounding public complaints of abuse by boards and management companies and said laws pertaining to common interest developments.

For all the pages of text you have produced, and all the rhetoric, pomp, and circumstance, save the back-patting, the hundreds of pages of self-serving slop miserably fails to protect titleholder assets or give them rights that other real property owners would be able to avail themselves to.

It fails to provide *per se* penalties against third-party management companies and their employees, fails to provide *per se* penalties against recalcitrant boards, fails to *per se* assist titleholders in protecting their assets, fails to provide a ***viable avenue of redress*** for the mounting problems associated with common interest developments, and homeowner associations--other than a maze of complicated double talk relating to small claims actions and arbitration and who-knows-what-else! What happened to all that big talk about management companies being held to prosecutable standards? Where did THAT go? All your work has functioned to protect the unaccountable boards and their aider and abettor attorneys and management companies.

Every avenue the titleholder attempts to pursue for "fairness" is a costly dead-end ➤ no thanks to you and your Commission.

The so-called pre-existing, or statutory avenues for "redress" are painfully inadequate and while in theory they MAY LOOK GOOD ON PAPER, they are all but useless in application AND they are NOT cost effective for the owner.[1] Implementation of many sections of the Davis-Stirling Act (even with your so-called Simplification) does not address the myriad of crossover laws, existing loopholes, and language and directions are frankly, **do not work in "real life."**

V.
BYPASSING THE LEGISLATIVE PROCESS BY USING "MADE TO ORDER" CHANGES THAT INCLUDE ALTERING SUBSTANTIVE ISSUES RESULTING IN TITLEHOLDER DISENFRANCHISEMENT
*
DOUBLE TAXATION WITHOUT REPRESENTATION?

If owners REALLY KNEW of the dire implications of the California Law Revision Commission's so-called "substantive issues" terminology, they'd be all over your Commission like a dirty shirt. So too, if owners **really** understood that the fancy language you propose on paper would have a detrimental (ie, legal) effect once implemented, they'd be all over your Commission like a dirty shirt. I included several examples in my January 2008 letter to the Commission.

You give it to the public on the one hand and the boards take it away with the other hand.

The California Law Revision Commission gives the association industry and the out-of-control-boards just what they want --- a type of "get out of jail card" -- meet in "executive session" without notice, without a duly convened meeting, any time they want and without any accountability whatsoever -- and don't provide documents to owners. You've given these errant boards and their aider and abettor attorneys a free-for-all line-up, hell, they just hit the lottery big time. There goes accountability,

[1] Donie Vanitzian, *Common Interest Developments,* (Thomson-West, 2007-2008 ed).

there goes transparency, there goes fairness, there goes protection of the individual's personal assets. Why? Because of the California Law Revision's rendition of what **it** wants for the unsuspecting deed-restricted titleholder! Courtesy of the "industry standard."

The California Law Revision Commission's entire preposterous project titled "Statutory Clarification and Simplification of CID Law" is laden with problems.

VI.
MORATORIUM ON CHANGES TO DAVIS-STIRLING ACT; NO SO-CALLED BILL OF RIGHTS NEEDED; CREATION OF VICTIM'S FUND FOR DEED-RESTRICTED OWNERS

As I have written before to you, there needs be a moratorium on changes to the Davis-Stirling Act in general.

Until the California Law Revision Commission completely expunges the word "property" from the statutes governing purchase, sale, and ownership of residential deed-restricted properties, the titleholders have a vested interest in their p-r-o-p-e-r-t-y.

There should be no separate, or independent "bill of rights" in the California Statutes for residential deed-restricted property owners. Instead, the US Constitution should apply and the titleholder's "rights" should be written into said statutes by way of realistic redress and penalties against associations, their third party providers and advisors, and boards of directors. **The benefits of said penalties must flow directly to the affected titleholder(s).**

There should also be created, a "Victims Fund" for any titleholder who is a victim of the aforementioned who break the laws.

However, to date, and even with the California Law Revision Commission recommendations, the titleholders have no *per se* "rights" and they have no protections.[2] Why doesn't the California Law Revision Commission advertise this admonition as a mandatory WARNING ON PURCHASE of California residential deed-restricted property located in a common interest development with a homeowners association: Under California Business and Professions Code Section 11018.1(c) "There are actions that can be taken by the governing body without a vote of the members of the association which can have a significant impact upon the quality of life for association members." What does your "Simplification and Clarification" have to say about THAT?

VII.
VOLUNTARY WAIVER

Unbelievably, I wrote to you last time that the California Law Revision'

[2] See e.g., Business and Professions Code sections 11018 et seq.

Commission makes reference to very dangerous combination of words: **Voluntary Waiver.** This must be removed (let alone clarified and defined) from the statute sections. That is dangerous for titleholders because statutorily the titleholder "voluntarily waives" certain rights on ***purchase.*** Are you now teaming with the Real Estate lobby? This wording appears to be intentionally misleading by the California Law Revision' Commission.

In effect, this means, that everything that is being proposed is superseded by the purchase of such "property." **What layperson would understand the LEGAL implications of giving up THOSE rights by a stroke of a pen on an escrow document at the eleventh hour that they probably did not read, or if they read, did not fully comprehend?**

VIII.
WARNING: "THE STAFF RECOMMENDS AGAINST THAT CHANGE"

John Wayne once said, "Who the hell are you?"

Interestingly, way too many serious and pertinent suggestions from the public are pooh-poohed by the California Law Revision Commission with the one-liner brush off comment "the staff recommends against that change." These unilateral decisions made by people like you prejudice the rights of all California deed-restricted property owners.

A better idea would be that the California Legislature issue a warning to all residential deed-restricted owners and potential owners of the perils of such ownership that inures to the detriment of the titleholder. Just as "truth in lending" has become an issue, so too must truth in these statutory provisions be an issue in this wholesale rewrite that the public has been handicapped in controlling.

Despite extremely naive and trusting nature of most buyers and owners and despite the availability of SOME media coverage of the legal problems surrounding ownership of these properties, owners do not fully appreciate the seriousness of the situation. The California Law Revision Commission has not helped--they have instead, hurt and severely prejudiced these consumers.

Thank you for your time.

Very truly yours,
/s/
Donie Vanitzian, J.D., Arbitrator