Study H-855 September 30, 2010

Memorandum 2010-46

Common Interest Development: Statutory Clarification and Simplification of CID Law (Further Public Comment)

The Third Supplement to Memorandum 2010-29 presented a letter from Donie Vanitzian, stating her opposition to the Commission's tentative recommendation on *Statutory Clarification and Simplification of CID Law* (Feb. 2010).

She also posted an article to the Internet, encouraging others to write in opposition to the proposed law. Unfortunately, her article thoroughly misrepresents the purpose and effect of the proposed law, which she describes as follows:

> This CLRC project:
> - is intended to cost homeowners more money indefinitely.
> - prevents homeowners from protecting their personal assets.
> - raises homeowner fees and other costs without any input from you.
> - creates problems for homeowners where none existed before.
> - forces homeowners to hire lawyers to accomplish otherwise simple tasks.
> - prevents you from suing and protecting your rights immediately.
> - is geared to take away rights of homeowners.
> - is a sham and rewrites laws without using proper channels to do so.
> - is a "deceit" perpetrated on the public under the guise of the "Commission's" work

See <http://www.scribd.com/doc/35897917/>. She provides no explanation or evidence for any of those claims, all of which are mistaken.

The Commission has since received five letters generally endorsing Ms. Vanitzian's position. We have also received another letter from Ms. Vanitzian.

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.

In addition, we've received a supportive letter from Janet Thew.

The new letters are attached in the Exhibit, as follows:

Exhibit p.

- Paul Loughrey, Members First Foundation (8/17/10) 1
- Wilhelm A. Mallory, Carlsbad (8/26/10) 2
- Irene Hoffman, Encinitas (8/28/10) 3
- George K. Staropoli, Scottsdale, Arizona (8/29/10) 4
- Donie Vanitzian, Marina del Rey (9/1/10) 8
- Katherine McDaniel, Laguna Woods (9/6/10) 16
- Janet Thew (9/28/10) 17

Except as otherwise indicated, all statutory references in this memorandum are to the Civil Code.

TYPES OF PUBLIC COMMENT

Before discussing the particulars of the new letters, it might be helpful to make a general observation about the types of comments that the Commission receives from the public and the way in which those types of comments can be used to assist the Commission in its efforts to improve the law.

As a general matter, comments received by the Commission can be grouped into three types:

(1) **Comments on the proposal that is under discussion**. Many comments focus on the specifics of the proposal that is under discussion. Would it accomplish the Commission's purpose? Would it create new problems that currently don't exist? Does it contain drafting errors? These types of comments are immediately helpful and often contribute to positive change in the law.

(2) **Comments on issues that are not created by the current proposal.** Many comments describe a problem in *existing law* that is not caused by the proposal under discussion. These comments often raises issues that have merit, but are beyond the scope of the Commission's current work. When that occurs, the Commission notes the issue for possible future study, without making any preliminary judgment on its merits.

(3) **Comments that have no useful connection to the current study.** Some comments do not fall into either of the first two categories. Instead, they may express broad concerns about CID mismanagement or corruption, or general distrust of CID board members, property managers, lawyers, the Commission, the Legislature, etc. Many of these comments appear to be well-intentioned, but do not provide the Commission with the sort of

specific information needed to identify and resolve problems in CID statutory law. Typically, it is not a good use of the staff's time to respond to such comments in detail.

To illustrate the distinction between these types of comments, suppose that an association has contracted with a general contractor to design and build a drainage system in the common area.

If a homeowner sees errors in the design or construction of the system, it would be helpful to provide that information to the contractor, who can then adjust the system to address the problem. This would be a Type 1 comment.

If a homeowner instead suggests that the landscaper fix a leak in the roof, that comment is not immediately helpful. The most that the contractor can do is note the problem for possible later attention by the association. By doing so, the contractor is not suggesting that the roof is in perfect repair. Nor is the contractor "ignoring" the problem with the roof. The problem is simply beyond the scope of the contractor's current work. This would be a Type 2 comment.

If a homeowner tells the contractor that the board members are all crooks or that the drainage system is actually being designed to flood people out of their homes, there is nothing that the contractor can usefully do in response. This would be a Type 3 comment.

HISTORICAL CONTEXT

The Commission has been studying CID law for several years (as just one of many time-consuming projects). In that time, the Commission has made a number of recommendations to improve CID law. All were aimed at helping to avoid or resolve disputes that arise in CIDs, to the benefit of CID homeowners:

- In 2003, the Commission recommended that associations be required to follow a statutory "notice and comment" procedure when adopting operating rules. The procedure also empowered members to vote to reverse an unpopular rule change. See *Common Interest Development Law: Procedural Fairness in Association Rulemaking and Decisionmaking*, 33 Cal. L. Revision Comm'n Reports 81 (2003) (enacted as Sections 1357.100-1357.150; 2003 Cal. Stat. ch. 557).
- In 2003, the Commission recommended adding article and chapter headings in the Davis-Stirling Act, making it significantly easier to navigate and use. *Organization of Davis-Stirling Common Interest Development Act*, 33 Cal. L. Revision Comm'n Reports 1 (2003) (enacted as 2003 Cal. Stat. ch. 557).

- In 2004, the Commission recommended that associations be required to follow basic fair procedures when making architectural decisions, including a right of appeal of an adverse decision. See *Common Interest Development Law: Architectural Review and Decisionmaking, 34 Cal. L. Revision Comm'n Reports 107 (2004).* (enacted as Section 1378; 2004 Cal. Stat. ch. 346).
- In 2004, the Commission recommended minor improvements to the operation of an existing ADR procedure. See *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003) (enacted as Sections 1369.510-1369.590; 2004 Cal. Stat. ch. 754).
- In 2004, the Commission recommended that associations be required to provide an informal dispute resolution procedure for use in disputes with their members. Use of the procedure is optional for the member. The association cannot charge a fee for using the procedure. See *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003) (enacted as Sections 1363.810-1363.850; 2004 Cal. Stat. ch. 754).
- In 2005, the Commission recommended that a "CID ombuds" office be created in the Department of Consumer Affairs (funded through a $3 per unit annual fee paid by CIDs). The office would provide a toll-free telephone information service for homeowners, online educational resources, and direct assistance in resolving CID disputes through informal conciliation or mediation. It was anticipated that the office might eventually also be authorized to investigate and administratively remedy violations of CID statutory law (through the issuance of binding orders, subject to judicial review and enforcement through civil contempt). Similar programs exist in other states and have been helpful in avoiding and defusing CID management problems, without resort to costly and divisive civil litigation. See *Common Interest Development Ombudsperson*, 35 Cal. L. Revision Comm'n Reports 123 (2005). Bills to implement the Commission's recommendation were twice approved by the Legislature but vetoed by the Governor. See AB 567 (2007) (Saldaña); AB 770 (2005) (Mullin).

The current proposal is intended to help CID homeowners understand and protect their rights, by making the law easier to navigate and use. The proposal would also make minor substantive improvements to improve and streamline association governance.

SUPPORTIVE COMMENT

Ms. Janet Thew appreciates the care taken by the Commission to develop the proposed law with "the interests of homeowners in mind." She has been closely

following the Commission's work in this study and is "continually heartened" by the Commission's efforts to avoid any dilution of homeowner rights or protections. See Exhibit p. 17.

The staff is encouraged to receive such feedback, given the considerable effort and care that has been taken to develop a proposal that will improve the law for homeowners, without introducing any deleterious change.

CRITICAL COMMENTS

Proposed Law Confusing

Mr. Loughrey asserts that the proposed law will confuse CID homeowners. See Exhibit p. 2. He does not explain his assertion.

The staff recognizes that persons who are already familiar with the current Davis-Stirling Act will need to adjust to the new organization, if the proposed law is enacted. That could lead to some temporary confusion for experts who need to learn the organization of the new Act.

However, the typical CID homeowner is not a Davis-Stirling Act expert and therefore should not be much affected by the transition from the old law to the new. To the contrary, homeowners who only consult the Davis-Stirling Act occasionally, when they need to answer a specific question, should find the reorganized statute much easier to understand and use.

Proposed Law Would Enrich Attorneys

Mr. Loughrey asserts that the proposed law would enrich attorneys who represent associations. See Exhibit p. 2. He does not explain his assertion.

To the extent that the proposal makes the law easier to understand and eliminates ambiguities, it should help to reduce legal costs. There will be less need for attorney advice about the meaning of the law and less litigation to resolve statutory ambiguities.

Proposed Law Would Increase Assessments

Ms. McDaniels asserts that the proposed law would cause her assessments to "increase exponentially overnight." See Exhibit p. 16. She does not explain her assertion.

In fact, the proposed law would preserve existing limitations on assessment increases, without substantive change. See proposed Section 5605.

Opposition to Inverse Condemnation

Mr. Loughrey states his opposition to "any form of Inverse Condemnations." See Exhibit p. 2. The staff is unsure why Mr. Loughrey makes that point. The proposed law has no apparent connection to inverse condemnation.

Proposed Law Needs Penalty Provisions

Ms. Hoffman agrees with Ms. Vanitzian that the law should provide penalties against board members and property managers who violate the law. See Exhibit p. 3.

The Commission previously considered the issue of penalties for violation of the Davis-Stirling Act, but decided to pursue less divisive options, such as education, mediation, and administrative enforcement.

Recall that board members are homeowner volunteers, many without any meaningful prior experience in managing real property or running a corporation. Recall too that many associations have trouble finding members willing to serve on the board. Some associations cannot achieve a board quorum and have gone into receivership as a result. It seems likely that many potential volunteers would be deterred by the prospect of being personally punished for honest mistakes (or facing the need to defend against such punishment).

Proposed Law Needs Restitution Provision

Ms. Hoffman agrees with Ms. Vanitzian that the law should create a restitution fund to provide financial relief to a homeowner who has been harmed by misconduct within a CID. See Exhibit p. 3.

Ms. Vanitzian has never explained this suggestion in sufficient detail to evaluate its merits.

Proposed Law Should Require Warning to Prospective Purchaser

Ms. Hoffman agrees with Ms. Vanitzian that the law should require that a prospective purchaser of a separate interest receive a warning of the consequences of purchasing a home in a CID. See Exhibit p. 3.

Existing law already requires disclosure that a home is within a CID, along with disclosure of extensive information about the association's governance and finances. See Section 1368. The proposed law would continue this rule. See proposed Sections 4525-4580.

Publicity

Ms. Hoffman agrees that the Commission should take out full page ads in all major California papers for a month and mail notices to all CID homeowners in California, in order to notify them of the Commission's work. See Exhibit p. 3.

This suggestion is unrealistic. The cost of postage alone would exceed the Commission's annual budget many times over. While it would undoubtedly be helpful to receive more public involvement, we are already operating with an extraordinary level of public input. Our materials are delivered to over 500 subscribers. We regularly receive input from all of the major organizations involved in CID policy making, and from many interested individuals. Once our recommendation is completed, it will need to be considered by the Legislature, using their ordinary process, at which time there will be further opportunities for public input.

Ignoring Ms. Vanitzian's Prior Letter

Mr. Mallory, Ms. Hoffman, and Mr. Staropoli all assert that the staff ignored Ms. Vanitzian's prior letter. See Exhibit pp. 2, 3, 4.

Ms. Vanitzian's letter was not ignored. It was carefully read and analyzed for any relevant content. The staff's discussion of the letter was brief because the letter contained very little relevant content. It was mostly made up of "Type 3" comments that did not merit a response.

MS. VANITZIAN'S MOST RECENT LETTER

In her most recent letter, Ms. Vanitzian describes what she see as problems with the proposed law. In fact, none of the problems that she identifies would be caused by the proposed law. They are all concerns she has about existing law.

Record Retention

Ms. Vanitzian states that associations often destroy records that should be retained. See Exhibit pp. 9-10, 12-13. "With no meaningful 'document retention' statutes governing homeowner associations, this problem will not solve itself." *Id*.

Fortunately, the proposed law would add document retention provisions to the Davis-Stirling Act. See proposed Sections 5250-5255.

Identity Theft and Other Record Misuse

Ms. Vanitzian asserts that there are insufficient protections against the misuse of members' personal information. See Exhibit pp. 9-10.

There is an existing provision (which would be continued in proposed Section 5230) that prohibits misuse of the membership list and authorizes the association to sue to enjoin misuse. See Section 1365.2(e). This provision would be continued in the proposed law. See proposed Section 5230.

Ms. Vanitzian is correct that the existing provision is asymmetrical, as it does not authorize suit by a *member* whose information has been misused. **The staff recommends that the issue be noted for possible future study.**

Duty to Redact

Existing Code Section 1365.2(d) (which would be continued in proposed Section 5215) provides that an association *may* redact a member's personal information from association records before allowing inspection of those records by other members. See Exhibit p. 13

Ms. Vanitzian suggests that redaction should be made mandatory.

In fact, the prior version of the Commission's recommendation in this study would have made redaction mandatory. See *Statutory Clarification and Simplification of CID Law*, p. 71 (Dec. 2007).

However, that proposed change was removed during the legislative process, as being too controversial for inclusion in a proposal of this type. For the same reason, it was not included in the current version of the proposal. **The issue is already on the list of future study topics.**

Arbitrary Rulemaking

Ms. Vanitzian asserts that management companies often "make up rules" and then instruct homeowners to follow them. See Exhibit p. 14.

Fortunately, the Commission recommended statutory requirements for CID rulemaking, which require that an association follow notice and comment procedures before adopting an operating rule, and provide members with a referendum power that can be used to reverse an unpopular rule change. Prior to enactment of the Commission's recommendation, there were no statutory restrictions on the adoption of rules in homeowners associations. See "Historical Context" above.

The rulemaking provisions would be continued without change in the proposed law. See proposed Sections 4350-4370.

Right to Sue to Enforce Davis-Stirling Act

Ms. Vanitzian suggests that the Commission "took away" homeowner rights to "directly sue" to enforce the Davis-Stirling Act.

It isn't clear what she means. The proposed law would not diminish any right to sue the Davis-Stirling Act. In fact, it would establish that right more clearly.

Under existing law, there are a patchwork of provisions that expressly authorize member suits to enforce specific provisions of the Davis-Stirling Act. That spotty coverage could create an implication that members cannot sue to enforce the Davis-Stirling Act, except where such suits are expressly authorized.

The proposed law would eliminate that implication by adding a general provision recognizing a member's right to sue to enforce any provision of the Davis-Stirling Act. See proposed Section 5980:

> 5980. In addition to any other remedy provided by law, a member may bring an action in superior court to enforce a provision of this Act.

Conclusion

The staff appreciates the effort Ms. Vanitzian has made, in her most recent letter, to be more specific about her concerns. However, she has not yet identified any specific problems that would be caused or worsened by the proposed law.

Respectfully submitted,

Brian Hebert
Executive Secretary

August 17, 2008

To: California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739
Fax 650.494.1827

Attention: Mr. Hebert

We are organization that was formed to promote the legal rights of tenants in a community by publishing a video newsletter, testifying before administrative and legislative bodies and occasionally initiating litigation that qualifies under IRC 501(c)(4). Rev. Rul. 80-206, 1980-2 C.B. 185.

Our members totally disagree with and "disappointed" describing the California Law Revision Commission's so-called efforts to change the Common Interest Development statutes and its bogus so-called "clarification" nonsense. it is, a 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.

Our letter to you represents twelve thousand (12,000 seniors) 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.

Please give the property rights back to our 12,000 homeowners. We reject any form of Inverse Condemnations.

Thank You;

Paul Loughrey

Paul Loughrey
President Members First Foundation

Wilhelm A. Mallory
6261 Arbor Rose Drive
Carlsbad, CA 92009-3064
Voice 760-438-1151
Email wamallory@roadrunner.com

August 26, 2010

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

Subject: Study H-855 August 19, 2010
Statutory Clarification and Simplification of CID Law

Dear Brian Hebert, Executive Secretary

I am writing to you to express my agreement with the letter from Ms. Vanitzian which was titled the **TEMPLE OF BLAME AND THE HOA ATTORNEYS FULL EMPLOYMENT ACT.**

I have been an avid reader of your actions over the past many years. Reading the comments of Ms. Vanitzian leads me to state that her letter is the clearest statement regarding the work generated by this commission in the twenty or so years I have been following their actions. I have been a member, a director, and officer of many Associations over the last 25 years.

I particularly endorse her opinions regarding the self-serving actions of Association Boards of Directors, the management companies who are parasites of the Association's actions and the lawyers who are supposed to assist and protect the Homeowners but instead milk the Association and innocent homeowners for all they can.

Your function as an element of Legislative Branch of this state bears the same goal as the rest of our representatives and that is to generate optimum income for your activity without focusing on the service provided to the citizens of this State.

I would sincerely hope that you take the information contained in Ms. Vanitzian's letter and study it and do not ignore the honesty and benefit of what she is saying, and how the rest of us feel about it.

Your office should rethink your objectives and strive to serve the citizens of this State by exercising rules that help them to be self-sufficient and free of over restrictive guidelines, fines, penalties and mandates for collecting more and more money from the Homeowners.

Very Truly Yours,

Bill Mallory

Wilhelm A. Mallory

August 28, 2010

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

Attention: Brian Herbert

Re: CALIFORNIA LAW REVISION COMMI SSION STAFF MEMORANDUM
Study H-855 August 19, 2010

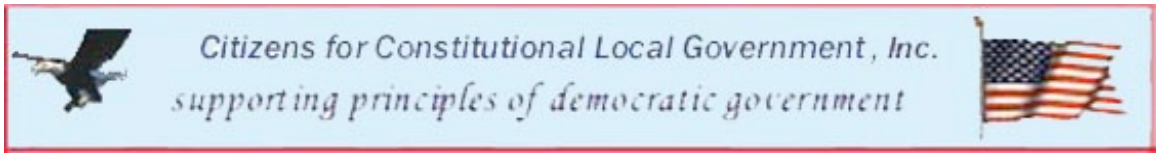
Dear Mr. Hebert:

As a past board member of a homeowner association with over 140 members, I would like to ask why you have not addressed Donie Vanitzian's concerns. For example, her statement "the proposed law does not impose penalties on errant board members, establish a victims' restitution fund, or require statutory warnings to new purchasers." Our membership called for a special election and subsequently voted out 3 board members who had not been representing the desired interests of members. Instead they implemented their own agenda without consent of the membership. Had we not voted them out, members would have been considerably disadvantaged with respect to individual rights and diminished property values. I was appalled to learn how extensively the laws are being bypassed by errant boards who use their positions to bully members and pass rules outside of their authority. Practically every friend or relative I know who belongs in a homeowner association has complained to me about the arbitrary and unfair treatment they have experienced in their CID. Yet there are no penalties to dissuade board members from acting exclusively in their own self-interest . Our community hired and dismissed three management companies before realizing managers fail to give proper guidance themselves and actually do more harm by reinforcing the malintentions of errant boards.

I agree with Ms. Vanitzian that 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." Not doing that would leave owners in CID's vulnerable to a system devoid of checks and balances which fails to protect them. Your avoiding Ms. Vanitzian's suggestions and dismissing them to say the proposed law has no "negative effect" reinforces her contention that the CLRC is pursuing the proposed law for its own self-interest. This approach only fosters suspicion that the CLRC is 1) has no desire to objectify the language in the proposed law and 2) is furthering the interests of attorneys and the real estate industry as a lobby group vs. the welfare of individual owners. This approach will only increase the contention and adversarial animus which already exists between individual owners and boards. Such condition will add to the increasing costs of maintaining CIDs which, in the current economic downturn, exacerbates a likelihood that the end outcome is an implosion where the system shuts down for lack of an equitable structure. I strongly urge you to reconsider your position. It is imperative you act upon Ms. Vanitzian's suggestions so as to establish the proper guidelines for restitution by homeowners.

Sincerely,

Irene Hoffman
204 N El Camino Real #E132, Encinitas, Ca 92024



August 29, 2010

email letter

Mr. Brian Hebert
California Law Review Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Dear Mr. Hebert:

It appears once again that CLRC continues to ignore valid, legitimate anti-CID communications sent to it under the writer's right to a public voice in CLRC deliberations. Ms. Vanitzian continues to be ignored -- re August 28, 2010 letter from Irene Hoffman, Vanitizian's August 12th fax to your attention, titled, *THE TEMPLE OF BLAME AND THE HOA ATTORNEYS FULL EMPLOYMENT ACT*.

I bring to your attention my email letter of January 13, 2009 to Governor Schwarzenegger and the California Legislative Leaders in regard to the disposition of AB1921, which attempted to apply the "findings" of CLRC. It is evident that CLRC continues to play its role in the unspoken alliance of ***"No Negatives About HOAs,"*** with the objective of misleading the people of California.

CLRC fails in its obligations to the people of California and should be dissolved forthwith.

Respectfully,

George K. Staropoli
President
Citizens for Constitutional Local Government

----- Original Message -----
From: PVTGOV - GEO
To: Assemblymember.saldana@assembly.ca.gov
Cc: Assemblymember.bass@assembly.ca.gov ; Assemblymember.torrico@assembly.ca.gov ; Assemblymember.villines@assembly.ca.gov ; darrell.steinberg@sen.ca.gov ; dean.florez@sen.ca.gov ; dave.cogdill@sen.ca.gov
Sent: Tuesday, January 13, 2009 9:13 AM
Subject: AB 1921: The CLRC recommended CID special interest bill

Summary

It is evident that CLRC would rather deal with the "technical" questions raised by the CAI special interest property lawyers that resulted in the withdrawal of AB1921 than to study substantive issues affecting the rights and freedoms of the people living in CIDs in California. I am reminded of the statement made by

President Lincoln to his aide shortly after the capture of Fort Sumter in 1861,

> [T]he necessity that is upon us, of proving that popular government is not an absurdity. We must settle this question now, whether in a free government the minority have the right to break up government whenever they choose.

Therefore, it is only proper that further consideration of AB1921, and any other CID recommendations, by CLRC should cease immediately until the Commission members can be replaced with persons who understand and will abide by the purposes and mission of CLRC. I urge the Governor and Legislature to address this very important concern prior to CLRC's next scheduled meeting on February 19.

Date: January 13, 2009

To: Governor Schwarzenegger, California Legislative Leaders

Subject: AB 1921: The CLRC recommended CID special interest bill

I found it quite astonishing that on April 29, 2008 Speaker Pro Tempore Saldana withdrew consideration of her bill, AB 1921, as a result of a letter by a legal group whose membership was overwhelmingly dominated by Community Associations Institute (CAI) attorneys and their employees. (See my Dec. 13, 2008 email letter to Mr. Hebert, attached hereto, acknowledged by Mr. Hebert in his email to me on Dec. 23).

In CLRC memorandum MM08-12s1 of May 29, Mr. Hebert wrote of Assemblyman Saldana's decision,

> 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.

This action was further clarified in MM08-64s1of Dec. 9 (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 . . . . **The staff strongly recommends that the Commission wait for the results of this process before seeking reintroduction of implementing legislation.**

. . . .
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 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 . . . .

However, Speaker Pro Tem Saldana did not address my concerns in her withdrawal of this bill under what is clearly CAI special interest influence. There is no mention of my April 11, 2008 letter to CLRC with my concerns for the omission of a Members Bill of Rights, among other constitutional concerns (see MM08-12s1, EX. p.1), nor did CLRC devote any discussion of study time regarding my issues with AB 1921.

Furthermore, there was no mention of the March 24, 2008 Center Valley Times article in which Ms. Donie Vanitzian severely criticized CLRC performance as biased toward the special interests had written in her,

> 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 . . . .

(See Appendix B of my Dec. 13 email letter). This article contained numerous objections to AB1921 that were ignored by CLRC and by Speaker Pro Tem Saldana.

Given CLRC's enabling legislation, and its own statement of its "History and Purpose" as found on its web page, it is safe to conclude that CLRC has failed to follow its duties to the Legislature and to the public by 1) disregarding these serious public concerns and major policy questions that were brought to its attention, and 2) not calling for an study by professionals and organizations relating to these constitutional concerns. CLRC replied to my first email in 2005 on its failure to address a Bill of Rights (Chapter 2, Member Bill of Rights) with a shocking admission of any knowledge of the Constitution or US Bill of Rights,

> 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.

CLRC sidestepped the "HOAS are a government" issue. CLRC failed to question

whether privately contracted governments can evade the Constitution as if they were simply a business, or private club, and not one that regulates and controls people within a territory, just like any other government. CLRC assumed that the Constitution is nothing more than the contract interference clause of Art. I, Sec. 10. CLRC failed in its obligations to uphold the US and California Constitutions, by permitting unconstitutional delegation of legislative powers to private organizations. CLRC held that the property laws of servitudes are superior to constitutional law, as do the CAI property lawyers who promote these common law holdings. CLRC concluded that, "*However, it is beyond the scope of the current project."* MM-05-25s1.

It is evident that CLRC would rather deal with the "technical" questions raised by the CAI special interest property lawyers that resulted in the withdrawal of AB1921 than to study substantive issues affecting the rights and freedoms of the people living in CIDs in California. I am reminded of the statement made by President Lincoln to his aide shortly after the capture of Fort Sumter in 1861,

> [T]he necessity that is upon us, of proving that popular government is not an absurdity. We must settle this question now, whether in a free government the minority have the right to break up government whenever they choose.

Therefore, it is only proper that further consideration of AB1921, and any other CID recommendations, by CLRC should cease immediately until the Commission members can be replaced with persons who understand and will abide by the purposes and mission of CLRC. I urge the Governor and Legislature to address this very important concern prior to CLRC's next scheduled meeting on February 19.

Respectfully,

George K. Staropoli, Pres.
Citizens for Constitutional Local Government, Inc.
Scottsdale, AZ
602-228-2891

September 1, 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 NOT-SO-SIMPLE SIMPLIFICATION OF, AMONG OTHER THINGS: IDENTITY THEFT

Re: Statutory Clarification and Simplification of CID Law

TABLE OF CONTENTS

I. Misuse and Abuse of Titleholder Personal Information

II. Management Companies and Boards Merely "Make it Up" as They Go Along

III. Homeowner Association Corruption Continues Unabated

Dear California Law Revision Commission:

Apparently Mr. Hebert's department, is of the belief that my initial letter to the California Law Revision Commission regarding this bogus make-work project of theirs, was "generic" and not "specific." Hard to believe given I have been writing to the CLRC for some time now with SPECIFICS. Never mind, that I have made, and paid for several Freedom of Information Act and California Public Records Act documents, a story worthy of national news, but saved for another time. All titleholders with assets and property located in a California Common Interest Development, subject to boards of directors and management companies, and with deed-restricted titles should make it a monthly, if not yearly, goal to obtain these records from the CLRC and READ and STUDY them. They are INTERESTING to anyone who is subject to the whims of the CLRC's decision making powers over owners. The CLRC's telephone bills are also public record, they are in my opinion, far more salacious than some of the documents as we have recently learned by the community of Bell experience, can be easily manipulated and omitted, "Oops, that wasn't provided?"

I continue to vehemently oppose this stupid REWRITE of the Davis-Stirling Act bogus project of yours as a colossal waste of taxpayer funds and as a project **that will have a substantial financial impact on titleholders and prejudice titleholders of this type of property ownership for decades to come.**[1]

The following example is an omission in your multi-million dollar make-work project, but then it is obvious, the goal of your project is not to protect the homeowners.

In February 2000, I had introduced into the California legislature, Assembly Bill 2031 that, in a much simpler and more precise form, required boards to maintain records for a reasonable period and to allow homeowners to inspect the books and records. A homeowner who was damaged by a board's failure to keep the records could sue for up to $5,000, the jurisdictional limit of small claims court. Although passed by the California Assembly by a vote of 75–1, it failed to pass the Senate Judiciary Committee.

At the time I wrote that bill there were no *per se* laws mandating the safekeeping of homeowner association books, records, and documents, nor were owners able to access such records—notwithstanding laws making destruction of documents, accounts and records a crime, such accountings were routinely destroyed or conveniently missing—as of the date of the publication of my book titled *Common*

[1] As a matter of note, expunging the term "titleholder" from the statutes and replacing it with the generic benign word "members" is just the start of further stripping owners of land and of their rights.

Interest Developments--Homeowners Guide (Thompson-West 2009),[2] and as of the date of this correspondence to the California Law Revision Commission, **nothing has changed that. The destruction of these documents happen on a daily basis.**

Letters I receive, confirm that destruction of records and association-related "evidence" including but not limited to computer hard drives, are happening at an alarming rate. Actions like these are meant to protect the actions of recalcitrant boards and their aiders and abettors.

I.
MISUSE AND ABUSE OF TITLEHOLDER PERSONAL INFORMATION

Letters documenting and confirming misuse and abuse of titleholders' personal information is even more alarming. I receive these letters often in response to my books, *Villa Appalling! Destroying the Myth of Affordable Community Living,* and *Common Interest Developments--Homeowners Guide,* and column in the Los Angeles Times, titled *Associations.*

To that end, there are no *per se* laws that hold management company owners and their personnel AND board directors responsible for breach of privacy and/or the dissemination and/or abuse or misuse of titleholder information.

Anyone whose personal identifying information—including something as mundane as a letter they wrote to the board, or anything with an account number and/or signature on a check—that has been obtained by a homeowners association, its third party vendors, and/or boards of directors, **are unequivocally at risk for identity theft.**

Simply, these titleholders are at the mercy of individuals they may not know, have no reason to trust, have no "duty-relationship" with, and for all intents and purposes cannot reach or speak to directly. And, even if they could pass the association-attorney barricades, no one in an association-related environment takes accountability for something that goes wrong, especially misuse and/or abuse of titleholder documents and personal information. Assuming arguendo that "someone" "somewhere" in the association environment decides to take responsibility for these documents, that person becomes dispensable, or moves, or gets fired, or sells his property and the revolving door starts all over again.

In a recent case where a management company and its employees attempted to destroy one homeowner who was effectively vocal against them, it made concerted communications with the person's place of business, his/her employer, forwarded

[2] D. Vanitzian, *Common Interest Developments--Homeowners Guide* (Thompson-West, 2009). Author note: As I am the sole copyright holder of this book, there are no fair use violations.

documents it had accumulated in its files over the years, and pummeled the employer (and the community) with falsehoods about the owner in order to have him/her fired and deplete his/her life savings attempting to defend him or herself. All this was in an attempt to turn the community against this person and to have him/her removed off the board of directors so the management company's illicit actions could continue without question. This special brand of torture is reserved only for those who own in Common Interest Developments with Homeowner Association boards because owners' hands are tied in protecting themselves, their assets, and their quality of life. The owners' only watchdog (for lack of a better word) is their board. Pathetic, but true. Without the owner's personal information at the ready, and with laws prohibiting and penalizing this kind of behavior, these vendors and boards would not have been able to accomplish their wicked means.

Seniors are particularly vulnerable in this arena, especially in those developments requiring proof of funds, bank account records, automatic debit information, accounting documents, trust documents, mortgage documents, contracts, stocks and bonds statements, from these owners. While there are no statutory requirements for titleholders to provide a majority of these documents, some developments have over-required documents that they decide they want. Homeowners do not know that these documents don't have to be and shouldn't be provided, and fearing retribution or fines and penalties, they merely hand them over. Homeowner association boards and/or their third party vendor management companies provide no protection or documentation in return that substantiates their custody and control, let alone safeguarding of said documents, and rarely do homeowners know to ask for a signatory receipt of the information they are blindly handing over to "someone."

All these documents are retained and accessed indiscriminately by temporary personnel, management company employees, board directors, and often times copied over and over and circulated among a myriad of individuals—without notice to the titleholder. **These documents live in perpetuity.** Each successive board for decades will be able to access and read even a deceased past owner's so-called "file" personal identifying information and all. Make no mistake, the association is certain not to leave a paper trail, even if a file does exist it may "never" be found. Some "honor system!"

Unbeknownst to the homeowner, their voluntarily-provided documents can and will be used against them in a court of law if and when that owner is subject to a lawsuit with their association or management company. Once the Buyer provides these documents, all they have is the board or management company's "word" that it is in a "file." There are no written assurances as to the safekeeping of said documents and no admonition of their potential for use. Names of individuals who will have access to them are also not provided. **This revolving door of access to an individual's personal documents is a risk to the titleholder, but especially to Seniors.**

Owners are unaware that *every* letter they send to their boards—as casual as that might be—are fodder for lawsuits where that simple letter is used as evidence

against that owner and possibly others. No warning about that in the California statutes. Yet, all owners are supposedly, automatically vested with that knowledge, the knowledge of laws they have no clue exist. No wonder boards and their hot shot attorneys encourage unsuspecting owners to "put it in writing" or "write the board" acting as if that will help solve their problems. Little do they know of the nightmare legal trap they are walking into. These same homeowners try endlessly to view association books and documents and are instead sent on a hike off a cliff, while they naively continue to "comply" with writing their boards thinking they are doing the right thing. If they only knew!

The majority of homeowner associations have relatively few, if any, protection in place for owners/titleholders that would prevent the dissemination (let alone *misuse*) of any information obtained by the association and/or its agents. By default, the board's response to such breaches of privacy is, predictably, "deny, deny, deny." Presently, nothing *per se* prevents such dissemination of an owner's identifying information collected on behalf of the association. In its failure to provide practical, explicit, and meaningful remedies for owners before they become victims (no thanks to the California Law Revision Commission), the legislature leaves these owners to rely on an unacceptable "honor system."

Laws do however, threaten to prosecute OWNERS for a twisted sense of misuse of certain association-related information. (How is it that the industry lobbyists are able to protect all their skewed interests, but nothing protects the owners who are responsible for funding this fiasco.) Not all boards and their vendors are honorable. That owners and their information are at the mercy of their association — and worse — its third party vendors who are more often than not UNACCOUNTABLE, grotesquely understates the consequences for victims, who often are faced with financial constraints, having to spend time and money that is rarely, if ever recoverable to fully investigate and pursue a viable cause of action. I might add, that so-called right to bring a cause of action was substantially diminished by the California Law Revision Commission when it took away the owner's right to directly sue in an attempt to protect their interests, instead creating a maze of diversionary delays such as "write the board" traps, "meet and confer" traps, "notice to sue" traps, "arbitration" traps and so on.

Given the lax nature of homeowners associations in general, it is no wonder such entities are a target for "data miners." California's legislature has vastly ignored the unreliability of those with custody and control over the treasure trove of member information and have chosen instead to concentrate on conciliatory methods for resolving rules and operations disputes. Again, that maze of traps and diversions preventing titleholders from protecting their assets and from taking proactive steps to protect their data and other information specific to their property and themselves.

Not only is the dissemination of owner information a problem, so too, is the association's destruction of documents in anticipation of litigation or discovery demands. Since the board and association typically retains custody and control of all books, records, and documents, "anything goes." With no codified policy for

association document destruction (let alone retention) many documents are improperly destroyed or are duplicates of copies of documents. **With no meaningful "document retention" statutes governing homeowner associations, this problem will not solve itself.**

While the association **may**—not—**shall**, withhold or redact information from the association records[3] where the "release of the information is reasonably likely to lead to identity theft,"[4] ***they are under no per se statutory duty to do so.*** For the purposes of Civil Code Section 1365.2, "identity theft" means the "unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property." Examples of information that may be withheld or redacted pursuant to Civil Code Section 1365.2(d) include bank account numbers of members or vendors, social security or tax identification numbers, and check, stock, and credit card numbers."[5]

While the association **may**—not—**shall**, withhold or redact information from the association records[6] because the information contains[7] any "person's personal identification information, including, without limitation, social security number, tax identification number, driver's license number, credit card account numbers, bank account number, and bank routing number,"[8] ***there are no statutory penalties for failure to do so.***

The word "may" is neither subtle nor insignificant, because under Evidence Code Section 11, the term "shall" is **mandatory** and term "may" is **permissive**. While camouflaging the detrimental impact of such laws on titleholders, the California Law Revision Commission's Simplification and Clarification project is rife with subtleties similar to that example.

---

[3] Civil Code Section 1365.2(d)(1).
[4] Civil Code Section 1365.2(d)(1)(A).
[5] Civil Code Section 1365.2(d)(1)(A), Civil Code Section 1365.2(a)(2) (for the purpose Civil Code Section 1365.2, "enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association, provided that the person submitting the reimbursement request shall be solely responsible for removing all personal identification information from the request).
[6] Civil Code Section 1365.2(d)(1).
[7] Civil Code Section 1365.2(d)(1)(E).
[8] Civil Code Section 1365.2(d)(1)(E)(iii), Civil Code Section 1365.2(a)(2) (for the purpose Civil Code Section 1365.2, "enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association, provided that the person submitting the reimbursement request shall be solely responsible for removing all personal identification information from the request).

There also appears to be a growing trend among homeowner associations, boards of directors, and third party vendors and agents, in "requiring" titleholders, owners, residents, renters, and others, to supply the association with their Social Security numbers and other ancillary information that they should not be privy to.

Where's the protection for titleholders who have sold their units but all their personal information stays behind? Where's the protection for Buyers who are forced to provide information to the association or its management company but have no idea what happens to it once they do that and have no protections for that information? Where are the safeguards from the association to the titleholders that the management company will not have custody and control of the owners personal information and writings? There are no laws requiring that management company owners and their personnel be bonded. There are no duties flowing from the management company to the individual titleholders. Yet, too many boards REQUIRE that owners communicate with these third party venders INSTEAD of directly with the board. The BOARD has a duty to the owners, not the management company. The board cannot delegate its duties to a management company, but without engaging in an assortment of endless hoops, owners are powerless to stop actions like these.

II.
MANAGEMENT COMPANIES AND BOARDS MERELY "MAKE IT UP" AS THEY GO ALONG

I am receiving so many letters from owners complaining that their association's management company makes up a rule and owners are blindly expected to follow it as their boards turns a deaf ear. Too many owners are unaware that rules cannot be made up on the fly, and they cannot be made up unilaterally by a third party vendor. Yet this is happening. Because their are no penalties for management company owners and their employees, this practice continues. So too are management companies becoming aiders and abettors to boards that sign their paychecks. Too many boards have become overly reliant on these high school graduates with self-certification or industry standard classes (whatever THAT means) allowing themselves to be given a "designation" or "title" that looks important. That designation or title is not a law license, yet too many management companies are using their designation or trumped up titles to engage in the unauthorized practice of law, advising boards on what to do and how to do it. When owners confront these third party vendors on their actions, predictably they are met with "ask your board." Owners are paying a high price for actions like these and the interference of third party vendors.

III.
HOMEOWNER ASSOCIATION CORRUPTION CONTINUES UNABATED

The upshot of this and more, is that the fees keep rising for the titleholders as they

are the bank account for these out of control homeowner associations. As the corruption in homeowner associations continues unabated, owners are left asking the same questions they did when the California Law Revision Commission first Velcroed itself onto the CID meal ticket about a decade ago: **Where are the penalties against boards and management companies and where are the protections for the titleholders?**

Thank you for your time.

Very truly yours,
/s/
Donie Vanitzian, J.D., Arbitrator
Post Office Box 10490
Marina del Rey, California 90295

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

DATE: September 6, 2010

Attention: Mr. Hebert

I absolutely support the letter of Donie Vanetzian and her point of view. I DO NOT WANT this "simplification and re-do of the statutes to take place. It is a frivolous project.

The "simplification" you are touting for **Statutory Clarification and Simplification of CID Law** is by no means a simplification but means that we will be subject to even more abuse. I am not alone in this thinking. If this goes to the legislature our assessments will rise exponentially overnight and we will be forever enslaved by powers opposed to the owners of memberships in CIDs.

This is WRONG and I am only one voice, small though it may be, among thousands of others who are so intimidated they are unable/unwilling to speak . The corruption that is ongoing in CIDs is simply beyond belief and the "simplification" you are undertaking will make it all the more easy to make victims of the titleholders.

Katherine McDaniel
3379 Punta Alta, N
Laguna Woods, Ca.
92637

EMAIL FROM JANET THEW
(9/28/10)

CLRC members,

I wish to thank all of you for keeping the interests of homeowners in mind. I read through each batch of comments and responses, and am continually heartened to see the commission not give in to the many lawyers' requests to water down our rights and protections. They do not have our best interests in mind, and that means you must. Again, thank you.

Janet Thew