Studies H-855 February 27, 2014

Fourth Supplement to Memorandum 2014-9

Common Interest Development Law (Public Comment)

Memorandum 2014-9 discussed public commentary on two recent Commission-recommended reforms of common interest development ("CID") law.[1] We have received another five letters on that topic.

Respectfully submitted,

Brian Hebert
Executive Director

1. 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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

California Law Revision Commission
UC Davis School of Law, Rm.1128
Davis, CA 95616

February 10, 2014

Attn: Mr. Brian Hebert

Dear Mr. Hebert:

I read Karen D. Conlon's February 5, 2014 letter and wanted to make a few comments. To say the least, I certainly agree the topic of CID living is controversial and the commission is tasked with a difficult job to sort through the mess however; I do not totally agree with all of Ms. Conlon's comments and insight.

Absolutely, the commission has endured "pot shots" and other ridicule, which I believe, is just part of the job in such a highly charged issue. Homeowners are not comfortable with government in their bedrooms and daily life or with rogue uninformed volunteer boards running rickshaw on homeowners to an unknown destination. Homeowners have enough to worry about than to come home and deal with board tyranny the product that ignorance produces.

In the second paragraph on Ms. Conlon's letter in part it states, "It seems you and the CLRC have been recipients while attempting to clarify"… recipients of what, clarify what? Does she mean recipients of recalcitrant boards or something else? While it appears cleaning up the Davis-Stirling Act does have some benefit and has simplified findi**n**g specific statues, what it has not accomplished is create statutes that simplify redress of homeowner grievances. Much to the determent of property managers tasked to *assist* boards in CID management, they act as de-facto attorneys, contractors or other ostensible professionals, while endeavoring to protect board immunity when board's make poor decisions. Generally, property managers do not hold professional licenses in any specific trade or legal affiliation yet they continue to make recommendations to voluntary boards ignorant to CID management. There may be some exceptions but as a past board president, I can testify to the many stunts (For the lack of a better word) managers incorporate into their programs and management style.

The commission, in my opinion has done little to level the playing field for distressed homeowners seeking redress to their particular complaint or a rogue board action. Mandating a rewrite of governing documents when developers turn projects over to homeowners would be a good place to start, thus keeping non-property owners off association boards, such as we have in our association. Somehow, it is misinterpreted that homeowners may be represented on the board with a property owner's agent, which resulted in a non-homeowner/property owner acting as our current board president. Where have the professional property managers been for the past forty-one years? Each time I questioned the rewrite of the governing documents as a board president, I was told, "Don't be silly, it is too cost prohibitive", or "Why do you think a change is needed"?

I interpreted as many do, to "act as an agent" meant the owner of the property must first be elected and could then pass its duties to an agent. We certainly do not see it to mean anyone off the street could walk in disrupt everything and get his name on a ballot. There should be a standardized template for governing documents and not various versions enacted on a whim, with or without ill intent in mind.

The legislature and other officials duped by organizations that portray themselves to be representative of homeowners continue to ignore the fact that most homeowners have never heard or had any contact with such organizations, allowing them to continue to lobby efforts for laws that protect their revenue streams at the cost of homeowner sanity and dignity. Exactly where do we find this transparency Ms. Conlon speaks about?

In the area of homeowner redress, it is non-existent trust me on this point. Redress of grievances continues to be the number one issue that contributes to weld anxiety and distrust between homeowners and the boards that govern them.

Ms. Conlon employs the word "empowering" when describing the benefits for the many accomplishments of CLRC recommendations. Empowerment is a concept or attitude many property management consultants incorporate as an absolute necessity to guarantee unfettered revenue streams.

As I have stated before, the CLRC should be recognized for its accomplishments and its failures. There is certainly enough praise given them as well as damnation. I write this letter not as an industry profiteer but as a homeowner with a legitimate issue that we all must recognize, address and fix without going at each other's throats. While there are many CID topics to choose from, I choose to speak about redress of homeowner grievances. This makes way for others to discuss their particular issue they consider needing attention.

From an industry profiteer perspective, it is not difficult to understand the overwhelming support given to any official group that helps protect their interests. It would be a welcomed change to see some papers written from an industry profiteer that suggests homeowners also need relief. Perhaps Ms. Conlon could be the first to advocate for homeowner redress. It would be refreshing to listen to an industry profiteer's prospective that speak to relief and redress of homeowner grievances. Only time will tell.

Respectfully,

David R. Hagmaier
Fullerton, CA

This is for publication except as noted below (*Please do not publish my address or phone number)
FAX 650-494-1827

February 7, 2014

Mr. Brian Hebert
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303

The Honorable Edmund G. Brown
Governor of the State of California
Attn: Camille Wagner
State Capitol, First Floor
Sacramento, CA 95814

Commissioners – California Law Revision Commission

Re: Letter from Kelly G. Richardson, RHO Richardson, Harman, Ober dated January 31, 2014
Criticism of Donnie Vanitzian and LA Times
Response to CLRC Second Supplement to Memorandum 2014-9

Dear Honorable Governor Brown and CLRC Commissioners:

I am a homeowner in a 142 unit homeowner association in Southern California who has served on its board of directors in the past for five years. My experience serving on the board was one of the most stress-filled confrontational positions I have ever held including my board service on several nonprofit orgs and a private computer manufacturing firm for which I helped negotiate a multi-million dollar merger-sale.

Mr. Kelly Richardson's criticisms of Ms. Vanitzian and the LA Times reminded me of the outright animus that arose between several association attorneys and homeowners when our community underwent an internal battle which resulted in the removal of three board members. I hope the comments Mr. Richardson posted to Ms. Vanitzian's excellent December 29, 2013 column in the Los Angeles Times are not industry-driven via an agenda to discredit Ms Vanitzian. I state that since the CLRC and Mr. Richardson have eliminated reference to Zachary Levine, the attorney co-author, from the discussion as if to singularly target Ms. Vanitzian.

I spearheaded the ouster movement with two other residents after I resigned from the board realizing I was the lone voice calling for the halt to other board members' effort to overcomplicate our association's governing documents via revisions that would have cost the association $5,000 to $7,000 of unnecessary legal fees. Tangential to that cause was the board's attempt to stiffen rules and penalties which would have raised association fees (to pay for the ensuing legal advice which would result from inevitable court cases to collect funds). Our rallying the homeowner troops to remove the board members succeeded, and I attribute our success largely to the road map provide by Ms. Vanitzian as gleaned through her excellent LA Times articles and books Villa Appalling! and Common Interest Developments—Homeowners Guide published by Westlaw. I studied Davis-Stirling and the corporate codes in and out per Ms. Vanitzian's kind prompting and guidance to the material I would need, and

despite HOA attorneys fear mongering about conducting a special election without a legal presence, we got the job done all of which has been legally documented.

With due respect to Mr. Kelly Richardson's professional expertise which surely surpasses my limited scope, it is entirely inaccurate and even inflammatory to say that Ms. Vanitzian "offers the public no education or suggestions but simply venom." The sinister connotation of the word venom as if to kill or physically harm someone is injurious to Ms. Vanitzian's character as a respected author and columnist; it implies evil intent for which there has been no substantive concrete evidence to substantiate such a pejorative claim. This kind of adversarial approach to solving problems only exacerbates the deep dissatisfaction I and other fellow homeowners have come to hold with regard to how attorneys present themselves as the final arbiters in association matters. Our experience is that such attorneys tend to bond with certain board members and/or management companies who in turn aid themselves and their associated attorneys by complicating governing documents unnecessarily conducting business in an 'us vs. them' agenda, pitting the board, management company and lawyer against homeowners thus fostering an adversarial relationship which benefits only themselves. Our association went through four management companies in a period of seven years after I and others discovered they or their attorneys had not been giving our association proper advice nor were they operating in the best interest of homeowners. None of the managers knew the specifics or details of Davis-Stirling enough to properly guide us thus a few of us wound up studying the codes ourselves to fill the knowledge gap.

In the process we learned not to succumb to the notion that we must rely and depend on managers and lawyers to resolve problems amicably. I did meet one attorney I respected so I do not impugn all HOA lawyers, but I would never approve hiring a lawyer who did not keep an open, objective attitude and the ability to have civil discourse with someone of Ms. Vanitzian's background as she has lived, heard and witnessed enough stories and complaints from homeowners such as myself to know homeowner associations by their very structure have serious flaws. Board members are vastly ignorant of their fiduciary responsibilities, and homeowners are generally too apathetic to care about how the community is governed which is a recipe for conflict, power struggles and outright tyranny over average citizens' day-to-day lives.

Additionally in defense of Ms. Vanitzian's skepticism on laws governing homeowner associations in general, the First Amendment grants private individuals and newspaper columnists the right to express dissenting opinions or criticisms whether one agrees with them or not. It appears to me that the CLRC forum is being used to espouse the personal views and criticisms of such industry representatives as Mr. Hebert and Mr. Richardson at taxpayers' expense. I find this to be a flagrant abuse of the public trust I have as a taxpayer in expecting open debate conducted without ad hominen attacks and personal vendettas against dissenting voices. This abuse should not be allowed to continue. I am surprised at Mr. Richardson's extremely personal attacks against a private individual. It makes me wonder what private agendas are fostered at the California Law Review Commission. I think the CLRC ought to establish policy guidelines that would objectify its responses fairly rather than allow its forum to be a self-serving mechanism for stifling public opinion.

Mr. Brian Hebert, CLRC
The Honorable Edmund G. Brown
February 7, 2014
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That brings me to ask as far as Davis-Stirling, let alone the rewrite is concerned, where are the provisions that protect homeowners from the ill consequences of industry professionals overreaching their authority or violating the rules? The entire code section appears to impose fines, penalties, attorney fees, collection costs and more, all at the homeowner's expense. What additions were made to facilitate the ability of homeowners to seek satisfactory relief against overzealous boards short of having to remove them which we found to be a very complicated drawn out process which took months? Where are the protections for homeowners who have put their life savings into a piece of property they intended to call their home? Without those protections I would have to agree with Ms. Vanitzian's take that these laws are the "Damn Stupid Act," a fitting description and indicative of a system set up primarily to benefit the ruling class of industry lawyers, management companies, and board members gone wild, again something I experienced firsthand and something Messrs. Hebert and Richardson and others of their common professional affiliations don't quite seem to grasp.

By omitting penalties against recalcitrant boards and by giving boards, managers, and attorneys the driver's seat, you disenfranchise owners who paid money to live in their development; as owners we have a financial interest in our properties whereas managers and attorneys have no such financial interest yet are allowed their power through the laws present in the Davis-Stirling Act. The public deserves better. The salaries and pensions Mr. Hebert and CLRC representatives receive at taxpayers' expense should be commensurate with the public good in accordance with the wishes of the majority of homeowners who fund the CLRC and through their taxes pay CLRC's public servants' paychecks. Such commensurate focus of the CLRC and associated industry supporters needs to be redirected to more productive issues vs. the undue negativity unleashed upon our real advocates like Ms. Vanitzian who IS acting in the public's best interest.

Respectfully,

Irene Hoffman

Irene Hoffman

IN Response to CLRC memorandum #2014-9 and all memos following that.

Dear Mr Hebert

I have been following the CLRC for a long time.

I have never seen personal attack by goverment entity like yours against Ms Vanitzian before now. I have to say how disappointed I am about how taxpayer money is Spent.

Your acting worst than Homeowners Association Board of ours. The money you Spent to target one person could have been spent to fill potholes on any Street or replace my HOA roof or pay HOA dues to save peoples homes who could not afford to pay them.

Karen Sarkis

February 8, 2014

The Honorable Edmund G. Brown

Governor of the State of California

ATTN: Camille Wagner

State Capitol, First Floor

Sacramento, CA. 95814

RE: CALIFORNIA LAW REVISION COMMISSION - STUDY H-855 (STAFF MEMORANDUM 2014-9)

Dear Governor Brown,

The "New" Davis-Stirling Act needs to be improved to equalize individual owner's rights.

It now favors the "Franchises" (i.e. H.O.A. Boards of Directors, H.O.A. Management Companies, and their Attorneys) and weakens the rights of the individual condominium owner

It appears that everyone involved in the rewrite and reorganization of this act is so busy congratulating each other, they don't realize that nothing in the nature of a major breakthrough occurred, it was just re-arranging the language - I certainly hope the Commercial and Industrial CID Statute was a better result. Instead of doing some heavy lifting–for instance–making California a "Super Lien" state–they chose the path of least resistance. It seems there is no "political will" to challenge another well entrenched "franchise"–the banks and other mortgage lending institutions in the State of California. As a practical matter, I mentioned the rewrite to a respected condominium management company principal, asking his impression of the effort. The response was "Within the sector (condo management companies) there was nothing earthshaking about the rewrite". The results of this rewrite don't bode well for an individual owner who typically has to cross the threshold of "one size fits all" to get the attention of their Board of Directors. True, Boards are overworked, but a lot has happened since the meltdown of 2008. Many HOA's are struggling with bad debts, as owners who are under water can't afford to pay HOA dues, or worse special assessments. The "one size fits all" might work in standardized complexes–but it definitely does not work in complexes with differences in amenities (views or no views for example) or differences in architecture either in design or elevations. I would like to give you a sample of how the language has changed in the original By-Laws and the proposed By-Laws under the "New" Davis Stirling: (this regards access to the Association's books and records by the individual homeowner): The original paragraph:

Article VIII, Sec. 5: Books and Records: The books, records and papers of the Association shall be kept at the principal place of business of the Association, and shall at all times, during reasonable business hours, be subject to inspection by any member.

Now: For the new "improved" language being proposed under the "new" Davis-Stirling Act: Sec. 12.2 Inspection of the Books and Records.

12.2.1. Member Inspection Rights. Any Member or his or her duly appointed representative may inspect or copy Association books, records and documents as provided by applicable law. Inspection or copying of such documents shall be during reasonable business hours, at the designated offices of the Association, for any purposes reasonably related to the Member's interest. Members shall make a written request on the Association, which request shall state the purpose for which the inspection or

copying rights are requested and the person designated by the Member to inspect and/or copy the records on the Member's behalf, if any.

The Association may charge the requesting Member for its actual, reasonable costs for copying and mailing the requested documents. The Association shall inform the Member of the amount of copying and mailing costs, and the requesting Member shall agree in writing, before sending the requested documents.

The Association may withhold or redact information from the requested documents, if such information is reasonably likely to lead to identity theft or fraud in connection with the Association or any Member, or for any other reason permitted by applicable law.

12.2.2. Director Inspection Rights. Every Director shall have an absolute right at any reasonable time to inspect all books, records, documents, and minutes of the Association, except for Members' Ballots, and the physical properties owned by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents.

12.2.3. Adoption of Reasonable Inspection Rules. The Board of Directors may establish reasonable rules with respect to: (i) notice of inspection; (ii) hours and days of the week when inspection may be made; and (iii) payment of any and all costs of reproducing copies of documents requested by the Member.

The expansion of this section is directed at placing a heavier burden on a Member with a dispute either against the Board or involved in a Common Area dispute with a neighbor – a good example being vandalizing a mature tree in a Common Area to enhance a view at the expense of a neighbor's privacy.

It also permits a Board member accused of "ultra vires" acts (such as vandalizing a mature Common Area tree) access to **confidential records outside of the Board member's dates of service on the Board**, a privilege denied an ordinary Association Member. A Director challenged by Member of "ultra vires" acts should not be allowed access to confidential records outside of their service on the Board, and should be charged for reasonable costs just as the ordinary Member is.

This section should, if indeed it is an attempt to make Association C.C. & R's more understandable and transparent, address the statutory length of time Association records can be accessed by a Member, as indicated in the "California Blue Book". It does not.

Another issue that should be well defined in the C.C. & R's., is that the normal statutes of limitations for acts of vandalism to common area property are waived in cases where the identity of the perpetrator is discovered after the time limits (under the statute of limitations) have expired. In other words, any member of the Association will be held financially accountable for vandalism or other destructive behavior regardless of the time elapsed if positively identified as the perpetrator. The Board of Directors will impose fines and penalties, including interest for offenders. A lien against the offender's condominium will also be filed to ensure compliance/payment. This is a common sense direct solution that can and should be handled under Davis-Stirling.

It appalls me that the Committee is calling on the Los Angeles Times to retract/"correct" the article by Donie Vanitzian (Dec. 29, 2013 – Associations Column). Frankly, the Management Companies, the Associations Boards of Directors and their Attorneys act in concert to suppress the individual rights of the Homeowner, all in the name of administrative efficiency. Ms. Vanitzian is the **ONLY CREDIBLE** source of information available to serve the interests of the ordinary Condominium owner. It is indeed unfortunate that her research budget is so limited. Imagine what she could accomplish if she had 1/10

of your staff/lobbyists/etc! Frankly, if I could offer a meaningful proposal to correct what is missing, it might be a good time to contact Ms. Vanitzian and negotiate a grant with her to get her insights into what the language of a Davis-Stirling Act that is FAIR to all parties should be like.

'Physician–Heal Thyself!' This Committee has much more work to do to make **meaningful** changes to Davis-Stirling. Gentlemen–now it's time for the "heavy lifting" you need to do.

Sincerely,

Michael Bahe

Michael Bahe (Condominium owner since 1974 and former member of an Association Board of Directors)

Cc: Brian Hebert, Executive Director, California Law Revision Commission

Nancy Rivera Brooks, Real Estate Editor, Los Angeles Times

February 6, 2014

Honorable Edward G. Brown
Governor of the State of California
Attn: Camille Wagner
State Capitol First Floor
Sacramento, Ca. 95814

FEB 19 2014

Commissioners – California Law Revision Commission.

Dear Governor Brown and CLRC Commission,

The passing of AB 805, Torres, Common Interest Development Law reorganizing the Davis-Stirling Common Interest Development Act, is a disaster. The California Law Revision Commission scrambling, consolidating and changing the reorganization of the Davis-Stirling Act have made AB-805 so confusing that homeowners cannot find or understand where the Davis-Stirling (1350-1378) codes are located.

We as Senior Citizens of Leisure World/Laguna Wood Village for 29 years, have been very active and vocal regarding California Condominium Laws. We know the Davis-Stirling Act (1350-1378) like the back of our hand and we believe Davis-Stirling Act did not need to be reorganized. What the Davis Stirling Act did need was to have the State Agencies who are paid to <u>enforce</u> California Laws, do their jobs.

We were very disappointed that after six years the California Law Revision Commission and the CID could not come up with a better bill than AB 805. Perhaps it would be smarter for all parties concerned to admit they made a mistake in reorganizing the Davis-Stirling Act and drop bill AB 805 and re-instate the Davis-Stirling Act with some teeth in it for enforcement of this LAW by State Agencies.

The Article written in the L.A. Times by Donie Vanitizian, Dec. 29,2013 was very helpful to homeowners , as she listed several Davis Stirling codes and where these Civil Codes could be found in Sections of AB-805. Mrs. Vanitizian was criticized by CID and CLRC on this Article and we believe they owe her a Public Apology, as this Article hit the nail right on the head and she had a right to give her opinion when asked.

Sincerely yours,

Noni and Corkey Eley
2401 Via Mariposa W. Unit Z-E
Laguna Woods, California 92637

cc: Craig Stevens