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Clerk of the House of Representatives	Secretary of the Senate
Legislative Resource Center	Office of Public Records
B-106 Cannon Building	232 Hart Building
Washington, DC 20515	Washington, DC 20510

SECRETARY OF THE SENA
04 AUG 18 AM 11:31

LOBBYING REPORT

Lobbying Disclosure Act of 1995 (Section 5) - **All Filers Are Required to Complete This Page**

1. Registrant Name
International Council of Shopping Centers

2. Address ☐ Check if different than previously reported
1033 N. Fairfax Street, Ste. 404, Alexandria, VA 22314

3. Principal Place of Business (if different from line 2)

City: State/zip (or Country)

4. Contact Name	Telephone	E-mail (optional)	5. Senate ID #
Judy Laniak	(703) 549-7404	jlaniak@icsc.org	19935-12

7. Client Name ☒ Self — 6. House ID # 19935

TYPE OF REPORT

8. Year 2004 Midyear (January 1-June 30) ☒ **OR** Year End (July 1-Decemb

9. Check if this filing amends a previously filed version of this report ☐

10. Check if this is a Termination Report ☐ ⇨ Termination Date _____ 11. No Lobbying A

INCOME OR EXPENSES - Complete Either Line 12 **OR** Line 13

12. Lobbying Firms

INCOME relating to lobbying activities for this reporting period was:

Less than $10,000 ☐

$10,000 or more ☐ ⇨ $ _____
Income (nearest $20,000)

Provide a good faith estimate, rounded to the nearest $20,000, of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).

13. Organizations

EXPENSES relating to lobbying activities for this reporting period were:

Less than $10,000 ☐

$10,000 or more ☐ ⇨ $ $350,250
Expenses (nearest $20,000)

14. REPORTING METHOD. Check box to indicate expen accounting method. See instructions for description of optio

☒ **Method A.** Reporting amounts using LDA definitions

☐ **Method B.** Reporting amounts under section 6033(b)(Internal Revenue Code

☐ **Method C.** Reporting amounts under section 162(e) of Internal Revenue Code

Signature _____ Date 8/12/04

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

Information Update Page - Complete ONLY where registration information has changed.

20. Client new address

21. Client new principal place of business (if different from line 20)

City State/Zip (or Country)

22. New general description of client's business or activities

LOBBYIST UPDATE

23. Name of each previously reported individual who is **no longer** expected to act as a lobbyist for the client

Herb L. Tyson

ISSUE UPDATE

24. General lobbying issues previously reported that **no longer** pertain

AFFILIATED ORGANIZATIONS

25. Add the following affiliated organization(s)

Name	Address	Principal Place of Bu (city and state or co

26. Name of each previously reported organization that is **no longer** affiliated with the registrant or client

FOREIGN ENTITIES

27. Add the following foreign entities

Name	Address	Principal place of business (city and state or country)	Amount of contribution for lobbying activities

28. Name of each previously reported foreign entity that **no longer** owns, **or** controls, **or** is affiliated with the registra affiliated organization

Signature _____ Date 8/12/04

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the re engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each code,** information as requested. Attach additional page(s) as needed.

15. General issue area code INS (one per page)

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House Of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)
Betsy R. Laird	
Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/12/04

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

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15. General issue area code BNK (one per page)

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House Of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

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15. General issue area code TAX (one per page)

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House Of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

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Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/12/04

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Registrant Name ICSC Client Name SELF

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15. General issue area code CAW (one per page)

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House Of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)
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Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/12/04

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

Registrant Name ICSC Client Name SELF

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15. General issue area code TEC (one per page)

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House Of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)
Betsy R. Laird	
Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

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Registrant Name ICSC Client Name SELF

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15. General issue area code ENV (one per page)

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House Of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)
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Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/12/04

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Registrant Name ICSC Client Name SELF

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15. General issue area code CSP (one per page)

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House Of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)
Betsy R. Laird	
Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/12/04

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Registrant Name ICSC Client Name SELF

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the re engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each code,** information as requested. Attach additional page(s) as needed.

15. General issue area code HOM (one per page)

16. Specific lobbying issues

SEE ATTACHED ISSUE BRIEFS

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House Of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)
Betsy R. Laird	
Kent Jeffreys	
Wayne Mehlman	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/12/04

Printed Name and Title Herb L. Tyson, Staff Vice President, Government Relations

International Council of Shopping Centers

Endangered Species Act

Issue Br

Updated Augus

The Issue:

The Endangered Species Act (ESA) needs to be reformed. It has failed to conserve the species it wa to protect and in the process has wreaked economic havoc and social distress on communities throu our nation.

The ESA has often been used as a tool by no-growth advocates to curtail progress and economic development. The ESA was first enacted in 1973 to protect species believed to be on the brink of extinction. When enacted, 109 species were listed for protection. Today, nearly 1300 species are list while an additional 300 species are proposed, or are candidates, for listing. Only twenty-five specie been "delisted," or removed from the species list, since 1973: Seven because of extinction, twelve b of data errors in the original listing process, and only six officially declared as reaching recovery populations. Further undermining the value of the ESA is the fact that many of the remaining "spec more accurately described as geographically isolated subpopulations of more commonly distributed species.

It is clear that the current ESA does not work. According to the General Accounting Office, more th percent of the species listed under the ESA rely upon private land for some if not all of their habitat GAO also found that ESA review processes regularly exceeded time deadlines and application of th was not consistent among federal offices. In addition, species can be listed without appropriate scie peer review while ignoring available data from commercial or other private sources. It is imperative ESA be reformed to reflect current scientific and economic realities.

Our Position:

ICSC supports legislative initiatives that ensure sound scientific practice plays an integral rol determination of listing and delisting of species and designation of habitat under the ESA. IC endorsed H.R. 1662 introduced by Rep. Greg Walden (R-OR) in the House of Representati companion bill, S. 2009, was introduced in the Senate by Sen. Gordon Smith (R-OR). This le would require the use of peer-reviewed scientific data in making listing and de-listing decisions. IC supports H.R. 2933, introduced by Rep. Dennis Cardoza (D-CA), which would result in an i habitat designation process. Both House bills were approved by the Resources Committee in J Chairman Pombo hopes to attach them to "must-pass" legislation for Congress this fall.

ICSC will continue to advocate for reform of the Endangered Species Act so that landowners are tr equitably. ICSC strives for an efficient and fair system by which a property owner can seek timely for laws and regulations that result in property being taken without compensation or that deny the e benefits of the "highest and best" use of private property.

For more information, contact Kent Jeffreys at 703-549-7404, ext. 223 or kjeffreys@icsc.org.

International Council of Shopping Centers

Wetlands Reform

Issue Bri

Updated May

The Issue:

The environmental importance of the nation's true wetlands is widely known. However, the federal wetlands program in effect today under Section 404 of the Clean Water Act is not the product of a c considered and fully debated legislative policy. Construction permits in wetland areas must be obta through the US Army Corps of Engineers, which otherwise concerns itself with navigable waterway truth, the Clean Water Act is not a wetland protection law; it is a water quality law that has been use attempt to achieve wetland protection, a goal for which it was not designed. In fact, the Supreme Co ruled in January 2001 (*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engine SWANCC*) that the Corps does not have regulatory authority over many isolated waters and wetlanc

Unfortunately, the SWANCC reasoning has not been followed by all federal courts. Despite this confusion, the Supreme Court refused to hear the appeal of a case involving isolated "wetlands" (*De US*). ICSC supported the appeal through a "friend of the court" brief. As a result of this disappoint property owners still may find themselves unexpectedly subject to the Corps' permitting requiremer even minor site improvements.

For most large projects, an "individual permit" is required. Successfully obtaining an individual per expensive and time-consuming. As an alternative, the Corps has developed a range of "Nationwide Permits" or NWPs that can expedite the permit process if a development falls within the scope of a particular NWP. All NWPs are to be reauthorized by March 2007 and ICSC will work with the Cor Congress and our real estate industry partners to expand the coverage of NWPs, particularly NWP 3 NWP 39 covers residential, commercial and institutional real estate development activities. Current be eligible for this permit, projects cannot result in filling or otherwise disturbing more than one hal of wetlands. In addition, a Pre-Construction Notification must be filed with the Corps if the project result in filling of more than 1/10 of an acre of wetlands. Large projects, such as regional malls, are unlikely to qualify under NWP 39.

Our Position:

ICSC stands ready to support any legislative effort that will utilize economic incentives to preserve restore our nation's wetlands. In addition, ICSC opposes any legislation that would expand the defi wetlands or make the permitting process more difficult or more expensive.

For more information, contact Kent Jeffreys at 703-549-7404, ext. 223 or kjeffreys@icsc.org

International Council of Shopping Centers

Terrorism Insurance

Issue Br

Updated Augus

The Issue:

Before September 11, 2001, coverage for acts of terrorism was generally included in a business' property and casualty policy. While "acts of war" have been traditionally excluded from policies, "acts of terrorism" were not. Even Oklahoma City and the 1993 World Trade Center bombings, U.S. insurers did not see the need to offer separate coverag of terrorism. September 11 changed all of that.

Although the insurance industry was able to absorb the estimated $40-$70 billion in damages from the September 1 most reinsurance companies decided, on a prospective basis, to exclude terrorism coverage because of their inability such coverage. As a result, terrorism insurance from primary insurers was either unobtainable (especially for hi properties) or available only at extremely high prices (with high deductibles, liability limits and exclusions).

Without proper terrorism insurance, property owners must bear some or all of the risk of loss from future terrorist attac in turn, could put them in technical default of existing loan agreements, prompting some lenders to "force place" insurance on them. The lack of such coverage also caused some banks to stop financing new projects or refinancin ones (which affects jobs) and some securities-rating firms, such as Moody's, to downgrade certain "high-profile" compa

Our Position:

ICSC and the Coalition to Insure Against Terrorism (CIAT) worked hard to promote the *Terrorism Risk Insurance A* (TRIA) that was signed into law in 2002. This law created a temporary federal "backstop" to better enable insurer affordable terrorism insurance on all commercial properties across the country. TRIA provides for a three-year prog expires at the end of 2005), whereby the federal government would pay 90-percent of terrorism-related insurance cl exceed certain industry-wide and per-company thresholds (up to $100 billion annually). It also gives the Treasury Sec authority to require that the insurance industry and its policyholders repay the government some or all of the ass receives.

In June, at the urging of ICSC and CIAT, Treasury Secretary John Snow extended, until the end of 2005, a key provis program that requires all primary insurers to "make available" terrorism coverage to their policyholders. That rec would have expired at the end of 2004 if it had not been extended by Sept. 1.

Also in June, Representative Pete Sessions (R-TX) introduced legislation, H.R. 4634, that would extend the TRIA pr two years to give the private sector more time to develop an effective alternative to TRIA. In July, Senator Robert B UT) and Representative Michael Capuano (D-MA) introduced S. 2764 and H.R. 4772, respectively, that would extend three years. ICSC urges Congress and the Administration to extend the TRIA program before they adjourn for the year.

Opposing Arguments:

Those who oppose TRIA's extension assert that it was designed to be a temporary program and that extending it o justify additional extensions. ICSC's response: TRIA needs to be extended to give the private sector more time t feasible alternative and to prevent economic disruption. We are hopeful that such an alternative will be developed soo eliminating the need for any further extensions.

They also argue that TRIA should not be extended since it is a bailout for the insurance industry. ICSC response: TRIA, most insurers will not offer terrorism insurance, which in turn would negatively affect their policyholders. Eve federal backstop, insurers are at great financial risk in the event of another terrorist attack and can be required to rein government for any financial assistance it receives.

For more information, contact Wayne Mehlman at 703-549-7404, ext. 225 or wmehlman@icsc.org

International Council of Shopping Centers

Sales Tax Equality

Issue Br

Updated Augus

The Issue:

Over the years, Congress and the courts have addressed whether states should be able to require out-of-state mail-orde to collect sales taxes. In 1992, the Supreme Court in *Quill v. North Dakota*, held that a state could not require a remote collect sales or use tax on its behalf unless that merchant had a physical presence (or "nexus") in that state. The Co would be too burdensome on retailers if they were required to collect sales taxes for hundreds of states and localities country. However, it also said that Congress could address this issue in the future.

The recent explosion of e-commerce brings a new focus and sense of urgency to this issue. The Internet marketplace expanding, yet it remains mostly free from sales tax collection. Furthermore, many states and localities are experienci deficits – which may result in higher business taxes and/or reduced governmental services (such as police and fire prote education). According to estimates prepared by the University of Tennessee's Center for Business and Economic R July 2004, states and localities lost between $15.5 and $16.1 billion in sales and use taxes from Internet sales in 200 projected to lose between $19.2 and $26.6 billion in 2006 and between $21.5 and 33.7 billion in 2008.

Our Position:

ICSC and the e-Fairness Coalition believe that tax policy should be consistent and equitable for all forms of consumer – whether they take place in shopping centers, via mail order or over the Internet. Internet retailers should not rec advantage at the expense of traditional retailers and state and local governments. The current dilemma facing Congr whether it should raise taxes, but whether it should allow states to require out-of-states merchants to collect currently c taxes on e-commerce purchases.

ICSC, therefore, strongly supports the *Streamlined Sales and Use Tax Act* (S. 1736, H.R. 3184). Introduced by Sena Enzi (R-WY) and Byron Dorgan (D-ND) and Representatives Ernest Istook (R-OK) and William Delahunt (D-M bipartisan bills would give those states that simplify their sales and use tax systems the authority to require out-of-stat to collect such taxes on their behalf. ICSC urges members of Congress to co-sponsor and enact this important legislatic

In order to demonstrate to Congress that they are taking measures to simplify their sales tax systems, 20 states ha enacted legislation that conforms their sales and use tax laws with a *Streamlined Sales and Use Tax Agreement*. This compact, which is voluntary to retailers, takes effect once ten states representing at least 20% of the U.S. populat conforming legislation. Although the 20% threshold appears to have been reached, it is unclear if the requirement ha been met since three states (MN, TX, WA) are either not in full compliance or have delayed effective dates.

Opposing Arguments:

Our opponents claim that allowing states to collect remote sales taxes is equivalent to raising taxes. ICSC's response and H.R. 3184 would not create or raise taxes – it would simply allow states to collect existing sales and use taxe already owed to them but remain uncollected.

They also argue that it would be too costly and burdensome to require remote retailers to collect sales taxes for other localities. ICSC's response: There is inexpensive software available that easily determines and remits the amoun owed to taxing jurisdictions all across the country. S. 1736 and H.R. 3184 would also exempt small businesses from collect.

For more information, contact Wayne Mehlman at 703-549-7404, ext. 225 or wmehlman@icsc.org

International Council of Shopping Centers

Bankruptcy Reform

Issue Br

Updated June

The Issue:

An increasing number of solvent companies have been filing for bankruptcy protection under Chapter 11 of the Bankru in order to restructure themselves and shed unprofitable stores. To make matters worse, many judges are giving bank tenants unreasonably long periods of time to decide whether they want to assume or reject their leases – while their st remain vacant. As a result, many shopping center owners are losing control over their own properties, customer traffic centers is down, and neighboring tenants are losing business (which can affect their leases). In addition, some bankru are being allowed to assign their leases to other retailers whose operations clearly violate "use" and other important clau original lease.

Our Position:

ICSC strongly supports the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2003* (H.R. 975) w introduced by House Judiciary Committee Chairman James Sensenbrenner (R-WI). H.R. 975 addresses several issues to the shopping center industry, including those relating to:

(1) The amount of time a bankrupt tenant has to assume or reject its leases. The bill would give retailers 120 days to decide, plus another 90 days "for cause," plus additional time if agreed to by the landlord;
(2) The adherence of "use" and other lease provisions upon assignment;
(3) Greater access to creditors' committees;
(4) The administrative priority of rents due under leases that are assumed and later rejected; and
(5) The curing of certain non-monetary defaults before a lease can be assumed and assigned.

The House passed H.R. 975 in March 2003 by a 315-113 vote, and later attached it to a smaller Senate-passed farm b bill (S. 1920) in January 2004. The House has named conferees, however, the Senate has not done so. ICSC urges the advance S. 1920 / H.R. 975 immediately so it can be enacted this year.

In a favorable development to our industry, the U.S. Court of Appeals (4th Circuit) in April 2004 overruled a U.S. Distri and held that the "use" clause that West Town Center (Chicago) and Trak Auto originally entered into must be adhered assignment in bankruptcy. Trak Auto wanted to assign its lease to an apparel retailer, but the Court denied its motion a stressed the importance of the Center's "tenant mix". ICSC filed amicus briefs in support of West Town Center in both This decision contradicts a 3rd Circuit Court ruling that allowed Rickel Home Centers to assign one of its leases to a ret direct violation of its "use" clause.

Opposing Argument:

Some retailers and trustees argue that they need more time than what H.R. 975 would allow to decide which leases they assume and which ones they should reject. ICSC's response: Most retailers have control over when they file for bankr know (at the time of filing) which stores are profitable (leases they should assume) and which ones are not (leases they reject). Furthermore, unlike most vendors, shopping center owners are compelled creditors and can not rent out a vaca until the retailer officially rejects the lease (which often takes many months or years).

For more information, contact Wayne Mehlman at 703-549-7404, ext. 225 or wmehlman@icsc.org.

International Council of Shopping Centers

ADA Notification Act

Issue Br

Updated Augus

The Issue:

The intent and spirit of the *Americans with Disabilities Act of 1990* is unfortunately being abused by a number of unscrupulous attorneys who are filing, or threatening to file, lawsuits against property owners f access violations. These attorneys have created a cottage industry of inspecting various shopping centers, st restaurants in order to locate minor, easily-correctable ADA infractions, such as those relating to parking lo and signs, bathroom dispensers, ramps and braille signage.

While most provisions of the Act require a plaintiff to notify and provide the owner an opportunity to c alleged violation(s) before a lawsuit can go forward, the section of the Act relating to public access t property does not contain such notice or opportunity to correct. Taking advantage of this loophole, some a (without giving property owners an opportunity to fix the alleged violations) are filing, or threatening to file, that usually lead to cash settlements – since the owners want to avoid the time, expense and hassle of litiga the potential negative publicity associated with it. To make matters worse, many of these owners thou properties were ADA-compliant based on assurances by state or local inspectors and/or outside consultants.

The Supreme Court, in *Buckhannon v. West Virginia Dept. of Health and Human Resources* (2001), he business is not liable for attorneys' fees if it voluntarily corrects an ADA violation before the case gets Despite this ruling, federal legislation is still needed to thwart the filing of minor ADA access cases.

Our Position:

ICSC and a coalition of other business groups support legislation introduced by Representative Mark Foley the *ADA Notification Act* (H.R. 728) – that would give property owners 90 days to fix an alleged AD violation after they have been notified before a related lawsuit can proceed in court. We believe H.R. 72 significantly curtail these abusive cases, while at the same time preserve the rights of the disabled co Although H.R. 728 is unlikely to advance in Congress this election year, we still urge our members to Representatives to cosponsor this important legislation.

In the meantime, ICSC recommends that its members take appropriate measures to comply with Federal, local ADA access laws in order to better serve the disabled community and to reduce the risk of related laws

Opposing Argument:

Some disabled rights advocates say that property owners should not be given additional time to correct alleg violations since they have had over a decade to bring their properties into compliance with existing ADA law ICSC's response: Most owners are unaware that their properties contain minor ADA violations since they h passed state or local inspections. It is only fair that property owners be given a reasonable time to correct su violations after being notified without being taken to court or having to pay legal fees to unscrupulous attorn drop the case.

For more information, contact Wayne Mehlman at 703-549-7404, ext. 225.