

AMENDED IN SENATE JUNE 25, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 728

Introduced by Assembly Member Leno

February 19, 2003

An act to amend Sections 11000.1 and 11018.12 of the Business and Professions Code, to amend Section 1675 of the Civil Code, and to amend Sections 66427 and 66452.4 of the Government Code, relating to subdivided lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 728, as amended, Leno. Real estate: subdivisions.

(1) Existing law provides for the regulation of real estate transactions, including subdivided lands transactions and defines “subdivided lands” and “subdivision” for these purposes with the exception of undivided interests that meet specified conditions. Existing law also defines “subdivided lands” and “subdivision” to include, among other things, any condominium project containing 5 or more condominiums, as defined, and authorizes the Real Estate Commissioner to issue a conditional public report when “subdivided lands” or a “subdivision” are offered for sale to the public and specified requirements are met.

This bill would make a clarifying change to these provisions and would extend the term of a conditional public report from 6 months to 3 years and a term of renewal from one additional term to additional terms of 6 months each, as specified.

(2) Existing law provides that a provision for the payment of liquidated damages in a contract to purchase and sell residential property is valid if the amount actually paid by a buyer who fails to complete the purchase of the property does not exceed 3% of the contract price unless the buyer establishes that the amount is unreasonable. If the amount actually paid exceeds 3% of the purchase price, the provision is invalid unless the party seeking to uphold the provision establishes that the amount actually paid is reasonable.

This bill would ~~delete these provisions and instead~~ provide that *for the initial sale of a newly constructed condominium*, the amount actually paid pursuant to a liquidated damages provision is valid to the extent that payment is actually made unless the buyer establishes that the amount is unreasonable as liquidated damages.

(3) The Subdivision Map Act provides that a governing body may not, among other things, refuse approval of a parcel, tentative, or final map of a condominium project on account of the design or the location of buildings on the property shown on the map that are not violative of local ordinances.

This bill would in addition provide that a governing body may not refuse approval of a parcel, tentative, or final map of a condominium project on account of the absence of a condominium plan or plans, as defined.

(4) The Subdivision Map Act requires that a tentative map is deemed to be validly approved if no action is taken upon a tentative map by an authorized advisory agency or the legislative body of a city or county to approve, conditionally approve, or disapprove the tentative map within the time limits specified in the act, and the tentative map complies with applicable requirements of the act and local ordinances enacted pursuant to the act.

This bill would require that a subdivider whose subdivision is deemed approved pursuant to these provisions is entitled, upon request of the local agency or the legislative body, to receive a written certification of approval. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11000.1 of the Business and Professions
2 Code is amended to read:

3 11000.1. (a) “Subdivided lands” and “subdivision,” as
4 defined by Sections 11000 and 11004.5, also include improved or
5 unimproved land or lands, a lot or lots, or a parcel or parcels, of
6 any size, in which, for the purpose of sale or lease or financing,
7 whether immediate or future, five or more undivided interests are
8 created or are proposed to be created.

9 (b) This section does not apply to the creation or proposed
10 creation of undivided interests in land if any one of the following
11 conditions exists:

12 (1) The undivided interests are held or to be held by persons
13 related one to the other by blood or marriage.

14 (2) The undivided interests are to be purchased and owned
15 solely by persons who present evidence satisfactory to the Real
16 Estate Commissioner that they are knowledgeable and
17 experienced investors who comprehend the nature and extent of
18 the risks involved in the ownership of these interests. The Real
19 Estate Commissioner shall grant an exemption from this part if the
20 undivided interests are to be purchased by no more than 10
21 persons, each of whom furnishes a signed statement to the
22 commissioner that he or she (1) is fully informed concerning the
23 real property to be acquired and his or her interest therein including
24 the risks involved in ownership of undivided interests, and (2) is
25 purchasing the interest or interests for his or her own account and
26 with no present intention to resell or otherwise dispose of the
27 interest for value, and (3) expressly waives protections afforded to
28 a purchaser by this part.

29 (3) The undivided interests are created as the result of a
30 foreclosure sale.

31 (4) The undivided interests are created by a valid order or
32 decree of a court.

33 (5) The offering and sale of the undivided interests have been
34 expressly qualified by the issuance of a permit from the
35 Commissioner of Corporations pursuant to the Corporate



1 Securities Law of 1968 (Division 1 (commencing with Section
2 25000) of Title 4 of the Corporations Code).

3 (6) The real property is offered for sale as a time-share project
4 as defined in Section 11003.5.

5 SEC. 2. Section 11018.12 of the Business and Professions
6 Code is amended to read:

7 11018.12. (a) The commissioner may issue a conditional
8 public report for a subdivision specified in Section 11004.5 if the
9 requirements of subdivision (e) are met, all deficiencies and
10 substantive inadequacies in the documents that are required to
11 make an application for a final public report for the subdivision
12 substantially complete have been corrected, the material elements
13 of the setup of the offering to be made under the authority of the
14 conditional public report have been established, and all
15 requirements for the issuance of a public report set forth in the
16 regulations of the commissioner have been satisfied, except for
17 one or more of the following requirements, as applicable:

18 (1) A final map has not been recorded.

19 (2) A condominium plan pursuant to subdivision (e) of Section
20 1351 of the Civil Code has not been recorded.

21 (3) A declaration of covenants, conditions, and restrictions
22 pursuant to Section 1353 of the Civil Code has not been recorded.

23 (4) A declaration of annexation has not been recorded.

24 (5) A recorded subordination of existing liens to the declaration
25 of covenants, conditions, and restrictions or declaration of
26 annexation, or escrow instructions to effect recordation prior to the
27 first sale, are lacking.

28 (6) Filed articles of incorporation are lacking.

29 (7) A current preliminary report of a licensed title insurance
30 company issued after filing of the final map and recording of the
31 declaration covering all subdivision interests to be included in the
32 public report has not been provided.

33 (8) Other requirements the commissioner determines are likely
34 to be timely satisfied by the applicant, notwithstanding the fact that
35 the failure to meet these requirements makes the application
36 qualitatively incomplete.

37 (b) The commissioner may issue a conditional public report for
38 a subdivision not referred to or specified in Section 11000.1 or
39 11004.5 if the requirements of subdivision (e) are met, all
40 deficiencies and substantive inadequacies in the documents that



1 are required to make an application for a final public report for the
2 subdivision substantially complete have been corrected, the
3 material elements of the setup of the offering to be made under the
4 authority of the conditional public report have been established,
5 and all requirements for issuance of a public report set forth in the
6 regulations of the commissioner have been satisfied, except for
7 one or more of the following requirements, as applicable:

8 (1) A final map has not been recorded.

9 (2) A declaration of covenants, conditions, and restrictions has
10 not been recorded.

11 (3) A current preliminary report of a licensed title insurance
12 company issued after filing of the final map and recording of the
13 declaration covering all subdivision interests to be included in the
14 public report has not been provided.

15 (4) Other requirements the commissioner determines are likely
16 to be timely satisfied by the applicant, notwithstanding the fact that
17 the failure to meet these requirements makes the application
18 qualitatively incomplete.

19 (c) A decision by the commissioner to not issue a conditional
20 public report shall be noticed in writing to the applicant within five
21 business days and that notice shall specifically state the reasons
22 why the report is not being issued.

23 (d) Notwithstanding the provisions of Section 11018.2, a
24 person may sell or lease, or offer for sale or lease, lots or parcels
25 in a subdivision pursuant to a conditional public report if, as a
26 condition of the sale or lease or offer for sale or lease, delivery of
27 legal title or other interest contracted for will not take place until
28 issuance of a public report and provided that the requirements of
29 subdivision (e) are met.

30 (e) (1) Evidence shall be supplied that all purchase money will
31 be deposited in compliance with ~~subdivision (a) of~~ Section
32 11013.2 or ~~subdivision (a) of~~ Section 11013.4, and in the case of
33 a subdivision referred to in subdivision (a) of this section, evidence
34 shall be given of compliance with paragraphs (1) and (2) of
35 subdivision (a) of Section 11018.5.

36 (2) A description of the nature of the transaction shall be
37 supplied.

38 (3) Provision shall be made for the return of the entire sum of
39 money paid or advanced by the purchaser if a subdivision public
40 report has not been issued ~~within six months of the date of issuance~~



1 *during the term* of the conditional public report, *or as extended*,
2 or the purchaser is dissatisfied with the public report because of a
3 change pursuant to Section 11012.

4 (f) A subdivider, principal, or his or her agent shall provide a
5 prospective purchaser a copy of the conditional public report and
6 a written statement including all of the following:

7 (1) Specification of the information required for issuance of a
8 public report.

9 (2) Specification of the information required in the public
10 report that is not available in the conditional public report, along
11 with a statement of the reasons why that information is not
12 available at the time of issuance of the conditional public report.

13 (3) A statement that no person acting as a principal or agent
14 shall sell or lease, or offer for sale or lease, lots or parcels in a
15 subdivision for which a conditional public report has been issued
16 except as provided in this article.

17 (4) Specification of the requirements of subdivision (e).

18 (g) The prospective purchaser shall sign a receipt that he or she
19 has received and has read the conditional public report and the
20 written statement provided pursuant to subdivision (f).

21 (h) The term of a conditional public report shall not exceed
22 three years, and may be renewed for additional terms of six months
23 each if the commissioner determines that the requirements for
24 issuance of a public report are likely to be satisfied during the
25 renewal term.

26 ~~SEC. 3.—Section 1675 of the Civil Code is amended to read:~~

27 ~~1675.—(a) As used in this section, “residential property”~~
28 ~~means real property primarily consisting of a dwelling that meets~~
29 ~~both of the following requirements:~~

30 ~~(1) The dwelling contains not more than four residential units.~~

31 ~~(2) At the time the contract to purchase and sell the property is~~
32 ~~made, the buyer intends to occupy the dwelling or one of its units~~
33 ~~as his residence.~~

34 ~~(b) A provision in a contract to purchase and sell residential~~
35 ~~property that provides that all or any part of a payment made by~~
36 ~~the buyer shall constitute liquidated damages to the seller upon the~~
37 ~~buyer’s failure to complete the purchase of the property is valid to~~
38 ~~the extent that payment in the form of cash or check, including a~~
39 ~~postdated check, is actually made if the provision satisfies the~~



1 requirements of Sections 1677 and 1678 and subdivision (c) of this
2 section.

3 ~~(c) The amount actually paid pursuant to the liquidated
4 damages provision is valid to the extent that payment is actually
5 made unless the buyer establishes that the amount is unreasonable
6 as liquidated damages.~~

7 ~~(d) For the purposes of subdivision (c), the reasonableness of
8 an amount actually paid as liquidated damages shall be determined
9 by taking into account both of the following:~~

10 ~~(1) The circumstances existing at the time the contract was
11 made.~~

12 ~~(2) The price and other terms and circumstances of any
13 subsequent sale or contract to sell and purchase the same property
14 if such sale or contract is made within six months of the buyer's
15 default.~~

16 *SEC. 3. Section 1675 of the Civil Code is amended to read:*

17 1675. (a) As used in this section, "residential property"
18 means real property primarily consisting of a dwelling that meets
19 both of the following requirements:

20 (1) The dwelling contains not more than four residential units.

21 (2) At the time the contract to purchase and sell the property is
22 made, the buyer intends to occupy the dwelling or one of its units
23 as his *or her* residence.

24 (b) A provision in a contract to purchase and sell residential
25 property ~~which~~ *that* provides that all or any part of a payment made
26 by the buyer shall constitute liquidated damages to the seller upon
27 the buyer's failure to complete the purchase of the property is valid
28 to the extent that payment in the form of cash or check, including
29 a postdated check, is actually made if the provision satisfies the
30 requirements of Sections 1677 and 1678 and ~~of either~~ *either* subdivision
31 (c) or (d) of this section.

32 (c) If the amount actually paid pursuant to the liquidated
33 damages provision does not exceed 3 percent of the purchase price,
34 the provision is valid to the extent that payment is actually made
35 unless the buyer establishes that ~~such~~ *the* amount is unreasonable
36 as liquidated damages.

37 (d) If the amount actually paid pursuant to the liquidated
38 damages provision exceeds 3 percent of the purchase price, the
39 provision is invalid unless the party seeking to uphold the



1 provision establishes that the amount actually paid is reasonable
2 as liquidated damages.

3 (e) For the purposes of subdivisions (c) and (d), the
4 reasonableness of an amount actually paid as liquidated damages
5 shall be determined by taking into account both of the following:

6 (1) The circumstances existing at the time the contract was
7 made.

8 (2) The price and other terms and circumstances of any
9 subsequent sale or contract to sell and purchase the same property
10 if ~~such~~ the sale or contract is made within six months of the buyer's
11 default.

12 (f) *Notwithstanding either subdivision (c) or (d), for the initial*
13 *sale of a newly constructed condominium, as defined pursuant to*
14 *Section 783, the amount actually paid pursuant to the liquidated*
15 *damages provision is valid to the extent that payment is actually*
16 *made unless the buyer establishes that the amount is unreasonable.*

17 SEC. 4. Section 66427 of the Government Code is amended
18 to read:

19 66427. (a) A map of a condominium project, a community
20 apartment project, or of the conversion of five or more existing
21 dwelling units to a stock cooperative project need not show the
22 buildings or the manner in which the buildings or the airspace
23 above the property shown on the map are to be divided, nor shall
24 the governing body have the right to refuse approval of a parcel,
25 tentative, or final map of the project on account of the design or
26 the location of buildings on the property shown on the map that are
27 not violative of local ordinances or on account of the manner in
28 which airspace is to be divided in conveying the condominium.

29 (b) A map need not include a condominium plan or plans, as
30 defined in subdivision (e) of Section 1351 of the Civil Code, and
31 the governing body may not refuse approval of a parcel, tentative,
32 or final map of the project on account of the absence of a
33 condominium plan.

34 (c) Fees and lot design requirements shall be computed and
35 imposed with respect to those maps on the basis of parcels or lots
36 of the surface of the land shown thereon as included in the project.

37 (d) Nothing herein shall be deemed to limit the power of the
38 legislative body to regulate the design or location of buildings in
39 a project by or pursuant to local ordinances.



1 (e) If the governing body has approved a parcel map or final
2 map for the establishment of condominiums on property pursuant
3 to the requirements of this division, the separation of a
4 three-dimensional portion or portions of the property from the
5 remainder of the property or the division of that three-dimensional
6 portion or portions into condominiums shall not constitute a
7 further subdivision as defined in Section 66424, provided each of
8 the following conditions has been satisfied:

9 (1) The total number of condominiums established is not
10 increased above the number authorized by the local agency in
11 approving the parcel map or final map.

12 (2) A perpetual estate or an estate for years in the remainder of
13 the property is held by the condominium owners in undivided
14 interests in common, or by an association as defined in subdivision
15 (a) of Section 1351 of the Civil Code, and the duration of the estate
16 in the remainder of the property is the same as the duration of the
17 estate in the condominiums.

18 (3) The three-dimensional portion or portions of property are
19 described on a condominium plan or plans, as defined in
20 subdivision (e) of Section 1351 of the Civil Code.

21 SEC. 5. Section 66452.4 of the Government Code is amended
22 to read:

23 66452.4. (a) If no action is taken upon a tentative map by an
24 advisory agency that is authorized by local ordinance to approve,
25 conditionally approve, or disapprove the tentative map or by the
26 legislative body within the time limits specified in this chapter or
27 any authorized extension thereof, the tentative map as filed, shall
28 be deemed to be approved, insofar as it complies with other
29 applicable requirements of this division and any local ordinances,
30 and it shall be the duty of the clerk of the legislative body to certify
31 or state his or her approval.

32 (b) Once a tentative map is deemed approved pursuant to
33 subdivision (a), a subdivider shall be entitled, upon request of the
34 local agency or the legislative body, to receive a written
35 certification of approval.

36 SEC. 6. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 a local agency or school district has the authority to levy service
39 charges, fees, or assessments sufficient to pay for the program or



- 1 level of service mandated by this act, within the meaning of
- 2 Section 17556 of the Government Code.

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