

AMENDED IN SENATE JUNE 28, 2004

AMENDED IN SENATE JUNE 15, 2004

AMENDED IN SENATE JUNE 1, 2004

AMENDED IN ASSEMBLY MAY 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1836

Introduced by Assembly Member Harman

January 22, 2004

An act to amend Sections 1354 ~~and~~, 1357.120, *and* 1367.1 of, to amend and renumber Section 1368.4 of, and to add Article 5 (commencing with Section 1363.810) to Chapter 4 of, and Article 1 (commencing with Section 1368.3) and Article 2 (commencing with Section 1369.510) to Chapter 7 of, Title 6 of Part 4 of Division 2 of, the Civil Code, and to repeal Section 383 of the Code of Civil Procedure, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1836, as amended, Harman. Common interest developments: dispute resolution.

Existing law provides that a common interest development association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings, in various circumstances, including enforcement of the governing documents. The ~~existing~~ Davis-Stirling Common Interest Development Act requires, before a common interest development association or an owner of a separate interest therein brings certain

actions related to the enforcement of the development's governing documents, that the parties endeavor to submit their dispute to alternative dispute resolution, as specified. Existing law defines and regulates operating rules in connection with common interest development associations and applies them to association procedures for resolution of assessment disputes.

This bill would revise and recast the provisions described above relating to dispute resolution. The bill would specify that a common interest development association and an owner of a separate interest may enforce governing documents other than the declaration. The bill would create a new dispute resolution procedure for conflicts between an association and a member, to be applied when the dispute concerns specified subjects. The bill would require an association to provide a fair, reasonable, and expeditious procedure for resolving these disputes, as defined by certain minimum standards, and would provide a procedure for associations that do not have a procedure of their own that meets the minimum standards, among them that the member not be charged a fee to participate in the process. The bill would also require that the association provide notice of its dispute resolution process, as specified.

~~The~~

This bill would revise the existing dispute resolution provisions, described above, to clarify their application to other nonjudicial processes and to broaden their applicability to include actions enforcing the Davis-Stirling Common Interest Development Act and the Nonprofit Mutual Benefit Corporation Law. Among other things, the bill would also provide for the tolling of a statute of limitations in certain circumstances, expand the permissible methods of service of a request to submit a dispute to the resolution process, and change the confidentiality protections applied to these procedures. ~~This~~ *The* bill would require that a common interest development association's procedures for the resolution of all disputes, not only those related to assessments, satisfy requirements regarding association operating rules. The bill would make additional technical and conforming changes.

The bill would incorporate additional changes in Section 1357.120 of the Civil Code proposed by AB 2376 that would become operative only if AB 2376 and this bill are both chaptered and become effective on or before January 1, 2005, and this bill is chaptered last.



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

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

1 SECTION 1. Section 1354 of the Civil Code is amended to
2 read:

3 1354. (a) The covenants and restrictions in the declaration
4 shall be enforceable equitable servitudes, unless unreasonable,
5 and shall inure to the benefit of and bind all owners of separate
6 interests in the development. Unless the declaration states
7 otherwise, these servitudes may be enforced by any owner of a
8 separate interest or by the association, or by both.

9 (b) A governing document other than the declaration may be
10 enforced by the association against an owner of a separate interest
11 or by an owner of a separate interest against the association.

12 (c) In an action to enforce the governing documents, the
13 prevailing party shall be awarded reasonable attorney's fees and
14 costs.

15 SEC. 2. Section 1357.120 of the Civil Code is amended to
16 read:

17 1357.120. (a) Sections 1357.130 and 1357.140 only apply to
18 an operating rule that relates to one or more of the following
19 subjects:

20 (1) Use of the common area or of an exclusive use common
21 area.

22 (2) Use of a separate interest, including any aesthetic or
23 architectural standards that govern alteration of a separate interest.

24 (3) Member discipline, including any schedule of monetary
25 penalties for violation of the governing documents and any
26 procedure for the imposition of penalties.

27 (4) Any standards for delinquent assessment payment plans.

28 (5) Any procedures adopted by the association for resolution of
29 disputes.

30 (b) Sections 1357.130 and 1357.140 do not apply to the
31 following actions by the board of directors of an association:

32 (1) A decision regarding maintenance of the common area.

33 (2) A decision on a specific matter that is not intended to apply
34 generally.



1 (3) A decision setting the amount of a regular or special
2 assessment.

3 (4) A rule change that is required by law, if the board of
4 directors has no discretion as to the substantive effect of the rule
5 change.

6 (5) Issuance of a document that merely repeats existing law or
7 the governing documents.

8 *SEC. 2.5. Section 1357.120 of the Civil Code is amended to*
9 *read:*

10 1357.120. (a) Sections 1357.130 and 1357.140 only apply to
11 an operating rule that relates to one or more of the following
12 subjects:

13 (1) Use of the common area or of an exclusive use common
14 area.

15 (2) Use of a separate interest, including any aesthetic or
16 architectural standards that govern alteration of a separate interest.

17 (3) Member discipline, including any schedule of monetary
18 penalties for violation of the governing documents and any
19 procedure for the imposition of penalties.

20 (4) Any standards for delinquent assessment payment plans.

21 (5) Any procedures adopted by the association for resolution of
22 assessment disputes.

23 (6) *Any procedures for reviewing and approving or*
24 *disapproving a proposed physical change to a member's separate*
25 *interest or to the common area.*

26 (b) Sections 1357.130 and 1357.140 do not apply to the
27 following actions by the board of directors of an association:

28 (1) A decision regarding maintenance of the common area.

29 (2) A decision on a specific matter that is not intended to apply
30 generally.

31 (3) A decision setting the amount of a regular or special
32 assessment.

33 (4) A rule change that is required by law, if the board of
34 directors has no discretion as to the substantive effect of the rule
35 change.

36 (5) Issuance of a document that merely repeats existing law or
37 the governing documents.

38 *SEC. 3. Article 5 (commencing with Section 1363.810) is*
39 *added to Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil*
40 *Code, to read:*



1 Article 5. Dispute Resolution Procedure

2
3 1363.810. (a) This article applies to a dispute between an
4 association and a member involving their rights, duties, or
5 liabilities under this title, under the Nonprofit Mutual Benefit
6 Corporation Law (Part 3 (commencing with Section 7110) of
7 Division 2 of Title 1 of the Corporations Code), or under the
8 governing documents of the common interest development or
9 association.

10 (b) This article supplements, and does not replace, Article 2
11 (commencing with Section 1369.510) of Chapter 7, relating to
12 alternative dispute resolution as a prerequisite to an enforcement
13 action.

14 1363.820. (a) An association shall provide a fair, reasonable,
15 and expeditious procedure for resolving a dispute within the scope
16 of this article.

17 (b) In developing a procedure pursuant to this article, an
18 association shall make *maximum*, reasonable use of available local
19 dispute resolution programs involving a neutral third party,
20 including low-cost mediation programs such as those listed on the
21 Internet Web sites of the Department of Consumer Affairs and the
22 United States Department of Housing and Urban Development.

23 (c) If an association does not provide a fair, reasonable, and
24 expeditious procedure for resolving a dispute within the scope of
25 this article, the procedure provided in Section 1363.840 applies
26 and satisfies the requirement of subdivision (a).

27 1363.830. A fair, reasonable, and expeditious dispute
28 resolution procedure shall at a minimum satisfy all of the
29 following requirements:

30 (a) The procedure may be invoked by either party to the
31 dispute. A request invoking the procedure shall be in writing.

32 (b) The procedure shall provide for prompt deadlines. The
33 procedure shall state the maximum time for the association to act
34 on a request invoking the procedure.

35 (c) If the procedure is invoked by a member, the association
36 shall participate in the procedure.

37 (d) If the procedure is invoked by the association, the member
38 may elect not to participate in the procedure. If the member
39 participates but the dispute is resolved other than by agreement of



1 the member, the member shall have a right of appeal to the
2 association's board of directors.

3 (e) A resolution of a dispute pursuant to the procedure, that is
4 not in conflict with the law or the governing documents, binds the
5 association and is judicially enforceable. An agreement reached
6 pursuant to the procedure, that is not in conflict with the law or the
7 governing documents, binds the parties and is judicially
8 enforceable.

9 (f) The procedure shall provide a means by which the member
10 and the association may explain their positions.

11 (g) A member of the association shall not be charged a fee to
12 participate in the process.

13 1363.840. (a) This section applies in an association that does
14 not otherwise provide a fair, reasonable, and expeditious dispute
15 resolution procedure. The procedure provided in this section is
16 fair, reasonable, and expeditious, within the meaning of this
17 article.

18 (b) Either party to a dispute within the scope of this article may
19 invoke the following procedure:

20 (1) The party may request the other party to meet and confer in
21 an effort to resolve the dispute. The request shall be in writing.

22 (2) A member of an association may refuse a request to meet
23 and confer. The association may not refuse a request to meet and
24 confer.

25 (3) The association's board of directors shall designate a
26 member of the board to meet and confer.

27 (4) The parties shall meet promptly at a mutually convenient
28 time and place, explain their positions to each other, and confer in
29 good faith in an effort to resolve the dispute.

30 (5) A resolution of the dispute agreed to by the parties shall be
31 memorialized in writing and signed by the parties, including the
32 board designee on behalf of the association.

33 (c) An agreement reached under this section binds the parties
34 and is judicially enforceable if both of the following conditions are
35 satisfied:

36 (1) The agreement is not in conflict with law or the governing
37 documents of the common interest development or association.

38 (2) The agreement is either consistent with the authority
39 granted by the board of directors to its designee or the agreement
40 is ratified by the board of directors.



1 (d) A member of the association may not be charged a fee to
2 participate in the process.

3 ~~SEC. 4. Section 1363.850 is added to the Civil Code, to read:~~
4 1363.850. The notice provided pursuant to Section 1369.590
5 shall include a description of the internal dispute resolution
6 process provided pursuant to this article.

7 ~~SEC. 5.~~

8 *SEC. 4. Section 1367.1 of the Civil Code is amended to read:*

9 1367.1. (a) A regular or special assessment and any late
10 charges, reasonable fees and costs of collection, reasonable
11 attorney's fees, if any, and interest, if any, as determined in
12 accordance with Section 1366, shall be a debt of the owner of the
13 separate interest at the time the assessment or other sums are
14 levied. At least 30 days prior to recording a lien upon the separate
15 interest of the owner of record to collect a debt that is past due
16 under this subdivision, the association shall notify the owner of
17 record in writing by certified mail of the following:

18 (1) A general description of the collection and lien enforcement
19 procedures of the association and the method of calculation of the
20 amount, a statement that the owner of the separate interest has the
21 right to inspect the association records, pursuant to Section 8333
22 of the Corporations Code, and the following statement in 14-point
23 boldface type, if printed, or in capital letters, if typed:
24 "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS
25 PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND
26 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT
27 COURT ACTION".

28 (2) An itemized statement of the charges owed by the owner,
29 including items on the statement which indicate the amount of any
30 delinquent assessments, the fees and reasonable costs of
31 collection, reasonable attorney's fees, any late charges, and
32 interest, if any.

33 (3) A statement that the owner shall not be liable to pay the
34 charges, interest, and costs of collection, if it is determined the
35 assessment was paid on time to the association.

36 (4) The right to request a meeting with the board as provided
37 by subdivision (c).

38 (b) Any payments made by the owner of a separate interest
39 toward the debt set forth, as required in subdivision (a), shall first
40 be applied to the assessments owed, and, only after the assessments



1 owed are paid in full shall the payments be applied to the fees and
2 costs of collection, attorney's fees, late charges, or interest. When
3 an owner makes a payment, the owner may request a receipt and
4 the association shall provide it. The receipt shall indicate the date
5 of payment and the person who received it. The association shall
6 provide a mailing address for overnight payment of assessments.

7 ~~(c) (1) An owner may dispute the debt noticed pursuant to~~
8 ~~subdivision (a) by submitting to the board a written explanation of~~
9 ~~the reasons for his or her dispute. The board shall respond in~~
10 ~~writing to the owner within 15 days of the date of the postmark of~~
11 ~~the explanation, if the explanation is mailed within 15 days of the~~
12 ~~postmark of the notice.~~

13 ~~(2) An owner, other than an owner of any interest that is~~
14 ~~described in Section 11003.5 of the Business and Professions~~
15 ~~Code, may submit a written request to meet with the board to~~
16 ~~discuss a payment plan for the debt noticed pursuant to subdivision~~
17 ~~(a). The association shall provide the owners the standards for~~
18 ~~payment plans, if any exist. The board shall meet with the owner~~
19 ~~in executive session within 45 days of the postmark of the request,~~
20 ~~if the request is mailed within 15 days of the date of the postmark~~
21 ~~of the notice, unless there is no regularly scheduled board meeting~~
22 ~~within that period, in which case the board may designate a~~
23 ~~committee of one or more members to meet with the owner.~~

24 (d) The amount of the assessment, plus any costs of collection,
25 late charges, and interest assessed in accordance with Section
26 1366, shall be a lien on the owner's interest in the common interest
27 development from and after the time the association causes to be
28 recorded with the county recorder of the county in which the
29 separate interest is located, a notice of delinquent assessment,
30 which shall state the amount of the assessment and other sums
31 imposed in accordance with Section 1366, a legal description of
32 the owner's interest in the common interest development against
33 which the assessment and other sums are levied, the name of the
34 record owner of the owner's interest in the common interest
35 development against which the lien is imposed. In order for the
36 lien to be enforced by nonjudicial foreclosure as provided in
37 subdivision (g), the notice of delinquent assessment shall state the
38 name and address of the trustee authorized by the association to
39 enforce the lien by sale. The notice of delinquent assessment shall
40 be signed by the person designated in the declaration or by the



1 association for that purpose, or if no one is designated, by the
2 president of the association, and mailed in the manner set forth in
3 Section 2924b, to all record owners of the owner's interest in the
4 common interest development no later than 10 calendar days after
5 recordation. Within 21 days of the payment of the sums specified
6 in the notice of delinquent assessment, the association shall record
7 or cause to be recorded in the office of the county recorder in which
8 the notice of delinquent assessment is recorded a lien release or
9 notice of rescission and provide the owner of the separate interest
10 a copy of the lien release or notice that the delinquent assessment
11 has been satisfied. A monetary charge imposed by the association
12 as a means of reimbursing the association for costs incurred by the
13 association in the repair of damage to common areas and facilities
14 for which the member or the member's guests or tenants were
15 responsible may become a lien against the member's separate
16 interest enforceable by the sale of the interest under Sections 2924,
17 2924b, and 2924c, provided the authority to impose a lien is set
18 forth in the governing documents. It is the intent of the Legislature
19 not to contravene Section 2792.26 of Title 10 of the California
20 Code of Regulations, as that section appeared on January 1, 1996,
21 for associations of subdivisions that are being sold under authority
22 of a subdivision public report, pursuant to Part 2 (commencing
23 with Section 11000) of Division 4 of the Business and Professions
24 Code.

25 (e) Except as indicated in subdivision (d), a monetary penalty
26 imposed by the association as a disciplinary measure for failure of
27 a member to comply with the governing instruments, except for
28 the late payments, may not be characterized nor treated in the
29 governing instruments as an assessment that may become a lien
30 against the member's subdivision separate interest enforceable by
31 the sale of the interest under Sections 2924, 2924b, and 2924c.

32 (f) A lien created pursuant to subdivision (d) shall be prior to
33 all other liens recorded subsequent to the notice of assessment,
34 except that the declaration may provide for the subordination
35 thereof to any other liens and encumbrances.

36 (g) An association may not voluntarily assign or pledge the
37 association's right to collect payments or assessments, or to
38 enforce or foreclose a lien to a third party, except when the
39 assignment or pledge is made to a financial institution or lender
40 chartered or licensed under federal or state law, when acting within



1 the scope of that charter or license, as security for a loan obtained
2 by the association; however, the foregoing provision may not
3 restrict the right or ability of an association to assign any unpaid
4 obligations of a former member to a third party for purposes of
5 collection. Subject to the limitations of this subdivision, after the
6 expiration of 30 days following the recording of a lien created
7 pursuant to subdivision (d), the lien may be enforced in any
8 manner permitted by law, including sale by the court, sale by the
9 trustee designated in the notice of delinquent assessment, or sale
10 by a trustee substituted pursuant to Section 2934a. Any sale by the
11 trustee shall be conducted in accordance with Sections 2924,
12 2924b, and 2924c applicable to the exercise of powers of sale in
13 mortgages and deeds of trusts. The fees of a trustee may not exceed
14 the amounts prescribed in Sections 2924c and 2924d.

15 (h) Nothing in this section or in subdivision (a) of Section 726
16 of the Code of Civil Procedure prohibits actions against the owner
17 of a separate interest to recover sums for which a lien is created
18 pursuant to this section or prohibits an association from taking a
19 deed in lieu of foreclosure.

20 (i) If it is determined that a lien previously recorded against the
21 separate interest was recorded in error, the party who recorded the
22 lien shall, within 21 calendar days, record or cause to be recorded
23 in the office of the county recorder in which the notice of
24 delinquent assessment is recorded a lien release or notice of
25 rescission and provide the owner of the separate interest with a
26 declaration that the lien filing or recording was in error and a copy
27 of the lien release or notice of rescission.

28 (j) (1) An association that fails to comply with the procedures
29 set forth in this section shall, prior to recording a lien, recommence
30 the required notice process.

31 (2) Any costs associated with recommencing the notice process
32 shall be borne by the association and not by the owner of a separate
33 interest.

34 (k) This section only applies to liens recorded on or after
35 January 1, 2003.

36 *SEC. 5.* Article 1 (commencing with Section 1368.3) is added
37 to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code,
38 to read:

39



1 Article 1. Miscellaneous Provisions

2
3 1368.3. An association established to manage a common
4 interest development has standing to institute, defend, settle, or
5 intervene in litigation, arbitration, mediation, or administrative
6 proceedings in its own name as the real party in interest and
7 without joining with it the individual owners of the common
8 interest development, in matters pertaining to the following:

9 (a) Enforcement of the governing documents.

10 (b) Damage to the common area.

11 (c) Damage to a separate interest that the association is
12 obligated to maintain or repair.

13 (d) Damage to a separate interest that arises out of, or is
14 integrally related to, damage to the common area or a separate
15 interest that the association is obligated to maintain or repair.

16 1368.4. (a) In an action maintained by an association
17 pursuant to subdivision (b), (c), or (d) of Section 1368.3, the
18 amount of damages recovered by the association shall be reduced
19 by the amount of damages allocated to the association or its
20 managing agents in direct proportion to their percentage of fault
21 based upon principles of comparative fault. The comparative fault
22 of the association or its managing agents may be raised by way of
23 defense, but shall not be the basis for a cross-action or separate
24 action against the association or its managing agents for
25 contribution or implied indemnity, where the only damage was
26 sustained by the association or its members. It is the intent of the
27 Legislature in enacting this subdivision to require that
28 comparative fault be pleaded as an affirmative defense, rather than
29 a separate cause of action, where the only damage was sustained
30 by the association or its members.

31 (b) In an action involving damages described in subdivision
32 (b), (c), or (d) of Section 1368.3, the defendant or cross-defendant
33 may allege and prove the comparative fault of the association or
34 its managing agents as a setoff to the liability of the defendant or
35 cross-defendant even if the association is not a party to the
36 litigation or is no longer a party whether by reason of settlement,
37 dismissal, or otherwise.

38 (c) Subdivisions (a) and (b) apply to actions commenced on or
39 after January 1, 1993.

1 (d) Nothing in this section affects a person’s liability under
2 Section 1431, or the liability of the association or its managing
3 agent for an act or omission which causes damages to another.

4 SEC. 6. Section 1368.4 of the Civil Code is amended and
5 renumbered to read:

6 1368.5. (a) Not later than 30 days prior to the filing of any
7 civil action by the association against the declarant or other
8 developer of a common interest development for alleged damage
9 to the common areas, alleged damage to the separate interests that
10 the association is obligated to maintain or repair, or alleged
11 damage to the separate interests that arises out of, or is integrally
12 related to, damage to the common areas or separate interests that
13 the association is obligated to maintain or repair, the board of
14 directors of the association shall provide a written notice to each
15 member of the association who appears on the records of the
16 association when the notice is provided. This notice shall specify
17 all of the following:

18 (1) That a meeting will take place to discuss problems that may
19 lead to the filing of a civil action.

20 (2) The options, including civil actions, that are available to
21 address the problems.

22 (3) The time and place of this meeting.

23 (b) Notwithstanding subdivision (a), if the association has
24 reason to believe that the applicable statute of limitations will
25 expire before the association files the civil action, the association
26 may give the notice, as described above, within 30 days after the
27 filing of the action.

28 SEC. 7. Article 2 (commencing with Section 1369.510) is
29 added to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil
30 Code, to read:

31

32 Article 2. Alternative Dispute Resolution

33

34 1369.510. As used in this article:

35 (a) “Alternative dispute resolution” means mediation,
36 arbitration, conciliation, or other nonjudicial procedure that
37 involves a neutral party in the decisionmaking process. The form
38 of alternative dispute resolution chosen pursuant to this article may
39 be binding or nonbinding , with the voluntary consent of the
40 parties.



1 (b) “Enforcement action” means a civil action or proceeding,
2 other than a cross-complaint, for any of the following purposes:

3 (1) Enforcement of this title.

4 (2) Enforcement of the Nonprofit Mutual Benefit Corporation
5 Law (Part 3 (commencing with Section 7110) of Division 2 of
6 Title 1 of the Corporations Code).

7 (3) Enforcement of the governing documents of a common
8 interest development.

9 1369.520. (a) An association or an owner or a member of a
10 common interest development may not file an enforcement action
11 in the superior court unless the parties have endeavored to submit
12 their dispute to alternative dispute resolution pursuant to this
13 article.

14 (b) This section applies only to an enforcement action that is
15 solely for declaratory, injunctive, or writ relief, or for that relief in
16 conjunction with a claim for monetary damages not in excess of
17 five thousand dollars (\$5,000).

18 (c) This section does not apply to a small claims action.

19 ~~(d) Except as provided in Section 1366.3, this section does not~~
20 ~~apply to an action for association assessments.~~

21 *(d) Notwithstanding subdivision (b), this section applies to an*
22 *action for collection of assessments, except a small claims action.*

23 1369.530. (a) Any party to a dispute may initiate the process
24 required by Section 1369.520 by serving on all other parties to the
25 dispute a Request for Resolution. The Request for Resolution shall
26 include all of the following:

27 (1) A brief description of the dispute between the parties.

28 (2) A request for alternative dispute resolution.

29 (3) A notice that the party receiving the Request for Resolution
30 is required to respond within 30 days of receipt or the request will
31 be deemed rejected.

32 (4) If the party on whom the request is served is the owner of
33 a separate interest, a copy of this article.

34 (b) Service of the Request for Resolution shall be by personal
35 delivery, first-class mail, express mail, facsimile transmission, or
36 other means reasonably calculated to provide the party on whom
37 the request is served actual notice of the request.

38 (c) A party on whom a Request for Resolution is served has 30
39 days following service to accept or reject the request. If a party



1 does not accept the request within that period, the request is
2 deemed rejected by the party.

3 1369.540. (a) If the party on whom a Request for Resolution
4 is served accepts the request, the parties shall complete the
5 alternative dispute resolution within 90 days after the party
6 initiating the request receives the acceptance, unless this period is
7 extended by written stipulation signed by both parties.

8 (b) Chapter 2 (commencing with Section 1115) of Division 9
9 of the Evidence Code applies to any form of alternative dispute
10 resolution initiated by a Request for Resolution under this article,
11 other than arbitration.

12 (c) The costs of the alternative dispute resolution shall be borne
13 by the parties.

14 1369.550. If a Request for Resolution is served before the end
15 of the applicable time limitation for commencing an enforcement
16 action, the time limitation is tolled during the following periods:

17 (a) The period provided in Section 1369.530 for response to a
18 Request for Resolution.

19 (b) If the Request for Resolution is accepted, the period
20 provided by Section 1369.540 for completion of alternative
21 dispute resolution, including any extension of time stipulated to by
22 the parties pursuant to Section 1369.540.

23 1369.560. (a) At the time of commencement of an
24 enforcement action, the party commencing the action shall file
25 with the initial pleading a certificate stating that one or more of the
26 following conditions is satisfied:

27 (1) Alternative dispute resolution has been completed in
28 compliance with this article.

29 (2) One of the other parties to the dispute did not accept the
30 terms offered for alternative dispute resolution.

31 (3) Preliminary or temporary injunctive relief is necessary.

32 (b) Failure to file a certificate pursuant to subdivision (a) is
33 grounds for a demurrer or a motion to strike unless the court finds
34 that dismissal of the action for failure to comply with this article
35 would result in substantial prejudice to one of the parties.

36 1369.570. (a) After an enforcement action is commenced, on
37 written stipulation of the parties, the matter may be referred to
38 alternative dispute resolution. The referred action is stayed.
39 During the stay, the action is not subject to the rules implementing
40 subdivision (c) of Section 68603 of the Government Code.



1 (b) The costs of the alternative dispute resolution shall be borne
2 by the parties.

3 1369.580. In an enforcement action in which fees and costs
4 may be awarded pursuant to subdivision (c) of Section 1354, the
5 court, in determining the amount of the award, may consider
6 whether a party's refusal to participate in alternative dispute
7 resolution before commencement of the action was reasonable.

8 1369.590. (a) An association shall annually provide its
9 members a summary of the provisions of this article that
10 specifically references this article. The summary shall include the
11 following language:

12
13 "Failure of a member of the association to comply with the
14 alternative dispute resolution requirements of Section 1369.520 of
15 the Civil Code may result in the loss of your right to sue the
16 association or another member of the association regarding
17 enforcement of the governing documents or the applicable law."
18

19 (b) The summary shall be provided either at the time the pro
20 forma budget required by Section 1365 is distributed or in the
21 manner prescribed in Section 5016 of the Corporations Code. The
22 summary shall include a description of the association's internal
23 dispute resolution process, as required by Section 1363.850.

24 SEC. 8. Section 383 of the Code of Civil Procedure is
25 repealed.

26 *SEC. 9. Section 2.5 of this bill incorporates amendments to*
27 *Section 1357.120 of the Civil Code proposed by both this bill and*
28 *AB 2376. It shall only become operative if (1) both bills are*
29 *enacted and become effective on or before January 1, 2005, (2)*
30 *each bill amends Section 1357.120 of the Civil Code, and (3) this*
31 *bill is enacted after AB 2376, in which case Section 2 of this bill*
32 *shall not become operative.*

