

AMENDED IN SENATE JUNE 15, 2004

AMENDED IN ASSEMBLY MAY 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2376

Introduced by Assembly Member Bates
(Coauthors: Assembly Members Harman, Maze, and Pacheco)
(Coauthor: Senator Oller)

February 19, 2004

An act to amend Sections 1357.120 and 1373 of, and to add Section 1378 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2376, as amended, Bates. Common interest developments: architectural review.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments. The act requires that a common interest development have a recorded declaration, and the act defines governing documents as the declaration, and any other documents, such as the bylaws, operating rules, and articles of incorporation, which govern the operation of the development. The governing documents may regulate the physical features of the development. Existing law requires that common interest development operating rule changes satisfy certain criteria and applies these requirements only to operating rules relating to specified subjects. Existing law exempts common interest developments that are limited to industrial or commercial uses, as specified, from the application of certain provisions of the act.

This bill would require the procedures of common interest development associations for reviewing and approving proposed physical changes to a member’s separate interest to satisfy the requirements regarding operating rules described above.

This bill would revise the definition of a common interest development that is limited to industrial or commercial use for purposes of exempting that development from certain provisions of the act. The bill would include in these exemptions provisions regarding physical changes in a separate interest or the common area, as specified.

The bill would provide that, if a common interest development association’s governing documents require association approval before an owner may make a physical change to the owner’s separate interest or to the common area, the association must satisfy specified requirements in reviewing a proposed change, including providing a fair, reasonable, and expeditious procedure for making its decision, as specified, and making a decision on a proposed change in writing. The bill would provide that an applicant whose proposal is denied is entitled to reconsideration at an open meeting of the board of directors of the association, except as specified. The bill would provide that its provisions do not authorize a change to the common area that is inconsistent with the association’s governing documents or governing law. The provisions of the bill would not apply to common interest developments that are limited to industrial or commercial uses, as specified. The bill would require an association to provide notice annually of any requirements for association approval of physical changes to property, as specified.

This bill would provide that one of its provisions would become operative only if AB 1836 is enacted and ~~become~~ *becomes* effective on or before January 1, 2004, and adds a specified section to the Civil Code.

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 1357.120 of the Civil Code is amended
- 2 to read:
- 3 1357.120. (a) Sections 1357.130 and 1357.140 only apply to
- 4 an operating rule that relates to one or more of the following
- 5 subjects:



- 1 (1) Use of the common area or of an exclusive use common
2 area.
- 3 (2) Use of a separate interest, including any aesthetic or
4 architectural standards that govern alteration of a separate interest.
- 5 (3) Member discipline, including any schedule of monetary
6 penalties for violation of the governing documents and any
7 procedure for the imposition of penalties.
- 8 (4) Any standards for delinquent assessment payment plans.
- 9 (5) Any procedures adopted by the association for resolution of
10 assessment disputes.
- 11 (6) Any procedures for reviewing and approving or
12 disapproving a proposed physical change to a member's separate
13 interest or to the common area.
- 14 (b) Sections 1357.130 and 1357.140 do not apply to the
15 following actions by the board of directors of an association:
 - 16 (1) A decision regarding maintenance of the common area.
 - 17 (2) A decision on a specific matter that is not intended to apply
18 generally.
 - 19 (3) A decision setting the amount of a regular or special
20 assessment.
 - 21 (4) A rule change that is required by law, if the board of
22 directors has no discretion as to the substantive effect of the rule
23 change.
 - 24 (5) Issuance of a document that merely repeats existing law or
25 the governing documents.
- 26 SEC. 2. Section 1373 of the Civil Code is amended to read:
 - 27 1373. (a) The following provisions do not apply to a common
28 interest development that is limited to industrial or commercial
29 uses by zoning or by a declaration of covenants, conditions, and
30 restrictions that has been recorded in the official records of each
31 county in which the common interest development is located:
 - 32 (1) Section 1356.
 - 33 (2) Article 4 (commencing with Section 1357.100) of Chapter
34 2 of Title 6 of Part 4 of Division 2.
 - 35 (3) Subdivision (b) of Section 1363.
 - 36 (4) Section 1365.
 - 37 (5) Section 1365.5.
 - 38 (6) Subdivision (b) of Section 1366.
 - 39 (7) Section 1366.1.
 - 40 (8) Section 1368.



1 (9) Section 1378.

2 (b) The Legislature finds that the provisions listed in
3 subdivision (a) are appropriate to protect purchasers in residential
4 common interest developments, however, the provisions may not
5 be necessary to protect purchasers in commercial or industrial
6 developments since the application of those provisions could
7 result in unnecessary burdens and costs for these types of
8 developments.

9 SEC. 3. Section 1378 is added to the Civil Code, to read:

10 1378. (a) This section applies if an association’s governing
11 documents require association approval before an owner of a
12 separate interest may make a physical change to the owner’s
13 separate interest or to the common area. In reviewing and
14 approving or disapproving a proposed change, the association
15 shall satisfy the following requirements:

16 (1) The association shall provide a fair, reasonable, and
17 expeditious procedure for making its decision. The procedure
18 shall be included in the association’s governing documents. The
19 procedure shall provide for prompt deadlines. The procedure shall
20 state the maximum time for response to an application or a request
21 for reconsideration by the board of directors.

22 (2) A decision on a proposed change shall be made in good faith
23 and may not be unreasonable, arbitrary, or capricious.

24 (3) *A decision on a proposed change shall be consistent with*
25 *any governing provision of law, including, but not limited to, the*
26 *Fair Employment and Housing Act (Part 2.8 (commencing with*
27 *Section 12900) of Division 3 of Title 2 of the Government Code.*

28 (4) A decision on a proposed change shall be in writing. If a
29 proposed change is disapproved, the written decision shall include
30 both an explanation of why the proposed change is disapproved
31 and a description of the procedure for reconsideration of the
32 decision by the board of directors.

33 ~~(4)~~

34 (5) If a proposed change is disapproved, the applicant is
35 entitled to reconsideration by the board of directors of the
36 association that made the decision, at an open meeting of the
37 board. This paragraph does not require reconsideration of a
38 decision that is made by the board of directors or a body that has
39 the same membership as the board of directors, at a meeting that
40 satisfies the requirements of Section 1363.05.



1 (b) Nothing in this section authorizes a physical change to the
2 common area in a manner that is inconsistent with an association's
3 governing documents or governing law.

4 (c) An association shall annually provide its members with
5 notice of any requirements for association approval of physical
6 changes to property. The notice shall describe the types of changes
7 that require association approval and shall include a copy of the
8 procedure used to review and approve or disapprove a proposed
9 change.

10 SEC. 3.5. Section 1378 is added to the Civil Code, to read:

11 1378. (a) This section applies if an association's governing
12 documents require association approval before an owner of a
13 separate interest may make a physical change to the owner's
14 separate interest or to the common area. In reviewing and
15 approving or disapproving a proposed change, the association
16 shall satisfy the following requirements:

17 (1) The association shall provide a fair, reasonable, and
18 expeditious procedure for making its decision. The procedure
19 shall be included in the association's governing documents. The
20 procedure shall provide for prompt deadlines. The procedure shall
21 state the maximum time for response to an application or a request
22 for reconsideration by the board of directors.

23 (2) A decision on a proposed change shall be made in good faith
24 and may not be unreasonable, arbitrary, or capricious.

25 (3) *A decision on a proposed change shall be consistent with*
26 *any governing provision of law, including, but not limited to, the*
27 *Fair Employment and Housing Act (Part 2.8 (commencing with*
28 *Section 12900) of Division 3 of Title 2 of the Government Code.*

29 (4) A decision on a proposed change shall be in writing. If a
30 proposed change is disapproved, the written decision shall include
31 both an explanation of why the proposed change is disapproved
32 and a description of the procedure for reconsideration of the
33 decision by the board of directors.

34 ~~(4)~~

35 (5) If a proposed change is disapproved, the applicant is
36 entitled to reconsideration by the board of directors of the
37 association that made the decision, at an open meeting of the
38 board. This paragraph does not require reconsideration of a
39 decision that is made by the board of directors or a body that has
40 the same membership as the board of directors, at a meeting that



1 satisfies the requirements of Section 1363.05. Reconsideration by
2 the board does not constitute dispute resolution within the meaning
3 of Section 1363.820.

4 (b) Nothing in this section authorizes a physical change to the
5 common area in a manner that is inconsistent with an association's
6 governing documents or governing law.

7 (c) An association shall annually provide its members with
8 notice of any requirements for association approval of physical
9 changes to property. The notice shall describe the types of changes
10 that require association approval and shall include a copy of the
11 procedure used to review and approve or disapprove a proposed
12 change.

13 SEC. 4. Section 3.5 of this bill shall only become operative if
14 Assembly Bill 1836 is enacted and ~~become~~ *becomes* effective on
15 or before January 1, 2004, and adds Section 1363.820 to the Civil
16 Code, in which case Section 3 of this bill shall be inoperative.

