

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN SENATE JUNE 13, 2006

AMENDED IN ASSEMBLY MAY 16, 2006

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY APRIL 27, 2006

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2851

Introduced by Assembly Member DeVore

February 24, 2006

An act to amend Section 1351 of, and to add Section 1356.5 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2851, as amended, DeVore. Common interest developments.

Existing law defines "condominium plan," for purposes of the Davis-Stirling Common Interest Development Act, as consisting of specified components, including a certificate consenting to the recordation of the condominium plan signed and acknowledged by certain persons. Existing law authorizes a condominium plan to be amended or revoked by a subsequently acknowledged recorded instrument executed by all of the persons whose signatures were required on the certificate.

This bill instead would authorize a condominium plan to be amended or revoked by a subsequently acknowledged recorded instrument executed by all of the persons whose signatures would be

required on the certificate as of the date of the amendment or revocation for the condominium project. The bill would further authorize the amendment of a condominium plan by an association for the purpose of repairing, rebuilding, or reconstructing all or a portion of a condominium project, as specified, if (1) the association obtains the written consent of each owner, the boundaries of whose separate interest are affected by the revised condominium plan, (2) the amendment is reasonable and does not eliminate any special rights or privileges of an owner or impair any security interest, (3) 67% of the owners whose units are subject to that condominium plan vote to approve the amendment, and (4) the association receives the approval of the superior court using a specified petition process. The bill also would set forth notice, election, and recording requirements for amendment of a condominium plan, specify requirements for execution of amendments to plans that affect only industrial or commercial uses, and provide that no amendment of a condominium plan is required for a unit owner to use any common area wall, floor, or ceiling area adjacent to the unit for installing utilities and other fixtures, as specified. The bill would make other technical, nonsubstantive changes.

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 1351 of the Civil Code is amended to
 2 read:
 3 1351. As used in this title, the following terms have the
 4 following meanings:
 5 (a) “Association” means a nonprofit corporation or
 6 unincorporated association created for the purpose of managing a
 7 common interest development.
 8 (b) “Common area” means the entire common interest
 9 development except the separate interests therein. The estate in
 10 the common area may be a fee, a life estate, an estate for years,
 11 or any combination of the foregoing. However, the common area
 12 for a planned development specified in paragraph (2) of
 13 subdivision (k) may consist of mutual or reciprocal easement
 14 rights appurtenant to the separate interests.

1 (c) “Common interest development” means any of the
2 following:

- 3 (1) A community apartment project.
- 4 (2) A condominium project.
- 5 (3) A planned development.
- 6 (4) A stock cooperative.

7 (d) “Community apartment project” means a development in
8 which an undivided interest in land is coupled with the right of
9 exclusive occupancy of any apartment located thereon.

10 (e) “Condominium plan” means a plan consisting of all of the
11 following:

12 (1) A description or survey map of a condominium project,
13 which shall refer to or show monumentation on the ground.

14 (2) A three-dimensional description of a condominium project,
15 one or more dimensions of which may extend for an indefinite
16 distance upwards or downwards, in sufficient detail to identify
17 the common areas and each separate interest.

18 (3) A certificate consenting to the recordation of the
19 condominium plan pursuant to this title signed and
20 acknowledged by the following:

21 (A) The record owner of fee title to that property included in
22 the condominium project.

23 (B) In the case of a condominium project which will terminate
24 upon the termination of an estate for years, the certificate shall be
25 signed and acknowledged by all lessors and lessees of the estate
26 for years.

27 (C) In the case of a condominium project subject to a life
28 estate, the certificate shall be signed and acknowledged by all life
29 tenants and remainder interests.

30 (D) The certificate shall also be signed and acknowledged by
31 either the trustee or the beneficiary of each recorded deed of
32 trust, and the mortgagee of each recorded mortgage encumbering
33 the property.

34 Owners of mineral rights, easements, rights-of-way, and other
35 nonpossessory interests do not need to sign the condominium
36 plan. Further, in the event a conversion to condominiums of a
37 community apartment project or stock cooperative has been
38 approved by the required number of owners, trustees,
39 beneficiaries, and mortgagees pursuant to Section 66452.10 of
40 the Government Code, the certificate need only be signed by

1 those owners, trustees, beneficiaries, and mortgagees approving
2 the conversion.

3 (f) A “condominium project” means a development consisting
4 of condominiums. A condominium consists of an undivided
5 interest in common in a portion of real property coupled with a
6 separate interest in space called a unit, the boundaries of which
7 are described on a recorded final map, parcel map, or
8 condominium plan in sufficient detail to locate all boundaries
9 thereof. The area within these boundaries may be filled with air,
10 earth, or water, or any combination thereof, and need not be
11 physically attached to land except by easements for access and, if
12 necessary, support. The description of the unit may refer to (1)
13 boundaries described in the recorded final map, parcel map, or
14 condominium plan, (2) physical boundaries, either in existence,
15 or to be constructed, such as walls, floors, and ceilings of a
16 structure or any portion thereof, (3) an entire structure containing
17 one or more units, or (4) any combination thereof. The portion or
18 portions of the real property held in undivided interest may be all
19 of the real property, except for the separate interests, or may
20 include a particular three-dimensional portion thereof, the
21 boundaries of which are described on a recorded final map,
22 parcel map, or condominium plan. The area within these
23 boundaries may be filled with air, earth, or water, or any
24 combination thereof, and need not be physically attached to land
25 except by easements for access and, if necessary, support. An
26 individual condominium within a condominium project may
27 include, in addition, a separate interest in other portions of the
28 real property.

29 (g) “Declarant” means the person or group of persons
30 designated in the declaration as declarant, or if no declarant is
31 designated, the person or group of persons who sign the original
32 declaration or who succeed to special rights, preferences, or
33 privileges designated in the declaration as belonging to the
34 signator of the original declaration.

35 (h) “Declaration” means the document, however denominated,
36 that contains the information required by Section 1353.

37 (i) “Exclusive use common area” means a portion of the
38 common areas designated by the declaration for the exclusive use
39 of one or more, but fewer than all, of the owners of the separate

1 interests and that is or will be appurtenant to the separate interest
2 or interests.

3 (1) Unless the declaration otherwise provides, any shutters,
4 awnings, window boxes, doorsteps, stoops, porches, balconies,
5 patios, exterior doors, doorframes, and hardware incident thereto,
6 screens and windows or other fixtures designed to serve a single
7 separate interest, but located outside the boundaries of the
8 separate interest, are exclusive use common areas allocated
9 exclusively to that separate interest.

10 (2) Notwithstanding the provisions of the declaration, internal
11 and external telephone wiring designed to serve a single separate
12 interest, but located outside the boundaries of the separate
13 interest, are exclusive use common areas allocated exclusively to
14 that separate interest.

15 (j) “Governing documents” means the declaration and any
16 other documents, such as bylaws, operating rules of the
17 association, articles of incorporation, or articles of association,
18 that govern the operation of the common interest development or
19 association.

20 (k) “Planned development” means a development, other than a
21 community apartment project, a condominium project, or a stock
22 cooperative, having either or both of the following features:

23 (1) The common area is owned either by an association or in
24 common by the owners of the separate interests who possess
25 appurtenant rights to the beneficial use and enjoyment of the
26 common area.

27 (2) A power exists in the association to enforce an obligation
28 of an owner of a separate interest with respect to the beneficial
29 use and enjoyment of the common area by means of an
30 assessment that may become a lien upon the separate interests in
31 accordance with Section 1367 or 1367.1.

32 (l) (1) “Separate interest” has the following meanings:

33 (A) In a community apartment project, “separate interest”
34 means the exclusive right to occupy an apartment, as specified in
35 subdivision (d).

36 (B) In a condominium project, “separate interest” means an
37 individual unit, as specified in subdivision (f).

38 (C) In a planned development, “separate interest” means a
39 separately owned lot, parcel, area, or space.

1 (D) In a stock cooperative, “separate interest” means the
 2 exclusive right to occupy a portion of the real property, as
 3 specified in subdivision (m).

4 (2) Unless the declaration or condominium plan, if any exists,
 5 otherwise provides, if walls, floors, or ceilings are designated as
 6 boundaries of a separate interest, the interior surfaces of the
 7 perimeter walls, floors, ceilings, windows, doors, and outlets
 8 located within the separate interest are part of the separate
 9 interest and any other portions of the walls, floors, or ceilings are
 10 part of the common areas.

11 (3) The estate in a separate interest may be a fee, a life estate,
 12 an estate for years, or any combination of the foregoing.

13 (m) “Stock cooperative” means a development in which a
 14 corporation is formed or availed of, primarily for the purpose of
 15 holding title to, either in fee simple or for a term of years,
 16 improved real property, and all or substantially all of the
 17 shareholders of the corporation receive a right of exclusive
 18 occupancy in a portion of the real property, title to which is held
 19 by the corporation. The owners’ interest in the corporation,
 20 whether evidenced by a share of stock, a certificate of
 21 membership, or otherwise, shall be deemed to be an interest in a
 22 common interest development and a real estate development for
 23 purposes of subdivision (f) of Section 25100 of the Corporations
 24 Code.

25 A “stock cooperative” includes a limited equity housing
 26 cooperative that is a stock cooperative that meets the criteria of
 27 Section 33007.5 of the Health and Safety Code.

28 SEC. 2. Section 1356.5 is added to the Civil Code, to read:

29 1356.5. (a) A condominium plan may be amended or
 30 revoked by a subsequently acknowledged recorded instrument
 31 executed by all the persons whose signatures would be required
 32 pursuant to subparagraphs (A) to (D), inclusive, of paragraph (3)
 33 of subdivision (e) of Section 1351, as of the date of the
 34 amendment or revocation for the condominium project.

35 (b) The association may amend a condominium plan for the
 36 purpose of repairing, rebuilding, or reconstructing all or a portion
 37 of a condominium project, as described in its condominium plan,
 38 due to structural or component failure, failure to meet mandatory
 39 legal standards, including the federal Americans with Disabilities
 40 Act of 1990 and building code requirements, correction of

1 hazardous construction defects, mitigation of hazardous
2 materials, functional obsolescence, or destruction, if all of the
3 following apply:

4 (1) The association obtains the written consent of each owner,
5 the boundaries of whose separate interest in a condominium unit
6 or exclusive use common area are altered, changed, or adversely
7 affected in any way by the revised condominium plan.

8 (2) The amendment is reasonable and does not eliminate any
9 special rights or privileges of an owner or impair the security
10 interest of a mortgagee or the beneficiary of a deed of trust.

11 (3) Sixty-seven percent of the owners whose units are subject
12 to that condominium plan vote to approve the amendment.

13 (4) The association receives the approval of the superior court
14 using the petition process provided in Section 1356, except that
15 the minimum votes of members shall be that established in
16 paragraph (3).

17 (c) The association shall hold a meeting of owners to discuss
18 the amendment to the condominium plan before signatures are
19 gathered pursuant to subdivision (a) or a vote is held pursuant to
20 subdivision (b). At least 60 days prior to the meeting, the owners
21 shall receive copies of all of the following:

22 (1) The current condominium plan.

23 (2) A complete description of the amendment and drawings.

24 (3) Copies of any notice materials apprising the owners of the
25 meeting day, time, and location.

26 (4) A statement of the need for the amendment.

27 (5) A detailed plan for financing the changes and whether the
28 association has insurance proceeds, capital reserves, or other
29 revenue sources to finance the changes.

30 (6) Whether the financing will require a special assessment
31 and, if so, a statement of the amount of the assessment and the
32 time period for collecting it.

33 (7) If the association seeks to amend a condominium plan
34 pursuant to subdivision (b), a description of the court review
35 process and a statement of the homeowners' right to participate
36 in the judicial review process.

37 (d) If the association seeks to amend a condominium plan
38 pursuant to subdivision (b), the ballot measure amending the
39 condominium plan shall be voted on in compliance with the

1 elections requirements set forth in Article 2 (commencing with
2 Section 1363.03) of Chapter 4.

3 (e) If the amendment to the condominium plan would affect
4 only industrial or commercial uses as provided in Section 1373,
5 and the amendment is for the purpose of moving the boundaries
6 between two or more industrial or commercial units, the *plan*
7 *may be amended and the* amendment shall be executed by all
8 owners of the affected units, the beneficiary or trustee of any
9 recorded deed of trust, the mortgagee of each recorded mortgage
10 encumbering the affected units, and the association.

11 (f) If the amendment to the condominium plan would affect
12 only industrial or commercial uses as provided in Section 1373,
13 and the amendment is for the purpose of allowing the owner of a
14 unit to further subdivide the unit, unless the condominium plan or
15 the declaration provides additional restrictions on the subdivision
16 of units, the *plan may be amended and the* amendment shall be
17 executed by the owner of the unit, the beneficiary or trustee of
18 any recorded deed of trust, and the mortgagee of each recorded
19 mortgage encumbering the affected unit.

20 (g) The division of a three-dimensional portion or portions of
21 property into condominiums as provided in subdivision (e) of
22 Section 66427 of the Government Code is not an amendment to a
23 condominium plan.

24 (h) No amendment to the condominium plan is required for the
25 purpose of allowing a unit owner to use any common area wall,
26 floor, or ceiling area consisting of a portion of a building
27 adjacent to the unit or the unit's exclusive-use common area for
28 installing and maintaining utilities or other services, installing
29 electrical or other service outlets located in the floor, walls, or
30 ceiling, or installing cabinets or other fixtures, windows, or
31 skylights. This subdivision does not eliminate any right of the
32 association to control the use of those common areas. The
33 approval of the association is not subject to the requirements of
34 Section 1363.07.

35 (i) An amendment to a condominium plan is not effective until
36 the amendment has been recorded in the county in which the
37 common interest development is located. Upon recordation of the
38 amendment, the amendment shall have the same force and effect
39 as the condominium plan. If an amendment is made pursuant to
40 subdivision (b), the association shall deliver or mail a copy of the

- 1 amendment to each affected owner of the association, together
- 2 with a statement that the amendment has been recorded.

O