

Senate Bill No. 853

Passed the Senate April 21, 2005

Secretary of the Senate

Passed the Assembly June 23, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 945, 1363, 1374, and 1378 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 853, Kehoe. Common interest developments.

(1) The Davis-Stirling Common Interest Development Act defines and regulates common interest developments. Existing law requires that when 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 provisions. Among these provisions is a requirement that a decision on a proposed change be consistent with any governing provision of law, including the Fair Employment and Housing Act.

This bill would specify that the requirement that a decision on a proposed change may not violate any governing provision of law, described above, and is not affected by contrary provisions in the association governing documents. The bill would also provide other examples of law that a decision of the association may not violate, and would make a conforming change.

(2) Existing law provides that a common interest development association has standing to institute, defend, settle, or intervene in specified civil proceedings in its own name, and addresses the reduction of damages for comparative fault in this context.

This bill would delete erroneous cross references and make nonsubstantive, technical changes in reference to these provisions.

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

SECTION 1. Section 945 of the Civil Code is amended to read:

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in Sections 1368.3 and

1368.4 shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

SEC. 2. Section 1363 of the Civil Code is amended to read:

1363. (a) A common interest development shall be managed by an association that may be incorporated or unincorporated. The association may be referred to as a community association.

(b) An association, whether incorporated or unincorporated, shall prepare a budget pursuant to Section 1365 and disclose information, if requested, in accordance with Section 1368.

(c) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

The association, whether incorporated or unincorporated, may exercise the powers granted to an association in this title.

(d) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.

(e) Notwithstanding any other provision of law, notice of meetings of the members shall specify those matters the board intends to present for action by the members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action.

(f) Members of the association shall have access to association records, including accounting books and records and membership lists, in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. The members of the association shall have the same access to the operating rules of the association as they have to the accounting books and records of the association.

(g) If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents or rules of the association, including any monetary penalty relating to the

activities of a guest or invitee of a member, the board of directors shall adopt and distribute to each member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the governing documents. The board of directors shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members pursuant to this subdivision.

(h) When the board of directors is to meet to consider or impose discipline upon a member, the board shall notify the member in writing, by either personal delivery or first-class mail, at least 10 days prior to the meeting. The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which a member may be disciplined, and a statement that the member has a right to attend and may address the board at the meeting. The board of directors of the association shall meet in executive session if requested by the member being disciplined.

If the board imposes discipline on a member, the board shall provide the member a written notification of the disciplinary action, by either personal delivery or first-class mail, within 15 days following the action. A disciplinary action shall not be effective against a member unless the board fulfills the requirements of this subdivision.

(i) Whenever two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, members of each participating association shall be (1) entitled to attend all meetings of the joint association other than executive sessions, (2) given reasonable opportunity for participation in those meetings, and (3) entitled to the same access to the joint association's records as they are to the participating association's records.

(j) Nothing in this section shall be construed to create, expand, or reduce the authority of the board of directors of an association to impose monetary penalties on an association member for a violation of the governing documents or rules of the association.

SEC. 3. Section 1374 of the Civil Code is amended to read:

1374. Nothing in this title may be construed to apply to a development wherein there does not exist a common area as defined in subdivision (b) of Section 1351.

This section is declaratory of existing law.

SEC. 4. Section 1378 of the Civil Code is amended to read:

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

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

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

(3) Notwithstanding a contrary provision of the governing documents, a decision on a proposed change may not violate any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety.

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

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors of the association that made the decision, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board of directors or a body that has the same membership as the board of directors, at a meeting that satisfies the requirements of Section 1363.05. Reconsideration by the board does not constitute dispute resolution within the meaning of Section 1363.820.

(b) Nothing in this section authorizes a physical change to the common area in a manner that is inconsistent with an association’s governing documents, unless the change is required by law.

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

CORRECTIONS:

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Approved _____, 2005

Governor