

Assembly Bill No. 691

CHAPTER 236

An act to amend Sections 11500, 11501, 11502, 11502.5, 11504, 11505, and 11506 of the Business and Professions Code, relating to common interest developments.

[Approved by Governor September 26, 2007. Filed with
Secretary of State September 26, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 691, Silva. Certified common interest development managers.

Existing law, the Davis-Stirling Common Interest Development Act, establishes a scheme for the regulation of common interest developments. Existing law requires a person to meet certain requirements in order to be called a "certified common interest development manager" and imposes other requirements with regard to common interest development managers. Existing law makes professional associations, as defined, responsible for the certification of common interest development managers, as specified. Existing law defines various terms for carrying out these provisions. Under existing law, the provisions regulating certified common interest development managers will become inoperative and be repealed on January 1, 2008.

This bill would extend the operation of these provisions until January 1, 2012. The bill would modify the requirements in order to be called a "certified common interest development manager" and would also revise various definitions. The bill would make numerous, nonsubstantive, and technical changes.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) There are approximately 41,000 common interest developments in this state. California common interest developments contain over 10 million homes that house more than 10 million people.

(b) Homes in common interest developments, like homes that are not in common interest developments, most often represent the owner's single largest lifetime investment.

(c) The management and operation of common interest developments is governed by a complex set of statutes and decisional law. In addition to possessing an understanding of the law, the successful professional common interest development management and operation of common interest developments require fundamental skills in subjects including, but not

limited to, finance, accounting, bookkeeping, contract administration, human resources, and parliamentary procedure.

(d) Common interest development managers are often delegated the authority, by the governing body of a common interest development, to collect and disburse substantial sums of money annually in homeowner assessments, which are used for the purpose of operating the community.

(e) The growth in common interest developments, coupled with the addition of governing statutes and decisional law, has emphasized the importance for common interest development managers to have the necessary skills and technical expertise to manage these associations.

(f) Individuals managing common interest developments who have these skills and expertise may identify themselves as “certified,” if they have met the requirements of Section 11502 of the Business and Professions Code.

(g) Since the enactment of the certification law in 2003, voluntary certification has tripled, resulting in a significant increase in the number of educated professional community managers.

(h) Residents of common interest developments in this state who serve as board members of those developments should be made aware that those managers who refer to themselves as “certified community managers” have met specific educational requirements and standards.

SEC. 2. Section 11500 of the Business and Professions Code is amended to read:

11500. For purposes of this chapter, the following definitions apply:

(a) “Common interest development” means a residential development identified in subdivision (c) of Section 1351 of the Civil Code.

(b) “Association” has the same meaning as defined in subdivision (a) of Section 1351 of the Civil Code.

(c) “Financial services” means acts performed or offered to be performed, for compensation, for an association, including, but not limited to, the preparation of internal unaudited financial statements, internal accounting and bookkeeping functions, billing of assessments, and related services.

(d) “Management services” means acts performed or offered to be performed in an advisory capacity for an association including, but not limited to, the following:

(1) Administering or supervising the collection, reporting, and archiving of the financial or common area assets of an association or common interest development, at the direction of the association’s board of directors.

(2) Implementing resolutions and directives of the board of directors of the association elected to oversee the operation of a common interest development.

(3) Implementing provisions of governing documents, as defined in Section 1351 of the Civil Code, that govern the operation of the common interest development.

(4) Administering association contracts, including insurance contracts, within the scope of the association’s duties or with other common interest development managers, vendors, contractors, and other third-party providers of goods and services to an association or common interest development.

(e) “Professional association for common interest development managers” means an organization that meets all of the following:

(1) Has at least 200 members or certificants who are common interest development managers in California.

(2) Has been in existence for at least five years.

(3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

(4) Certifies that a common interest development manager has met the criteria set forth in Section 11502 without requiring membership in the association.

(5) Requires adherence to a code of professional ethics and standards of practice for certified common interest development managers.

SEC. 3. Section 11501 of the Business and Professions Code is amended to read:

11501. (a) “Common interest development manager” means an individual who for compensation, or in expectation of compensation, provides or contracts to provide management or financial services, or represents himself or herself to act in the capacity of providing management or financial services to an association. Notwithstanding any other provision of law, an individual may not be required to obtain a real estate or broker’s license in order to perform the services of a common interest development manager to an association.

(b) “Common interest development manager” also means any of the following:

(1) An individual who is a partner in a partnership, a shareholder or officer in a corporation, or who, in any other business entity acts in a capacity to advise, supervise, and direct the activity of a registrant or provisional registrant, or who acts as a principal on behalf of a company that provides the services of a common interest development manager.

(2) An individual operating under a fictitious business name who provides the services of a common interest development manager.

This section may not be construed to require an association to hire for compensation a common interest development manager, unless required to do so by its governing documents. Nothing in this part shall be construed to supersede any law that requires a license, permit, or any other form of registration, to provide management or financial services. Nothing in this section shall preclude a licensee of the California Board of Accountancy from providing financial services to an association within the scope of his or her license in addition to the preparation of reviewed and audited financial statements and the preparation of the association’s tax returns.

SEC. 4. Section 11502 of the Business and Professions Code is amended to read:

11502. In order to be called a “certified common interest development manager,” a person shall meet one of the following requirements:

(a) Prior to July 1, 2003, has passed a knowledge, skills, and aptitude examination as specified in Section 11502.5 or has been granted a certification or a designation by a professional association for common interest development managers, and who has, within five years prior to July

1, 2004, received instruction in California law pursuant to paragraph (1) of subdivision (b).

(b) On or after July 1, 2003, has successfully completed an educational curriculum that shall be no less than a combined 30 hours in coursework described in this subdivision and passed an examination or examinations that test competence in common interest development management in the following areas:

(1) The law that relates to the management of common interest developments, including, but not limited to, the following courses of study:

(A) Topics covered by the Davis-Stirling Common Interest Development Act, contained in Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, including, but not limited to, the types of California common interest developments, disclosure requirements pertaining to common interest developments, meeting requirements, financial reporting requirements, and member access to association records.

(B) Personnel issues, including, but not limited to, general matters related to independent contractor or employee status, the laws on harassment, the Unruh Civil Rights Act, the California Fair Employment and Housing Act, and the Americans with Disabilities Act.

(C) Risk management, including, but not limited to, insurance coverage, maintenance, operations, and emergency preparedness.

(D) Property protection for associations, including, but not limited to, pertinent matters relating to environmental hazards such as asbestos, radon gas, and lead-based paint, the Vehicle Code, local and municipal regulations, family day care facilities, energy conservation, Federal Communications Commission rules and regulations, and solar energy systems.

(E) Business affairs of associations, including, but not limited to, necessary compliance with federal, state, and local law.

(F) Basic understanding of governing documents, codes, and regulations relating to the activities and affairs of associations and common interest developments.

(2) Instruction in general management that is related to the managerial and business skills needed for management of a common interest development, including, but not limited to, the following:

(A) Finance issues, including, but not limited to, budget preparation; management; administration or supervision of the collection, reporting, and archiving of the financial or common area assets of an association or common interest development; bankruptcy laws; and assessment collection.

(B) Contract negotiation and administration.

(C) Supervision of employees and staff.

(D) Management of maintenance programs.

(E) Management and administration of rules, regulations, and parliamentary procedures.

(F) Management and administration of architectural standards.

(G) Management and administration of the association's recreational programs and facilities.

(H) Management and administration of owner and resident communications.

(I) Training and strategic planning for the association's board of directors and its committees.

(J) Implementation of association policies and procedures.

(K) Ethics, professional conduct, and standards of practice for common interest development managers.

(L) Current issues relating to common interest developments.

(M) Conflict avoidance and resolution mechanisms.

SEC. 5. Section 11502.5 of the Business and Professions Code is amended to read:

11502.5. The course related competency examination or examinations and education provided to a certified common interest development manager pursuant to Section 11502 by any professional association for common interest development managers, or any postsecondary educational institution, shall be developed and administered in a manner consistent with standards and requirements set forth by the American Educational Research Association's "Standards for Educational and Psychological Testing," and the Equal Employment Opportunity Commission's "Uniform Guidelines for Employee Selection Procedures," the Unruh Civil Rights Act, the California Fair Employment and Housing Act, and the Americans with Disabilities Act of 1990, or the course or courses that have been approved as a continuing education course or an equivalent course of study pursuant to the regulations of the Real Estate Commissioner.

SEC. 6. Section 11504 of the Business and Professions Code is amended to read:

11504. On or before September 1, 2003, and annually thereafter, a person who either provides or contemplates providing the services of a common interest development manager to an association shall disclose to the board of directors of the association the following information:

(a) Whether or not the common interest development manager has met the requirements of Section 11502 so he or she may be called a certified common interest development manager.

(b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification.

(c) The location of his or her primary office.

(d) Prior to entering into or renewing a contract with an association, the common interest development manager shall disclose to the board of directors of the association or common interest development whether the fidelity insurance of the common interest development manager or his or her employer covers the current year's operating and reserve funds of the association. This requirement shall not be construed to compel an association to require a common interest development manager to obtain or maintain fidelity insurance.

(e) Whether the common interest development manager possesses an active real estate license.

This section may not preclude a common interest development manager from disclosing information as required in Section 1363.1 of the Civil Code.

SEC. 7. Section 11505 of the Business and Professions Code is amended to read:

11505. It is an unfair business practice for a common interest development manager, a company that employs the common interest development manager, or a company that is controlled by a company that also has a financial interest in a company employing that manager, to do any of the following:

(a) On or after July 1, 2003, to hold oneself out or use the title of “certified common interest development manager” or any other term that implies or suggests that the person is certified as a common interest development manager without meeting the requirements of Section 11502.

(b) To state or advertise that he or she is certified, registered, or licensed by a governmental agency to perform the functions of a certified common interest development manager.

(c) To state or advertise a registration or license number, unless the license or registration is specified by a statute, regulation, or ordinance.

(d) To fail to comply with any item to be disclosed in Section 11504 of this code, or Section 1363.1 of the Civil Code.

SEC. 8. Section 11506 of the Business and Professions Code is amended to read:

11506. This part shall be subject to the review required by Division 1.2 (commencing with Section 473). This part shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.