

Introduced by Senator Harman

February 22, 2007

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

LEGISLATIVE COUNSEL'S DIGEST

SB 475, as introduced, Harman. Common interest developments: condominium plans.

The Davis-Stirling Common Interest Development Act governs the creation and management of common interest developments. The act specifies the documents that comprise a condominium plan for these purposes, including a certificate consenting to the recordation of the condominium plan signed and acknowledged as prescribed.

This bill would make a technical, nonsubstantive change to these provisions.

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

1 the common area may be a fee, a life estate, an estate for years, or
2 any combination of the foregoing. However, the common area for
3 a planned development specified in paragraph (2) of subdivision
4 (k) may consist of mutual or reciprocal easement rights appurtenant
5 to the separate interests.

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

7 (1) A community apartment project.

8 (2) A condominium project.

9 (3) A planned development.

10 (4) A stock cooperative.

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

14 (e) “Condominium plan” means a plan consisting of (1) a
15 description or survey map of a condominium project, which shall
16 refer to or show monumentation on the ground, (2) a
17 three-dimensional description of a condominium project, one or
18 more dimensions of which may extend for an indefinite distance
19 upwards or downwards, in sufficient detail to identify the common
20 areas and each separate interest, and (3) a certificate consenting
21 to the recordation of the condominium plan pursuant to this title
22 signed and acknowledged by the following:

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

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

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

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

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

1 pursuant to Section 66452.10 of the Government Code, the
2 certificate need ~~only~~ be signed *only* by those owners, trustees,
3 beneficiaries, and mortgagees approving the conversion.

4 A condominium plan may be amended or revoked by a
5 subsequently acknowledged recorded instrument executed by all
6 the persons whose signatures would be required pursuant to this
7 subdivision.

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

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

39 (h) “Declaration” means the document, however denominated,
40 which contains the information required by Section 1353.

1 (i) “Exclusive use common area” means a portion of the
2 common areas designated by the declaration for the exclusive use
3 of one or more, but fewer than all, of the owners of the separate
4 interests and which is or will be appurtenant to the separate interest
5 or interests.

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

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

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

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

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

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

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

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

38 (2) In a condominium project, “separate interest” means an
39 individual unit, as specified in subdivision (f).

1 (3) In a planned development, “separate interest” means a
2 separately owned lot, parcel, area, or space.

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

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

13 The estate in a separate interest may be a fee, a life estate, an
14 estate for years, or any combination of the foregoing.

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

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