**Assembly Bill No. 2485**

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Passed the Assembly August 30, 2010

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*Chief Clerk of the Assembly*

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Passed the Senate August 26, 2010

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*Secretary of the Senate*

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This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ____M.

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*Private Secretary of the Governor*

CHAPTER _____

An act to amend Section 1375.05 of the Civil Code, and to amend Section 70617 of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2485, Feuer. Courts: civil actions.

(1) Existing law requires the governing association of a common interest development and the builder of the development to comply with specified dispute resolution procedures. However, existing law, until July 1, 2010, provides that if the parties have not settled the matter, the association or its assignee may file a complaint in superior court, as provided.

This bill would extend the operation of these latter provisions to July 1, 2017.

(2) Existing law specifies various uniform fees for filing specified documents in connection with certain civil proceedings. The fee for filing in the superior court an application to appear as counsel pro hac vice is $250.

This bill would increase the fee for filing in the superior court an application to appear as counsel pro hac vice to $500. This bill would provide for $250 of the fee to be deposited into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund and for $250 of the fee to be deposited into the Trial Court Trust Fund.

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

SECTION 1. Section 1375.05 of the Civil Code is amended to read:

1375.05. (a) Upon the completion of the mandatory prefiling dispute resolution process described in Section 1375, if the parties have not settled the matter, the association or its assignee may file a complaint in the superior court in the county in which the project is located. Those matters shall be given trial priority.

(b) In assigning trial priority, the court shall assign the earliest possible trial date, taking into consideration the pretrial preparation completed pursuant to Section 1375, and shall deem the complaint

to have been filed on the date of service of the Notice of Commencement of Legal Proceedings described under Section 1375.

(c) Any respondent, subcontractor, or design professional who received timely prior notice of the inspections and testing conducted under Section 1375 shall be prohibited from engaging in additional inspection or testing, except if all of the following specific conditions are met, upon motion to the court:

(1) There is an insurer for a subcontractor or design professional, that did not have timely notice that legal proceedings were commenced under Section 1375 at least 30 days prior to the commencement of inspections or testing pursuant to paragraph (6) of subdivision (h) of Section 1375.

(2) The insurer's insured did not participate in any inspections or testing conducted under the provisions of paragraph (6) of subdivision (h) of Section 1375.

(3) The insurer has, after receiving notice of a complaint filed in superior court under subdivision (a), retained separate counsel, who did not participate in the Section 1375 dispute resolution process, to defend its insured as to the allegations in the complaint.

(4) It is reasonably likely that the insured would suffer prejudice if additional inspections or testing are not permitted.

(5) The information obtainable through the proposed additional inspections or testing is not available through any reasonable alternative sources.

If the court permits additional inspections or testing upon finding that these requirements are met, any additional inspections or testing shall be limited to the extent reasonably necessary to avoid the likelihood of prejudice and shall be coordinated among all similarly situated parties to ensure that they occur without unnecessary duplication. For purposes of providing notice to an insurer prior to inspections or testing under paragraph (6) of subdivision (h) of Section 1375, if notice of the proceedings was not provided by the insurer's insured, notice may be made via certified mail either by the subcontractor, design professional, association, or respondent to the address specified in the Statement of Insurance provided under paragraph (2) of subdivision (e) of Section 1375. Nothing herein shall affect the rights of an intervenor who files a complaint in intervention. If the association alleges defects that were not specified in the prefiling dispute resolution

process under Section 1375, the respondent, subcontractor, and design professionals shall be permitted to engage in testing or inspection necessary to respond to the additional claims. A party who seeks additional inspections or testing based upon the amendment of claims shall apply to the court for leave to conduct those inspections or that testing. If the court determines that it must review the defect claims alleged by the association in the prefiling dispute resolution process in order to determine whether the association alleges new or additional defects, this review shall be conducted in camera. Upon objection of any party, the court shall refer the matter to a judge other than the assigned trial judge to determine if the claim has been amended in a way that requires additional testing or inspection.

(d) Any subcontractor or design professional who had notice of the facilitated dispute resolution conducted under Section 1375 but failed to attend, or attended without settlement authority, shall be bound by the amount of any settlement reached in the facilitated dispute resolution in any subsequent trial, although the affected party may introduce evidence as to the allocation of the settlement. Any party who failed to participate in the facilitated dispute resolution because the party did not receive timely notice of the mediation shall be relieved of any obligation to participate in the settlement. Notwithstanding any privilege applicable to the prefiling dispute resolution process provided by Section 1375, evidence may be introduced by any party to show whether a subcontractor or design professional failed to attend or attended without settlement authority. The binding effect of this subdivision shall in no way diminish or reduce a nonsettling subcontractor or design professional's right to defend itself or assert all available defenses relevant to its liability in any subsequent trial. For purposes of this subdivision, a subcontractor or design professional shall not be deemed to have attended without settlement authority because it asserted defenses to its potential liability.

(e) Notice of the facilitated dispute resolution conducted under Section 1375 must be mailed by the respondent no later than 20 days prior to the date of the first facilitated dispute resolution session to all parties. Notice shall also be mailed to each of these parties' known insurance carriers. Mailing of this notice shall be by certified mail. Any subsequent facilitated dispute resolution

notices shall be served by any means reasonably calculated to provide those parties actual notice.

(f) As to the complaint, the order of discovery shall, at the request of any defendant, except upon a showing of good cause, permit the association's expert witnesses to be deposed prior to any percipient party depositions. The depositions shall, at the request of the association, be followed immediately by the defendant's experts and then by the subcontractors' and design professionals' experts, except on a showing of good cause. For purposes of this section, in determining what constitutes "good cause," the court shall consider, among other things, the goal of early disclosure of defects and whether the expert is prepared to render a final opinion, except that the court may modify the scope of any expert's deposition to address those concerns.

(g) (1) The only method of seeking judicial relief for the failure of the association or the respondent to complete the dispute resolution process under Section 1375 shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the respondent after that action has been filed. A verified application asserting a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the respondent alleging substantial noncompliance with Section 1375, the court shall schedule a hearing within 21 days of the application to determine whether the association or respondent has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3) (A) If the court finds that the association or the respondent did not substantially comply with this paragraph, the court shall stay the action for up to 90 days to allow the noncomplying party to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance. At any time, the court may, for good cause shown, extend the period of the stay upon application of the noncomplying party.

(B) If, within the time set by the court pursuant to this paragraph, the association or the respondent has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without

prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the respondent has complied with this section.

(h) This section is operative on July 1, 2002, but does not apply to any action or proceeding pending on that date.

(i) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute that is enacted before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 70617 of the Government Code is amended to read:

70617. (a) Except as provided in subdivisions (d) and (e), the uniform fee for filing a motion, application, or any other paper requiring a hearing subsequent to the first paper, is forty dollars ($40). Papers for which this fee shall be charged include the following:

(1) A motion listed in paragraphs (1) to (12), inclusive, of subdivision (a) of Section 1005 of the Code of Civil Procedure.

(2) A motion or application to continue a trial date.

(3) An application for examination of a third person controlling defendant's property under Section 491.110 or 491.150 of the Code of Civil Procedure.

(4) Discovery motions under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

(5) A motion for a new trial of any civil action or special proceeding.

(6) An application for an order for a judgment debtor examination under Section 708.110 or 708.160 of the Code of Civil Procedure.

(7) An application for an order of sale of a dwelling under Section 704.750 of the Code of Civil Procedure.

(8) An ex parte application that requires a party to give notice of the ex parte appearance to other parties.

(b) There shall be no fee under subdivision (a) or (c) for filing any of the following:

(1) A motion, application, demurrer, request, notice, or stipulation and order that is the first paper filed in an action and on which a first paper filing fee is paid.

(2) An amended notice of motion.

(3) A civil case management statement.

(4) A request for trial de novo after judicial arbitration.

(5) A stipulation that does not require an order.

(6) A request for an order to prevent civil harassment.

(7) A request for an order to prevent domestic violence.

(8) A request for entry of default or default judgment.

(9) A paper requiring a hearing on a petition for emancipation of a minor.

(10) A paper requiring a hearing on a petition for an order to prevent abuse of an elder or dependent adult.

(11) A paper requiring a hearing on a petition for a writ of review, mandate, or prohibition.

(12) A paper requiring a hearing on a petition for a decree of change of name or gender.

(13) A paper requiring a hearing on a petition to approve the compromise of a claim of a minor.

(c) The fee for filing the following papers not requiring a hearing is twenty dollars ($20):

(1) A request, application, or motion for, or a notice of, the continuance of a hearing or case management conference. The fee shall be charged no more than once for each continuance. The fee shall not be charged if the continuance is required by the court.

(2) A stipulation and order.

(3) A request for an order authorizing service of summons by posting or by publication under Section 415.45 or 415.50 of the Code of Civil Procedure.

(d) The fee for filing a motion for summary judgment or summary adjudication of issues is two hundred dollars ($200).

(e) The fee for filing in the superior court an application to appear as counsel pro hac vice is five hundred dollars ($500). This fee is in addition to any other fee required of the applicant. Two hundred fifty dollars ($250) of the fee collected under this subdivision shall be transmitted to the state for deposit into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5. Two hundred fifty dollars ($250) of the fee collected under this subdivision shall

be transmitted to the state for deposit in the Trial Court Trust Fund, established in Section 68085.

(f) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the fees required by subdivisions (a), (c), (d), and (e) apply separately to each motion or other paper filed. The Judicial Council may publish rules to give uniform guidance to courts in applying fees under this section.

Approved _____, 2010

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*Governor*