

AMENDED IN ASSEMBLY MAY 10, 2010

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2502

Introduced by Assembly Member Brownley

February 19, 2010

An act to amend Section 1367.1 of the Civil Code, relating to homeowners' associations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2502, as amended, Brownley. Homeowners' associations: delinquencies.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes a homeowners' association that manages the development to levy assessments to fulfill its obligations. The act provides that a regular or special assessment of the association, fees, reasonable costs of collection, attorney's fees, late charges, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied. Existing law provides that payments made by a homeowner to reduce the debt shall first be applied to the assessments owed, and may only be applied to fees, reasonable costs of collection, attorney's fees, late charges, and interest only after the assessments owed are paid in full.

This bill would clarify that the provisions that set forth the order in which payments are to be allocated apply to any agent of the homeowners' association and to any 3rd party assigned to collect payment for purposes of collection of the debt. This bill would provide

that a homeowner may not waive the right to have payments allocated in the order specified. This bill would also require the homeowners' association and its agent to accept partial payments of the debt if the partial payments comply with the terms of a written agreement.

Existing law requires a homeowners' association, if requested by a homeowner, to meet with the board in special session, within 45 days of the request, to discuss a payment plan. Existing law provides that if there is no special session scheduled within the 45-day period, that the board may designate a committee to meet with the homeowner to discuss a payment plan within that time period.

This bill would only allow the board to designate a committee to meet with the homeowner if the homeowner authorizes the designation of that committee, and, if the homeowner does not authorize the designation of the committee, would require the meeting to *discuss a payment plan* to take place at the next regularly scheduled board meeting. *This bill would authorize either an owner or the association to have counsel present at the meeting, subject to the requirement that the other party is notified of the counsel's presence at least 48 hours prior to the scheduled meeting. If there are minutes of an executive meeting concerning the payment plan, this bill would authorize the owner to request a copy of the portion of those minutes that relate to the payment plan.* This bill would ~~provide that the homeowners' association may not authorize an agent, representative, or any other 3rd party to discuss or negotiate a payment plan without the consent of the homeowner and would require that all payment plans would be subject to the approval of the board at an open meeting of the board to be made in writing and would require that a copy of an executed contract for a payment plan be sent to the owner within 7 days following the execution of the contract.~~ This bill would also provide that, ~~in the event the association assigns or pledges its right to collect payments or assessments to a financial institution, lender, or other 3rd party, that the 3rd party if the association contracts with an agent to collect payments made by the owner, that agent would be subject to the provisions of the act and, if the owner has entered into a payment plan with the homeowners' association, would require that 3rd party to conduct any collection procedures in accordance with the provisions of an existing payment plan.~~

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. (a) The Legislature finds and declares:

2 (1) The Davis-Stirling Common Interest Development Act was
3 enacted to provide protections, in part, to owners in common
4 interest developments.

5 (2) The Davis-Stirling Common Interest Development Act
6 establishes procedures to be followed by homeowners' associations
7 in the collection of delinquencies of regular and special
8 assessments.

9 (3) ~~Some homeowners' associations assign the association's~~
10 ~~right to collect these delinquencies to agents that have required~~
11 ~~contract with agents to collect these delinquencies, who, at times,~~
12 ~~may require the owner to enter into payment plans that are different~~
13 ~~than the payment plan by and between the association and the~~
14 ~~owner. Some of the contracts have required the owner to waive~~
15 ~~his or her rights to the protections provided by the Davis-Stirling~~
16 ~~Common Interest Development Act. as provided in Section 1367.1~~
17 ~~of the Civil Code.~~

18 (4) ~~By waiving these rights, some owners have been coerced~~
19 ~~into payment plans that require the payments to be first applied to~~
20 ~~the costs of collection, attorney's fees, late charges, and interest,~~
21 ~~rather than to the principal, forcing the homeowner to sink deeper~~
22 ~~into debt.~~

23 (b) It is the intent of the Legislature, by enacting this act, to
24 apply the requirements of the Davis-Stirling Common Interest
25 Development Act, with respect to the collection of delinquencies,
26 to agents of the homeowners' associations assigned to collect
27 delinquent assessments.

28 SEC. 2. Section 1367.1 of the Civil Code is amended to read:

29 1367.1. (a) A regular or special assessment and any late
30 charges, reasonable fees and costs of collection, reasonable
31 attorney's fees, if any, and interest, if any, as determined in
32 accordance with Section 1366, shall be a debt of the owner of the
33 separate interest at the time the assessment or other sums are levied.
34 At least 30 days prior to recording a lien upon the separate interest
35 of the owner of record to collect a debt that is past due under this
36 subdivision, the association shall notify the owner of record in
37 writing by certified mail of the following:

1 (1) A general description of the collection and lien enforcement
 2 procedures of the association and the method of calculation of the
 3 amount, a statement that the owner of the separate interest has the
 4 right to inspect the association records, pursuant to Section 8333
 5 of the Corporations Code, and the following statement in 14-point
 6 boldface type, if printed, or in capital letters, if typed:
 7 “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS
 8 PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND
 9 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT
 10 COURT ACTION.”

11 (2) An itemized statement of the charges owed by the owner,
 12 including items on the statement which indicate the amount of any
 13 delinquent assessments, the fees and reasonable costs of collection,
 14 reasonable attorney’s fees, any late charges, and interest, if any.

15 (3) A statement that the owner shall not be liable to pay the
 16 charges, interest, and costs of collection, if it is determined the
 17 assessment was paid on time to the association.

18 (4) The right to request a meeting with the board as provided
 19 by paragraph (3) of subdivision (c). *If a meeting is scheduled, and*
 20 *if either the owner or the association is to be represented by*
 21 *counsel, the party to be represented shall disclose that fact to the*
 22 *other party at least 48 hours prior to the commencement of the*
 23 *meeting.*

24 (5) The right to dispute the assessment debt by submitting a
 25 written request for dispute resolution to the association pursuant
 26 to the association’s “meet and confer” program required in Article
 27 5 (commencing with Section 1363.810) of Chapter 4.

28 (6) The right to request alternative dispute resolution with a
 29 neutral third party pursuant to Article 2 (commencing with Section
 30 1369.510) of Chapter 7 before the association may initiate
 31 foreclosure against the owner’s separate interest, except that
 32 binding arbitration shall not be available if the association intends
 33 to initiate a judicial foreclosure.

34 (7) *The right to enter into a payment plan and the right to*
 35 *receive a copy of the payment and any amendments made to the*
 36 *payment plan.*

37 (b) (1) Any payments made by the owner of a separate interest
 38 toward the debt set forth, as required in subdivision (a), whether
 39 ~~made to the association or an agent of the association assigned to~~
 40 ~~collect the debt~~ *made to the association or its agent*, shall first be

1 applied to the assessments owed, and, only after the assessments
2 owed are paid in full shall the payments be applied to the fees and
3 costs of collection, attorney’s fees, late charges, or interest. When
4 an owner makes a payment, the owner may request a receipt and
5 the association or its agent assigned to accept payment for purposes
6 of collection of the debt shall provide it. The receipt shall indicate
7 the date of payment and the person who received it. The association
8 shall provide a mailing address for ~~overnight~~ payment of
9 assessments.

10 ~~(2) The association or agent of the association assigned to collect~~
11 (2) *The association or its agent that collects the* payment of
12 the debt shall not refuse to accept partial payment of the debt
13 should the partial payment comply with the terms of the written
14 agreement *by and* between the association and the owner.

15 (3) The provisions set forth in paragraph (1), regarding the order
16 in which the payments made are to be allocated, shall apply to an
17 agent of the association that accepts payment for purposes of
18 collection of the debt. An owner shall not waive the provisions of
19 paragraph (1) that set forth the order of the allocation of payments
20 made toward the debt.

21 (4) An owner and the association may mutually agree to amend
22 a payment plan so long as the amended payment plan is in *writing*
23 *and in* compliance with paragraph (1).

24 (c) (1) (A) Prior to recording a lien for delinquent assessments,
25 an association shall offer the owner and, if so requested by the
26 owner, participate in dispute resolution pursuant to the association’s
27 “meet and confer” program required in Article 5 (commencing
28 with Section 1363.810) of Chapter 4.

29 (B) Prior to initiating a foreclosure for delinquent assessments,
30 an association shall offer the owner and, if so requested by the
31 owner, shall participate in dispute resolution pursuant to the
32 association’s “meet and confer” program required in Article 5
33 (commencing with Section 1363.810) of Chapter 4 or alternative
34 dispute resolution with a neutral third party pursuant to Article 2
35 (commencing with Section 1369.510) of Chapter 7. The decision
36 to pursue dispute resolution or a particular type of alternative
37 dispute resolution shall be the choice of the owner, except that
38 binding arbitration shall not be available if the association intends
39 to initiate a judicial foreclosure.

1 (2) For liens recorded on or after January 1, 2006, the decision
2 to record a lien for delinquent assessments shall be made only by
3 the board of directors of the association and may not be delegated
4 to an agent of the association. The board shall approve the decision
5 by a majority vote of the board members in an open meeting. The
6 board shall record the vote in the minutes of that meeting.

7 (3) (A) An owner, other than an owner of any interest that is
8 described in Section 11212 of the Business and Professions Code
9 that is not otherwise exempt from this section pursuant to
10 subdivision (a) of Section 11211.7, may submit a written request
11 to meet with the board to discuss a payment plan for the debt
12 noticed pursuant to subdivision (a). The association shall ~~provide~~
13 ~~the owners~~ *disclose, in writing, to the owner* the standards for
14 payment plans, if any exist. The board shall meet with the owner
15 in executive session, within 45 days of the postmark of the request,
16 if the request is mailed within 15 days of the date of the postmark
17 of the notice, unless there is no regularly scheduled board meeting
18 within that period, in which case the board, if authorized by the
19 owner, may designate a committee of one or more members to
20 meet with the owner. If the owner does not authorize the board to
21 designate a committee to meet with the owner, the board shall
22 meet with the owner at the next regularly-scheduled board meeting.
23 ~~The board shall not, without the consent of the owner, authorize~~
24 ~~an agent or representative of the association or any other third~~
25 ~~party to discuss or negotiate a payment plan. All payment plans~~
26 ~~are subject to the approval of the board at an open meeting of the~~
27 ~~board.~~ *scheduled board meeting. If there are minutes of the*
28 *executive session concerning a payment plan, an owner who is a*
29 *party to the payment plan may, upon written request, receive a*
30 *copy of the pertinent section of those minutes relating to the*
31 *payment plan.*

32 (B) *An owner or the association has a right to counsel at the*
33 *executive session or committee meeting subject to disclosure, by*
34 *the party that retains counsel, to the other party at least 48 hours*
35 *prior to the commencement of that meeting.*

36 (C) *Payment plans shall be in writing and a copy of the executed*
37 *contract setting forth the terms of the payment plan shall be*
38 *delivered to the owner within seven days following the execution*
39 *of the contract.*

40 (B)

1 (D) Payment plans may incorporate any assessments that accrue
2 during the payment plan period. Payment plans shall not impede
3 an association's ability to record a lien on the owner's separate
4 interest to secure payment of delinquent assessments. Additional
5 late fees shall not accrue during the payment plan period if the
6 owner is in compliance with the terms of the payment plan. In the
7 event of a default on any payment plan, the association may resume
8 its efforts to collect the delinquent assessments from the time prior
9 to entering into the payment plan.

10 (d) The amount of the assessment, plus any costs of collection,
11 late charges, and interest assessed in accordance with Section 1366,
12 shall be a lien on the owner's separate interest in the common
13 interest development from and after the time the association causes
14 to be recorded with the county recorder of the county in which the
15 separate interest is located, a notice of delinquent assessment,
16 which shall state the amount of the assessment and other sums
17 imposed in accordance with Section 1366, a legal description of
18 the owner's separate interest in the common interest development
19 against which the assessment and other sums are levied, and the
20 name of the record owner of the separate interest in the common
21 interest development against which the lien is imposed. The
22 itemized statement of the charges owed by the owner described in
23 paragraph (2) of subdivision (a) shall be recorded together with
24 the notice of delinquent assessment. In order for the lien to be
25 enforced by nonjudicial foreclosure as provided in subdivision (g),
26 the notice of delinquent assessment shall state the name and address
27 of the trustee authorized by the association to enforce the lien by
28 sale. The notice of delinquent assessment shall be signed by the
29 person designated in the declaration or by the association for that
30 purpose, or if no one is designated, by the president of the
31 association. A copy of the recorded notice of delinquent assessment
32 shall be mailed by certified mail to every person whose name is
33 shown as an owner of the separate interest in the association's
34 records, and the notice shall be mailed no later than 10 calendar
35 days after recordation. Within 21 days of the payment of the sums
36 specified in the notice of delinquent assessment, the association
37 shall record or cause to be recorded in the office of the county
38 recorder in which the notice of delinquent assessment is recorded
39 a lien release or notice of rescission and provide the owner of the
40 separate interest a copy of the lien release or notice that the

1 delinquent assessment has been satisfied. A monetary charge
2 imposed by the association as a means of reimbursing the
3 association for costs incurred by the association in the repair of
4 damage to common areas and facilities for which the member or
5 the member's guests or tenants were responsible may become a
6 lien against the member's separate interest enforceable by the sale
7 of the interest under Sections 2924, 2924b, and 2924c, provided
8 the authority to impose a lien is set forth in the governing
9 documents. It is the intent of the Legislature not to contravene
10 Section 2792.26 of Title 10 of the California Code of Regulations,
11 as that section appeared on January 1, 1996, for associations of
12 subdivisions that are being sold under authority of a subdivision
13 public report, pursuant to Part 2 (commencing with Section 11000)
14 of Division 4 of the Business and Professions Code.

15 (e) Except as indicated in subdivision (d), a monetary penalty
16 imposed by the association as a disciplinary measure for failure
17 of a member to comply with the governing instruments, except for
18 the late payments, may not be characterized nor treated in the
19 governing instruments as an assessment that may become a lien
20 against the member's subdivision separate interest enforceable by
21 the sale of the interest under Sections 2924, 2924b, and 2924c.

22 (f) A lien created pursuant to subdivision (d) shall be prior to
23 all other liens recorded subsequent to the notice of assessment,
24 except that the declaration may provide for the subordination
25 thereof to any other liens and encumbrances.

26 (g) (1) An association may not voluntarily assign or pledge the
27 association's right to collect payments or assessments, or to enforce
28 or foreclose a lien to a third party, except when the assignment or
29 pledge is made to a financial institution or lender chartered or
30 licensed under federal or state law, when acting within the scope
31 of that charter or license, as security for a loan obtained by the
32 association; however, the foregoing provision may not restrict the
33 right or ability of an association to assign any unpaid obligations
34 of a former member to a third party for purposes of collection. If
35 the association assigns or pledges its right to collect payments or
36 assessments to a financial institution, lender, or other third party,
37 then the third party shall be subject to the provisions of this section
38 and, if the owner has entered into a payment plan with the
39 association, then the third party shall also conduct any collection
40 procedures in accordance with the provisions of that payment plan.

1 *the association contracts with an agent to collect the payments*
2 *made by an owner toward the debt, as required in subdivision (a),*
3 *the agent shall be subject to the provisions of this section.*

4 (2) Subject to the limitations of this subdivision, after the
5 expiration of 30 days following the recording of a lien created
6 pursuant to subdivision (d), the lien may be enforced in any manner
7 permitted by law, including sale by the court, sale by the trustee
8 designated in the notice of delinquent assessment, or sale by a
9 trustee substituted pursuant to Section 2934a. Any sale by the
10 trustee shall be conducted in accordance with Sections 2924,
11 2924b, and 2924c applicable to the exercise of powers of sale in
12 mortgages and deeds of trust. The fees of a trustee may not exceed
13 the amounts prescribed in Sections 2924c and 2924d, plus the cost
14 of service for either of the following:

15 (A) The notice of default pursuant to subdivision (j) of Section
16 1367.1.

17 (B) The decision of the board to foreclose upon the separate
18 interest of an owner as described in paragraph (3) of subdivision
19 (c) of Section 1367.4.

20 (h) Nothing in this section or in subdivision (a) of Section 726
21 of the Code of Civil Procedure prohibits actions against the owner
22 of a separate interest to recover sums for which a lien is created
23 pursuant to this section or prohibits an association from taking a
24 deed in lieu of foreclosure.

25 (i) If it is determined that a lien previously recorded against the
26 separate interest was recorded in error, the party who recorded the
27 lien shall, within 21 calendar days, record or cause to be recorded
28 in the office of the county recorder in which the notice of
29 delinquent assessment is recorded a lien release or notice of
30 rescission and provide the owner of the separate interest with a
31 declaration that the lien filing or recording was in error and a copy
32 of the lien release or notice of rescission.

33 (j) In addition to the requirements of Section 2924, a notice of
34 default shall be served by the association on the owner's legal
35 representative in accordance with the manner of service of
36 summons in Article 3 (commencing with Section 415.10) of
37 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The
38 owner's legal representative shall be the person whose name is
39 shown as the owner of a separate interest in the association's
40 records, unless another person has been previously designated by

1 the owner as his or her legal representative in writing and mailed
2 to the association in a manner that indicates that the association
3 has received it.

4 (k) Upon receipt of a written request by an owner identifying a
5 secondary address for purposes of collection notices, the
6 association shall send additional copies of any notices required by
7 this section to the secondary address provided. The association
8 shall notify owners of their right to submit secondary addresses to
9 the association, at the time the association issues the pro forma
10 operating budget pursuant to Section 1365. The owner's request
11 shall be in writing and shall be mailed to the association in a
12 manner that shall indicate the association has received it. The
13 owner may identify or change a secondary address at any time,
14 provided that, if a secondary address is identified or changed during
15 the collection process, the association shall only be required to
16 send notices to the indicated secondary address from the point the
17 association receives the request.

18 (l) (1) An association that fails to comply with the procedures
19 set forth in this section shall, prior to recording a lien, recommence
20 the required notice process.

21 (2) Any costs associated with recommencing the notice process
22 shall be borne by the association and not by the owner of a separate
23 interest.

24 (m) This section only applies to liens recorded on or after
25 January 1, 2003.

26 (n) This section is subordinate to, and shall be interpreted in
27 conformity with, Section 1367.4.