

AMENDED IN SENATE APRIL 7, 2010

SENATE BILL

No. 1128

Introduced by Senator DeSaulnier

February 18, 2010

An act to amend Sections 1365.2 and 1368 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 1128, as amended, DeSaulnier. Common interest developments: ~~transfers of title.~~ *governance.*

The Davis-Stirling Common Interest Development Act, requires that an owner of a separate interest in a common interest development provide certain items to a prospective purchaser prior to transfer of title, and prohibits an association, community service organization, or similar entity, as defined, from imposing or collecting any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and a specified charge for providing certain information upon request. Existing law also requires an association, community service organization, or similar entity to make the accounting books and records and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative, as provided.

This bill would apply these provisions to a nonprofit entity that provides services to a common interest development under a declaration of trust, as provided, except as specified.

~~The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its~~

obligations. The act provides that a regular or special assessment of the association, late charges, reasonable costs of collection, attorney's fees, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a notice of delinquent assessment and follows a specified process. Existing law authorizes a community service organization or similar entity that performs environmental mitigation and that was established prior to February 20, 2003, and a community service organization or similar entity established and collecting transfer fees prior to January 1, 2004, that institutes specified fee collection procedures on and after January 1, 2006, to impose or collect an assessment, penalty, or fee in connection with a transfer of title or any other interest in an amount not to exceed the actual costs to change its records.

This bill would provide that the Golden Rain Foundation of Walnut Creek may apply a fee upon the sale or other transfer of title of a separate interest within the common interest developments for which it provides services under a declaration of trust if a fee was applied to the sale or transfer of separate interests within that common interest development prior to January 1, 2010, in accordance with the provisions of existing law that apply to fees imposed and collected by specified community service organizations or similar entities that perform environmental mitigation.

This bill would make legislative findings and declarations as to the necessity of a special statute for the purpose of ensuring the continuity of services to residents of real property maintained by a community service organization located in the County of Contra Costa.

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 1365.2 of the Civil Code is amended to
- 2 read:
- 3 1365.2. (a) For the purposes of this section, the following
- 4 definitions shall apply:
- 5 (1) "Association records" means all of the following:
- 6 (A) Any financial document required to be provided to a member
- 7 in Section 1365.

1 (B) Any financial document or statement required to be provided
2 in Section 1368.

3 (C) Interim financial statements, periodic or as compiled,
4 containing any of the following:

5 (i) Balance sheet.

6 (ii) Income and expense statement.

7 (iii) Budget comparison.

8 (iv) General ledger. A “general ledger” is a report that shows
9 all transactions that occurred in an association account over a
10 specified period of time.

11 The records described in this subparagraph shall be prepared in
12 accordance with an accrual or modified accrual basis of accounting.

13 (D) Executed contracts not otherwise privileged under law.

14 (E) Written board approval of vendor or contractor proposals
15 or invoices.

16 (F) State and federal tax returns.

17 (G) Reserve account balances and records of payments made
18 from reserve accounts.

19 (H) Agendas and minutes of meetings of the members, the board
20 of directors and any committees appointed by the board of directors
21 pursuant to Section 7212 of the Corporations Code; excluding,
22 however, agendas, minutes, and other information from executive
23 sessions of the board of directors as described in Section 1363.05.

24 (I) (i) Membership lists, including name, property address, and
25 mailing address, if the conditions set forth in clause (ii) are met
26 and except as otherwise provided in clause (iii).

27 (ii) The member requesting the list shall state the purpose for
28 which the list is requested which purpose shall be reasonably
29 related to the requester’s interest as a member. If the association
30 reasonably believes that the information in the list will be used for
31 another purpose, it may deny the member access to the list. If the
32 request is denied, in any subsequent action brought by the member
33 under subdivision (f), the association shall have the burden to prove
34 that the member would have allowed use of the information for
35 purposes unrelated to his or her interest as a member.

36 (iii) A member of the association may opt out of the sharing of
37 his or her name, property address, and mailing address by notifying
38 the association in writing that he or she prefers to be contacted via
39 the alternative process described in subdivision (c) of Section 8330

1 of the Corporations Code. This opt-out shall remain in effect until
2 changed by the member.

3 (J) Check registers.

4 (2) “Enhanced association records” means invoices, receipts
5 and canceled checks for payments made by the association,
6 purchase orders approved by the association, credit card statements
7 for credit cards issued in the name of the association, statements
8 for services rendered, and reimbursement requests submitted to
9 the association, provided that the person submitting the
10 reimbursement request shall be solely responsible for removing
11 all personal identification information from the request.

12 (b) (1) The association shall make available association records
13 and enhanced association records for the time periods and within
14 the timeframes provided in subdivisions (i) and (j) for inspection
15 and copying by a member of the association, or the member’s
16 designated representative. The association may bill the requesting
17 member for the direct and actual cost of copying requested
18 documents. The association shall inform the member of the amount
19 of the copying costs before copying the requested documents.

20 (2) A member of the association may designate another person
21 to inspect and copy the specified association records on the
22 member’s behalf. The member shall make this designation in
23 writing.

24 (c) (1) The association shall make the specified association
25 records available for inspection and copying in the association’s
26 business office within the common interest development.

27 (2) If the association does not have a business office within the
28 development, the association shall make the specified association
29 records available for inspection and copying at a place that the
30 requesting member and the association agree upon.

31 (3) If the association and the requesting member cannot agree
32 upon a place for inspection and copying pursuant to paragraph (2),
33 or if the requesting member submits a written request directly to
34 the association for copies of specifically identified records, the
35 association may satisfy the requirement to make the association
36 records available for inspection and copying by mailing copies of
37 the specifically identified records to the member by first-class mail
38 within the timeframes set forth in subdivision (j).

39 (4) The association may bill the requesting member for the direct
40 and actual cost of copying and mailing requested documents. The

1 association shall inform the member of the amount of the copying
2 and mailing costs, and the member shall agree to pay those costs,
3 before copying and sending the requested documents.

4 (5) In addition to the direct and actual costs of copying and
5 mailing, the association may bill the requesting member an amount
6 not in excess of ten dollars (\$10) per hour, and not to exceed two
7 hundred dollars (\$200) total per written request, for the time
8 actually and reasonably involved in redacting the enhanced
9 association records as provided in paragraph (2) of subdivision
10 (a). The association shall inform the member of the estimated costs,
11 and the member shall agree to pay those costs, before retrieving
12 the requested documents.

13 (d) (1) Except as provided in paragraph (2), the association
14 may withhold or redact information from the association records
15 for any of the following reasons:

16 (A) The release of the information is reasonably likely to lead
17 to identity theft. For the purposes of this section, “identity theft”
18 means the unauthorized use of another person’s personal
19 identifying information to obtain credit, goods, services, money,
20 or property. Examples of information that may be withheld or
21 redacted pursuant to this paragraph include bank account numbers
22 of members or vendors, social security or tax identification
23 numbers, and check, stock, and credit card numbers.

24 (B) The release of the information is reasonably likely to lead
25 to fraud in connection with the association.

26 (C) The information is privileged under law. Examples include
27 documents subject to attorney-client privilege or relating to
28 litigation in which the association is or may become involved, and
29 confidential settlement agreements.

30 (D) The release of the information is reasonably likely to
31 compromise the privacy of an individual member of the association.

32 (E) The information contains any of the following:

33 (i) Records of a-la-carte goods or services provided to individual
34 members of the association for which the association received
35 monetary consideration other than assessments.

36 (ii) Records of disciplinary actions, collection activities, or
37 payment plans of members other than the member requesting the
38 records.

39 (iii) Any person’s personal identification information, including,
40 without limitation, social security number, tax identification

1 number, driver’s license number, credit card account numbers,
2 bank account number, and bank routing number.

3 (iv) Agendas, minutes, and other information from executive
4 sessions of the board of directors as described in Section 1363.05,
5 except for executed contracts not otherwise privileged. Privileged
6 contracts shall not include contracts for maintenance, management,
7 or legal services.

8 (v) Personnel records other than the payroll records required to
9 be provided under paragraph (2).

10 (vi) Interior architectural plans, including security features, for
11 individual homes.

12 (2) Except as provided by the attorney-client privilege, the
13 association may not withhold or redact information concerning
14 the compensation paid to employees, vendors, or contractors.
15 Compensation information for individual employees shall be set
16 forth by job classification or title, not by the employee’s name,
17 social security number, or other personal information.

18 (3) No association, officer, director, employee, agent or
19 volunteer of an association shall be liable for damages to a member
20 of the association or any third party as the result of identity theft
21 or other breach of privacy because of the failure to withhold or
22 redact that member’s information under this subdivision unless
23 the failure to withhold or redact the information was intentional,
24 willful, or negligent.

25 (4) If requested by the requesting member, an association that
26 denies or redacts records shall provide a written explanation
27 specifying the legal basis for withholding or redacting the requested
28 records.

29 (e) (1) The association records, and any information from them,
30 may not be sold, used for a commercial purpose, or used for any
31 other purpose not reasonably related to a member’s interest as a
32 member. An association may bring an action against any person
33 who violates this section for injunctive relief and for actual
34 damages to the association caused by the violation.

35 (2) This section may not be construed to limit the right of an
36 association to damages for misuse of information obtained from
37 the association records pursuant to this section or to limit the right
38 of an association to injunctive relief to stop the misuse of this
39 information.

1 (3) An association shall be entitled to recover reasonable costs
2 and expenses, including reasonable attorney’s fees, in a successful
3 action to enforce its rights under this section.

4 (f) A member of an association may bring an action to enforce
5 the member’s right to inspect and copy the association records. If
6 a court finds that the association unreasonably withheld access to
7 the association records, the court shall award the member
8 reasonable costs and expenses, including reasonable attorney’s
9 fees, and may assess a civil penalty of up to five hundred dollars
10 (\$500) for the denial of each separate written request. A cause of
11 action under this section may be brought in small claims court if
12 the amount of the demand does not exceed the jurisdiction of that
13 court. A prevailing association may recover any costs if the court
14 finds the action to be frivolous, unreasonable, or without
15 foundation.

16 (g) The provisions of this section apply to any community
17 service organization or similar entity, as defined in paragraph (3)
18 of subdivision (c) of Section 1368, that is related to the association,
19 ~~and this to any nonprofit entity that provides services to a common~~
20 ~~interest development under a declaration of trust. This section~~
21 shall operate to give a member of the ~~community service~~
22 organization or ~~similar~~ entity a right to inspect and copy the records
23 of that organization or entity equivalent to that granted to
24 association members by this section.

25 (h) Requesting parties shall have the option of receiving
26 specifically identified records by electronic transmission or
27 machine-readable storage media as long as those records can be
28 transmitted in a redacted format that does not allow the records to
29 be altered. The cost of duplication shall be limited to the direct
30 cost of producing the copy of a record in that electronic format.
31 The association may deliver specifically identified records by
32 electronic transmission or machine-readable storage media as long
33 as those records can be transmitted in a redacted format that
34 prevents the records from being altered.

35 (i) The time periods for which specified records shall be
36 provided is as follows:

37 (1) Association records shall be made available for the current
38 fiscal year and for each of the previous two fiscal years.

39 (2) Minutes of member and board meetings shall be permanently
40 made available. If a committee has decisionmaking authority,

1 minutes of the meetings of that committee shall be made available
2 commencing January 1, 2007, and shall thereafter be permanently
3 made available.

4 (j) The timeframes in which access to specified records shall
5 be provided to a requesting member are as follows:

6 (1) Association records prepared during the current fiscal year,
7 within 10 business days following the association's receipt of the
8 request.

9 (2) Association records prepared during the previous two fiscal
10 years, within 30 calendar days following the association's receipt
11 of the request.

12 (3) Any record or statement available pursuant to Section 1365
13 or 1368, within the timeframe specified therein.

14 (4) Minutes of member and board meetings, within the
15 timeframe specified in subdivision (d) of Section 1363.05.

16 (5) Minutes of meetings of committees with decisionmaking
17 authority for meetings commencing on or after January 1, 2007,
18 within 15 calendar days following approval.

19 (6) Membership list, within the timeframe specified in Section
20 8330 of the Corporations Code.

21 (k) There shall be no liability pursuant to this section for an
22 association that fails to retain records for the periods specified in
23 subdivision (i) that were created prior to January 1, 2006.

24 (l) As applied to an association and its members, the provisions
25 of this section are intended to supersede the provisions of Sections
26 8330 and 8333 of the Corporations Code to the extent those
27 sections are inconsistent.

28 (m) The provisions of this section shall not apply to any common
29 interest development in which separate interests are being offered
30 for sale by a subdivider under the authority of a public report issued
31 by the Department of Real Estate so long as the subdivider or all
32 subdividers offering those separate interests for sale, or any
33 employees of those subdividers or any other person who receives
34 direct or indirect compensation from any of those subdividers,
35 comprise a majority of the members of the board of directors of
36 the association. Notwithstanding the foregoing, this section shall
37 apply to that common interest development no later than 10 years
38 after the close of escrow for the first sale of a separate interest to
39 a member of the general public pursuant to the public report issued
40 for the first phase of the development.

1 (n) This section shall become operative on July 1, 2006.

2 *SEC. 2. Section 1368 of the Civil Code is amended to read:*

3 1368. (a) The owner of a separate interest, other than an owner
4 subject to the requirements of Section 11018.6 of the Business and
5 Professions Code, shall, as soon as practicable before transfer of
6 title to the separate interest or execution of a real property sales
7 contract therefor, as defined in Section 2985, provide the following
8 to the prospective purchaser:

9 (1) A copy of the governing documents of the common interest
10 development, including any operating rules, and including a copy
11 of the association's articles of incorporation, or, if not incorporated,
12 a statement in writing from an authorized representative of the
13 association that the association is not incorporated.

14 (2) If there is a restriction in the governing documents limiting
15 the occupancy, residency, or use of a separate interest on the basis
16 of age in a manner different from that provided in Section 51.3, a
17 statement that the restriction is only enforceable to the extent
18 permitted by Section 51.3 and a statement specifying the applicable
19 provisions of Section 51.3.

20 (3) A copy of the most recent documents distributed pursuant
21 to Section 1365.

22 (4) A true statement in writing obtained from an authorized
23 representative of the association as to the amount of the
24 association's current regular and special assessments and fees, any
25 assessments levied upon the owner's interest in the common
26 interest development that are unpaid on the date of the statement,
27 and any monetary fines or penalties levied upon the owner's
28 interest and unpaid on the date of the statement. The statement
29 obtained from an authorized representative shall also include true
30 information on late charges, interest, and costs of collection which,
31 as of the date of the statement, are or may be made a lien upon the
32 owner's interest in a common interest development pursuant to
33 Section 1367 or 1367.1.

34 (5) A copy or a summary of any notice previously sent to the
35 owner pursuant to subdivision (h) of Section 1363 that sets forth
36 any alleged violation of the governing documents that remains
37 unresolved at the time of the request. The notice shall not be
38 deemed a waiver of the association's right to enforce the governing
39 documents against the owner or the prospective purchaser of the
40 separate interest with respect to any violation. This paragraph shall

1 not be construed to require an association to inspect an owner's
2 separate interest.

3 (6) A copy of the preliminary list of defects provided to each
4 member of the association pursuant to Section 1375, unless the
5 association and the builder subsequently enter into a settlement
6 agreement or otherwise resolve the matter and the association
7 complies with Section 1375.1. Disclosure of the preliminary list
8 of defects pursuant to this paragraph does not waive any privilege
9 attached to the document. The preliminary list of defects shall also
10 include a statement that a final determination as to whether the list
11 of defects is accurate and complete has not been made.

12 (7) A copy of the latest information provided for in Section
13 1375.1.

14 (8) Any change in the association's current regular and special
15 assessments and fees which have been approved by the
16 association's board of directors, but have not become due and
17 payable as of the date disclosure is provided pursuant to this
18 subdivision.

19 (b) Upon written request, an association shall, within 10 days
20 of the mailing or delivery of the request, provide the owner of a
21 separate interest with a copy of the requested items specified in
22 paragraphs (1) to (8), inclusive, of subdivision (a). The items
23 required to be made available pursuant to this section may be
24 maintained in electronic form and requesting parties shall have
25 the option of receiving them by electronic transmission or machine
26 readable storage media if the association maintains these items in
27 electronic form. The association may charge a reasonable fee for
28 this service based upon the association's actual cost to procure,
29 prepare, and reproduce the requested items.

30 (c) (1) ~~Subject to the provisions of~~ *Except as provided in*
31 paragraph (2), neither an association nor a community service
32 organization or similar entity may impose or collect any
33 assessment, penalty, or fee in connection with a transfer of title or
34 any other interest except for the following:

35 (A) An amount not to exceed the association's actual costs to
36 change its records.

37 (B) An amount authorized by subdivision (b).

38 (2) ~~The amendments made to this subdivision by the act adding~~
39 ~~this prohibition in paragraph (1) does not apply to a community~~
40 ~~service organization or similar entity, or to a nonprofit entity that~~

1 *provides services to a common interest development under a*
2 *declaration of trust, that is described in subparagraph (A) or (B):*

3 (A) The community service organization or similar entity
4 satisfies both of the following requirements:

5 (i) The community service organization or similar entity was
6 established prior to February 20, 2003.

7 (ii) The community service organization or similar entity exists
8 and operates, in whole or in part, to fund or perform environmental
9 mitigation or to restore or maintain wetlands or native habitat, as
10 required by the state or local government as an express written
11 condition of development.

12 (B) The community service organization or similar entity, *or a*
13 *nonprofit entity that provides services to a common interest*
14 *development under a declaration of trust, satisfies all of the*
15 *following requirements:*

16 (i) ~~The community service organization or similar entity is not~~
17 ~~an organization or entity described in subparagraph (A).~~

18 (ii) ~~The community service organization or similar entity was~~
19 ~~established and received a transfer fee prior to January 1, 2004.~~

20 (iii) On and after January 1, 2006, ~~the community service~~
21 ~~organization or similar entity offers a purchaser the following~~
22 ~~payment options for the fee or charge it collects at time of transfer:~~

23 (I) Paying the fee or charge at the time of transfer.

24 (II) Paying the fee or charge pursuant to an installment payment
25 plan for a period of not less than seven years. If the purchaser
26 elects to pay the fee or charge in installment payments, the
27 ~~community service organization or similar entity may also collect~~
28 ~~additional amounts that do not exceed the actual costs for billing~~
29 ~~and financing on the amount owed. If the purchaser sells the~~
30 ~~separate interest before the end of the installment payment plan~~
31 ~~period, he or she shall pay the remaining balance prior to transfer.~~

32 (3) For the purposes of this subdivision, a “community service
33 organization or similar entity” means a nonprofit entity, other than
34 an association, that is organized to provide services to residents
35 of the common interest development or to the public in addition
36 to the residents, to the extent community common areas or facilities
37 are available to the public. A “community service organization or
38 similar entity” does not include an entity that has been organized
39 solely to raise moneys and contribute to other nonprofit
40 organizations that are qualified as tax exempt under Section

1 501(c)(3) of the Internal Revenue Code and that provide housing
2 or housing assistance.

3 (d) Any person or entity who willfully violates this section is
4 liable to the purchaser of a separate interest that is subject to this
5 section for actual damages occasioned thereby and, in addition,
6 shall pay a civil penalty in an amount not to exceed five hundred
7 dollars (\$500). In an action to enforce this liability, the prevailing
8 party shall be awarded reasonable attorneys' fees.

9 (e) Nothing in this section affects the validity of title to real
10 property transferred in violation of this section.

11 (f) In addition to the requirements of this section, an owner
12 transferring title to a separate interest shall comply with applicable
13 requirements of Sections 1133 and 1134.

14 (g) For the purposes of this section, a person who acts as a
15 community association manager is an agent, as defined in Section
16 2297, of the association.

17 ~~SECTION 1. Notwithstanding any other provision of law, the
18 Golden Rain Foundation of Walnut Creek may apply a fee upon
19 the sale or other transfer of title of a separate interest within the
20 common interest developments for which it provides services under
21 a declaration of trust if a fee was applied to the sale or transfer of
22 separate interests within that common interest development prior
23 to January 1, 2010. The fee shall be applied in accordance with
24 subdivision (e) of Section 1368 of the Civil Code.~~

25 ~~SEC. 2. The Legislature finds and declares that a special law
26 is necessary and that a general law cannot be made applicable
27 within the meaning of Section 16 of Article IV of the California
28 Constitution because of the unique need to ensure the continuity
29 of services to residents of real property maintained by a community
30 service organization located within the County of Contra Costa.~~