

AMENDED IN ASSEMBLY AUGUST 9, 2010

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: 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.

This bill would also incorporate additional changes to Section 1368 of the Civil Code, as proposed by AB 1927, to be operative only if AB

1927 and this bill are both enacted, each bill amends Section 1368 of the Civil Code, and this bill is enacted after AB 1927.

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.

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

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

12 (i) Balance sheet.

13 (ii) Income and expense statement.

14 (iii) Budget comparison.

15 (iv) General ledger. A "general ledger" is a report that shows
16 all transactions that occurred in an association account over a
17 specified period of time.

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

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

21 (E) Written board approval of vendor or contractor proposals
22 or invoices.

23 (F) State and federal tax returns.

24 (G) Reserve account balances and records of payments made
25 from reserve accounts.

26 (H) Agendas and minutes of meetings of the members, the board
27 of directors and any committees appointed by the board of directors
28 pursuant to Section 7212 of the Corporations Code; excluding,
29 however, agendas, minutes, and other information from executive
30 sessions of the board of directors as described in Section 1363.05.

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

1 (ii) The member requesting the list shall state the purpose for
2 which the list is requested which purpose shall be reasonably
3 related to the requester’s interest as a member. If the association
4 reasonably believes that the information in the list will be used for
5 another purpose, it may deny the member access to the list. If the
6 request is denied, in any subsequent action brought by the member
7 under subdivision (f), the association shall have the burden to prove
8 that the member would have allowed use of the information for
9 purposes unrelated to his or her interest as a member.

10 (iii) A member of the association may opt out of the sharing of
11 his or her name, property address, and mailing address by notifying
12 the association in writing that he or she prefers to be contacted via
13 the alternative process described in subdivision (c) of Section 8330
14 of the Corporations Code. This opt-out shall remain in effect until
15 changed by the member.

16 (J) Check registers.

17 (2) “Enhanced association records” means invoices, receipts
18 and canceled checks for payments made by the association,
19 purchase orders approved by the association, credit card statements
20 for credit cards issued in the name of the association, statements
21 for services rendered, and reimbursement requests submitted to
22 the association, provided that the person submitting the
23 reimbursement request shall be solely responsible for removing
24 all personal identification information from the request.

25 (b) (1) The association shall make available association records
26 and enhanced association records for the time periods and within
27 the timeframes provided in subdivisions (i) and (j) for inspection
28 and copying by a member of the association, or the member’s
29 designated representative. The association may bill the requesting
30 member for the direct and actual cost of copying requested
31 documents. The association shall inform the member of the amount
32 of the copying costs before copying the requested documents.

33 (2) A member of the association may designate another person
34 to inspect and copy the specified association records on the
35 member’s behalf. The member shall make this designation in
36 writing.

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

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

5 (3) If the association and the requesting member cannot agree
6 upon a place for inspection and copying pursuant to paragraph (2),
7 or if the requesting member submits a written request directly to
8 the association for copies of specifically identified records, the
9 association may satisfy the requirement to make the association
10 records available for inspection and copying by mailing copies of
11 the specifically identified records to the member by first-class mail
12 within the timeframes set forth in subdivision (j).

13 (4) The association may bill the requesting member for the direct
14 and actual cost of copying and mailing requested documents. The
15 association shall inform the member of the amount of the copying
16 and mailing costs, and the member shall agree to pay those costs,
17 before copying and sending the requested documents.

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

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

30 (A) The release of the information is reasonably likely to lead
31 to identity theft. For the purposes of this section, “identity theft”
32 means the unauthorized use of another person’s personal
33 identifying information to obtain credit, goods, services, money,
34 or property. Examples of information that may be withheld or
35 redacted pursuant to this paragraph include bank account numbers
36 of members or vendors, social security or tax identification
37 numbers, and check, stock, and credit card numbers.

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

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

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

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

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

11 (ii) Records of disciplinary actions, collection activities, or
12 payment plans of members other than the member requesting the
13 records.

14 (iii) Any person's personal identification information, including,
15 without limitation, social security number, tax identification
16 number, driver's license number, credit card account numbers,
17 bank account number, and bank routing number.

18 (iv) Agendas, minutes, and other information from executive
19 sessions of the board of directors as described in Section 1363.05,
20 except for executed contracts not otherwise privileged. Privileged
21 contracts shall not include contracts for maintenance, management,
22 or legal services.

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

25 (vi) Interior architectural plans, including security features, for
26 individual homes.

27 (2) Except as provided by the attorney-client privilege, the
28 association may not withhold or redact information concerning
29 the compensation paid to employees, vendors, or contractors.
30 Compensation information for individual employees shall be set
31 forth by job classification or title, not by the employee's name,
32 social security number, or other personal information.

33 (3) No association, officer, director, employee, agent or
34 volunteer of an association shall be liable for damages to a member
35 of the association or any third party as the result of identity theft
36 or other breach of privacy because of the failure to withhold or
37 redact that member's information under this subdivision unless
38 the failure to withhold or redact the information was intentional,
39 willful, or negligent.

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

5 (e) (1) The association records, and any information from them,
6 may not be sold, used for a commercial purpose, or used for any
7 other purpose not reasonably related to a member's interest as a
8 member. An association may bring an action against any person
9 who violates this section for injunctive relief and for actual
10 damages to the association caused by the violation.

11 (2) This section may not be construed to limit the right of an
12 association to damages for misuse of information obtained from
13 the association records pursuant to this section or to limit the right
14 of an association to injunctive relief to stop the misuse of this
15 information.

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

19 (f) A member of an association may bring an action to enforce
20 the member's right to inspect and copy the association records. If
21 a court finds that the association unreasonably withheld access to
22 the association records, the court shall award the member
23 reasonable costs and expenses, including reasonable attorney's
24 fees, and may assess a civil penalty of up to five hundred dollars
25 (\$500) for the denial of each separate written request. A cause of
26 action under this section may be brought in small claims court if
27 the amount of the demand does not exceed the jurisdiction of that
28 court. A prevailing association may recover any costs if the court
29 finds the action to be frivolous, unreasonable, or without
30 foundation.

31 (g) The provisions of this section apply to any community
32 service organization or similar entity, as defined in paragraph (3)
33 of subdivision (c) of Section 1368, that is related to the association,
34 and to any nonprofit entity that provides services to a common
35 interest development under a declaration of trust. This section shall
36 operate to give a member of the organization or entity a right to
37 inspect and copy the records of that organization or entity
38 equivalent to that granted to association members by this section.

39 (h) Requesting parties shall have the option of receiving
40 specifically identified records by electronic transmission or

1 machine-readable storage media as long as those records can be
2 transmitted in a redacted format that does not allow the records to
3 be altered. The cost of duplication shall be limited to the direct
4 cost of producing the copy of a record in that electronic format.
5 The association may deliver specifically identified records by
6 electronic transmission or machine-readable storage media as long
7 as those records can be transmitted in a redacted format that
8 prevents the records from being altered.

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

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

13 (2) Minutes of member and board meetings shall be permanently
14 made available. If a committee has decisionmaking authority,
15 minutes of the meetings of that committee shall be made available
16 commencing January 1, 2007, and shall thereafter be permanently
17 made available.

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

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

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

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

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

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

33 (6) Membership list, within the timeframe specified in Section
34 8330 of the Corporations Code.

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

38 (l) As applied to an association and its members, the provisions
39 of this section are intended to supersede the provisions of Sections

1 8330 and 8333 of the Corporations Code to the extent those
2 sections are inconsistent.

3 (m) The provisions of this section shall not apply to any common
4 interest development in which separate interests are being offered
5 for sale by a subdivider under the authority of a public report issued
6 by the Department of Real Estate so long as the subdivider or all
7 subdividers offering those separate interests for sale, or any
8 employees of those subdividers or any other person who receives
9 direct or indirect compensation from any of those subdividers,
10 comprise a majority of the members of the board of directors of
11 the association. Notwithstanding the foregoing, this section shall
12 apply to that common interest development no later than 10 years
13 after the close of escrow for the first sale of a separate interest to
14 a member of the general public pursuant to the public report issued
15 for the first phase of the development.

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

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

18 1368. (a) The owner of a separate interest, other than an owner
19 subject to the requirements of Section 11018.6 of the Business and
20 Professions Code, shall, as soon as practicable before transfer of
21 title to the separate interest or execution of a real property sales
22 contract therefor, as defined in Section 2985, provide the following
23 to the prospective purchaser:

24 (1) A copy of the governing documents of the common interest
25 development, including any operating rules, and including a copy
26 of the association's articles of incorporation, or, if not incorporated,
27 a statement in writing from an authorized representative of the
28 association that the association is not incorporated.

29 (2) If there is a restriction in the governing documents limiting
30 the occupancy, residency, or use of a separate interest on the basis
31 of age in a manner different from that provided in Section 51.3, a
32 statement that the restriction is only enforceable to the extent
33 permitted by Section 51.3 and a statement specifying the applicable
34 provisions of Section 51.3.

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

37 (4) A true statement in writing obtained from an authorized
38 representative of the association as to the amount of the
39 association's current regular and special assessments and fees, any
40 assessments levied upon the owner's interest in the common

1 interest development that are unpaid on the date of the statement,
2 and any monetary fines or penalties levied upon the owner's
3 interest and unpaid on the date of the statement. The statement
4 obtained from an authorized representative shall also include true
5 information on late charges, interest, and costs of collection which,
6 as of the date of the statement, are or may be made a lien upon the
7 owner's interest in a common interest development pursuant to
8 Section 1367 or 1367.1.

9 (5) A copy or a summary of any notice previously sent to the
10 owner pursuant to subdivision (h) of Section 1363 that sets forth
11 any alleged violation of the governing documents that remains
12 unresolved at the time of the request. The notice shall not be
13 deemed a waiver of the association's right to enforce the governing
14 documents against the owner or the prospective purchaser of the
15 separate interest with respect to any violation. This paragraph shall
16 not be construed to require an association to inspect an owner's
17 separate interest.

18 (6) A copy of the preliminary list of defects provided to each
19 member of the association pursuant to Section 1375, unless the
20 association and the builder subsequently enter into a settlement
21 agreement or otherwise resolve the matter and the association
22 complies with Section 1375.1. Disclosure of the preliminary list
23 of defects pursuant to this paragraph does not waive any privilege
24 attached to the document. The preliminary list of defects shall also
25 include a statement that a final determination as to whether the list
26 of defects is accurate and complete has not been made.

27 (7) A copy of the latest information provided for in Section
28 1375.1.

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

34 (b) Upon written request, an association shall, within 10 days
35 of the mailing or delivery of the request, provide the owner of a
36 separate interest with a copy of the requested items specified in
37 paragraphs (1) to (8), inclusive, of subdivision (a). The items
38 required to be made available pursuant to this section may be
39 maintained in electronic form and requesting parties shall have
40 the option of receiving them by electronic transmission or machine

1 readable storage media if the association maintains these items in
2 electronic form. The association may charge a reasonable fee for
3 this service based upon the association's actual cost to procure,
4 prepare, and reproduce the requested items.

5 (c) (1) Except as provided in paragraph (2), neither an
6 association nor a community service organization or similar entity
7 may impose or collect any assessment, penalty, or fee in connection
8 with a transfer of title or any other interest except for the following:

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

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

12 (2) The prohibition in paragraph (1) does not apply to a
13 community service organization or similar entity, or to a nonprofit
14 entity that provides services to a common interest development
15 under a declaration of trust, that is described in subparagraph (A)
16 or (B):

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

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

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

26 (B) The community service organization or similar entity, or a
27 nonprofit entity that provides services to a common interest
28 development under a declaration of trust, satisfies all of the
29 following requirements:

30 (i) The organization or entity is not an organization or entity
31 described in subparagraph (A).

32 (ii) The organization or entity was established and received a
33 transfer fee prior to January 1, 2004.

34 (iii) On and after January 1, 2006, the organization or entity
35 offers a purchaser the following payment options for the fee or
36 charge it collects at time of transfer:

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

38 (II) Paying the fee or charge pursuant to an installment payment
39 plan for a period of not less than seven years. If the purchaser
40 elects to pay the fee or charge in installment payments, the

1 organization or entity may also collect additional amounts that do
2 not exceed the actual costs for billing and financing on the amount
3 owed. If the purchaser sells the separate interest before the end of
4 the installment payment plan period, he or she shall pay the
5 remaining balance prior to transfer.

6 (3) For the purposes of this subdivision, a “community service
7 organization or similar entity” means a nonprofit entity, other than
8 an association, that is organized to provide services to residents
9 of the common interest development or to the public in addition
10 to the residents, to the extent community common areas or facilities
11 are available to the public. A “community service organization or
12 similar entity” does not include an entity that has been organized
13 solely to raise moneys and contribute to other nonprofit
14 organizations that are qualified as tax exempt under Section
15 501(c)(3) of the Internal Revenue Code and that provide housing
16 or housing assistance.

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

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

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

28 (g) For the purposes of this section, a person who acts as a
29 community association manager is an agent, as defined in Section
30 2297, of the association.

31 *SEC. 2.5. Section 1368 of the Civil Code is amended to read:*

32 1368. (a) The owner of a separate interest, other than an owner
33 subject to the requirements of Section 11018.6 of the Business and
34 Professions Code, shall, as soon as practicable before transfer of
35 title to the separate interest or execution of a real property sales
36 contract therefor, as defined in Section 2985, provide the following
37 to the prospective purchaser:

38 (1) A copy of the governing documents of the common interest
39 development, including any operating rules, and including a copy
40 of the association’s articles of incorporation, or, if not incorporated,

1 a statement in writing from an authorized representative of the
2 association that the association is not incorporated.

3 (2) If there is a restriction in the governing documents limiting
4 the occupancy, residency, or use of a separate interest on the basis
5 of age in a manner different from that provided in Section 51.3, a
6 statement that the restriction is only enforceable to the extent
7 permitted by Section 51.3 and a statement specifying the applicable
8 provisions of Section 51.3.

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

11 (4) A true statement in writing obtained from an authorized
12 representative of the association as to the amount of the
13 association's current regular and special assessments and fees, any
14 assessments levied upon the owner's interest in the common
15 interest development that are unpaid on the date of the statement,
16 and any monetary fines or penalties levied upon the owner's
17 interest and unpaid on the date of the statement. The statement
18 obtained from an authorized representative shall also include true
19 information on late charges, interest, and costs of collection which,
20 as of the date of the statement, are or may be made a lien upon the
21 owner's interest in a common interest development pursuant to
22 Section 1367 or 1367.1.

23 (5) A copy or a summary of any notice previously sent to the
24 owner pursuant to subdivision (h) of Section 1363 that sets forth
25 any alleged violation of the governing documents that remains
26 unresolved at the time of the request. The notice shall not be
27 deemed a waiver of the association's right to enforce the governing
28 documents against the owner or the prospective purchaser of the
29 separate interest with respect to any violation. This paragraph shall
30 not be construed to require an association to inspect an owner's
31 separate interest.

32 (6) A copy of the preliminary list of defects provided to each
33 member of the association pursuant to Section 1375, unless the
34 association and the builder subsequently enter into a settlement
35 agreement or otherwise resolve the matter and the association
36 complies with Section 1375.1. Disclosure of the preliminary list
37 of defects pursuant to this paragraph does not waive any privilege
38 attached to the document. The preliminary list of defects shall also
39 include a statement that a final determination as to whether the list
40 of defects is accurate and complete has not been made.

1 (7) A copy of the latest information provided for in Section
2 1375.1.

3 (8) Any change in the association’s current regular and special
4 assessments and fees which have been approved by the
5 association’s board of directors, but have not become due and
6 payable as of the date disclosure is provided pursuant to this
7 subdivision.

8 (9) *If there is a provision in the governing documents that*
9 *prohibits the rental or leasing of all or any of the separate interests*
10 *in the common interest development to a renter, lessee, or tenant,*
11 *a statement describing the prohibition.*

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

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

28 (A) An amount not to exceed the association’s actual costs to
29 change its records.

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

31 (2) ~~The amendments made to this subdivision by the act adding~~
32 ~~this prohibition in paragraph (1) does not apply to a community~~
33 ~~service organization or similar entity, or to a nonprofit entity that~~
34 ~~provides services to a common interest development under a~~
35 ~~declaration of trust, that is described in subparagraph (A) or (B):~~

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

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

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

6 (B) The community service organization or similar entity, *or a*
7 *nonprofit entity that provides services to a common interest*
8 *development under a declaration of trust*, satisfies all of the
9 following requirements:

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

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

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

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

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

26 (3) For the purposes of this subdivision, a “community service
27 organization or similar entity” means a nonprofit entity, other than
28 an association, that is organized to provide services to residents
29 of the common interest development or to the public in addition
30 to the residents, to the extent community common areas or facilities
31 are available to the public. A “community service organization or
32 similar entity” does not include an entity that has been organized
33 solely to raise moneys and contribute to other nonprofit
34 organizations that are qualified as tax exempt under Section
35 501(c)(3) of the Internal Revenue Code and that provide housing
36 or housing assistance.

37 (d) Any person or entity who willfully violates this section is
38 liable to the purchaser of a separate interest that is subject to this
39 section for actual damages occasioned thereby and, in addition,
40 shall pay a civil penalty in an amount not to exceed five hundred

1 dollars (\$500). In an action to enforce this liability, the prevailing
2 party shall be awarded reasonable attorneys' fees.

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

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

8 (g) For the purposes of this section, a person who acts as a
9 community association manager is an agent, as defined in Section
10 2297, of the association.

11 *SEC. 3. Section 2.5 of this bill incorporates amendments to*
12 *Section 1368 of the Civil Code proposed by both this bill and AB*
13 *1927. It shall only become operative if (1) both bills are enacted*
14 *and become effective on or before January 1, 2011, (2) each bill*
15 *amends Section 1368 of the Civil Code, and (3) this bill is enacted*
16 *after AB 1927, in which case Section 2 of this bill shall not become*
17 *operative.*