

ASSEMBLY BILL

No. 466

Introduced by Assembly Member Butler

February 15, 2011

An act to amend Section 1366 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 466, as introduced, Butler. Common interest developments: assessments.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments, and authorizes an association to levy regular and special assessments in accordance with specified requirements.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

- 1 SECTION 1. Section 1366 of the Civil Code is amended to
2 read:
3 1366. (a) Except as provided in this section, the association
4 shall levy regular and special assessments sufficient to perform its
5 obligations under the governing documents and this title. However,
6 annual increases in regular assessments for any fiscal year, as
7 authorized by subdivision (b), shall not be imposed unless the
8 board has complied with subdivision (a) of Section 1365 with

1 respect to that fiscal year, or has obtained the approval of owners,
2 constituting a quorum, casting a majority of the votes at a meeting
3 or election of the association conducted in accordance with Chapter
4 5 (commencing with Section 7510) of Part 3 of Division 2 of Title
5 1 of the Corporations Code and Section 7613 of the Corporations
6 Code. For the purposes of this section, “quorum” means more than
7 50 percent of the owners of an association.

8 (b) Notwithstanding more restrictive limitations placed on the
9 board by the governing documents, the board of directors may not
10 impose a regular assessment that is more than 20 percent greater
11 than the regular assessment for the association’s preceding fiscal
12 year or impose special assessments which in the aggregate exceed
13 5 percent of the budgeted gross expenses of the association for
14 that fiscal year without the approval of owners, constituting a
15 quorum, casting a majority of the votes at a meeting or election of
16 the association conducted in accordance with Chapter 5
17 (commencing with Section 7510) of Part 3 of Division 2 of Title
18 1 of the Corporations Code and Section 7613 of the Corporations
19 Code. For the purposes of this section, quorum means more than
20 50 percent of the owners of an association. This section does not
21 limit assessment increases necessary for emergency situations. For
22 purposes of this section, an emergency situation is any one of the
23 following:

- 24 (1) An extraordinary expense required by an order of a court.
- 25 (2) An extraordinary expense necessary to repair or maintain
26 the common interest development or any part of it for which the
27 association is responsible, where a threat to personal safety on the
28 property is discovered.
- 29 (3) An extraordinary expense necessary to repair or maintain
30 the common interest development or any part of it for which the
31 association is responsible that could not have been reasonably
32 foreseen by the board in preparing and distributing the pro forma
33 operating budget under Section 1365. However, prior to the
34 imposition or collection of an assessment under this subdivision,
35 the board shall pass a resolution containing written findings as to
36 the necessity of the extraordinary expense involved and why the
37 expense was not or could not have been reasonably foreseen in
38 the budgeting process, and the resolution shall be distributed to
39 the members with the notice of assessment.

1 (c) Regular assessments imposed or collected to perform the
2 obligations of an association under the governing documents or
3 this title shall be exempt from execution by a judgment creditor
4 of the association only to the extent necessary for the association
5 to perform essential services, such as paying for utilities and
6 insurance. In determining the appropriateness of an exemption, a
7 court shall ensure that only essential services are protected under
8 this subdivision.

9 This exemption shall not apply to any consensual pledges, liens,
10 or encumbrances that have been approved by the owners of an
11 association, constituting a quorum, casting a majority of the votes
12 at a meeting or election of the association, or to any state tax lien,
13 or to any lien for labor or materials supplied to the common area.

14 (d) The association shall provide notice by first-class mail to
15 the owners of the separate interests of any increase in the regular
16 or special assessments of the association, not less than 30 nor more
17 than 60 days prior to the increased assessment becoming due.

18 (e) Regular and special assessments levied pursuant to the
19 governing documents are delinquent 15 days after they become
20 due, unless the declaration provides a longer time period, in which
21 case the longer time period shall apply. If an assessment is
22 delinquent the association may recover all of the following:

23 (1) Reasonable costs incurred in collecting the delinquent
24 assessment, including reasonable attorney's fees.

25 (2) A late charge not exceeding 10 percent of the delinquent
26 assessment or ten dollars (\$10), whichever is greater, unless the
27 declaration specifies a late charge in a smaller amount, in which
28 case any late charge imposed shall not exceed the amount specified
29 in the declaration.

30 (3) Interest on all sums imposed in accordance with this section,
31 including the delinquent assessments, reasonable fees and costs
32 of collection, and reasonable attorney's fees, at an annual interest
33 rate not to exceed 12 percent, commencing 30 days after the
34 assessment becomes due, unless the declaration specifies the
35 recovery of interest at a rate of a lesser amount, in which case the
36 lesser rate of interest shall apply.

1 (f) Associations are hereby exempted from interest-rate
2 limitations imposed by Article XV of the California Constitution,
3 subject to the limitations of this section.

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