

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 771

Introduced by Assembly Member Butler

February 17, 2011

An act to amend ~~Section 1368 of~~ *Sections 1365 and 1368 of*, and to add *Section 1368.2 to*, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 771, as amended, Butler. Common interest developments: requests for documents: fees.

The Davis-Stirling Common Interest Development Act requires an owner of a separate interest in a common interest development to provide specified documents to a prospective purchaser of that interest. Existing law requires a homeowners' association to provide these documents to the owner of the separate interest within 10 days of the mailing or delivery of the request and limits the amount of fees charged for the provision of the documents to the association's actual costs to procure, prepare, and reproduce the requested documents.

This bill would *require the association to provide a statement describing the fees that may be charged to a seller to procure, prepare, and reproduce the documents. The bill would provide that the timeframe for the provision of, and the limitation of the amount of fees charged for, the specified documents also apply to an agent, as defined, of the association that provides the documents to an owner of a separate interest in a common interest development. This bill would also require an association or an agent of the association to provide a written or electronic estimate of the fees that will be assessed for the provision of*

the specified documents. *The bill would require the owner of a separate interest to also provide a form for billing disclosures, as specified, to a prospective purchaser.*

This bill contains legislative findings and declarations in support of the proposed changes.

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) That subdivision (b) of Section 1368 of the Civil Code,
 3 which limits the amount of fees charged by an association of a
 4 common interest development for the provision of specified
 5 ~~documents items~~ to a seller of a separate interest in a common
 6 interest development to a reasonable amount based upon the
 7 association’s cost to procure, prepare, and reproduce the requested
 8 ~~documents items~~, was intended to apply to any person that provided
 9 ~~the specified documents those items~~.
 10 (2) That the decision of *Berryman v. Merit Property*
 11 *Management, Inc.* (2007) 152 Cal.App.4th 1544, in which the
 12 court held that subdivision (b) of Section 1368 of the Civil Code
 13 is limited to fees charged by the association of the common interest
 14 development and does not apply to an agent of the association,
 15 does not reflect the Legislature’s intent ~~to limit the amount of as~~
 16 ~~to~~ fees that may be charged for the provision of the ~~specified~~
 17 ~~documents items~~.
 18 (b) It is the intent of the Legislature that the amendments
 19 ~~proposed by this act clarify the Legislature’s original intent to~~
 20 ~~unilaterally limit the amount of fees charged for the provision of~~
 21 ~~specified documents to a seller of a separate interest in a common~~
 22 ~~interest development to the association’s cost to procure, prepare,~~
 23 ~~and reproduce the requested documents.~~ *proposed by this act clarify*
 24 *the process for assessing fees charged for the provision of specified*
 25 *items to a seller of a separate interest in a common interest*
 26 *development.*
 27 SEC. 2. *Section 1365 of the Civil Code is amended to read:*
 28 1365. Unless the governing documents impose more stringent
 29 standards, the association shall prepare and distribute to all of its
 30 members the following documents:

- 1 (a) A pro forma operating budget, which shall include all of the
2 following:
- 3 (1) The estimated revenue and expenses on an accrual basis.
- 4 (2) A summary of the association's reserves based upon the
5 most recent review or study conducted pursuant to Section 1365.5,
6 based only on assets held in cash or cash equivalents, which shall
7 be printed in boldface type and include all of the following:
- 8 (A) The current estimated replacement cost, estimated remaining
9 life, and estimated useful life of each major component.
- 10 (B) As of the end of the fiscal year for which the study is
11 prepared:
- 12 (i) The current estimate of the amount of cash reserves necessary
13 to repair, replace, restore, or maintain the major components.
- 14 (ii) The current amount of accumulated cash reserves actually
15 set aside to repair, replace, restore, or maintain major components.
- 16 (iii) If applicable, the amount of funds received from either a
17 compensatory damage award or settlement to an association from
18 any person or entity for injuries to property, real or personal, arising
19 out of any construction or design defects, and the expenditure or
20 disposition of funds, including the amounts expended for the direct
21 and indirect costs of repair of construction or design defects. These
22 amounts shall be reported at the end of the fiscal year for which
23 the study is prepared as separate line items under cash reserves
24 pursuant to clause (ii). Instead of complying with the requirements
25 set forth in this clause, an association that is obligated to issue a
26 review of their financial statement pursuant to subdivision (b) may
27 include in the review a statement containing all of the information
28 required by this clause.
- 29 (C) The percentage that the amount determined for purposes of
30 clause (ii) of subparagraph (B) equals the amount determined for
31 purposes of clause (i) of subparagraph (B).
- 32 (D) The current deficiency in reserve funding expressed on a
33 per unit basis. The figure shall be calculated by subtracting the
34 amount determined for purposes of clause (ii) of subparagraph (B)
35 from the amount determined for purposes of clause (i) of
36 subparagraph (B) and then dividing the result by the number of
37 separate interests within the association, except that if assessments
38 vary by the size or type of ownership interest, then the association
39 shall calculate the current deficiency in a manner that reflects the
40 variation.

1 (3) A statement as to all of the following:

2 (A) Whether the board of directors of the association has
3 determined to defer or not undertake repairs or replacement of any
4 major component with a remaining life of 30 years or less,
5 including a justification for the deferral or decision not to undertake
6 the repairs or replacement.

7 (B) Whether the board of directors of the association, consistent
8 with the reserve funding plan adopted pursuant to subdivision (e)
9 of Section 1365.5, has determined or anticipates that the levy of
10 one or more special assessments will be required to repair, replace,
11 or restore any major component or to provide adequate reserves
12 therefor. If so, the statement shall also set out the estimated amount,
13 commencement date, and duration of the assessment.

14 (C) The mechanism or mechanisms by which the board of
15 directors will fund reserves to repair or replace major components,
16 including assessments, borrowing, use of other assets, deferral of
17 selected replacements or repairs, or alternative mechanisms.

18 (D) Whether the association has any outstanding loans with an
19 original term of more than one year, including the payee, interest
20 rate, amount outstanding, annual payment, and when the loan is
21 scheduled to be retired.

22 (4) A general statement addressing the procedures used for the
23 calculation and establishment of those reserves to defray the future
24 repair, replacement, or additions to those major components that
25 the association is obligated to maintain. The report shall include,
26 but need not be limited to, reserve calculations made using the
27 formula described in paragraph (4) of subdivision (b) of Section
28 1365.2.5, and may not assume a rate of return on cash reserves in
29 excess of 2 percent above the discount rate published by the Federal
30 Reserve Bank of San Francisco at the time the calculation was
31 made.

32 The summary of the association's reserves disclosed pursuant
33 to paragraph (2) shall not be admissible in evidence to show
34 improper financial management of an association, provided that
35 other relevant and competent evidence of the financial condition
36 of the association is not made inadmissible by this provision.

37 Notwithstanding a contrary provision in the governing
38 documents, a copy of the operating budget shall be annually
39 distributed not less than 30 days nor more than 90 days prior to
40 the beginning of the association's fiscal year.

1 (b) Commencing January 1, 2009, a summary of the reserve
2 funding plan adopted by the board of directors of the association,
3 as specified in paragraph (4) of subdivision (e) of Section 1365.5.
4 The summary shall include notice to members that the full reserve
5 study plan is available upon request, and the association shall
6 provide the full reserve plan to any member upon request.

7 (c) A review of the financial statement of the association shall
8 be prepared in accordance with generally accepted accounting
9 principles by a licensee of the California Board of Accountancy
10 for any fiscal year in which the gross income to the association
11 exceeds seventy-five thousand dollars (\$75,000). A copy of the
12 review of the financial statement shall be distributed within 120
13 days after the close of each fiscal year.

14 (d) Instead of the distribution of the pro forma operating budget
15 required by subdivision (a), the board of directors may elect to
16 distribute a summary of the pro forma operating budget to all of
17 its members with a written notice that the pro forma operating
18 budget is available at the business office of the association or at
19 another suitable location within the boundaries of the development,
20 and that copies will be provided upon request and at the expense
21 of the association. If any member requests that a copy of the pro
22 forma operating budget required by subdivision (a) be mailed to
23 the member, the association shall provide the copy to the member
24 by first-class United States mail at the expense of the association
25 and delivered within five days. The written notice that is distributed
26 to each of the association members shall be in at least 10-point
27 boldface type on the front page of the summary of the budget.

28 (e) A statement describing the association's policies and
29 practices in enforcing lien rights or other legal remedies for default
30 in payment of its assessments against its members shall be annually
31 delivered to the members not less than 30 days nor more than 90
32 days immediately preceding the beginning of the association's
33 fiscal year.

34 (f) (1) A summary of the association's property, general
35 liability, earthquake, flood, and fidelity insurance policies, which
36 shall be distributed not less than 30 days nor more than 90 days
37 preceding the beginning of the association's fiscal year, that
38 includes all of the following information about each policy:

39 (A) The name of the insurer.

40 (B) The type of insurance.

1 (C) The policy limits of the insurance.

2 (D) The amount of deductibles, if any.

3 (2) The association shall, as soon as reasonably practicable,
 4 notify its members by first-class mail if any of the policies
 5 described in paragraph (1) have lapsed, been canceled, and are not
 6 immediately renewed, restored, or replaced, or if there is a
 7 significant change, such as a reduction in coverage or limits or an
 8 increase in the deductible, as to any of those policies. If the
 9 association receives any notice of nonrenewal of a policy described
 10 in paragraph (1), the association shall immediately notify its
 11 members if replacement coverage will not be in effect by the date
 12 the existing coverage will lapse.

13 (3) To the extent that any of the information required to be
 14 disclosed pursuant to paragraph (1) is specified in the insurance
 15 policy declaration page, the association may meet its obligation
 16 to disclose that information by making copies of that page and
 17 distributing it to all of its members.

18 (4) The summary distributed pursuant to paragraph (1) shall
 19 contain, in at least 10-point boldface type, the following statement:
 20 “This summary of the association’s policies of insurance provides
 21 only certain information, as required by subdivision (f) of Section
 22 1365 of the Civil Code, and should not be considered a substitute
 23 for the complete policy terms and conditions contained in the actual
 24 policies of insurance. Any association member may, upon request
 25 and provision of reasonable notice, review the association’s
 26 insurance policies and, upon request and payment of reasonable
 27 duplication charges, obtain copies of those policies. Although the
 28 association maintains the policies of insurance specified in this
 29 summary, the association’s policies of insurance may not cover
 30 your property, including personal property or, real property
 31 improvements to or around your dwelling, or personal injuries or
 32 other losses that occur within or around your dwelling. Even if a
 33 loss is covered, you may nevertheless be responsible for paying
 34 all or a portion of any deductible that applies. Association members
 35 should consult with their individual insurance broker or agent for
 36 appropriate additional coverage.”

37 (g) *A statement describing the fees that may be charged to a*
 38 *seller to procure, prepare, and reproduce documents pursuant to*
 39 *the requirements of Section 1368. The statement shall provide the*
 40 *date that the estimate was prepared and the period of time that*

1 *the fees are valid. The statement shall be updated when the*
2 *association revises the fees.*

3 ~~SEC. 2.~~

4 SEC. 3. Section 1368 of the Civil Code is amended to read:

5 1368. (a) The owner of a separate interest, other than an owner
6 subject to the requirements of Section 11018.6 of the Business and
7 Professions Code, shall, as soon as practicable before transfer of
8 title to the separate interest or execution of a real property sales
9 contract therefor, as defined in Section 2985, provide the following
10 to the prospective purchaser *with a copy of the completed form*
11 *specified in Section 1368.2:*

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

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

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

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

37 (5) A copy or a summary of any notice previously sent to the
38 owner pursuant to subdivision (h) of Section 1363 that sets forth
39 any alleged violation of the governing documents that remains
40 unresolved at the time of the request. The notice shall not be

1 deemed a waiver of the association's right to enforce the governing
2 documents against the owner or the prospective purchaser of the
3 separate interest with respect to any violation. This paragraph shall
4 not be construed to require an association to inspect an owner's
5 separate interest.

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

15 (7) A copy of the latest information provided for in Section
16 1375.1.

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

22 (9) *A copy of the most recent 12 months of minutes approved*
23 *by the association's board of directors.*

24 ~~(b) Upon written request, an association or an agent of the~~
25 ~~association shall, within 10 days of the mailing or delivery of the~~
26 ~~request, provide the owner of a separate interest with a copy of~~
27 ~~the requested items specified in paragraphs (1) to (8), inclusive,~~
28 ~~of subdivision (a). Upon receipt of the written request, the~~
29 ~~association or the agent of the association shall provide a written~~
30 ~~estimate of the fees that will be assessed for the provision of the~~
31 ~~documents. The items required to be made available pursuant to~~
32 ~~this section may be maintained in electronic form and requesting~~
33 ~~parties shall have the option of receiving them by electronic~~
34 ~~transmission or machine readable storage media if the association~~
35 ~~maintains these items in electronic form. The association may~~
36 ~~charge, or the agent of the association may collect, a reasonable~~
37 ~~fee for this service based upon the association's actual cost to~~
38 ~~procure, prepare, and reproduce the requested items.~~

39 *(b) (1) Upon receipt of an electronic or written request, the*
40 *association, or the agent of the association, shall, within 10 days*

1 of the mailing or delivery of the request, provide the owner of a
2 separate interest, or any other recipient authorized by the owner,
3 with a copy of the requested items specified in paragraphs (1) to
4 (9), inclusive, of subdivision (a). Upon receipt of a written or
5 electronic request, the association or the agent of the association
6 shall provide a written or electronic estimate of the fees that will
7 be assessed for providing the requested items. The items required
8 to be made available pursuant to this section may be maintained
9 in electronic form, and shall be posted on the Internet Web site, if
10 any, of the association or agent of the association, and shall be
11 accessible to the owner or any other recipient authorized by the
12 owner. Requesting parties shall have the option of receiving the
13 items by electronic transmission if the association, or the
14 association's agent, maintains the items in electronic form. The
15 association or the association's agent may collect a reasonable
16 fee for the procurement, preparation, reproduction, and delivery
17 of the items requested pursuant to the provisions of this section.

18 (2) No additional fees may be charged by the association for
19 the electronic delivery of the items requested.

20 (3) Fees for any documents or items not required by this section
21 shall not be charged or assessed at the time fees are charged for
22 the items provided pursuant to this section. Fees for items provided
23 pursuant to this section shall be separate from any other fee, fine,
24 or assessment.

25 (4) Any payment for the provision of items pursuant to this
26 section shall not be processed until the required items are delivered
27 to the owner or any other recipient authorized by the owner.

28 (5) Fees for any items not required to be provided under this
29 section shall be paid at the close of escrow, or if there is no escrow,
30 at the transfer of title, unless otherwise agreed to by the owner
31 and any other recipient authorized by the owner.

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

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

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

39 (2) The prohibition in paragraph (1) does not apply to a
40 community service organization or similar entity, or to a nonprofit

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

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

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

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

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

17 (i) The organization or entity is not an organization or entity
18 described in subparagraph (A).

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

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

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

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

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

1 organizations that are qualified as tax exempt under Section
2 501(c)(3) of the Internal Revenue Code and that provide housing
3 or housing assistance.

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

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

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

15 (g) For the purposes of this section, a person who acts as a
16 community association manager is an agent, as defined in Section
17 2297, of the association.

18 (h) For purposes of this section “agent of the association” means
19 any person or entity ~~performing services~~ *providing the items* for,
20 or acting on behalf of, the association *pursuant to the requirements*
21 *of this section.*

22 *SEC. 4. Section 1368.2 is added to the Civil Code, to read:*
23 *1368.2. The form for billing disclosures required by Section*
24 *1368 shall be in substantially the following form:*

25
26 *Form for Billing of Disclosures Required by Section 1368*

27
28 *Property Address* _____

29 *Owner of Property* _____

30 *Owner’s Mailing Address* _____
31 *(If known or different from property address.)*

32
33 *Provider of the Section 1368 Items:*

34
35
36 _____
37 *Print Name Position or Title Association or Agent Date Form Completed*

38 *Check or Complete Applicable Column Below*

	<i>Item</i>	<i>Civil Code Section</i>	<i>Included</i>	<i>Not Available (N/A) or Not Applicable (N/App)</i>
1				
2				
3				
4	<i>Articles of Incorporation</i>	<i>Section</i>	_____	_____
5	<i>or statement that not</i>	<i>1368(a)(1)</i>		
6	<i>incorporated</i>			
7	<i>CC&Rs</i>	<i>Section</i>	_____	_____
8		<i>1368(a)(1)</i>		
9	<i>Bylaws</i>	<i>Section</i>	_____	_____
10		<i>1368(a)(1)</i>		
11	<i>Operating Rules</i>	<i>Section</i>	_____	_____
12		<i>1368(a)(1)</i>		
13	<i>Age restrictions, if any</i>	<i>Section</i>	_____	_____
14		<i>1368(a)(2)</i>		
15	<i>Pro forma operating</i>	<i>Sections 1365</i>	_____	_____
16	<i>budget or summary,</i>	<i>and 1368(a)(3)</i>		
17	<i>including reserve study</i>			
18	<i>Assessment and reserve</i>	<i>Sections 1365</i>	_____	_____
19	<i>funding disclosure</i>	<i>and 1368(a)(4)</i>		
20	<i>summary</i>			
21	<i>Financial statement</i>	<i>Sections 1365</i>	_____	_____
22	<i>review</i>	<i>and 1368(a)(3)</i>		
23	<i>Assessment enforcement</i>	<i>Sections 1365</i>	_____	_____
24	<i>policy</i>	<i>and 1368(a)(4)</i>		
25	<i>Insurance summary</i>	<i>Sections 1365</i>	_____	_____
26		<i>and 1368(a)(3)</i>		
27	<i>Regular assessment</i>	<i>Section</i>	_____	_____
28		<i>1368(a)(4)</i>		
29	<i>Special assessment</i>	<i>Section</i>	_____	_____
30		<i>1368(a)(4)</i>		
31	<i>Emergency assessment</i>	<i>Section</i>	_____	_____
32		<i>1368(a)(4)</i>		
33	<i>Other unpaid obligations</i>	<i>Sections 1367.1</i>	_____	_____
34	<i>of seller</i>	<i>and 1368(a)(4)</i>		
35	<i>Approved changes to</i>	<i>Section 1365</i>	_____	_____
36	<i>assessments</i>	<i>and 1368(a)(4),</i>		
37		<i>(8)</i>		
38	<i>Settlement notice</i>	<i>Sections</i>	_____	_____
39	<i>regarding common area</i>	<i>1368(a)(6), (7)</i>		
40	<i>defects</i>	<i>and 1375.1</i>		

1	<i>Preliminary list of defects</i>	<i>Sections</i>	_____	_____
2		<i>1368(a)(6),</i>		
3		<i>1375, and</i>		
4		<i>1375.1</i>		
5	<i>Notice(s) of violation</i>	<i>Sections 1363</i>	_____	_____
6		<i>and 1368(a)(5)</i>		
7	<i>Required statement of fees</i>	<i>Sections 1365(g)</i>	_____	_____
8		<i>and 1368</i>		
9	<i>Most recent 12</i>	<i>Section</i>	_____	_____
10	<i>mo./minutes</i>	<i>1368(a)(9)</i>		
11				