

AMENDED IN ASSEMBLY MARCH 21, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1838

Introduced by Assembly Member Charles Calderon

February 22, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1838, as amended, Charles Calderon. Common interest developments: association records.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments, which include community apartment projects, condominium projects, planned developments, and stock cooperatives. Existing law specifies certain documents that an association must provide to a prospective purchaser ~~upon request~~ *before transfer of title to the separate interest or execution of a real property sales contract, as defined. Existing law also specifies certain documents that an association must provide to a prospective purchaser upon request. Existing law prohibits an association from charging certain assessments, penalties, or fees in connection with a transfer of title or any other interest, unless an exception applies. Among these exceptions, existing law authorizes an association to collect an amount not to exceed the association's actual cost to change its records.* Existing law requires the association to also provide a specified form that contains an estimate of the costs associated with providing the prospective purchaser with the requested documents.

This bill would *apply all the requirements and prohibitions described above to an authorized representative of an association. The bill would*

also authorize an assessment, penalty, or fee for an amount not to exceed the fees charged by an authorized representative of an association to change the records of the association. The bill would also require that the financial disclosure form described above be written in at least 10-point type.

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 1368 of the Civil Code is amended to
 2 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 *obtain from the association or authorized*
 6 *representative of the association*, as soon as practicable before
 7 transfer of title to the separate interest or execution of a real
 8 property sales contract therefor, as defined in Section 2985, *and*
 9 ~~provide the following~~ to the prospective purchaser *all of the*
 10 *following*:
 11 (1) A copy of the governing documents of the common interest
 12 development, including any operating rules, and including a copy
 13 of the association’s articles of incorporation, or, if not incorporated,
 14 a statement in writing from an authorized representative of the
 15 association that the association is not incorporated.
 16 (2) If there is a restriction in the governing documents limiting
 17 the occupancy, residency, or use of a separate interest on the basis
 18 of age in a manner different from that provided in Section 51.3, a
 19 statement that the restriction is only enforceable to the extent
 20 permitted by Section 51.3 and a statement specifying the applicable
 21 provisions of Section 51.3.
 22 (3) A copy of the most recent documents distributed pursuant
 23 to Section 1365.
 24 (4) A true statement in writing ~~obtained from an authorized~~
 25 ~~representative of the association~~ as to the amount of the
 26 association’s current regular and special assessments and fees, any
 27 assessments levied upon the owner’s interest in the common
 28 interest development that are unpaid on the date of the statement,
 29 and any monetary fines or penalties levied upon the owner’s
 30 interest and unpaid on the date of the statement. The statement

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

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

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

24 (7) A copy of the latest information provided for in Section
25 1375.1.

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

31 (9) If there is a provision in the governing documents that
32 prohibits the rental or leasing of any of the separate interests in
33 the common interest development to a renter, lessee, or tenant, a
34 statement describing the prohibition and its applicability.

35 (10) If requested by the prospective purchaser, a copy of the
36 minutes of the meetings, excluding meetings held in executive
37 session, of the association's board of directors, conducted over the
38 previous 12 months, that were approved by the association's board
39 of directors.

1 (b) (1) Upon written request, the association *or authorized*
2 *representative of the association* shall, within 10 days of the
3 mailing or delivery of the request, provide the owner of a separate
4 interest, or any other recipient authorized by the owner, with a
5 copy of the requested documents specified in paragraphs (1) to
6 (10), inclusive, of subdivision (a). Upon receipt of a written request,
7 the association *or authorized representative of the association*
8 shall provide, on the form described in Section 1368.2, a written
9 or electronic estimate of the fees that will be assessed for providing
10 the requested documents. The documents required to be made
11 available pursuant to this section may be maintained in electronic
12 form, and may be posted on the association's Internet Web site.
13 Requesting parties shall have the option of receiving the documents
14 by electronic transmission if the association maintains the
15 documents in electronic form. The association may collect a
16 reasonable fee based upon the association's actual cost for the
17 procurement, preparation, reproduction, and delivery of the
18 documents requested pursuant to the provisions of this section.

19 (2) No additional fees may be charged by the association *or*
20 *authorized representative of the association* for the electronic
21 delivery of the documents requested.

22 (3) Fees for any documents required by this section shall be
23 distinguished from other fees, fines, or assessments billed as part
24 of the transfer or sales transaction. Delivery of the documents
25 required by this section shall not be withheld for any reason nor
26 subject to any condition except the payment of the fee allowed
27 pursuant to paragraph (1).

28 (4) An association may contract with any person or entity to
29 facilitate compliance with the requirements of this subdivision on
30 behalf of the association.

31 (5) The association *or authorized representative of the*
32 *association* shall also provide a recipient authorized by the owner
33 of a separate interest with a copy of the completed form specified
34 in Section 1368.2 at the time the required documents are delivered.

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

39 (A) An amount not to exceed the association's actual costs to
40 change its records *or the fees charged by the authorized*

1 *representative of the association to change the records of the*
2 *association.*

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

4 (2) The prohibition in paragraph (1) does not apply to a
5 community service organization or similar entity, or to a nonprofit
6 entity that provides services to a common interest development
7 under a declaration of trust, that is described in subparagraph (A)
8 or (B):

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

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

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

18 (B) The community service organization or similar entity, or a
19 nonprofit entity that provides services to a common interest
20 development under a declaration of trust, satisfies all of the
21 following requirements:

22 (i) The organization or entity is not an organization or entity
23 described in subparagraph (A).

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

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

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

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

38 (3) For the purposes of this subdivision, a “community service
39 organization or similar entity” means a nonprofit entity, other than
40 an association, that is organized to provide services to residents

1 of the common interest development or to the public in addition
2 to the residents, to the extent community common areas or facilities
3 are available to the public. A “community service organization or
4 similar entity” does not include an entity that has been organized
5 solely to raise moneys and contribute to other nonprofit
6 organizations that are qualified as tax exempt under Section
7 501(c)(3) of the Internal Revenue Code and that provide housing
8 or housing assistance.

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

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

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

20 (g) For the purposes of this section, a person who acts as a
21 community association manager is an agent, as defined in Section
22 2297, of the association.

23 **SECTION 1.**

24 *SEC. 2.* Section 1368.2 of the Civil Code is amended to read:

25 1368.2. The form for billing disclosures required by Section
26 1368 shall be in substantially the following form and in at least
27 10-point type:

28
29 CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED BY SECTION
30 1368*

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32 Property Address _____
33 Owner of Property _____
34 Owner’s Mailing Address _____
35 (If known or different from property address.)

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37 Provider of the Section 1368 Items:
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39 _____
40 Print Name Position or Title Association or Agent Date Form Completed

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Check or Complete Applicable Column or Columns Below

Document	Civil Code Section	Included	Not Available (N/A) or Not Applicable (N/App)
Articles of Incorporation or statement that not incorporated	Section 1368(a)(1)	_____	_____
CC&Rs	Section 1368(a)(1)	_____	_____
Bylaws	Section 1368(a)(1)	_____	_____
Operating Rules	Section 1368(a)(1)	_____	_____
Age restrictions, if any	Section 1368(a)(2)	_____	_____
Pro forma operating budget or summary, including reserve study	Sections 1365 and 1368(a)(3)	_____	_____
Assessment and reserve funding disclosure summary	Sections 1365 and 1368(a)(4)	_____	_____
Financial statement review	Sections 1365 and 1368(a)(3)	_____	_____
Assessment enforcement policy	Sections 1365 and 1368(a)(4)	_____	_____
Insurance summary	Sections 1365 and 1368(a)(3)	_____	_____
Regular assessment	Section 1368(a)(4)	_____	_____
Special assessment	Section 1368(a)(4)	_____	_____
Emergency assessment	Section 1368(a)(4)	_____	_____
Other unpaid obligations of seller	Sections 1367.1 and 1368(a)(4)	_____	_____
Approved changes to assessments	Sections 1365 and 1368(a)(4), (8)	_____	_____
Settlement notice regarding common area defects	Sections 1368(a)(6), (7) and 1375.1	_____	_____
Preliminary list of defects	Sections 1368(a)(6), 1375, and 1375.1	_____	_____
Notice(s) of violation	Sections 1363 and 1368(a)(5)	_____	_____

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3 Required statement of fees Section 1368 _____
4 Minutes of regular meetings Section 1368(a)(9) _____
5 of the board of directors
6 conducted over the previous
7 12 months, if requested
8 Total fees for these _____
9 documents:

10 * The information provided by this form may not include all fees that may be
11 imposed before the close of escrow. Additional fees that are not related to the
12 requirements of Section 1368 may be charged separately.
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