

AMENDED IN SENATE AUGUST 7, 2012

AMENDED IN ASSEMBLY MAY 7, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY MARCH 21, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1838**

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**Introduced by Assembly Member Charles Calderon**

February 22, 2012

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An act to amend 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 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. 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 further prohibit a cancellation fee for the documents described above if the cancellation was requested in writing by the same person who placed the order and if work on the order had not yet been performed or if the work had been compensated. *The bill would require the association to refund all fees for the documents described above if the request was canceled in writing and work on the order had not yet been performed. Additionally, if the request was canceled in writing, the bill would require the association to refund the share of fees collected for the above-described documents that represents the portion of the work not performed on the order.* The bill would also require that the form 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, 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  
19 applicable provisions of Section 51.3.

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

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

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

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

31 (7) A copy of the latest information provided for in Section  
32 1375.1.

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

38 (9) If there is a provision in the governing documents that  
39 prohibits the rental or leasing of any of the separate interests in

1 the common interest development to a renter, lessee, or tenant, a  
2 statement describing the prohibition and its applicability.

3 (10) If requested by the prospective purchaser, a copy of the  
4 minutes of the meetings, excluding meetings held in executive  
5 session, of the association’s board of directors, conducted over the  
6 previous 12 months, that were approved by the association’s board  
7 of directors.

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

25 (2) No additional fees may be charged by the association for  
26 the electronic delivery of the documents requested.

27 (3) (A) A cancellation fee for documents specified in  
28 subdivision (a) shall not be collected if either of the following  
29 applies:

30 ~~(A)~~

31 (i) The request was canceled in writing by the same party that  
32 placed the order and work had not yet been performed on the order.

33 ~~(B)~~

34 (ii) The request was canceled in writing and any work that had  
35 been performed on the order was compensated.

36 (B) *The association shall refund all fees collected pursuant to*  
37 *paragraph (1) if the request was canceled in writing and work had*  
38 *not yet been performed on the order.*

1 (C) *If the request was canceled in writing, the association shall*  
2 *refund the share of fees collected pursuant to paragraph (1) that*  
3 *represents the portion of the work not performed on the order.*

4 (4) Fees for any documents required by this section shall be  
5 distinguished from other fees, fines, or assessments billed as part  
6 of the transfer or sales transaction. Delivery of the documents  
7 required by this section shall not be withheld for any reason nor  
8 subject to any condition except the payment of the fee allowed  
9 pursuant to paragraph (1).

10 (5) An association may contract with any person or entity to  
11 facilitate compliance with the requirements of this subdivision on  
12 behalf of the association.

13 (6) The association shall also provide a recipient authorized by  
14 the owner of a separate interest with a copy of the completed form  
15 specified in Section 1368.2 at the time the required documents are  
16 delivered.

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

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

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

24 (2) The prohibition in paragraph (1) does not apply to a  
25 community service organization or similar entity, or to a nonprofit  
26 entity that provides services to a common interest development  
27 under a declaration of trust, that is described in subparagraph (A)  
28 or (B):

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

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

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

38 (B) The community service organization or similar entity, or a  
39 nonprofit entity that provides services to a common interest

1 development under a declaration of trust, satisfies all of the  
2 following requirements:

3 (i) The organization or entity is not an organization or entity  
4 described in subparagraph (A).

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

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

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

11 (II) Paying the fee or charge pursuant to an installment payment  
12 plan for a period of not less than seven years. If the purchaser  
13 elects to pay the fee or charge in installment payments, the  
14 organization or entity may also collect additional amounts that do  
15 not exceed the actual costs for billing and financing on the amount  
16 owed. If the purchaser sells the separate interest before the end of  
17 the installment payment plan period, he or she shall pay the  
18 remaining balance prior to transfer.

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

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

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

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

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

SEC. 2. Section 1368.2 of the Civil Code is amended to read: 1368.2. The form for billing disclosures required by Section 1368 shall be in substantially the following form and in at least 10-point type:

CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED BY SECTION 1368\*

Property Address \_\_\_\_\_
Owner of Property \_\_\_\_\_
Owner's Mailing Address \_\_\_\_\_
(If known or different from property address.)

Provider of the Section 1368 Items:

Print Name Position or Title Association or Agent Date Form Completed

Check or Complete Applicable Column or Columns Below

Table with 4 columns: Document, Civil Code Section, Included, Not Available (N/A) or Not Applicable (N/App). Rows include Articles of Incorporation or statement that not incorporated, CC&Rs, Bylaws, Operating Rules, Age restrictions, Pro forma operating budget or summary, Assessment and reserve funding disclosure summary.

1	Financial statement review	Sections 1365 and _____	_____
2		1368(a)(3)	
3	Assessment enforcement	Sections 1365 and _____	_____
4	policy	1368(a)(4)	
5	Insurance summary	Sections 1365 and _____	_____
6		1368(a)(3)	
7	Regular assessment	Section 1368(a)(4)	_____
8	Special assessment	Section 1368(a)(4)	_____
9	Emergency assessment	Section 1368(a)(4)	_____
10	Other unpaid obligations of	Sections 1367.1	_____
11	seller	and 1368(a)(4)	_____
12	Approved changes to	Sections 1365 and _____	_____
13	assessments	1368(a)(4), (8)	
14	Settlement notice regarding	Sections	_____
15	common area defects	1368(a)(6), (7) and	_____
16		1375.1	
17	Preliminary list of defects	Sections	_____
18		1368(a)(6), 1375,	
19		and 1375.1	
20	Notice(s) of violation	Sections 1363 and _____	_____
21		1368(a)(5)	
22			
23			
24	Required statement of fees	Section 1368	_____
25	Minutes of regular meetings	Section 1368(a)(9)	_____
26	of the board of directors		
27	conducted over the previous		
28	12 months, if requested		
29	Total fees for these		_____
30	documents:		
31	* The information provided by this form may not include all fees that may be		
32	imposed before the close of escrow. Additional fees that are not related to the		
33	requirements of Section 1368 may be charged separately.		
34			