

**ASSEMBLY BILL**

**No. 2273**

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**Introduced by Assembly Member Wieckowski**

February 24, 2012

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An act to amend Section 1368 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2273, as introduced, Wieckowski. Common interest developments: required documents.

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 additionally provide that an owner of a separate interest shall, within 30 days of transferring title, provide to the association's board secretary, agent, manager, or designated representative, a copy of the owner's deed or other document transferring title to the purchaser of the separate interest and a written notice of the purchaser's mailing address, except as specified.

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 applicable  
19 provisions of Section 51.3.

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

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

34 (5) A copy or a summary of any notice previously sent to the  
35 owner pursuant to subdivision (h) of Section 1363 that sets forth  
36 any alleged violation of the governing documents that remains  
37 unresolved at the time of the request. The notice shall not be  
38 deemed a waiver of the association's right to enforce the governing

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

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

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

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

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

25 (10) If requested by the prospective purchaser, a copy of the  
26 minutes of the meetings, excluding meetings held in executive  
27 session, of the association's board of directors, conducted over the  
28 previous 12 months, that were approved by the association's board  
29 of directors.

30 (b) (1) Upon written request, the association shall, within 10  
31 days of the mailing or delivery of the request, provide the owner  
32 of a separate interest, or any other recipient authorized by the  
33 owner, with a copy of the requested documents specified in  
34 paragraphs (1) to (10), inclusive, of subdivision (a). Upon receipt  
35 of a written request, the association shall provide, on the form  
36 described in Section 1368.2, a written or electronic estimate of the  
37 fees that will be assessed for providing the requested documents.  
38 The documents required to be made available pursuant to this  
39 section may be maintained in electronic form, and may be posted  
40 on the association's Internet Web site. Requesting parties shall

1 have the option of receiving the documents by electronic  
 2 transmission if the association maintains the documents in  
 3 electronic form. The association may collect a reasonable fee based  
 4 upon the association’s actual cost for the procurement, preparation,  
 5 reproduction, and delivery of the documents requested pursuant  
 6 to the provisions of this section.

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

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

15 (4) An association may contract with any person or entity to  
 16 facilitate compliance with the requirements of this subdivision on  
 17 behalf of the association.

18 (5) The association shall also provide a recipient authorized by  
 19 the owner of a separate interest with a copy of the completed form  
 20 specified in Section 1368.2 at the time the required documents are  
 21 delivered.

22 (c) (1) *Unless the association notifies the owner of a separate*  
 23 *interest that the association acknowledges a transfer of title, the*  
 24 *owner shall, within 30 days of transferring title, provide both of*  
 25 *the following to the association’s board secretary, agent, manager,*  
 26 *or designated representative:*

27 (A) *A copy of the owner’s deed or other document transferring*  
 28 *title to the purchaser of the separate interest.*

29 (B) *Written notice of the purchaser’s mailing address.*

30 (2) *This subdivision shall not apply to an owner, subdivider, or*  
 31 *agent subject to the requirements of Section 11018.6 of the*  
 32 *Business and Professions Code.*

33 (e)

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

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

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

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

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

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

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

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

19 (i) The organization or entity is not an organization or entity  
20 described in subparagraph (A).

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

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

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

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

35 (3) For the purposes of this subdivision, a “community service  
36 organization or similar entity” means a nonprofit entity, other than  
37 an association, that is organized to provide services to residents  
38 of the common interest development or to the public in addition  
39 to the residents, to the extent community common areas or facilities  
40 are available to the public. A “community service organization or

1 similar entity” does not include an entity that has been organized  
2 solely to raise moneys and contribute to other nonprofit  
3 organizations that are qualified as tax exempt under Section  
4 501(c)(3) of the Internal Revenue Code and that provide housing  
5 or housing assistance.

6 ~~(d)~~

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

13 ~~(e)~~

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

16 ~~(f)~~

17 (g) 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)~~

21 (h) For the purposes of this section, a person who acts as a  
22 community association manager is an agent, as defined in Section  
23 2297, of the association.