

AMENDED IN ASSEMBLY JULY 5, 2011

AMENDED IN SENATE MAY 23, 2011

AMENDED IN SENATE MARCH 30, 2011

SENATE BILL

No. 563

Introduced by Committee on Transportation and Housing (Senators DeSaulnier (Chair), Gaines, Harman, Huff, Kehoe, Lowenthal, Pavley, Rubio, and Simitian)

February 17, 2011

An act to amend Sections 1363, 1363.05, and 1365.2 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 563, as amended, Committee on Transportation and Housing. Common interest developments: meetings.

(1) Existing law provides for the creation of common interest developments and requires that a common interest development be managed by an association that may or may not be incorporated. Existing law prescribes requirements for meetings of the board of directors of the association that manages the development, and requires notice of the time and place of a meeting of the board of directors to be given to the members of the association at least 4 days prior to the meeting, except as specified.

This bill would require notice for a meeting that will be held solely in executive session to be given to members of the association at least 2 days prior to the meeting, except as specified. The bill would provide that, if a member consents, notice may be given to the member electronically, and would also delete provisions that generally allow

the board of directors to consider any proper matter at a meeting even if it has not been noticed as an action item for the meeting.

This bill would permit meetings of the board of directors of a common interest development association to be conducted by teleconference, as specified, by revising the definition of a meeting for these purposes. The bill would require that a teleconference meeting be conducted in a manner that protects the rights of members of the association and otherwise complies with other requirements governing common interest developments. The bill would also require that the notice of a teleconference meeting identify at least one physical location so that members of the association may attend and would require that at least one member of the board of directors be present at that location. The bill would prohibit the board of directors from taking action on any item of business outside of a meeting. The bill would prohibit the board from conducting a meeting via a series of electronic transmissions, such as electronic mail, except to conduct an emergency meeting, as specified. The bill would establish a definition of an item of business.

(2) Existing law requires an association to make available specified association records, but excludes from those requirements agendas for meetings of the board of directors that are held in executive session.

This bill would delete this exclusion, and would therefore require an association to make available agendas for meetings held in executive session.

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 1363 of the Civil Code is amended to
2 read:
3 1363. (a) A common interest development shall be managed
4 by an association that may be incorporated or unincorporated. The
5 association may be referred to as a community association.
6 (b) An association, whether incorporated or unincorporated,
7 shall prepare a budget pursuant to Section 1365 and disclose
8 information, if requested, in accordance with Section 1368.
9 (c) Unless the governing documents provide otherwise, and
10 regardless of whether the association is incorporated or
11 unincorporated, the association may exercise the powers granted
12 to a nonprofit mutual benefit corporation, as enumerated in Section

1 7140 of the Corporations Code, except that an unincorporated
2 association may not adopt or use a corporate seal or issue
3 membership certificates in accordance with Section 7313 of the
4 Corporations Code.

5 The association, whether incorporated or unincorporated, may
6 exercise the powers granted to an association in this title.

7 (d) Meetings of the membership of the association shall be
8 conducted in accordance with a recognized system of parliamentary
9 procedure or any parliamentary procedures the association may
10 adopt.

11 (e) Members of the association shall have access to association
12 records, including accounting books and records and membership
13 lists, in accordance with Article 3 (commencing with Section 8330)
14 of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations
15 Code. The members of the association shall have the same access
16 to the operating rules of the association as they have to the
17 accounting books and records of the association.

18 (f) If an association adopts or has adopted a policy imposing
19 any monetary penalty, including any fee, on any association
20 member for a violation of the governing documents or rules of the
21 association, including any monetary penalty relating to the
22 activities of a guest or invitee of a member, the board of directors
23 shall adopt and distribute to each member, by personal delivery
24 or first-class mail, a schedule of the monetary penalties that may
25 be assessed for those violations, which shall be in accordance with
26 authorization for member discipline contained in the governing
27 documents. The board of directors shall not be required to distribute
28 any additional schedules of monetary penalties unless there are
29 changes from the schedule that was adopted and distributed to the
30 members pursuant to this subdivision.

31 (g) When the board of directors is to meet to consider or impose
32 discipline upon a member, the board shall notify the member in
33 writing, by either personal delivery or first-class mail, at least 10
34 days prior to the meeting. The notification shall contain, at a
35 minimum, the date, time, and place of the meeting, the nature of
36 the alleged violation for which a member may be disciplined, and
37 a statement that the member has a right to attend and may address
38 the board at the meeting. The board of directors of the association
39 shall meet in executive session if requested by the member being
40 disciplined.

1 If the board imposes discipline on a member, the board shall
2 provide the member a written notification of the disciplinary action,
3 by either personal delivery or first-class mail, within 15 days
4 following the action. A disciplinary action shall not be effective
5 against a member unless the board fulfills the requirements of this
6 subdivision.

7 (h) Whenever two or more associations have consolidated any
8 of their functions under a joint neighborhood association or similar
9 organization, members of each participating association shall be
10 (1) entitled to attend all meetings of the joint association other than
11 executive sessions, (2) given reasonable opportunity for
12 participation in those meetings, and (3) entitled to the same access
13 to the joint association's records as they are to the participating
14 association's records.

15 (i) Nothing in this section shall be construed to create, expand,
16 or reduce the authority of the board of directors of an association
17 to impose monetary penalties on an association member for a
18 violation of the governing documents or rules of the association.

19 SEC. 2. Section 1363.05 of the Civil Code is amended to read:
20 1363.05. (a) This section shall be known and may be cited as
21 the Common Interest Development Open Meeting Act.

22 (b) Any member of the association may attend meetings of the
23 board of directors of the association, except when the board
24 adjourns to, or meets solely in, executive session to consider
25 litigation, matters relating to the formation of contracts with third
26 parties, member discipline, personnel matters, or to meet with a
27 member, upon the member's request, regarding the member's
28 payment of assessments, as specified in Section 1367 or 1367.1.
29 The board of directors of the association shall meet in executive
30 session, if requested by a member who may be subject to a fine,
31 penalty, or other form of discipline, and the member shall be
32 entitled to attend the executive session. As specified in paragraph
33 (2) of subdivision (k), a member of the association shall be entitled
34 to attend a teleconference meeting or the portion of a teleconference
35 meeting that is open to members, and that meeting or portion of
36 the meeting shall be audible to the members in a location specified
37 in the notice of the meeting.

38 (c) Any matter discussed in executive session shall be generally
39 noted in the minutes of the immediately following meeting that is
40 open to the entire membership.

1 (d) The minutes, minutes proposed for adoption that are marked
2 to indicate draft status, or a summary of the minutes, of any
3 meeting of the board of directors of an association, other than an
4 executive session, shall be available to members within 30 days
5 of the meeting. The minutes, proposed minutes, or summary
6 minutes shall be distributed to any member of the association upon
7 request and upon reimbursement of the association's costs for
8 making that distribution.

9 (e) Members of the association shall be notified in writing at
10 the time that the pro forma budget required in Section 1365 is
11 distributed, or at the time of any general mailing to the entire
12 membership of the association, of their right to have copies of the
13 minutes of meetings of the board of directors, and how and where
14 those minutes may be obtained.

15 (f) Unless the bylaws provide for a longer period of notice,
16 members shall be given notice of the time and place of a meeting
17 as defined in subdivision (k), except for an emergency meeting or
18 a meeting that will be held solely in executive session, at least four
19 days prior to the meeting. Except for an emergency meeting,
20 members shall be given notice of the time and place of a meeting
21 that will be held solely in executive session at least two days prior
22 to the meeting. Notice shall be given by posting the notice in a
23 prominent place or places within the common area and by mail to
24 any owner who had requested notification of board meetings by
25 mail, at the address requested by the owner. Notice may also be
26 given by mail, by delivery of the notice to each unit in the
27 development, by newsletter or similar means of communication,
28 or, with the consent of the member, by electronic means. The notice
29 shall contain the agenda for the meeting.

30 (g) An emergency meeting of the board may be called by the
31 president of the association, or by any two members of the
32 governing body other than the president, if there are circumstances
33 that could not have been reasonably foreseen which require
34 immediate attention and possible action by the board, and which
35 of necessity make it impracticable to provide notice as required
36 by this section.

37 (h) The board of directors of the association shall permit any
38 member of the association to speak at any meeting of the
39 association or the board of directors, except for meetings of the
40 board held in executive session. A reasonable time limit for all

1 members of the association to speak to the board of directors or
2 before a meeting of the association shall be established by the
3 board of directors.

4 (i) (1) Except as described in paragraphs (2) to (4), inclusive,
5 the board of directors of the association may not discuss or take
6 action on any item at a nonemergency meeting unless the item was
7 placed on the agenda included in the notice that was posted and
8 distributed pursuant to subdivision (f). This subdivision does not
9 prohibit a resident who is not a member of the board from speaking
10 on issues not on the agenda.

11 (2) Notwithstanding paragraph (1), a member of the board of
12 directors, a managing agent or other agent of the board of directors,
13 or a member of the staff of the board of directors, may do any of
14 the following:

15 (A) Briefly respond to statements made or questions posed by
16 a person speaking at a meeting as described in subdivision (h).

17 (B) Ask a question for clarification, make a brief announcement,
18 or make a brief report on his or her own activities, whether in
19 response to questions posed by a member of the association or
20 based upon his or her own initiative.

21 (3) Notwithstanding paragraph (1), the board of directors or a
22 member of the board of directors, subject to rules or procedures
23 of the board of directors, may do any of the following:

24 (A) Provide a reference to, or provide other resources for factual
25 information to, its managing agent or other agents or staff.

26 (B) Request its managing agent or other agents or staff to report
27 back to the board of directors at a subsequent meeting concerning
28 any matter, or take action to direct its managing agent or other
29 agents or staff to place a matter of business on a future agenda.

30 (C) Direct its managing agent or other agents or staff to perform
31 administrative tasks that are necessary to carry out this subdivision.

32 (4) (A) Notwithstanding paragraph (1), the board of directors
33 may take action on any item of business not appearing on the
34 agenda posted and distributed pursuant to subdivision (f) under
35 any of the following conditions:

36 (i) Upon a determination made by a majority of the board of
37 directors present at the meeting that an emergency situation exists.
38 An emergency situation exists if there are circumstances that could
39 not have been reasonably foreseen by the board, that require

1 immediate attention and possible action by the board, and that, of
2 necessity, make it impracticable to provide notice.

3 (ii) Upon a determination made by the board by a vote of
4 two-thirds of the members present at the meeting, or, if less than
5 two-thirds of total membership of the board is present at the
6 meeting, by a unanimous vote of the members present, that there
7 is a need to take immediate action and that the need for action
8 came to the attention of the board after the agenda was posted and
9 distributed pursuant to subdivision (f).

10 (iii) The item appeared on an agenda that was posted and
11 distributed pursuant to subdivision (f) for a prior meeting of the
12 board of directors that occurred not more than 30 calendar days
13 before the date that action is taken on the item and, at the prior
14 meeting, action on the item was continued to the meeting at which
15 the action is taken.

16 (B) Before discussing any item pursuant to this paragraph, the
17 board of directors shall openly identify the item to the members
18 in attendance at the meeting.

19 (j) (1) The board of directors shall not take action on any item
20 of business outside of a meeting.

21 (2) (A) Notwithstanding Section 7211 of the Corporations Code,
22 the board of directors shall not conduct a meeting via a series of
23 electronic transmissions, including, but not limited to, electronic
24 mail, ~~except that electronic~~ *as specified in subparagraph (B).*

25 (B) *Electronic* transmissions may be used as a method of
26 conducting an emergency meeting if all members of the board,
27 individually or collectively, consent in writing to that action, and
28 if the written consent or consents are filed with the minutes of the
29 ~~meetings of the board.~~ *meeting of the board. Written consent to*
30 *conduct an emergency meeting may be transmitted electronically.*

31 (k) As used in this section:

32 (1) “Item of business” means any action within the authority of
33 the board, except those actions that the board has validly delegated
34 to any other person or persons, managing agent, officer of the
35 association, or committee of the board comprising less than a
36 majority of the directors.

37 (2) “Meeting” means either of the following:

38 (A) A congregation of a majority of the members of the board
39 at the same time and place to hear, discuss, or deliberate upon any
40 item of business that is within the authority of the board.

1 (B) A teleconference in which a majority of the members of the
2 board, in different locations, are connected by electronic means,
3 through audio or video or both. A teleconference meeting shall be
4 conducted in a manner that protects the rights of members of the
5 association and otherwise complies with the requirements of this
6 title. Except for a meeting that will be held solely in executive
7 session, the notice of the teleconference meeting shall identify at
8 least one physical location so that members of the association may
9 attend and at least one member of the board of directors shall be
10 present at that location. Participation by board members in a
11 teleconference meeting constitutes presence at that meeting as long
12 as all board members participating in the meeting are able to hear
13 one another and members of the association speaking on matters
14 before the board.

15 SEC. 3. Section 1365.2 of the Civil Code is amended to read:

16 1365.2. (a) For the purposes of this section, the following
17 definitions shall apply:

18 (1) “Association records” means all of the following:

19 (A) Any financial document required to be provided to a member
20 in Section 1365.

21 (B) Any financial document or statement required to be provided
22 in Section 1368.

23 (C) Interim financial statements, periodic or as compiled,
24 containing any of the following:

25 (i) Balance sheet.

26 (ii) Income and expense statement.

27 (iii) Budget comparison.

28 (iv) General ledger. A “general ledger” is a report that shows
29 all transactions that occurred in an association account over a
30 specified period of time.

31 The records described in this subparagraph shall be prepared in
32 accordance with an accrual or modified accrual basis of accounting.

33 (D) Executed contracts not otherwise privileged under law.

34 (E) Written board approval of vendor or contractor proposals
35 or invoices.

36 (F) State and federal tax returns.

37 (G) Reserve account balances and records of payments made
38 from reserve accounts.

39 (H) Agendas and minutes of meetings of the members, the board
40 of directors and any committees appointed by the board of directors

1 pursuant to Section 7212 of the Corporations Code; excluding,
2 however, minutes and other information from executive sessions
3 of the board of directors as described in Section 1363.05.

4 (I) (i) Membership lists, including name, property address, and
5 mailing address, if the conditions set forth in clause (ii) are met
6 and except as otherwise provided in clause (iii).

7 (ii) The member requesting the list shall state the purpose for
8 which the list is requested which purpose shall be reasonably
9 related to the requester's interest as a member. If the association
10 reasonably believes that the information in the list will be used for
11 another purpose, it may deny the member access to the list. If the
12 request is denied, in any subsequent action brought by the member
13 under subdivision (f), the association shall have the burden to prove
14 that the member would have allowed use of the information for
15 purposes unrelated to his or her interest as a member.

16 (iii) A member of the association may opt out of the sharing of
17 his or her name, property address, and mailing address by notifying
18 the association in writing that he or she prefers to be contacted via
19 the alternative process described in subdivision (c) of Section 8330
20 of the Corporations Code. This opt-out shall remain in effect until
21 changed by the member.

22 (J) Check registers.

23 (2) "Enhanced association records" means invoices, receipts
24 and canceled checks for payments made by the association,
25 purchase orders approved by the association, credit card statements
26 for credit cards issued in the name of the association, statements
27 for services rendered, and reimbursement requests submitted to
28 the association, provided that the person submitting the
29 reimbursement request shall be solely responsible for removing
30 all personal identification information from the request.

31 (b) (1) The association shall make available association records
32 and enhanced association records for the time periods and within
33 the timeframes provided in subdivisions (i) and (j) for inspection
34 and copying by a member of the association, or the member's
35 designated representative. The association may bill the requesting
36 member for the direct and actual cost of copying requested
37 documents. The association shall inform the member of the amount
38 of the copying costs before copying the requested documents.

39 (2) A member of the association may designate another person
40 to inspect and copy the specified association records on the

1 member's behalf. The member shall make this designation in
2 writing.

3 (c) (1) The association shall make the specified association
4 records available for inspection and copying in the association's
5 business office within the common interest development.

6 (2) If the association does not have a business office within the
7 development, the association shall make the specified association
8 records available for inspection and copying at a place that the
9 requesting member and the association agree upon.

10 (3) If the association and the requesting member cannot agree
11 upon a place for inspection and copying pursuant to paragraph (2),
12 or if the requesting member submits a written request directly to
13 the association for copies of specifically identified records, the
14 association may satisfy the requirement to make the association
15 records available for inspection and copying by mailing copies of
16 the specifically identified records to the member by first-class mail
17 within the timeframes set forth in subdivision (j).

18 (4) The association may bill the requesting member for the direct
19 and actual cost of copying and mailing requested documents. The
20 association shall inform the member of the amount of the copying
21 and mailing costs, and the member shall agree to pay those costs,
22 before copying and sending the requested documents.

23 (5) In addition to the direct and actual costs of copying and
24 mailing, the association may bill the requesting member an amount
25 not in excess of ten dollars (\$10) per hour, and not to exceed two
26 hundred dollars (\$200) total per written request, for the time
27 actually and reasonably involved in redacting the enhanced
28 association records as provided in paragraph (2) of subdivision
29 (a). The association shall inform the member of the estimated costs,
30 and the member shall agree to pay those costs, before retrieving
31 the requested documents.

32 (d) (1) Except as provided in paragraph (2), the association
33 may withhold or redact information from the association records
34 for any of the following reasons:

35 (A) The release of the information is reasonably likely to lead
36 to identity theft. For the purposes of this section, "identity theft"
37 means the unauthorized use of another person's personal
38 identifying information to obtain credit, goods, services, money,
39 or property. Examples of information that may be withheld or
40 redacted pursuant to this paragraph include bank account numbers

1 of members or vendors, social security or tax identification
2 numbers, and check, stock, and credit card numbers.

3 (B) The release of the information is reasonably likely to lead
4 to fraud in connection with the association.

5 (C) The information is privileged under law. Examples include
6 documents subject to attorney-client privilege or relating to
7 litigation in which the association is or may become involved, and
8 confidential settlement agreements.

9 (D) The release of the information is reasonably likely to
10 compromise the privacy of an individual member of the association.

11 (E) The information contains any of the following:

12 (i) Records of a la carte goods or services provided to individual
13 members of the association for which the association received
14 monetary consideration other than assessments.

15 (ii) Records of disciplinary actions, collection activities, or
16 payment plans of members other than the member requesting the
17 records.

18 (iii) Any person's personal identification information, including,
19 without limitation, social security number, tax identification
20 number, driver's license number, credit card account numbers,
21 bank account number, and bank routing number.

22 (iv) Minutes and other information from executive sessions of
23 the board of directors as described in Section 1363.05, except for
24 executed contracts not otherwise privileged. Privileged contracts
25 shall not include contracts for maintenance, management, or legal
26 services.

27 (v) Personnel records other than the payroll records required to
28 be provided under paragraph (2).

29 (vi) Interior architectural plans, including security features, for
30 individual homes.

31 (2) Except as provided by the attorney-client privilege, the
32 association may not withhold or redact information concerning
33 the compensation paid to employees, vendors, or contractors.
34 Compensation information for individual employees shall be set
35 forth by job classification or title, not by the employee's name,
36 social security number, or other personal information.

37 (3) No association, officer, director, employee, agent or
38 volunteer of an association shall be liable for damages to a member
39 of the association or any third party as the result of identity theft
40 or other breach of privacy because of the failure to withhold or

1 redact that member's information under this subdivision unless
2 the failure to withhold or redact the information was intentional,
3 willful, or negligent.

4 (4) If requested by the requesting member, an association that
5 denies or redacts records shall provide a written explanation
6 specifying the legal basis for withholding or redacting the requested
7 records.

8 (e) (1) The association records, and any information from them,
9 may not be sold, used for a commercial purpose, or used for any
10 other purpose not reasonably related to a member's interest as a
11 member. An association may bring an action against any person
12 who violates this section for injunctive relief and for actual
13 damages to the association caused by the violation.

14 (2) This section may not be construed to limit the right of an
15 association to damages for misuse of information obtained from
16 the association records pursuant to this section or to limit the right
17 of an association to injunctive relief to stop the misuse of this
18 information.

19 (3) An association shall be entitled to recover reasonable costs
20 and expenses, including reasonable attorney's fees, in a successful
21 action to enforce its rights under this section.

22 (f) A member of an association may bring an action to enforce
23 the member's right to inspect and copy the association records. If
24 a court finds that the association unreasonably withheld access to
25 the association records, the court shall award the member
26 reasonable costs and expenses, including reasonable attorney's
27 fees, and may assess a civil penalty of up to five hundred dollars
28 (\$500) for the denial of each separate written request. A cause of
29 action under this section may be brought in small claims court if
30 the amount of the demand does not exceed the jurisdiction of that
31 court. A prevailing association may recover any costs if the court
32 finds the action to be frivolous, unreasonable, or without
33 foundation.

34 (g) The provisions of this section apply to any community
35 service organization or similar entity, as defined in paragraph (3)
36 of subdivision (c) of Section 1368, that is related to the association,
37 and to any nonprofit entity that provides services to a common
38 interest development under a declaration of trust. This section shall
39 operate to give a member of the organization or entity a right to

1 inspect and copy the records of that organization or entity
2 equivalent to that granted to association members by this section.

3 (h) Requesting parties shall have the option of receiving
4 specifically identified records by electronic transmission or
5 machine-readable storage media as long as those records can be
6 transmitted in a redacted format that does not allow the records to
7 be altered. The cost of duplication shall be limited to the direct
8 cost of producing the copy of a record in that electronic format.
9 The association may deliver specifically identified records by
10 electronic transmission or machine-readable storage media as long
11 as those records can be transmitted in a redacted format that
12 prevents the records from being altered.

13 (i) The time periods for which specified records shall be
14 provided is as follows:

15 (1) Association records shall be made available for the current
16 fiscal year and for each of the previous two fiscal years.

17 (2) Minutes of member and board meetings shall be permanently
18 made available. If a committee has decisionmaking authority,
19 minutes of the meetings of that committee shall be made available
20 commencing January 1, 2007, and shall thereafter be permanently
21 made available.

22 (j) The timeframes in which access to specified records shall
23 be provided to a requesting member are as follows:

24 (1) Association records prepared during the current fiscal year,
25 within 10 business days following the association's receipt of the
26 request.

27 (2) Association records prepared during the previous two fiscal
28 years, within 30 calendar days following the association's receipt
29 of the request.

30 (3) Any record or statement available pursuant to Section 1365
31 or 1368, within the timeframe specified therein.

32 (4) Minutes of member and board meetings, within the
33 timeframe specified in subdivision (d) of Section 1363.05.

34 (5) Minutes of meetings of committees with decisionmaking
35 authority for meetings commencing on or after January 1, 2007,
36 within 15 calendar days following approval.

37 (6) Membership list, within the timeframe specified in Section
38 8330 of the Corporations Code.

- 1 (k) There shall be no liability pursuant to this section for an
2 association that fails to retain records for the periods specified in
3 subdivision (i) that were created prior to January 1, 2006.
- 4 (l) As applied to an association and its members, the provisions
5 of this section are intended to supersede the provisions of Sections
6 8330 and 8333 of the Corporations Code to the extent those
7 sections are inconsistent.
- 8 (m) The provisions of this section shall not apply to any common
9 interest development in which separate interests are being offered
10 for sale by a subdivider under the authority of a public report issued
11 by the Department of Real Estate so long as the subdivider or all
12 subdividers offering those separate interests for sale, or any
13 employees of those subdividers or any other person who receives
14 direct or indirect compensation from any of those subdividers,
15 comprise a majority of the members of the board of directors of
16 the association. Notwithstanding the foregoing, this section shall
17 apply to that common interest development no later than 10 years
18 after the close of escrow for the first sale of a separate interest to
19 a member of the general public pursuant to the public report issued
20 for the first phase of the development.
- 21 (n) This section shall become operative on July 1, 2006.