

AMENDED IN SENATE JUNE 2, 2014
AMENDED IN ASSEMBLY SEPTEMBER 12, 2013
AMENDED IN ASSEMBLY MARCH 18, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 569

Introduced by Assembly Member Chau

February 20, 2013

An act to amend Sections 11003.4 and 11013.1 of, and to add Section 11013.6 to, the Business and Professions Code, and to amend Section 5100 of the Civil Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 569, as amended, Chau. Real property: divided lands.

(1) Existing law exempts a limited-equity housing cooperative or a workforce housing cooperative trust from provisions of existing law governing subdivided land transactions that are applicable to stock cooperatives if the limited-equity housing cooperative or workforce housing cooperative trust complies with specified conditions.

This bill would revise the conditions for the exemption to, among other things, require that each party that executes a regulatory agreement with the cooperative satisfy itself that the rights of the cooperative members are provided adequate protection, as specified. By expanding the applicability of a crime, this bill would impose a state-mandated local program.

(2) Existing law prohibits the sale or lease of lots or parcels within a subdivision that is subject to a blanket encumbrance unless the encumbrance includes a specified release clause or certain conditions are met.

This bill would authorize the sale or lease of an individual interest in a defined stock cooperative or limited housing cooperative that is subject to a blanket encumbrance if specified conditions are met.

(3) The Davis-Stirling Common Interest Development Act establishes procedures for elections.

This bill would exempt a stock cooperative with bylaws that provide that all members and shareholders automatically become directors of the homeowners’ association from the procedures applicable to the election of directors of the homeowners’ association.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 11003.4 of the Business and Professions~~
2 ~~Code is amended to read:~~
3 ~~11003.4. (a) A “limited-equity housing cooperative” or a~~
4 ~~“workforce housing cooperative trust” is a corporation that meets~~
5 ~~the criteria of Section 11003.2 and that also meets the criteria of~~
6 ~~Sections 817 and 817.1 of the Civil Code, as applicable. Except~~
7 ~~as provided in subdivision (b), a limited-equity housing or~~
8 ~~workforce housing cooperative trust shall be subject to all the~~
9 ~~requirements of this chapter pertaining to stock cooperatives.~~
10 ~~(b) A limited-equity housing cooperative or a workforce housing~~
11 ~~cooperative trust shall be exempt from the requirements of this~~
12 ~~chapter if the limited-equity housing cooperative or workforce~~
13 ~~housing cooperative trust complies with all the following~~
14 ~~conditions:~~
15 ~~(1) The United States Department of Housing and Urban~~
16 ~~Development, the United States Department of Agriculture, the~~
17 ~~National Consumers Cooperative Bank, the California Housing~~
18 ~~Finance Agency, the Public Employees’ Retirement System~~
19 ~~(PERS), the State Teachers’ Retirement System (STRS), the~~
20 ~~Department of Housing and Community Development, the Federal~~
21 ~~Home Loan Bank System or any of its member institutions, a state~~

1 or federally chartered credit union, a state or federally certified
2 community development financial institution, or the city, county,
3 school district, or redevelopment agency in which the cooperative
4 is located, alone or in any combination with each other, directly
5 finances or subsidizes at least 50 percent of the total construction
6 or development cost or one hundred thousand dollars (\$100,000),
7 whichever is less; or the real property to be occupied by the
8 cooperative was sold or leased by the Transportation Agency, other
9 state agency, a city, a county, or a school district for the
10 development of the cooperative and has a regulatory agreement
11 approved by the Department of Housing and Community
12 Development for the term of the permanent financing,
13 notwithstanding the source of the permanent subsidy or financing.

14 (2) No more than 20 percent of the total development cost of a
15 limited-equity mobilehome park, and no more than 10 percent of
16 the total development cost of other limited-equity housing
17 cooperatives, is provided by purchasers of membership shares.

18 (3) A regulatory agreement that covers the cooperative for a
19 term of at least as long as the duration of the permanent financing
20 or subsidy, notwithstanding the source of the permanent subsidy
21 or financing, has been duly executed between the recipient of the
22 financing and either (A) one of the federal or state agencies
23 specified in paragraph (1) or (B) a local public agency that is
24 providing financing for the project under a regulatory agreement
25 meeting standards of the Department of Housing and Community
26 Development. The regulatory agreement shall make provision for
27 at least all of the following:

28 (A) Assurances for completion of the common areas and
29 facilities to be owned or leased by the limited-equity housing
30 cooperative, unless a construction agreement between the same
31 parties contains written assurances for completion.

32 (B) Governing instruments for the organization and operation
33 of the housing cooperative by the members.

34 (C) The ongoing fiscal management of the project by the
35 cooperative, including an adequate budget, reserves, and provisions
36 for maintenance and management.

37 (D) Distribution of a membership information report to any
38 prospective purchaser of a membership share, prior to purchase
39 of that share. The membership information report shall contain
40 full disclosure of the financial obligations and responsibilities of

1 cooperative membership, the resale of shares, the financing of the
2 cooperative including any arrangements made with any partners,
3 membership share accounts, occupancy restrictions, management
4 arrangements, and any other information pertinent to the benefits,
5 risks, and obligations of cooperative ownership.

6 ~~(4) Each party that executes the regulatory agreement shall~~
7 ~~satisfy itself that the bylaws, articles of incorporation, occupancy~~
8 ~~agreement, subscription agreement, any lease of the regulated~~
9 ~~premises, any arrangement with partners, and arrangement for~~
10 ~~membership share accounts provide adequate protection of the~~
11 ~~rights of cooperative members.~~

12 ~~(5) Each provider of financing or subsidies shall receive from~~
13 ~~the attorney for the recipient of the financing or subsidy a legal~~
14 ~~opinion that the cooperative meets the requirements of Section~~
15 ~~817 of the Civil Code and the exemption provided by this section.~~

16 ~~(e) Any limited-equity cooperative, or workforce housing~~
17 ~~cooperative trust that meets the requirements for exemption~~
18 ~~pursuant to subdivision (b) may elect to be subject to all provisions~~
19 ~~of this chapter.~~

20 ~~(d) The developer of the cooperative shall notify the Bureau of~~
21 ~~Real Estate, on a form provided by the bureau, that an exemption~~
22 ~~is claimed under this section. The Bureau of Real Estate shall retain~~
23 ~~this form for at least four years for statistical purposes.~~

24 *SECTION 1. Section 11003.4 of the Business and Professions*
25 *Code is amended to read:*

26 11003.4. (a) A “limited-equity housing cooperative” or a
27 “workforce housing cooperative trust” is a corporation that meets
28 the criteria of Section 11003.2 and that also meets the criteria of
29 Sections 817 and 817.1 of the Civil Code, as applicable. Except
30 as provided in subdivision (b), a limited-equity housing or
31 workforce housing cooperative trust shall be subject to all the
32 requirements of this chapter pertaining to stock cooperatives.

33 (b) A limited-equity housing cooperative or a workforce housing
34 cooperative trust shall be exempt from the requirements of this
35 chapter if the limited-equity housing cooperative or workforce
36 housing cooperative trust complies with all the following
37 conditions:

38 (1) The United States Department of Housing and Urban
39 Development, the United States Department of Agriculture, the
40 National Consumers Cooperative Bank, the California Housing

1 Finance Agency, the Public Employees' Retirement System
2 (PERS), the State Teachers' Retirement System (STRS), the
3 Department of Housing and Community Development, ~~or~~ the
4 Federal Home Loan Bank System or any of its member institutions,
5 ~~alone a state or in any combination with each other, federally~~
6 ~~chartered credit union, a state or with federally certified community~~
7 ~~development financial institution, or~~ the city, county, school
8 district, or redevelopment agency in which the cooperative is
9 located, ~~alone or in any combination with each other,~~ directly
10 finances or subsidizes at least 50 percent of the total construction
11 or development cost or one hundred thousand dollars (\$100,000),
12 whichever is less; or the real property to be occupied by the
13 cooperative was sold or leased by the ~~Department of~~
14 ~~Transportation, Transportation Agency,~~ other state agency, a city,
15 a county, or a school district for the development of the cooperative
16 and has a regulatory agreement approved by the Department of
17 Housing and Community Development for the term of the
18 permanent financing, notwithstanding the source of the permanent
19 subsidy or financing.

20 (2) No more than 20 percent of the total development cost of a
21 limited-equity mobilehome park, and no more than 10 percent of
22 the total development cost of other limited-equity housing
23 cooperatives, is provided by purchasers of membership shares.

24 (3) A regulatory agreement that covers the cooperative for a
25 term of at least as long as the duration of the permanent financing
26 or subsidy, notwithstanding the source of the permanent subsidy
27 ~~or financing financing,~~ has been duly executed between the
28 recipient of the financing and either (A) one of the federal or state
29 agencies specified in paragraph (1) or (B) a local public agency
30 that is providing financing for the project under a regulatory
31 agreement meeting standards of the Department of Housing and
32 Community Development. The regulatory agreement shall make
33 provision for at least all of the following:

34 (A) Assurances for completion of the common areas and
35 facilities to be owned or leased by the limited-equity housing
36 cooperative, unless a construction agreement between the same
37 parties contains written assurances for completion.

38 (B) Governing instruments for the organization and operation
39 of the housing cooperative by the members.

1 (C) The ongoing fiscal management of the project by the
2 cooperative, including an adequate budget, reserves, and provisions
3 for maintenance and management.

4 (D) Distribution of a membership information report to any
5 prospective purchaser of a membership share, prior to purchase
6 of that share. The membership information report shall contain
7 full disclosure of the financial obligations and responsibilities of
8 cooperative membership, the resale of shares, the financing of the
9 cooperative including any arrangements made with any partners,
10 membership share accounts, occupancy restrictions, management
11 arrangements, and any other information pertinent to the benefits,
12 risks, and obligations of cooperative ownership.

13 ~~(4) The federal, state, or local public agency~~ *Each party* that
14 executes the regulatory agreement shall satisfy itself that the
15 bylaws, articles of incorporation, occupancy agreement,
16 subscription agreement, any lease of the regulated premises, any
17 arrangement with partners, and arrangement for membership share
18 accounts provide adequate protection of the rights of cooperative
19 members.

20 ~~(5) The federal~~ *Each provider of financing or state agency*
21 *subsidies* shall receive from the attorney for the recipient of the
22 financing or subsidy a legal opinion that the cooperative meets the
23 requirements of Section 817 of the Civil Code and the exemption
24 provided by this section.

25 (c) Any limited-equity cooperative, or workforce housing
26 cooperative trust that meets the requirements for exemption
27 pursuant to subdivision (b) may elect to be subject to all provisions
28 of this chapter.

29 (d) The developer of the cooperative shall notify the Bureau of
30 Real Estate, on a form provided by the bureau, that an exemption
31 is claimed under this section. The Bureau of Real Estate shall retain
32 this form for at least four years for statistical purposes.

33 SEC. 2. Section 11013.1 of the Business and Professions Code
34 is amended to read:

35 11013.1. It shall be unlawful, except as provided in Section
36 11013.2 or 11013.6, for the owner, subdivider, or agent to sell or
37 lease lots or parcels within a subdivision that is subject to a blanket
38 encumbrance unless there exists in the blanket encumbrance or
39 other supplementary agreement a provision, hereinafter referred
40 to as a release clause, which by its terms shall unconditionally

1 provide that the purchaser or lessee of a lot or parcel can obtain
2 legal title or other interest contracted for, free and clear of the
3 blanket encumbrance, upon compliance with the terms and
4 conditions of the purchase or lease.

5 SEC. 3. Section 11013.6 is added to the Business and
6 Professions Code, to read:

7 11013.6. Notwithstanding Sections 11013.1 and 11013.2, an
8 individual interest in a stock cooperative, as defined in Section
9 4190 of the Civil Code, or a limited equity housing cooperative,
10 as defined in Section 817 of the Civil Code, may be sold or leased
11 subject to a blanket encumbrance if all of the following conditions
12 are met:

13 (a) The notice required pursuant to Section 1133 of the Civil
14 Code is provided to each prospective purchaser and lessee of the
15 interest and is included in every purchase and lease contract.

16 (b) The property subject to the sale or lease has obtained a public
17 report from the Bureau of Real Estate that accounts for the blanket
18 encumbrance.

19 (c) The governing documents for the association require the
20 association to create within one year of the sale of at least 50
21 percent of the individual interests in the stock cooperative or
22 limited-equity housing cooperative and maintain during the term
23 of the blanket encumbrance a financing reserve amount equal to
24 at least three months of the amount of the debt service payments
25 due on the blanket encumbrance or a lesser amount acceptable to
26 the commissioner.

27 SEC. 4. Section 5100 of the Civil Code is amended to read:

28 5100. (a) Notwithstanding any other law or provision of the
29 governing documents, elections regarding assessments legally
30 requiring a vote, election and removal of directors, amendments
31 to the governing documents, or the grant of exclusive use of
32 common area pursuant to Section 4600 shall be held by secret
33 ballot in accordance with the procedures set forth in this article.

34 (b) This article also governs an election on any topic that is
35 expressly identified in the operating rules as being governed by
36 this article.

37 (c) The provisions of this article apply to both incorporated and
38 unincorporated associations, notwithstanding any contrary
39 provision of the governing documents.

1 (d) The procedures set forth in this article shall apply to votes
2 cast directly by the membership, but do not apply to votes cast by
3 delegates or other elected representatives.

4 (e) In the event of a conflict between this article and the
5 provisions of the Nonprofit Mutual Benefit Corporation Law (Part
6 3 (commencing with Section 7110) of Division 2 of Title 1 of the
7 Corporations Code) relating to elections, the provisions of this
8 article shall prevail.

9 (f) Directors shall not be required to be elected pursuant to this
10 article if the governing documents provide that one member from
11 each separate interest is a director.

12 SEC. 5. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.