

**ASSEMBLY BILL**

**No. 1024**

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**Introduced by Assembly Member Torres**

February 22, 2013

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An act to amend Sections 11000.1, 11003.4, 11013.1, and 11013.2 of, and to add Section 11013.6 to, the Business and Professions Code, to add Section 5146 to the Civil Code, and to amend Section 66426 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1024, as introduced, Torres. Real property: divided lands.

(1) Existing law generally governs real estate transactions, including transactions involving subdivided lands. Existing law requires any person who intends to offer subdivided lands within California for sale or lease to file with the Department of Real Estate an application for a public report, consisting of a completed questionnaire and a notice of intention that includes, among other things, a statement of the proposed uses for which the proposed subdivision will be offered. Existing law provides a person who has made an offer to purchase an interest in an undivided-interest subdivision, as specified, the right to rescind any contract resulting from the acceptance of that offer until midnight of the 3rd calendar day following the day on which the prospective purchaser executed the offer to purchase. Existing law makes a violation of these provisions a crime.

Existing law exempts from the definition of “subdivided lands” and “subdivision” the creation or proposed creation of undivided interests in land if the offering and sale of the undivided interests have been expressly qualified by a permit from the Commissioner of Corporations.

This bill would revise the above-described exemption to apply to the offering and sale of undivided interests in a stock cooperative or community apartment project that is exempt from specified securities requirements, as well as to the offering and sale of undivided interests in a common interest development that has been so expressly qualified.

(2) 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 every 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.

(3) 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 a specified condition is met.

(4) 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.

(5) The existing Subdivision Map Act requires a tentative and final map for all subdivisions creating 5 or more parcels, 5 or more condominiums, as defined, a community apartment project containing 5 or more parcels, or for the conversion of a dwelling to a stock cooperative containing 5 or more dwelling units, except as specified.

This bill would delete from the above-described requirement a community apartment project containing 5 or more parcels and the conversion of a dwelling to a stock cooperative containing 5 or more dwelling units.

(6) 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 11000.1 of the Business and Professions  
2 Code is amended to read:

3 11000.1. (a) "Subdivided lands" and "subdivision," as defined  
4 by Sections 11000 and 11004.5, also include improved or  
5 unimproved land or lands, a lot or lots, or a parcel or parcels, of  
6 any size, in which, for the purpose of sale or lease or financing,  
7 whether immediate or future, five or more undivided interests are  
8 created or are proposed to be created.

9 (b) This section does not apply to the creation or proposed  
10 creation of undivided interests in land if any one of the following  
11 conditions exists:

12 (1) The undivided interests are held or to be held by persons  
13 related one to the other by blood or marriage.

14 (2) The undivided interests are to be purchased and owned solely  
15 by persons who present evidence satisfactory to the Real Estate  
16 Commissioner that they are knowledgeable and experienced  
17 investors who comprehend the nature and extent of the risks  
18 involved in the ownership of these interests. The Real Estate  
19 Commissioner shall grant an exemption from this part if the  
20 undivided interests are to be purchased by no more than 10 persons,  
21 each of whom furnishes a signed statement to the commissioner  
22 that he or she (A) is fully informed concerning the real property  
23 to be acquired and his or her interest in that property including the  
24 risks involved in ownership of undivided interests, (B) is  
25 purchasing the interest or interests for his or her own account and  
26 with no present intention to resell or otherwise dispose of the  
27 interest for value, and (C) expressly waives protections afforded  
28 to a purchaser by this part.

29 (3) The undivided interests are created as the result of a  
30 foreclosure sale.

1 (4) The undivided interests are created by a valid order or decree  
 2 of a court.

3 (5) The offering and sale of the undivided interests ~~have in a~~  
 4 *stock cooperative or community apartment project is exempt from*  
 5 *the requirements of Section 25110 of the Corporations Code*  
 6 *pursuant to subdivision (f) of Section 25102 of that code.*

7 (6) *The offering and sale of undivided interests in a common*  
 8 *interest development have been expressly qualified by the issuance*  
 9 *of a permit from the Commissioner of Corporations pursuant to*  
 10 *the Corporate Securities Law of 1968 (Division 1 (commencing*  
 11 *with Section 25000) of Title 4 of the Corporations Code).*

12 SEC. 2. Section 11003.4 of the Business and Professions Code  
 13 is amended to read:

14 11003.4. (a) A “limited-equity housing cooperative” or a  
 15 “workforce housing cooperative trust” is a corporation that meets  
 16 the criteria of Section 11003.2 and that also meets the criteria of  
 17 Sections 817 and 817.1 of the Civil Code, as applicable. Except  
 18 as provided in subdivision (b), a limited-equity housing or  
 19 workforce housing cooperative trust shall be subject to all the  
 20 requirements of this chapter pertaining to stock cooperatives.

21 (b) A limited-equity housing cooperative or a workforce housing  
 22 cooperative trust shall be exempt from the requirements of this  
 23 chapter if the limited-equity housing cooperative or workforce  
 24 housing cooperative trust complies with all the following  
 25 conditions:

26 (1) The United States Department of Housing and Urban  
 27 Development, the United States Department of Agriculture, the  
 28 National Consumers Cooperative Bank, the California Housing  
 29 Finance Agency, the Public Employees’ Retirement System  
 30 (PERS), the State Teachers’ Retirement System (STRS), the  
 31 Department of Housing and Community Development, ~~or~~ the  
 32 Federal Home Loan Bank System or any of its member institutions,  
 33 ~~alone or in any combination with each other, or with a state or~~  
 34 *federally chartered credit union, a state or federally certified*  
 35 *community development financial institution, or the city, county,*  
 36 *school district, or redevelopment agency in which the cooperative*  
 37 *is located, alone or in any combination with each other, directly*  
 38 *finances or subsidizes at least 50 percent of the total construction*  
 39 *or development cost or one hundred thousand dollars (\$100,000),*  
 40 *whichever is less; or the real property to be occupied by the*

1 cooperative was sold or leased by the Department of  
2 Transportation, other state agency, a city, a county, or a school  
3 district for the development of the cooperative and has a regulatory  
4 agreement approved by the Department of Housing and Community  
5 Development for the term of the permanent financing,  
6 notwithstanding the source of the permanent subsidy or financing.

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

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

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

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

27 (C) The ongoing fiscal management of the project by the  
28 cooperative, including an adequate budget, reserves, and provisions  
29 for maintenance and management.

30 (D) Distribution of a membership information report to any  
31 prospective purchaser of a membership share, prior to purchase  
32 of that share. The membership information report shall contain  
33 full disclosure of the financial obligations and responsibilities of  
34 cooperative membership, the resale of shares, the financing of the  
35 cooperative including any arrangements made with any partners,  
36 membership share accounts, occupancy restrictions, management  
37 arrangements, and any other information pertinent to the benefits,  
38 risks, and obligations of cooperative ownership.

39 (4) ~~The federal, state, or local public agency~~ *Every party* that  
40 executes the regulatory agreement shall satisfy itself that the

1 bylaws, articles of incorporation, occupancy agreement,  
 2 subscription agreement, any lease of the regulated premises, any  
 3 arrangement with partners, and arrangement for membership share  
 4 accounts provide adequate protection of the rights of cooperative  
 5 members.

6 (5) ~~The federal or state agency~~ *Every provider of financing or*  
 7 *subsidies* shall receive from the attorney for the recipient of the  
 8 financing or subsidy a legal opinion that the cooperative meets the  
 9 requirements of Section 817 of the Civil Code and the exemption  
 10 provided by this section.

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

15 (d) The developer of the cooperative shall notify the ~~Department~~  
 16 *Bureau* of Real Estate, on a form provided by the department, that  
 17 an exemption is claimed under this section. ~~The Department Bureau~~  
 18 of Real Estate shall retain this form for at least four years for  
 19 statistical purposes.

20 SEC. 3. Section 11013.1 of the Business and Professions Code  
 21 is amended to read:

22 11013.1. It shall be unlawful, except as provided in Section  
 23 11013.2 *or 11013.3*, for the owner, subdivider, or agent to sell or  
 24 lease lots or parcels within a subdivision that is subject to a blanket  
 25 encumbrance unless there exists in ~~such~~ *the* blanket encumbrance  
 26 or other supplementary agreement a provision, hereinafter referred  
 27 to as a release clause, which by its terms shall unconditionally  
 28 provide that the purchaser or lessee of a lot or parcel can obtain  
 29 legal title or other interest contracted for, free and clear of ~~such~~  
 30 *the* blanket encumbrance, upon compliance with the terms and  
 31 conditions of the purchase or lease.

32 SEC. 4. Section 11013.2 of the Business and Professions Code  
 33 is amended to read:

34 11013.2. ~~Should there not exist in~~ *If* the blanket encumbrance  
 35 or supplementary agreement *does not include* a release clause as  
 36 set forth in Section 11013.1, then it shall be unlawful for the owner,  
 37 subdivider, or agent to sell or lease lots or parcels within ~~such~~ *the*  
 38 subdivision unless one of the following conditions is complied  
 39 with:

1 (a) The entire sum of money paid or advanced by the purchaser  
2 or lessee of ~~any such~~ *the* lot or parcel, or ~~such a~~ portion thereof as  
3 the commissioner shall determine is sufficient to protect the interest  
4 of the purchaser or lessee, shall be deposited into an escrow  
5 depository acceptable to the commissioner until ~~either (1) a~~ *any*  
6 *of the following occur:*

7 (1) A proper release is obtained from ~~such the~~ blanket  
8 ~~encumbrance; or (2) either~~ *encumbrance.*

9 (2) *Either* the owner, subdivider, or agent or the purchaser or  
10 lessee may default under their contract of sale or lease and there  
11 is a determination as to the disposition of ~~such moneys; or (3) the~~  
12 *the moneys.*

13 (3) *The* owner, subdivider, or agent orders the return of ~~such~~  
14 *the* moneys to ~~such this~~ purchaser or lessee.

15 (b) The title to the subdivision is to be held in trust under an  
16 agreement of trust acceptable to the commissioner until a proper  
17 release from ~~such the~~ blanket encumbrance is obtained.

18 (c) A bond to the State of California is furnished to the  
19 commissioner for the benefit and protection of purchasers or lessees  
20 of ~~such the~~ lots or parcels, in ~~such an~~ amount and subject to ~~such~~  
21 *the* terms as may be approved by the commissioner, which shall  
22 provide for the return of the moneys paid or advanced by any  
23 purchaser or lessee, for or on account of the purchase or lease of  
24 ~~any such the~~ lot or parcel if a proper release from ~~such the~~ blanket  
25 encumbrance is not obtained; provided, however, that if it should  
26 be determined that ~~such the~~ purchaser or lessee, by reason of  
27 default or otherwise, is not entitled to the return of ~~such the~~  
28 moneys, or any portion thereof, then ~~such the~~ bond shall be  
29 exonerated to the extent of the amount of ~~such the~~ moneys to which  
30 ~~such the~~ purchaser or lessee is not entitled.

31 (d) There is conformance to ~~such other~~ *another* alternative  
32 requirement or method ~~which that~~ the commissioner may deem  
33 acceptable to carry into effect the intent and provisions of this part.

34 (e) *The sale or lease subject to the blanket encumbrance is*  
35 *described in Section 11013.3.*

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

38 11013.6. Notwithstanding Sections 11013.1 and 11013.2, an  
39 individual interest in a stock cooperative, as defined in Section  
40 11003.2, or a limited equity housing cooperative, as defined in

1 Section 817 of the Civil Code, may be sold or leased subject to a  
 2 blanket encumbrance if any of the following conditions are met:

3 (a) The property subject to the sale has obtained a public report  
 4 from the Bureau of Real Estate.

5 (b) The notice required pursuant to Section 1133 of the Civil  
 6 Code is provided to every prospective purchaser of the interest  
 7 and is included in every purchase contract.

8 (c) The governing documents of a homeowners association for  
 9 a stock cooperative require the association to create within one  
 10 year of the sale of at least 50 percent of the individual interest in  
 11 the stock cooperative and maintain during the term of the blanket  
 12 encumbrance a financing reserve amount equal to at least three  
 13 months of the amount of the debt service payments due on the  
 14 blanket encumbrance.

15 (d) Every purchaser of an individual interest in the stock  
 16 cooperative is an excluded purchaser, as defined in Section  
 17 260.102.13 of Title 10 of the California Code of Regulations.

18 SEC. 6. Section 5146 is added to the Civil Code, to read:

19 5146. Except for Section 5145, the provisions of this article  
 20 applicable to the election of directors of a homeowners' association  
 21 shall not apply to a stock cooperative with bylaws that provide  
 22 that all members and shareholders automatically become directors  
 23 of the homeowners' association.

24 SEC. 7. Section 66426 of the Government Code is amended  
 25 to read:

26 66426. A tentative and final map shall be required for all  
 27 subdivisions creating five or more parcels; *or* five or more  
 28 condominiums, as defined in Section 783 of the Civil Code, ~~a~~  
 29 ~~community apartment project containing five or more parcels, or~~  
 30 ~~for the conversion of a dwelling to a stock cooperative containing~~  
 31 ~~five or more dwelling units~~, except where any one of the following  
 32 occurs:

33 (a) The land before division contains less than five acres, each  
 34 parcel created by the division abuts upon a maintained public street  
 35 or highway, and no dedications or improvements are required by  
 36 the legislative body.

37 (b) Each parcel created by the division has a gross area of 20  
 38 acres or more and has an approved access to a maintained public  
 39 street or highway.



1 (c) The land consists of a parcel or parcels of land having  
2 approved access to a public street or highway, which comprises  
3 part of a tract of land zoned for industrial or commercial  
4 development, and which has the approval of the governing body  
5 as to street alignments and widths.

6 (d) Each parcel created by the division has a gross area of not  
7 less than 40 acres or is not less than a quarter of a quarter section.

8 (e) The land being subdivided is solely for the creation of an  
9 environmental subdivision pursuant to Section 66418.2.

10 (f) A parcel map shall be required for those subdivisions  
11 described in subdivisions (a), (b), (c), (d), and (e).

12 SEC. 8. 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.