

AMENDED IN SENATE JUNE 24, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1024

Introduced by Assembly Member Torres

February 22, 2013

An act to amend Sections ~~11000.1, 11003.4, 11003.4 and 11013.1; and 11013.2~~ of, and to add Section 11013.6 to, the Business and Professions Code, and to ~~add Section 5146 to~~ *amend Section 5100* of the Civil Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1024, as amended, 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)~~

~~(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 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)~~

~~(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.~~

~~(4)~~

~~(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.~~

~~(5)~~

~~(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 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.~~
31 ~~(4) The undivided interests are created by a valid order or decree~~
32 ~~of a court.~~
33 ~~(5) The offering and sale of the undivided interests in a stock~~
34 ~~cooperative or community apartment project is exempt from the~~

1 requirements of Section 25110 of the Corporations Code pursuant
 2 to subdivision (f) of Section 25102 of that code:

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

8 **SEC. 2.**

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

11 11003.4. (a) A “limited-equity housing cooperative” or a
 12 “workforce housing cooperative trust” is a corporation that meets
 13 the criteria of Section 11003.2 and that also meets the criteria of
 14 Sections 817 and 817.1 of the Civil Code, as applicable. Except
 15 as provided in subdivision (b), a limited-equity housing or
 16 workforce housing cooperative trust shall be subject to all the
 17 requirements of this chapter pertaining to stock cooperatives.

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

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

1 Development for the term of the permanent financing,
2 notwithstanding the source of the permanent subsidy or financing.

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

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

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

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

23 (C) The ongoing fiscal management of the project by the
24 cooperative, including an adequate budget, reserves, and provisions
25 for maintenance and management.

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

35 (4) Every party that executes the regulatory agreement shall
36 satisfy itself that the bylaws, articles of incorporation, occupancy
37 agreement, subscription agreement, any lease of the regulated
38 premises, any arrangement with partners, and arrangement for
39 membership share accounts provide adequate protection of the
40 rights of cooperative members.

1 (5) Every provider of financing or subsidies shall receive from
2 the attorney for the recipient of the financing or subsidy a legal
3 opinion that the cooperative meets the requirements of Section
4 817 of the Civil Code and the exemption provided by this section.

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

9 (d) The developer of the cooperative shall notify the Bureau of
10 Real Estate, on a form provided by the ~~department~~ *bureau*, that an
11 exemption is claimed under this section. The Bureau of Real Estate
12 shall retain this form for at least four years for statistical purposes.

13 ~~SEC. 3.~~

14 *SEC. 2.* Section 11013.1 of the Business and Professions Code
15 is amended to read:

16 11013.1. It shall be unlawful, except as provided in Section
17 11013.2 or ~~11013.3~~ *11013.6*, for the owner, subdivider, or agent
18 to sell or lease lots or parcels within a subdivision that is subject
19 to a blanket encumbrance unless there exists in the blanket
20 encumbrance or other supplementary agreement a provision,
21 hereinafter referred to as a release clause, which by its terms shall
22 unconditionally provide that the purchaser or lessee of a lot or
23 parcel can obtain legal title or other interest contracted for, free
24 and clear of the blanket encumbrance, upon compliance with the
25 terms and conditions of the purchase or lease.

26 ~~SEC. 4.~~ Section 11013.2 of the Business and Professions Code
27 is amended to read:

28 ~~11013.2. If the blanket encumbrance or supplementary~~
29 ~~agreement does not include a release clause as set forth in Section~~
30 ~~11013.1, then it shall be unlawful for the owner, subdivider, or~~
31 ~~agent to sell or lease lots or parcels within the subdivision unless~~
32 ~~one of the following conditions is complied with:~~

33 ~~(a) The entire sum of money paid or advanced by the purchaser~~
34 ~~or lessee of the lot or parcel, or a portion thereof as the~~
35 ~~commissioner shall determine is sufficient to protect the interest~~
36 ~~of the purchaser or lessee, shall be deposited into an escrow~~
37 ~~depository acceptable to the commissioner until any of the~~
38 ~~following occur:~~

39 (1) A proper release is obtained from the blanket encumbrance.

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

4 ~~(3) The owner, subdivider, or agent orders the return of the~~
5 ~~moneys to this purchaser or lessee.~~

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

9 ~~(c) A bond to the State of California is furnished to the~~
10 ~~commissioner for the benefit and protection of purchasers or lessees~~
11 ~~of the lots or parcels, in an amount and subject to the terms as may~~
12 ~~be approved by the commissioner, which shall provide for the~~
13 ~~return of the moneys paid or advanced by any purchaser or lessee,~~
14 ~~for or on account of the purchase or lease of the lot or parcel if a~~
15 ~~proper release from the blanket encumbrance is not obtained;~~
16 ~~provided, however, that if it should be determined that the~~
17 ~~purchaser or lessee, by reason of default or otherwise, is not entitled~~
18 ~~to the return of the moneys, or any portion thereof, then the bond~~
19 ~~shall be exonerated to the extent of the amount of the moneys to~~
20 ~~which the purchaser or lessee is not entitled.~~

21 ~~(d) There is conformance to another alternative requirement or~~
22 ~~method that the commissioner may deem acceptable to carry into~~
23 ~~effect the intent and provisions of this part.~~

24 ~~(e) The sale or lease subject to the blanket encumbrance is~~
25 ~~described in Section 11013.6.~~

26 ~~SEC. 5.~~

27 ~~SEC. 3.~~ Section 11013.6 is added to the Business and
28 Professions Code, to read:

29 11013.6. Notwithstanding Sections 11013.1 and 11013.2, an
30 individual interest in a stock cooperative, as defined in Section
31 ~~11003.2~~ 4190 of the Civil Code, or a limited equity housing
32 cooperative, as defined in Section 817 of the Civil Code, may be
33 sold or leased subject to a blanket encumbrance if ~~the~~ *all of the*
34 *following conditions are met:*

35 (a) *The notice required pursuant to Section 1133 of the Civil*
36 *Code is provided to every prospective purchaser of the interest*
37 *and is included in every purchase contract and any of the following*
38 *conditions are met: contract.*

39 (a)

1 (b) The property subject to the sale has obtained a public report
 2 from the Bureau of Real Estate *that accounts for the blanket*
 3 *encumbrance.*

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

11 ~~(c) Every purchaser of an individual interest in the stock~~
 12 ~~cooperative is an excluded purchaser, as defined in Section~~
 13 ~~260.102.13 of Title 10 of the California Code of Regulations.~~

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

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

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

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

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

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

38 (c) The provisions of this article apply to both incorporated and
 39 unincorporated associations, notwithstanding any contrary
 40 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) *A director shall not be required to be elected pursuant to*
10 *this article if the governing documents provide that all members*
11 *are directors.*

12 ~~SEC. 7.~~

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