

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE JULY 8, 2013

AMENDED IN SENATE JUNE 24, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**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 11003.4 and ~~11013.1 of~~, *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 1024, as amended, Torres. 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 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.

(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

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

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

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

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

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

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

39 (D) Distribution of a membership information report to any  
40 prospective purchaser of a membership share, prior to purchase

1 of that share. The membership information report shall contain  
2 full disclosure of the financial obligations and responsibilities of  
3 cooperative membership, the resale of shares, the financing of the  
4 cooperative including any arrangements made with any partners,  
5 membership share accounts, occupancy restrictions, management  
6 arrangements, and any other information pertinent to the benefits,  
7 risks, and obligations of cooperative ownership.

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

14 (5) Every provider of financing or subsidies shall receive from  
15 the attorney for the recipient of the financing or subsidy a legal  
16 opinion that the cooperative meets the requirements of Section  
17 817 of the Civil Code and the exemption provided by this section.

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

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

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

28 11013.1. It shall be unlawful, except as provided in Section  
29 11013.2 or 11013.6, for the owner, subdivider, or agent to sell or  
30 lease lots or parcels within a subdivision that is subject to a blanket  
31 encumbrance unless there exists in the blanket encumbrance or  
32 other supplementary agreement a provision, hereinafter referred  
33 to as a release clause, which by its terms shall unconditionally  
34 provide that the purchaser or lessee of a lot or parcel can obtain  
35 legal title or other interest contracted for, free and clear of the  
36 blanket encumbrance, upon compliance with the terms and  
37 conditions of the purchase or lease.

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

1 11013.6. Notwithstanding Sections 11013.1 and 11013.2, an  
2 individual interest in a stock cooperative, as defined in Section  
3 4190 of the Civil Code, or a limited equity housing cooperative,  
4 as defined in Section 817 of the Civil Code, may be sold or leased  
5 subject to a blanket encumbrance if all of the following conditions  
6 are met:

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

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

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

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

22 5100. (a) Notwithstanding any other law or provision of the  
23 governing documents, elections regarding assessments legally  
24 requiring a vote, election and removal of directors, amendments  
25 to the governing documents, or the grant of exclusive use of  
26 common area pursuant to Section 4600 shall be held by secret  
27 ballot in accordance with the procedures set forth in this article.

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

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

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

37 (e) In the event of a conflict between this article and the  
38 provisions of the Nonprofit Mutual Benefit Corporation Law (Part  
39 3 (commencing with Section 7110) of Division 2 of Title 1 of the

1 Corporations Code) relating to elections, the provisions of this  
2 article shall prevail.

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

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