

ASSEMBLY BILL

No. 1738

Introduced by Assembly Member Chau

February 14, 2014

An act to amend Sections 5910 and 5915 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1738, as introduced, Chau. Common interest developments: dispute resolution.

The Davis-Stirling Common Interest Development Act defines a common interest development and requires it to be managed by an association. The act requires an association to provide a fair, reasonable, and expeditious procedure for resolving a dispute between an association and a member involving their rights, duties, or liabilities under the act, the Nonprofit Mutual Benefit Corporation Law, or the association's governing documents. The act authorizes an association to develop its own procedure for these purposes and requires this procedure to satisfy specified minimum standards, including, among others, providing a means by which the member and the association may explain their positions.

This bill would additionally require that an association's dispute resolution procedure include a means by which the counsel for a member or an association may explain their position.

The act also establishes an alternative procedure applicable to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure as described above. Under these provisions a procedure that, among other things, authorizes either party to request, in writing, the other party to meet and confer, prohibits

the association from refusing a request to meet and confer, and requires the parties to meet and confer in good faith in an effort to resolve the dispute is deemed a fair, reasonable, and expeditious dispute resolution procedure.

This bill would additionally require the procedure to provide either party the right to be represented by counsel when meeting and conferring.

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 5910 of the Civil Code is amended to
2 read:

3 5910. A fair, reasonable, and expeditious dispute resolution
4 procedure shall at a minimum satisfy all of the following
5 requirements:

6 (a) The procedure may be invoked by either party to the dispute.
7 A request invoking the procedure shall be in writing.

8 (b) The procedure shall provide for prompt deadlines. The
9 procedure shall state the maximum time for the association to act
10 on a request invoking the procedure.

11 (c) If the procedure is invoked by a member, the association
12 shall participate in the procedure.

13 (d) If the procedure is invoked by the association, the member
14 may elect not to participate in the procedure. If the member
15 participates but the dispute is resolved other than by agreement of
16 the member, the member shall have a right of appeal to the board.

17 (e) A resolution of a dispute pursuant to the procedure, which
18 is not in conflict with the law or the governing documents, binds
19 the association and is judicially enforceable. An agreement reached
20 pursuant to the procedure, which is not in conflict with the law or
21 the governing documents, binds the parties and is judicially
22 enforceable.

23 (f) The procedure shall provide a means by which the member
24 and the association, *or their counsel*, may explain their positions.

25 (g) A member of the association shall not be charged a fee to
26 participate in the process.

27 SEC. 2. Section 5915 of the Civil Code is amended to read:

1 5915. (a) This section applies to an association that does not
2 otherwise provide a fair, reasonable, and expeditious dispute
3 resolution procedure. The procedure provided in this section is
4 fair, reasonable, and expeditious, within the meaning of this article.

5 (b) Either party to a dispute within the scope of this article may
6 invoke the following procedure:

7 (1) The party may request the other party to meet and confer in
8 an effort to resolve the dispute. The request shall be in writing.

9 (2) A member of an association may refuse a request to meet
10 and confer. The association may not refuse a request to meet and
11 confer.

12 (3) The board shall designate a director to meet and confer.

13 (4) The parties shall meet promptly at a mutually convenient
14 time and place, explain their positions to each other, and confer
15 in good faith in an effort to resolve the dispute. *The parties shall*
16 *have the right to be represented by counsel when meeting and*
17 *conferring.*

18 (5) A resolution of the dispute agreed to by the parties shall be
19 memorialized in writing and signed by the parties, including the
20 board designee on behalf of the association.

21 (c) An agreement reached under this section binds the parties
22 and is judicially enforceable if both of the following conditions
23 are satisfied:

24 (1) The agreement is not in conflict with law or the governing
25 documents of the common interest development or association.

26 (2) The agreement is either consistent with the authority granted
27 by the board to its designee or the agreement is ratified by the
28 board.

29 (d) A member may not be charged a fee to participate in the
30 process.