

AMENDED IN SENATE JUNE 16, 2014

AMENDED IN ASSEMBLY MAY 1, 2014

AMENDED IN ASSEMBLY APRIL 22, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1738**

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**Introduced by Assembly Member Chau**

February 14, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1738, as amended, 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 that a resolution of a dispute, pursuant to the procedure, binds the association and is judicially enforceable, and that an agreement, pursuant to the procedure, binds the parties and is judicially enforceable, as specified. The act also requires that the procedure provide 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 attorney for a member or an association or another person may explain their position if advance written notice is provided, as specified. The bill would require the parties to bear their own costs for an attorney.~~ *the resolution or agreement under an association's procedure for resolving these disputes between an association and a member to be in writing. The bill would authorize a member and an association to be assisted by an attorney or another person in explaining their positions at their own cost.*

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~~ *dispute*, is deemed a fair, reasonable, and expeditious dispute resolution procedure. *The act provides that an agreement reached under this procedure binds the parties and is judicially enforceable if specified conditions are satisfied.*

This bill would additionally require the alternative procedure to provide either party the right to have an attorney or another person participate when meeting and conferring ~~if advance written notice is provided, as specified. The bill would require the parties to bear provided at their own costs for an attorney.~~ *cost. This bill would require an agreement reached under the alternative procedure that binds the parties and is judicially enforceable to be in writing, as specified.*

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.

1 (b) The procedure shall provide for prompt deadlines. The  
2 procedure shall state the maximum time for the association to act  
3 on a request invoking the procedure.

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

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

10 ~~(e) A resolution of a dispute pursuant to the procedure, which  
11 is not in conflict with the law or the governing documents, binds  
12 the association and is judicially enforceable. An agreement reached  
13 pursuant to the procedure, which is not in conflict with the law or  
14 the governing documents, binds the parties and is judicially  
15 enforceable if the agreement is in writing.~~

16 ~~(f) (1) The procedure shall provide a means by which the  
17 member and the association, with the assistance of an attorney or  
18 another person, if they so choose, may explain their respective  
19 positions and seek to negotiate a mutually satisfactory resolution.~~

20 ~~(2) If either a member, an association, or both, intends to have  
21 an attorney or another person participate in the procedure, the  
22 procedure shall require the member, the association, or both, to  
23 provide 10 days' written notice of this intent to be given to the  
24 other party pursuant to the methods identified in subdivision (b)  
25 of Section 4035 and subdivision (a) of Section 4040. If notice is  
26 not provided, the party not receiving the required notice shall have  
27 the election of postponing the procedure until the notice  
28 requirement is met.~~

29 *(e) A written resolution of a dispute pursuant to the procedure  
30 that is not in conflict with the law or the governing documents  
31 binds the association and is judicially enforceable. A written  
32 agreement reached pursuant to the procedure that is not in conflict  
33 with the law or the governing documents binds the parties and is  
34 judicially enforceable.*

35 *(f) The procedure shall provide a means by which the member  
36 and the association may explain their positions. The member and  
37 association may be assisted by an attorney or another person in  
38 explaining their positions at their own cost.*

1 (g) A member of the association shall not be charged a fee to  
2 participate in the process. ~~Each party shall bear the cost of the~~  
3 ~~party's own attorney fees, if any.~~

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

5 5915. (a) This section applies to an association that does not  
6 otherwise provide a fair, reasonable, and expeditious dispute  
7 resolution procedure. The procedure provided in this section is  
8 fair, reasonable, and expeditious, within the meaning of this article.

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

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

13 (2) A member of an association may refuse a request to meet  
14 and confer. The association may not refuse a request to meet and  
15 confer.

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

17 ~~(4) (A) The parties shall meet promptly at a mutually convenient~~  
18 ~~time and place, explain their positions to each other, and confer~~  
19 ~~in good faith in an effort to resolve the dispute. Each party shall~~  
20 ~~have the right to have an attorney or another person participate~~  
21 ~~when meeting and conferring to explain their respective positions~~  
22 ~~and seek to negotiate a mutually satisfactory resolution.~~

23 ~~(B) If either a member, an association, or both, intends to have~~  
24 ~~an attorney or another person participate in the procedure, the~~  
25 ~~procedure shall require the member, the association, or both, to~~  
26 ~~provide 10 days' written notice of this intent to be given to the~~  
27 ~~other party pursuant to the methods identified in subdivision (b)~~  
28 ~~of Section 4035 and subdivision (a) of Section 4040. If notice is~~  
29 ~~not provided, the party not receiving the required notice shall have~~  
30 ~~the election of postponing the procedure until the notice~~  
31 ~~requirement is met.~~

32 *(4) The parties shall meet promptly at a mutually convenient*  
33 *time and place, explain their positions to each other, and confer*  
34 *in good faith in an effort to resolve the dispute. The parties may*  
35 *be assisted by an attorney or another person at their own cost*  
36 *when conferring.*

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

1 (c) ~~An~~ *A written* agreement reached under this section binds the  
2 parties and is judicially enforceable if both of the following  
3 conditions are satisfied:

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

6 (2) The agreement is either consistent with the authority granted  
7 by the board to its designee or the agreement is ratified by the  
8 board.

9 (d) A member shall not be charged a fee to participate in the  
10 process. ~~Each party shall bear the cost of the party's own attorney~~  
11 ~~fees, if any.~~