

AMENDED IN ASSEMBLY AUGUST 22, 2014

AMENDED IN ASSEMBLY MAY 28, 2014

AMENDED IN SENATE MARCH 25, 2014

SENATE BILL

No. 992

Introduced by Senator Nielsen

(Principal coauthor: Senator Galgiani)

(Principal coauthors: Assembly Members Brown and Gonzalez)

February 12, 2014

An act to amend Section 4735 of, *and to add Section 4736 to*, the Civil Code, relating to common interest developments, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 992, as amended, Nielsen. Common interest developments: property use and maintenance.

The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. Existing law provides that, unless otherwise provided in the common interest development declaration, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to that interest. Existing law makes void and unenforceable any provision of the governing documents of a common interest development or association that prohibits use of low water-using plants, or prohibits or restricts compliance with water-efficient landscape ordinances or regulations on the use of water, as specified.

~~This bill would prohibit~~

Existing law prohibits an association from imposing a fine or assessment on separate interest owners for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency *or the local government has declared a local emergency* due to drought.

This bill would exempt from these prohibitions against imposing a fine or assessment an association that uses recycled water for landscape irrigation.

This bill would also provide that a provision of the governing documents is void and enforceable if it requires pressure washing, as defined, the exterior of a separate interest and any exclusive use common area appurtenant to the separate interest during a state or local government declared drought emergency.

This bill would incorporate additional changes in Section 4735 of the Civil Code proposed in AB 2104, that would become operative only if AB 2104 and this bill are both chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 4735 of the Civil Code is amended to~~
 2 ~~read:~~
 3 ~~4735. (a) Notwithstanding any other law, a provision of the~~
 4 ~~governing documents shall be void and unenforceable if it does~~
 5 ~~any of the following:~~
 6 ~~(1) Prohibits, or includes conditions that have the effect of~~
 7 ~~prohibiting, the use of low water-using plants as a group.~~
 8 ~~(2) Has the effect of prohibiting or restricting compliance with~~
 9 ~~either of the following:~~
 10 ~~(A) A water-efficient landscape ordinance adopted or in effect~~
 11 ~~pursuant to subdivision (c) of Section 65595 of the Government~~
 12 ~~Code.~~
 13 ~~(B) Any regulation or restriction on the use of water adopted~~
 14 ~~pursuant to Section 353 or 375 of the Water Code.~~
 15 ~~(b) This section shall not prohibit an association from applying~~
 16 ~~landscaping rules established in the governing documents, to the~~

1 extent the rules fully conform with the requirements of subdivision
2 (a):

3 ~~(e) Notwithstanding any other provision of this part, an~~
4 ~~association shall not impose a fine or assessment against an owner~~
5 ~~of a separate interest for reducing or eliminating watering of~~
6 ~~vegetation or lawns during any period for which the Governor has~~
7 ~~declared a state of emergency due to drought pursuant to~~
8 ~~subdivision (b) of Section 8558 of the Government Code.~~

9 *SECTION 1. Section 4735 of the Civil Code is amended to*
10 *read:*

11 4735. (a) Notwithstanding any other law, a provision of the
12 governing documents shall be void and unenforceable if it does
13 any of the following:

14 (1) Prohibits, or includes conditions that have the effect of
15 prohibiting, the use of low water-using plants as a group.

16 (2) Has the effect of prohibiting or restricting compliance with
17 either of the following:

18 (A) A water-efficient landscape ordinance adopted or in effect
19 pursuant to subdivision (c) of Section 65595 of the Government
20 Code.

21 (B) Any regulation or restriction on the use of water adopted
22 pursuant to Section 353 or 375 of the Water Code.

23 (b) This section shall not prohibit an association from applying
24 landscaping rules established in the governing documents, to the
25 extent the rules fully conform with ~~the requirements of subdivision~~
26 (a).

27 (c) Notwithstanding any other provision of this part, an
28 association, *except an association that uses recycled water, as*
29 *defined in Section 13050 of the Water Code, for landscaping*
30 *irrigation*, shall not impose a fine or assessment against ~~a member~~
31 *an owner* of a separate interest for reducing or eliminating the
32 watering of vegetation or lawns during any period for which either
33 of the following have occurred:

34 (1) The Governor has declared a state of emergency due to
35 drought pursuant to subdivision (b) of Section 8558 of the
36 Government Code.

37 (2) A local government has declared a local emergency due to
38 drought pursuant to subdivision (c) of Section 8558 of the
39 Government Code.

40 *SEC. 1.5. Section 4735 of the Civil Code is amended to read:*

1 4735. (a) Notwithstanding any other law, a provision of the
 2 governing documents *or architectural or landscaping guidelines*
 3 *or policies* shall be void and unenforceable if it does any of the
 4 following:

5 (1) Prohibits, or includes conditions that have the effect of
 6 prohibiting, the use of low water-using plants as a ~~group~~ *group*
 7 *or as a replacement of existing turf.*

8 (2) Has the effect of prohibiting or restricting compliance with
 9 either of the following:

10 (A) A water-efficient landscape ordinance adopted or in effect
 11 pursuant to subdivision (c) of Section 65595 of the Government
 12 Code.

13 (B) Any regulation or restriction on the use of water adopted
 14 pursuant to Section 353 or 375 of the Water Code.

15 (b) This section shall not prohibit an association from applying
 16 landscaping rules established in the governing documents, to the
 17 extent the rules fully conform with ~~the requirements of~~ subdivision
 18 (a).

19 (c) Notwithstanding any other provision of this part, an
 20 association, *except an association that uses recycled water, as*
 21 *defined in Section 13050 of the Water Code, for landscaping*
 22 *irrigation*, shall not impose a fine or assessment against ~~a member~~
 23 *an owner* of a separate interest for reducing or eliminating the
 24 watering of vegetation or lawns during any period for which either
 25 of the following have occurred:

26 (1) The Governor has declared a state of emergency due to
 27 drought pursuant to subdivision (b) of Section 8558 of the
 28 Government Code.

29 (2) A local government has declared a local emergency due to
 30 drought pursuant to subdivision (c) of Section 8558 of the
 31 Government Code.

32 *SEC. 2. Section 4736 is added to the Civil Code, to read:*

33 4736. (a) *A provision of the governing documents shall be*
 34 *void and unenforceable if it requires pressure washing the exterior*
 35 *of a separate interest and any exclusive use common area*
 36 *appurtenant to the separate interest during a state or local*
 37 *government declared drought emergency.*

38 (b) *For purposes of this section, “pressure washing” means the*
 39 *use of a high-pressure sprayer or hose and potable water to remove*

1 loose paint, mold, grime, dust, mud, and dirt from surfaces and
2 objects, including buildings, vehicles, and concrete surfaces.

3 *SEC. 3. Section 1.5 of this bill incorporates amendments to*
4 *Section 4735 of the Civil Code proposed by both this bill and*
5 *Assembly Bill 2104. It shall only become operative if (1) both bills*
6 *are enacted and become effective on or before January 1, 2015,*
7 *but this bill becomes operative first, (2) each bill amends Section*
8 *4735 of the Civil Code, and (3) this bill is enacted after Assembly*
9 *Bill 2104, in which case Section 4735 of the Civil Code, as*
10 *amended by Section 1 of this bill, shall remain operative only until*
11 *the operative date of Assembly Bill 2104, at which time Section*
12 *1.5 of this bill shall become operative.*

13 ~~SEC. 2.~~

14 *SEC. 4.* This act is an urgency statute necessary for the
15 immediate preservation of the public peace, health, or safety within
16 the meaning of Article IV of the Constitution and shall go into
17 immediate effect. The facts constituting the necessity are:

18 The Governor has proclaimed a state of emergency to exist in
19 California due to current drought conditions. In order to respond
20 to these current drought conditions as quickly as possible, it is
21 necessary for this act to take effect immediately.