

AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 1026

Introduced by Senator Vidak

February 14, 2014

An act to amend ~~Section 3291 of the Civil Code, relating to damages.~~ *Sections 5705, 5710, and 6822 of the Civil Code, relating to common interest developments.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1026, as amended, Vidak. ~~Personal injury actions: damages: interest. Common interest developments: assessment collection: notice.~~

The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments, except for those developments limited to industrial or commercial uses, which are governed by the Commercial and Industrial Common Interest Development Act. Each act requires specified procedures for the collection of delinquent assessments, including, but not limited to, a procedure for giving notice to an owner of a separate interest of collection actions.

This bill would allow, under certain circumstances, an association governed by either act to serve an owner or owner's representative with notice of a foreclosure action to collect delinquent assessments by posting a copy of the notice on the owner's separate interest in a manner most likely to give actual notice to the party to be served and mailing a copy of the notice, as specified.

~~Under existing law, a plaintiff in an action brought to recover damages for personal injury may claim interest on the damages alleged, as specified.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

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 5705 of the Civil Code is amended to*
2 *read:*

3 5705. (a) Notwithstanding any law or any provisions of the
4 governing documents to the contrary, this section shall apply to
5 debts for assessments that arise on and after January 1, 2006.

6 (b) Prior to initiating a foreclosure on an owner's separate
7 interest, the association shall offer the owner and, if so requested
8 by the owner, participate in dispute resolution pursuant to the
9 association's "meet and confer" program required in Article 2
10 (commencing with Section 5900) of Chapter 10 or alternative
11 dispute resolution as set forth in Article 3 (commencing with
12 Section 5925) of Chapter 10. The decision to pursue dispute
13 resolution or a particular type of alternative dispute resolution shall
14 be the choice of the owner, except that binding arbitration shall
15 not be available if the association intends to initiate a judicial
16 foreclosure.

17 (c) The decision to initiate foreclosure of a lien for delinquent
18 assessments that has been validly recorded shall be made only by
19 the board and may not be delegated to an agent of the association.
20 The board shall approve the decision by a majority vote of the
21 directors in an executive session. The board shall record the vote
22 in the minutes of the next meeting of the board open to all
23 members. The board shall maintain the confidentiality of the owner
24 or owners of the separate interest by identifying the matter in the
25 minutes by the parcel number of the property, rather than the name
26 of the owner or owners. A board vote to approve foreclosure of a
27 lien shall take place at least 30 days prior to any public sale.

28 (d) (1) The board shall provide notice by personal service in
29 accordance with the manner of service of summons in Article 3
30 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
31 2 of the Code of Civil Procedure to an owner of a separate interest
32 who occupies the separate interest or to the owner's legal
33 representative, if the board votes to foreclose upon the separate

1 interest. The board shall provide written notice to an owner of a
2 separate interest who does not occupy the separate interest by
3 first-class mail, postage prepaid, at the most current address shown
4 on the books of the association. In the absence of written
5 notification by the owner to the association, the address of the
6 owner's separate interest may be treated as the owner's mailing
7 address.

8 *(2) If after reasonable diligence the notice is not able to be*
9 *served on an owner or owner's representative in accordance with*
10 *the manner of service set forth in paragraph (1), the association*
11 *may post a copy of the notice on the owner's separate interest in*
12 *a manner most likely to give actual notice to the party to be served*
13 *and mail a copy of the notice by first-class mail to all known*
14 *addresses of the owner or owner's representative. If the association*
15 *effects service by posting and mailing in accordance with this*
16 *paragraph, the association shall record a declaration of diligence,*
17 *specifying in reasonable detail the efforts made to effect service*
18 *in accordance with the manner of service of summons in Article*
19 *3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part*
20 *2 of the Code of Civil Procedure. The declaration shall contain*
21 *the name, address, and telephone number of the association, as*
22 *well as the legal description and assessor's parcel number of the*
23 *separate interest subject to the notice.*

24 *SEC. 2. Section 5710 of the Civil Code is amended to read:*

25 5710. (a) Any sale by the trustee shall be conducted in
26 accordance with Sections 2924, 2924b, and 2924c applicable to
27 the exercise of powers of sale in mortgages and deeds of trust.

28 (b) (1) In addition to the requirements of Section 2924, the
29 association shall serve a notice of default on the person named as
30 the owner of the separate interest in the association's records or,
31 if that person has designated a legal representative pursuant to this
32 subdivision, on that legal representative. Service shall be in
33 accordance with the manner of service of summons in Article 3
34 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
35 2 of the Code of Civil Procedure. An owner may designate a legal
36 representative in a writing that is mailed to the association in a
37 manner that indicates that the association has received it.

38 *(2) If after reasonable diligence the notice is not able to be*
39 *served on an owner or owner's representative in accordance with*
40 *the manner of service set forth in paragraph (1), the association*

1 *may post a copy of the notice on the owner's separate interest in*
2 *a manner most likely to give actual notice to the party to be served*
3 *and mail a copy of the notice by first-class mail to all known*
4 *addresses of the owner or owner's representative. If the association*
5 *effects service by posting and mailing in accordance with this*
6 *paragraph, the association shall record a declaration of diligence,*
7 *specifying in reasonable detail the efforts made to effect service*
8 *in accordance with the manner of service of summons in Article*
9 *3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part*
10 *2 of the Code of Civil Procedure. The declaration shall contain*
11 *the name, address, and telephone number of the association, as*
12 *well as the legal description and assessor's parcel number of the*
13 *separate interest subject to the notice.*

14 (c) The fees of a trustee may not exceed the amounts prescribed
15 in Sections 2924c and 2924d, plus the cost of service for either of
16 the following:

17 (1) The notice of default pursuant to subdivision (b).

18 (2) The decision of the board to foreclose upon the separate
19 interest of an owner as described in subdivision (d) of Section
20 5705.

21 *SEC. 3. Section 6822 of the Civil Code is amended to read:*

22 6822. (a) Any sale by the trustee shall be conducted in
23 accordance with Sections 2924, 2924b, and 2924c applicable to
24 the exercise of powers of sale in mortgages and deeds of trust.

25 (b) (1) In addition to the requirements of Section 2924, the
26 association shall serve a notice of default on the person named as
27 the owner of the separate interest in the association's records or,
28 if that person has designated a legal representative pursuant to this
29 subdivision, on that legal representative. Service shall be in
30 accordance with the manner of service of summons in Article 3
31 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
32 2 of the Code of Civil Procedure. An owner may designate a legal
33 representative in a writing that is mailed to the association in a
34 manner that indicates that the association has received it.

35 (2) *If after reasonable diligence the notice is not able to be*
36 *served on an owner or owner's representative in accordance with*
37 *the manner of service set forth in paragraph (1), the association*
38 *may post a copy of the notice on the owner's separate interest in*
39 *a manner most likely to give actual notice to the party to be served*
40 *and mail a copy of the notice by first-class mail to all known*

1 *addresses of the owner or owner’s representative. If the association*
 2 *effects service by posting and mailing in accordance with this*
 3 *paragraph, the association shall record a declaration of diligence,*
 4 *specifying in reasonable detail the efforts made to effect service*
 5 *in accordance with the manner of service of summons in Article*
 6 *3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part*
 7 *2 of the Code of Civil Procedure. The declaration shall contain*
 8 *the name, address, and telephone number of the association, as*
 9 *well as the legal description and assessor’s parcel number of the*
 10 *separate interest subject to the notice.*

11 (c) The fees of a trustee may not exceed the amounts prescribed
 12 in Sections 2924c and 2924d, plus the cost of service for the notice
 13 of default pursuant to subdivision (b).

14 ~~SECTION 1. Section 3291 of the Civil Code is amended to~~
 15 ~~read:~~

16 ~~3291. (a) In an action brought to recover damages for personal~~
 17 ~~injury sustained by any person resulting from or occasioned by~~
 18 ~~the tort of any other person, corporation, association, or partnership,~~
 19 ~~whether by negligence or by willful intent of the other person,~~
 20 ~~corporation, association, or partnership, and whether the injury~~
 21 ~~was fatal or otherwise, it is lawful for the plaintiff in the complaint~~
 22 ~~to claim interest on the damages alleged as provided in this section.~~

23 ~~(b) If the plaintiff makes an offer, pursuant to Section 998 of~~
 24 ~~the Code of Civil Procedure, which the defendant does not accept~~
 25 ~~prior to trial or within 30 days, whichever occurs first, and the~~
 26 ~~plaintiff obtains a more favorable judgment, the judgment shall~~
 27 ~~bear interest at the legal rate of 10 percent per annum, calculated~~
 28 ~~from the date of the plaintiff’s first offer pursuant to Section 998~~
 29 ~~of the Code of Civil Procedure that is exceeded by the judgment,~~
 30 ~~and interest shall accrue until the satisfaction of judgment.~~

31 ~~(c) This section shall not apply to a public entity, or to a public~~
 32 ~~employee for an act or omission within the scope of his or her~~
 33 ~~employment, and neither the public entity nor the public employee~~
 34 ~~shall be liable, directly or indirectly, to any person for any interest~~
 35 ~~imposed by this section.~~

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