

ASSEMBLY BILL

No. 1963

Introduced by Assembly Member Calderon

February 12, 2016

An act to amend Section 6000 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1963, as introduced, Calderon. Common interest developments: construction defects.

Existing law, the Davis-Stirling Common Interest Development Act, requires, until July 1, 2017, specified conditions to be met before an association may file a complaint for damages against a builder, developer, or general contractor of a common interest development based upon a claim for defects in the design or construction of the common interest development.

This bill would delete the inoperative and repeal dates of the above described requirement.

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 6000 of the Civil Code is amended to
2 read:
3 6000. (a) Before an association files a complaint for damages
4 against a builder, developer, or general contractor (respondent) of
5 a common interest development based upon a claim for defects in
6 the design or construction of the common interest development,

1 all of the requirements of this section shall be satisfied with respect
2 to the builder, developer, or general contractor.

3 (b) The association shall serve upon the respondent a “Notice
4 of Commencement of Legal Proceedings.” The notice shall be
5 served by certified mail to the registered agent of the respondent,
6 or if there is no registered agent, then to any officer of the
7 respondent. If there are no current officers of the respondent,
8 service shall be upon the person or entity otherwise authorized by
9 law to receive service of process. Service upon the general
10 contractor shall be sufficient to initiate the process set forth in this
11 section with regard to any builder or developer, if the builder or
12 developer is not amenable to service of process by the foregoing
13 methods. This notice shall toll all applicable statutes of limitation
14 and repose, whether contractual or statutory, by and against all
15 potentially responsible parties, regardless of whether they were
16 named in the notice, including claims for indemnity applicable to
17 the claim for the period set forth in subdivision (c). The notice
18 shall include all of the following:

- 19 (1) The name and location of the project.
- 20 (2) An initial list of defects sufficient to apprise the respondent
21 of the general nature of the defects at issue.
- 22 (3) A description of the results of the defects, if known.
- 23 (4) A summary of the results of a survey or questionnaire
24 distributed to homeowners to determine the nature and extent of
25 defects, if a survey has been conducted or a questionnaire has been
26 distributed.
- 27 (5) Either a summary of the results of testing conducted to
28 determine the nature and extent of defects or the actual test results,
29 if that testing has been conducted.

30 (c) Service of the notice shall commence a period, not to exceed
31 180 days, during which the association, the respondent, and all
32 other participating parties shall try to resolve the dispute through
33 the processes set forth in this section. This 180-day period may be
34 extended for one additional period, not to exceed 180 days, only
35 upon the mutual agreement of the association, the respondent, and
36 any parties not deemed peripheral pursuant to paragraph (3) of
37 subdivision (e). Any extensions beyond the first extension shall
38 require the agreement of all participating parties. Unless extended,
39 the dispute resolution process prescribed by this section shall be

1 deemed completed. All extensions shall continue the tolling period
2 described in subdivision (b).

3 (d) Within 25 days of the date the association serves the Notice
4 of Commencement of Legal Proceedings, the respondent may
5 request in writing to meet and confer with the board. Unless the
6 respondent and the association otherwise agree, there shall be not
7 more than one meeting, which shall take place no later than 10
8 days from the date of the respondent's written request, at a mutually
9 agreeable time and place. The meeting shall be subject to
10 subdivision (a) of Section 4925 and subdivisions (a) and (b) of
11 Section 4935. The discussions at the meeting are privileged
12 communications and are not admissible in evidence in any civil
13 action, unless the association and the respondent consent in writing
14 to their admission.

15 (e) Upon receipt of the notice, the respondent shall, within 60
16 days, comply with the following:

17 (1) The respondent shall provide the association with access to,
18 for inspection and copying of, all plans and specifications,
19 subcontracts, and other construction files for the project that are
20 reasonably calculated to lead to the discovery of admissible
21 evidence regarding the defects claimed. The association shall
22 provide the respondent with access to, for inspection and copying
23 of, all files reasonably calculated to lead to the discovery of
24 admissible evidence regarding the defects claimed, including all
25 reserve studies, maintenance records and any survey questionnaires,
26 or results of testing to determine the nature and extent of defects.
27 To the extent any of the above documents are withheld based on
28 privilege, a privilege log shall be prepared and submitted to all
29 other parties. All other potentially responsible parties shall have
30 the same rights as the respondent regarding the production of
31 documents upon receipt of written notice of the claim, and shall
32 produce all relevant documents within 60 days of receipt of the
33 notice of the claim.

34 (2) The respondent shall provide written notice by certified mail
35 to all subcontractors, design professionals, their insurers, and the
36 insurers of any additional insured whose identities are known to
37 the respondent or readily ascertainable by review of the project
38 files or other similar sources and whose potential responsibility
39 appears on the face of the notice. This notice to subcontractors,
40 design professionals, and insurers shall include a copy of the Notice

1 of Commencement of Legal Proceedings, and shall specify the
2 date and manner by which the parties shall meet and confer to
3 select a dispute resolution facilitator pursuant to paragraph (1) of
4 subdivision (f), advise the recipient of its obligation to participate
5 in the meet and confer or serve a written acknowledgment of receipt
6 regarding this notice, advise the recipient that it will waive any
7 challenge to selection of the dispute resolution facilitator if it elects
8 not to participate in the meet and confer, advise the recipient that
9 it may seek the assistance of an attorney, and advise the recipient
10 that it should contact its insurer, if any. Any subcontractor or design
11 professional, or insurer for that subcontractor, design professional,
12 or additional insured, who receives written notice from the
13 respondent regarding the meet and confer shall, prior to the meet
14 and confer, serve on the respondent a written acknowledgment of
15 receipt. That subcontractor or design professional shall, within 10
16 days of service of the written acknowledgment of receipt, provide
17 to the association and the respondent a Statement of Insurance that
18 includes both of the following:

19 (A) The names, addresses, and contact persons, if known, of all
20 insurance carriers, whether primary or excess and regardless of
21 whether a deductible or self-insured retention applies, whose
22 policies were in effect from the commencement of construction
23 of the subject project to the present and which potentially cover
24 the subject claims.

25 (B) The applicable policy numbers for each policy of insurance
26 provided.

27 (3) Any subcontractor or design professional, or insurer for that
28 subcontractor, design professional, or additional insured, who so
29 chooses, may, at any time, make a written request to the dispute
30 resolution facilitator for designation as a peripheral party. That
31 request shall be served contemporaneously on the association and
32 the respondent. If no objection to that designation is received within
33 15 days, or upon rejection of that objection, the dispute resolution
34 facilitator shall designate that subcontractor or design professional
35 as a peripheral party, and shall thereafter seek to limit the
36 attendance of that subcontractor or design professional only to
37 those dispute resolution sessions deemed peripheral party sessions
38 or to those sessions during which the dispute resolution facilitator
39 believes settlement as to peripheral parties may be finalized.
40 Nothing in this subdivision shall preclude a party who has been

1 designated a peripheral party from being reclassified as a
2 nonperipheral party, nor shall this subdivision preclude a party
3 designated as a nonperipheral party from being reclassified as a
4 peripheral party after notice to all parties and an opportunity to
5 object. For purposes of this subdivision, a peripheral party is a
6 party having total claimed exposure of less than twenty-five
7 thousand dollars (\$25,000).

8 (f) (1) Within 20 days of sending the notice set forth in
9 paragraph (2) of subdivision (e), the association, respondent,
10 subcontractors, design professionals, and their insurers who have
11 been sent a notice as described in paragraph (2) of subdivision (e)
12 shall meet and confer in an effort to select a dispute resolution
13 facilitator to preside over the mandatory dispute resolution process
14 prescribed by this section. Any subcontractor or design professional
15 who has been given timely notice of this meeting but who does
16 not participate, waives any challenge he or she may have as to the
17 selection of the dispute resolution facilitator. The role of the dispute
18 resolution facilitator is to attempt to resolve the conflict in a fair
19 manner. The dispute resolution facilitator shall be sufficiently
20 knowledgeable in the subject matter and be able to devote sufficient
21 time to the case. The dispute resolution facilitator shall not be
22 required to reside in or have an office in the county in which the
23 project is located. The dispute resolution facilitator and the
24 participating parties shall agree to a date, time, and location to
25 hold a case management meeting of all parties and the dispute
26 resolution facilitator, to discuss the claims being asserted and the
27 scheduling of events under this section. The case management
28 meeting with the dispute resolution facilitator shall be held within
29 100 days of service of the Notice of Commencement of Legal
30 Proceedings at a location in the county where the project is located.
31 Written notice of the case management meeting with the dispute
32 resolution facilitator shall be sent by the respondent to the
33 association, subcontractors and design professionals, and their
34 insurers who are known to the respondent to be on notice of the
35 claim, no later than 10 days prior to the case management meeting,
36 and shall specify its date, time, and location. The dispute resolution
37 facilitator in consultation with the respondent shall maintain a
38 contact list of the participating parties.

39 (2) No later than 10 days prior to the case management meeting,
40 the dispute resolution facilitator shall disclose to the parties all

1 matters that could cause a person aware of the facts to reasonably
2 entertain a doubt that the proposed dispute resolution facilitator
3 would be able to resolve the conflict in a fair manner. The
4 facilitator's disclosure shall include the existence of any ground
5 specified in Section 170.1 of the Code of Civil Procedure for
6 disqualification of a judge, any attorney-client relationship the
7 facilitator has or had with any party or lawyer for a party to the
8 dispute resolution process, and any professional or significant
9 personal relationship the facilitator or his or her spouse or minor
10 child living in the household has or had with any party to the
11 dispute resolution process. The disclosure shall also be provided
12 to any subsequently noticed subcontractor or design professional
13 within 10 days of the notice.

14 (3) A dispute resolution facilitator shall be disqualified by the
15 court if he or she fails to comply with this subdivision and any
16 party to the dispute resolution process serves a notice of
17 disqualification prior to the case management meeting. If the
18 dispute resolution facilitator complies with this subdivision, he or
19 she shall be disqualified by the court on the basis of the disclosure
20 if any party to the dispute resolution process serves a notice of
21 disqualification prior to the case management meeting.

22 (4) If the parties cannot mutually agree to a dispute resolution
23 facilitator, then each party shall submit a list of three dispute
24 resolution facilitators. Each party may then strike one nominee
25 from the other parties' list, and petition the court, pursuant to the
26 procedure described in subdivisions (n) and (o), for final selection
27 of the dispute resolution facilitator. The court may issue an order
28 for final selection of the dispute resolution facilitator pursuant to
29 this paragraph.

30 (5) Any subcontractor or design professional who receives notice
31 of the association's claim without having previously received
32 timely notice of the meet and confer to select the dispute resolution
33 facilitator shall be notified by the respondent regarding the name,
34 address, and telephone number of the dispute resolution facilitator.
35 Any such subcontractor or design professional may serve upon
36 the parties and the dispute resolution facilitator a written objection
37 to the dispute resolution facilitator within 15 days of receiving
38 notice of the claim. Within seven days after service of this
39 objection, the subcontractor or design professional may petition
40 the superior court to replace the dispute resolution facilitator. The

1 court may replace the dispute resolution facilitator only upon a
2 showing of good cause, liberally construed. Failure to satisfy the
3 deadlines set forth in this subdivision shall constitute a waiver of
4 the right to challenge the dispute resolution facilitator.

5 (6) The costs of the dispute resolution facilitator shall be
6 apportioned in the following manner: one-third to be paid by the
7 association; one-third to be paid by the respondent; and one-third
8 to be paid by the subcontractors and design professionals, as
9 allocated among them by the dispute resolution facilitator. The
10 costs of the dispute resolution facilitator shall be recoverable by
11 the prevailing party in any subsequent litigation pursuant to Section
12 1032 of the Code of Civil Procedure, provided however that any
13 nonsettling party may, prior to the filing of the complaint, petition
14 the facilitator to reallocate the costs of the dispute resolution
15 facilitator as they apply to any nonsettling party. The determination
16 of the dispute resolution facilitator with respect to the allocation
17 of these costs shall be binding in any subsequent litigation. The
18 dispute resolution facilitator shall take into account all relevant
19 factors and equities between all parties in the dispute resolution
20 process when reallocating costs.

21 (7) In the event the dispute resolution facilitator is replaced at
22 any time, the case management statement created pursuant to
23 subdivision (h) shall remain in full force and effect.

24 (8) The dispute resolution facilitator shall be empowered to
25 enforce all provisions of this section.

26 (g) (1) No later than the case management meeting, the parties
27 shall begin to generate a data compilation showing the following
28 information regarding the alleged defects at issue:

29 (A) The scope of the work performed by each potentially
30 responsible subcontractor.

31 (B) The tract or phase number in which each subcontractor
32 provided goods or services, or both.

33 (C) The units, either by address, unit number, or lot number, at
34 which each subcontractor provided goods or services, or both.

35 (2) This data compilation shall be updated as needed to reflect
36 additional information. Each party attending the case management
37 meeting, and any subsequent meeting pursuant to this section, shall
38 provide all information available to that party relevant to this data
39 compilation.

1 (h) At the case management meeting, the parties shall, with the
2 assistance of the dispute resolution facilitator, reach agreement on
3 a case management statement, which shall set forth all of the
4 elements set forth in paragraphs (1) to (8), inclusive, except that
5 the parties may dispense with one or more of these elements if
6 they agree that it is appropriate to do so. The case management
7 statement shall provide that the following elements shall take place
8 in the following order:

9 (1) Establishment of a document depository, located in the
10 county where the project is located, for deposit of documents,
11 defect lists, demands, and other information provided for under
12 this section. All documents exchanged by the parties and all
13 documents created pursuant to this subdivision shall be deposited
14 in the document depository, which shall be available to all parties
15 throughout the prefiling dispute resolution process and in any
16 subsequent litigation. When any document is deposited in the
17 document depository, the party depositing the document shall
18 provide written notice identifying the document to all other parties.
19 The costs of maintaining the document depository shall be
20 apportioned among the parties in the same manner as the costs of
21 the dispute resolution facilitator.

22 (2) Provision of a more detailed list of defects by the association
23 to the respondent after the association completes a visual inspection
24 of the project. This list of defects shall provide sufficient detail
25 for the respondent to ensure that all potentially responsible
26 subcontractors and design professionals are provided with notice
27 of the dispute resolution process. If not already completed prior
28 to the case management meeting, the Notice of Commencement
29 of Legal Proceedings shall be served by the respondent on all
30 additional subcontractors and design professionals whose potential
31 responsibility appears on the face of the more detailed list of
32 defects within seven days of receipt of the more detailed list. The
33 respondent shall serve a copy of the case management statement,
34 including the name, address, and telephone number of the dispute
35 resolution facilitator, to all the potentially responsible
36 subcontractors and design professionals at the same time.

37 (3) Nonintrusive visual inspection of the project by the
38 respondent, subcontractors, and design professionals.

39 (4) Invasive testing conducted by the association, if the
40 association deems appropriate. All parties may observe and

1 photograph any testing conducted by the association pursuant to
2 this paragraph, but may not take samples or direct testing unless,
3 by mutual agreement, costs of testing are shared by the parties.

4 (5) Provision by the association of a comprehensive demand
5 which provides sufficient detail for the parties to engage in
6 meaningful dispute resolution as contemplated under this section.

7 (6) Invasive testing conducted by the respondent, subcontractors,
8 and design professionals, if they deem appropriate.

9 (7) Allowance for modification of the demand by the association
10 if new issues arise during the testing conducted by the respondent,
11 subcontractor, or design professionals.

12 (8) Facilitated dispute resolution of the claim, with all parties,
13 including peripheral parties, as appropriate, and insurers, if any,
14 present and having settlement authority. The dispute resolution
15 facilitators shall endeavor to set specific times for the attendance
16 of specific parties at dispute resolution sessions. If the dispute
17 resolution facilitator does not set specific times for the attendance
18 of parties at dispute resolution sessions, the dispute resolution
19 facilitator shall permit those parties to participate in dispute
20 resolution sessions by telephone.

21 (i) In addition to the foregoing elements of the case management
22 statement described in subdivision (h), upon mutual agreement of
23 the parties, the dispute resolution facilitator may include any or
24 all of the following elements in a case management statement: the
25 exchange of consultant or expert photographs; expert presentations;
26 expert meetings; or any other mechanism deemed appropriate by
27 the parties in the interest of resolving the dispute.

28 (j) The dispute resolution facilitator, with the guidance of the
29 parties, shall at the time the case management statement is
30 established, set deadlines for the occurrence of each event set forth
31 in the case management statement, taking into account such factors
32 as the size and complexity of the case, and the requirement of this
33 section that this dispute resolution process not exceed 180 days
34 absent agreement of the parties to an extension of time.

35 (k) (1) ~~(A)~~—At a time to be determined by the dispute resolution
36 facilitator, the respondent may submit to the association all of the
37 following:

38 ~~(i)~~

39 (A) A request to meet with the board to discuss a written
40 settlement offer.

- 1 ~~(ii)~~
- 2 (B) A written settlement offer, and a concise explanation of the
- 3 reasons for the terms of the offer.
- 4 ~~(iii)~~
- 5 (C) A statement that the respondent has access to sufficient
- 6 funds to satisfy the conditions of the settlement offer.
- 7 ~~(iv)~~
- 8 (D) A summary of the results of testing conducted for the
- 9 purposes of determining the nature and extent of defects, if this
- 10 testing has been conducted, unless the association provided the
- 11 respondent with actual test results.
- 12 ~~(B)~~
- 13 (2) If the respondent does not timely submit the items required
- 14 by this subdivision, the association shall be relieved of any further
- 15 obligation to satisfy the requirements of this subdivision only.
- 16 ~~(C)~~
- 17 (3) No less than 10 days after the respondent submits the items
- 18 required by this paragraph, the respondent and the board shall meet
- 19 and confer about the respondent’s settlement offer.
- 20 ~~(D)~~
- 21 (4) If the board rejects a settlement offer presented at the
- 22 meeting held pursuant to this subdivision, the board shall hold a
- 23 meeting open to each member of the association. The meeting
- 24 shall be held no less than 15 days before the association
- 25 commences an action for damages against the respondent.
- 26 ~~(E)~~
- 27 (5) No less than 15 days before this meeting is held, a written
- 28 notice shall be sent to each member of the association specifying
- 29 all of the following:
- 30 ~~(i)~~
- 31 (A) That a meeting will take place to discuss problems that may
- 32 lead to the filing of a civil action, and the time and place of this
- 33 meeting.
- 34 ~~(ii)~~
- 35 (B) The options that are available to address the problems,
- 36 including the filing of a civil action and a statement of the various
- 37 alternatives that are reasonably foreseeable by the association to
- 38 pay for those options and whether these payments are expected to
- 39 be made from the use of reserve account funds or the imposition

1 of regular or special assessments, or emergency assessment
2 increases.

3 ~~(iii)~~

4 (C) The complete text of any written settlement offer, and a
5 concise explanation of the specific reasons for the terms of the
6 offer submitted to the board at the meeting held pursuant to
7 subdivision (d) that was received from the respondent.

8 ~~(F)~~

9 (6) The respondent shall pay all expenses attributable to sending
10 the settlement offer to all members of the association. The
11 respondent shall also pay the expense of holding the meeting, not
12 to exceed three dollars (\$3) per association member.

13 ~~(G)~~

14 (7) The discussions at the meeting and the contents of the notice
15 and the items required to be specified in the notice pursuant to
16 subparagraph (E) are privileged communications and are not
17 admissible in evidence in any civil action, unless the association
18 consents to their admission.

19 ~~(H)~~

20 (8) No more than one request to meet and discuss a written
21 settlement offer may be made by the respondent pursuant to this
22 subdivision.

23 (I) All defect lists and demands, communications, negotiations,
24 and settlement offers made in the course of the prelitigation dispute
25 resolution process provided by this section shall be inadmissible
26 pursuant to Sections 1119 to 1124, inclusive, of the Evidence Code
27 and all applicable decisional law. This inadmissibility shall not be
28 extended to any other documents or communications which would
29 not otherwise be deemed inadmissible.

30 (m) Any subcontractor or design professional may, at any time,
31 petition the dispute resolution facilitator to release that party from
32 the dispute resolution process upon a showing that the
33 subcontractor or design professional is not potentially responsible
34 for the defect claims at issue. The petition shall be served
35 contemporaneously on all other parties, who shall have 15 days
36 from the date of service to object. If a subcontractor or design
37 professional is released, and it later appears to the dispute
38 resolution facilitator that it may be a responsible party in light of
39 the current defect list or demand, the respondent shall renounce the
40 party as provided by paragraph (2) of subdivision (e), provide a

1 copy of the current defect list or demand, and direct the party to
2 attend a dispute resolution session at a stated time and location. A
3 party who subsequently appears after having been released by the
4 dispute resolution facilitator shall not be prejudiced by its absence
5 from the dispute resolution process as the result of having been
6 previously released by the dispute resolution facilitator.

7 (n) Any party may, at any time, petition the superior court in
8 the county where the project is located, upon a showing of good
9 cause, and the court may issue an order, for any of the following,
10 or for appointment of a referee to resolve a dispute regarding any
11 of the following:

12 (1) To take a deposition of any party to the process, or subpoena
13 a third party for deposition or production of documents, which is
14 necessary to further prelitigation resolution of the dispute.

15 (2) To resolve any disputes concerning inspection, testing,
16 production of documents, or exchange of information provided
17 for under this section.

18 (3) To resolve any disagreements relative to the timing or
19 contents of the case management statement.

20 (4) To authorize internal extensions of timeframes set forth in
21 the case management statement.

22 (5) To seek a determination that a settlement is a good faith
23 settlement pursuant to Section 877.6 of the Code of Civil Procedure
24 and all related authorities. The page limitations and meet and confer
25 requirements specified in this section shall not apply to these
26 motions, which may be made on shortened notice. Instead, these
27 motions shall be subject to other applicable state law, rules of
28 court, and local rules. A determination made by the court pursuant
29 to this motion shall have the same force and effect as the
30 determination of a postfiling application or motion for good faith
31 settlement.

32 (6) To ensure compliance, on shortened notice, with the
33 obligation to provide a Statement of Insurance pursuant to
34 paragraph (2) of subdivision (e).

35 (7) For any other relief appropriate to the enforcement of the
36 provisions of this section, including the ordering of parties, and
37 insurers, if any, to the dispute resolution process with settlement
38 authority.

39 (o) (1) A petition filed pursuant to subdivision (n) shall be filed
40 in the superior court in the county in which the project is located.

1 The court shall hear and decide the petition within 10 days after
2 filing. The petitioning party shall serve the petition on all parties,
3 including the date, time, and location of the hearing no later than
4 five business days prior to the hearing. Any responsive papers
5 shall be filed and served no later than three business days prior to
6 the hearing. Any petition or response filed under this section shall
7 be no more than three pages in length.

8 (2) All parties shall meet with the dispute resolution facilitator,
9 if one has been appointed and confer in person or by telephone
10 prior to the filing of that petition to attempt to resolve the matter
11 without requiring court intervention.

12 (p) As used in this section:

13 (1) "Association" shall have the same meaning as defined in
14 Section 4080.

15 (2) "Builder" means the declarant, as defined in Section 4130.

16 (3) "Common interest development" shall have the same
17 meaning as in Section 4100, except that it shall not include
18 developments or projects with less than 20 units.

19 (q) The alternative dispute resolution process and procedures
20 described in this section shall have no application or legal effect
21 other than as described in this section.

22 (r) This section shall become operative on July 1, 2002, however
23 it shall not apply to any pending suit or claim for which notice has
24 previously been given.

25 ~~(s) This section shall become inoperative on July 1, 2017, and,~~
26 ~~as of January 1, 2018, is repealed, unless a later enacted statute,~~
27 ~~that becomes operative on or before January 1, 2018, deletes or~~
28 ~~extends the dates on which it becomes inoperative and is repealed.~~