

AMENDED IN ASSEMBLY MAY 2, 2016
AMENDED IN ASSEMBLY APRIL 14, 2016
AMENDED IN ASSEMBLY MARCH 18, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2362

Introduced by Assembly Member Chu

February 18, 2016

An act to add Section 4777 to the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2362, as amended, Chu. Common interest developments: pesticide application.

Existing law, the Davis-Stirling Common Interest Development Act, regulates the creation and governance of common interest developments, which are managed by associations. Existing law generally provides that an association is responsible for maintaining common areas in the development and owners of separate interests are responsible for their interests. Existing law permits an association to require the removal of an occupant of a separate interest for such times and periods as may be necessary for the effective treatment of wood-destroying pests. Existing law generally requires a landlord or his or her authorized agent to provide notice to tenants, and under certain circumstances tenants of adjacent units, of the use of pesticides at the tenant's dwelling unit or in common areas if the landlord or authorized agent applies any pesticide without a licensed pest control operator.

This bill would require a common interest development association or its authorized agent to provide notice to an owner and, if applicable,

tenant of a separate interest, and under certain circumstances to owners and, if applicable, tenants of adjacent separate interests, if pesticide is to be applied without a licensed pest control operator to a separate interest or to a common area. The bill would prescribe the contents of the notice and how it is to be provided. The bill would authorize an owner or tenant to agree to immediate pesticide application and would prescribe a revised notification procedure in this instance. *The bill would also permit the notice to be posted, as specified, after the pesticide application if the pest poses an imminent threat to health and safety.*

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. The Legislature finds and declares the following:
- 2 (a) Existing law, Section 1940.8.5 of the Civil Code, requires
- 3 a landlord or his or her agent who applies pesticide in certain ways
- 4 to a dwelling unit or common area without a licensed pest control
- 5 operator to provide to tenants of potentially affected units written
- 6 notification that includes the pest to be targeted, the pesticide to
- 7 be used, the frequency of its use, and a health and safety statement
- 8 prior to the pesticide application.
- 9 (b) It is the intent of this bill, therefore, that when pesticides are
- 10 about to be applied to the separate interests or to the common areas
- 11 of a common interest development either by the homeowner
- 12 association or by one of its agents rather than by a licensed pest
- 13 control operator, that the owners and, if applicable, tenants of the
- 14 separate interests and the owners and, if applicable, tenants of
- 15 adjacent separate units that could reasonably be impacted by the
- 16 pesticide be provided with substantially the same written
- 17 notification that they would have received under existing law had
- 18 the pesticides been applied by a licensed pest control operator.
- 19 SEC. 2. Section 4777 is added to the Civil Code, to read:
- 20 4777. (a) For the purposes of this section:
- 21 (1) “Adjacent separate interest” means a separate interest that
- 22 is directly beside, above, or below a particular separate interest or
- 23 the common area.
- 24 (2) “Authorized agent” means an individual, organization, or
- 25 other entity that has entered into an agreement with the association
- 26 to act on the association’s behalf.

1 (3) “Broadcast application” means spreading pesticide over an
2 area greater than two square feet.

3 (4) “Electronic delivery” means delivery of a document by
4 electronic means to the electronic address at, or through which,
5 an owner of a separate interest has authorized electronic delivery.

6 (5) “Licensed pest control operator” means anyone licensed by
7 the state to apply pesticides.

8 (6) “Pest” means a living organism that causes damage to
9 property or economic loss, or transmits or produces diseases.

10 (7) “Pesticide” means any substance, or mixture of substances,
11 that is intended to be used for controlling, destroying, repelling,
12 or mitigating any pest or organism, excluding antimicrobial
13 pesticides as defined by the Federal Insecticide, Fungicide, and
14 Rodenticide Act (7 U.S.C. Sec. 136(mm)).

15 (b) (1) An association or its authorized agent that applies any
16 pesticide to a separate interest or to the common area without a
17 licensed pest control operator shall provide the owner and, if
18 applicable, the tenant of an affected separate interest and, if making
19 broadcast applications, or using total release foggers or aerosol
20 sprays, the owner and, if applicable, the tenant in an adjacent
21 separate interest that could reasonably be impacted by the pesticide
22 use with written notice that contains the following statements and
23 information using words with common and everyday meaning:

24 (A) The pest or pests to be controlled.

25 (B) The name and brand of the pesticide product proposed to
26 be used.

27 (C) “State law requires that you be given the following
28 information:

29

30 CAUTION – PESTICIDES ARE TOXIC CHEMICALS. The
31 California Department of Pesticide Regulation and the United
32 States Environmental Protection Agency allow the unlicensed use
33 of certain pesticides based on existing scientific evidence that there
34 are no appreciable risks if proper use conditions are followed or
35 that the risks are outweighed by the benefits. The degree of risk
36 depends upon the degree of exposure, so exposure should be
37 minimized.

38 If within 24 hours following application of a pesticide, a person
39 experiences symptoms similar to common seasonal illness
40 comparable to influenza, the person should contact a physician,

1 appropriate licensed health care provider, or the California Poison
2 Control System (1-800-222-1222).

3 For further information, contact any of the following: for Health
4 Questions – the County Health Department (telephone number)
5 and for Regulatory Information – the Department of Pesticide
6 Regulation (916-324-4100).”

7

8 (D) The approximate date, time, and frequency with which the
9 pesticide will be applied.

10 (E) The following notification:

11 “The approximate date, time, and frequency of this pesticide
12 application is subject to change.”

13 (2) At least 48 hours prior to application of the pesticide to a
14 separate interest, the association or its authorized agent shall
15 provide individual notice to the owner and, if applicable, the tenant
16 of the separate interest and notice to an owner and, if applicable,
17 the tenant occupying any adjacent separate interest that is required
18 to be notified pursuant to paragraph (1).

19 (3) (A) At least 48 hours prior to application of the pesticide
20 to a common area, the association or its authorized agent ~~shall~~
21 *shall, if practicable, post the written notice described in paragraph*
22 *(1) in a conspicuous place in or around the common area in which*
23 *the pesticide is to be applied. Otherwise, if not practicable, the*
24 *association or its authorized agent shall provide individual notice*
25 *to the owner and, if applicable, the tenant of the separate interest*
26 *that is adjacent to the common area.*

27 (B) *If the pest poses an immediate threat to health and safety,*
28 *thereby making compliance with notification prior to the pesticide*
29 *application unreasonable, the association or its authorized agent*
30 *shall post the written notice as soon as practicable, but not later*
31 *than one hour after the pesticide is applied.*

32 (4) Notice to tenants of separate interests shall be provided, in
33 at least one of the following ways:

34 (A) First-class mail.

35 (B) Personal delivery to a tenant 18 years of age or older.

36 (C) Electronic delivery, if an electronic mailing address has
37 been provided by the tenant.

38 (5) (A) Upon receipt of written notification, the owner of the
39 separate interest or the tenant may agree in writing or, if
40 notification was delivered electronically, the tenant may agree

1 through electronic delivery, to allow the association or authorized
2 agent to apply a pesticide immediately or at an agreed upon time.

3 (B) (i) Prior to receipt of written notification, the association
4 or authorized agent may agree orally to an immediate pesticide
5 application if the owner or, if applicable, the tenant requests that
6 the pesticide be applied before the 48-hour *notice* of the pesticide
7 product proposed to be used.

8 (ii) With respect to an owner or, if applicable, a tenant entering
9 into an oral agreement for immediate pesticide application, the
10 association or authorized agent, no later than the time of pesticide
11 application, shall leave the written notice specified in paragraph
12 (1) in a conspicuous place in the separate interest or at the entrance
13 of the separate interest in a manner in which a reasonable person
14 would discover the notice.

15 (iii) If any owner or, if applicable, any tenant of a separate
16 interest or an owner or, if applicable, a tenant of an adjacent
17 separate interest is also required to be notified pursuant to this
18 subparagraph, the association or authorized agent shall provide
19 that person with this notice as soon as practicable after the oral
20 agreement is made authorizing immediate pesticide application,
21 but in no case later than commencement of application of the
22 pesticide.

23 (6) A copy of a written notice provided pursuant paragraph (1)
24 shall be attached to the minutes of the board meeting immediately
25 subsequent the application of the pesticide.

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