

**ASSEMBLY BILL**

**No. 463**

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**Introduced by Assembly Members Goldsmith and Alpert**

February 16, 1995

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An act to amend Section 1365.5 of, and to add Section 1368.4 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 463, as introduced, Goldsmith. Common interest developments: reserve funds.

Existing law authorizes the board of directors of an association managing a common interest development to temporarily transfer reserve funds to the general operating fund to meet short-term cash-flow requirements or other expenses if the board meets a prescribed condition. Existing law restricts the imposition of a special assessment levied to recover the full amount of the expended funds without the approval of the owners, as specified, unless the special assessment is to pay certain legal costs.

This bill would delete the exception to the requirement for ownership approval of special assessments for prescribed legal costs. This bill would also require the board to provide written notice to members of the association regarding any civil action filed by the association against the declarant or other developer of a common interest development for alleged damage to certain areas or interests that the association is obligated to maintain or repair, 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 1365.5 of the Civil Code is  
2 amended to read:

3 1365.5. (a) Unless the governing documents impose  
4 more stringent standards, the board of directors of the  
5 association shall do all of the following:

6 (1) Review a current reconciliation of the association’s  
7 operating accounts on at least a quarterly basis.

8 (2) Review a current reconciliation of the association’s  
9 reserve accounts on at least a quarterly basis.

10 (3) Review, on at least a quarterly basis, the current  
11 year’s actual reserve revenues and expenses compared to  
12 the current year’s budget.

13 (4) Review the latest account statements prepared by  
14 the financial institutions where the association has its  
15 operating and reserve accounts.

16 (5) Review an income and expense statement for the  
17 association’s operating and reserve accounts on at least a  
18 quarterly basis.

19 (b) The signatures of at least two persons, who shall be  
20 members of the association’s board of directors, or one  
21 officer who is not a member of the board of directors and  
22 a member of the board of directors, shall be required for  
23 the withdrawal of moneys from the association’s reserve  
24 accounts.

25 (c) (1) The board of directors shall not expend funds  
26 designated as reserve funds for any purpose other than  
27 the repair, restoration, replacement, or maintenance of,  
28 or litigation involving the repair, restoration,  
29 replacement, or maintenance of, major components  
30 which the association is obligated to repair, restore,  
31 replace, or maintain and for which the reserve fund was  
32 established.

33 (2) However, the board may authorize the temporary  
34 transfer of money from a reserve fund to the association’s  
35 general operating fund to meet short-term cash-flow  
36 requirements or other expenses, provided the board has  
37 made a written finding, recorded in the board’s minutes,  
38 explaining the reasons that the transfer is needed, and



1 describing when and how the money will be repaid to the  
2 reserve fund. The transferred funds shall be restored to  
3 the reserve fund within one year of the date of the initial  
4 transfer, except that the board may, upon making a  
5 finding supported by documentation that a temporary  
6 delay would be in the best interests of the common  
7 interest development, temporarily delay the restoration.  
8 The board shall exercise prudent fiscal management in  
9 delaying restoration of these funds and in restoring the  
10 expended funds to the reserve account, and shall, if  
11 necessary, levy a special assessment to recover the full  
12 amount of the expended funds within the time limits  
13 required by this section. This special assessment is subject  
14 to the limitation imposed by Section 1366, ~~unless the~~  
15 ~~special assessment is to pay for legal costs associated with~~  
16 ~~litigation involving the repair, restoration, replacement,~~  
17 ~~or maintenance of, major components which the~~  
18 ~~association is obligated to repair, restore, replace, or~~  
19 ~~maintain.~~ The board may, at its discretion, extend the  
20 date the payment on the special assessment is due. Any  
21 extension shall not prevent the board from pursuing any  
22 legal remedy to enforce the collection of an unpaid  
23 special assessment.

24 (d) When the decision is made to use reserve funds or  
25 to temporarily transfer money from the reserve fund to  
26 pay for litigation, the association shall notify the members  
27 of the association of that decision in the next available  
28 mailing to all members pursuant to Section 5016 of the  
29 Corporations Code, and of the availability of an  
30 accounting of those expenses. Unless the governing  
31 documents impose more stringent standards, the  
32 association shall make an accounting of expenses related  
33 to the litigation on at least a quarterly basis. The  
34 accounting shall be made available for inspection by  
35 members of the association at the association's office.

36 (e) At least once every three years the board of  
37 directors shall cause a study of the reserve account  
38 requirements of the common interest development to be  
39 conducted if the current replacement value of the major  
40 components which the association is obligated to repair,



1 replace, restore, or maintain is equal to or greater than  
2 one-half of the gross budget of the association for any  
3 fiscal year. The board shall review this study annually and  
4 shall consider and implement necessary adjustments to  
5 the board's analysis of the reserve account requirements  
6 as a result of that review.

7 The study required by this subdivision shall at a  
8 minimum include:

9 (1) Identification of the major components which the  
10 association is obligated to repair, replace, restore, or  
11 maintain which, as of the date of the study, have a  
12 remaining useful life of less than 30 years.

13 (2) Identification of the probable remaining useful life  
14 of the components identified in paragraph (1) as of the  
15 date of the study.

16 (3) An estimate of the cost of repair, replacement,  
17 restoration, or maintenance of the components identified  
18 in paragraph (1) during and at the end of their useful life.

19 (4) An estimate of the total annual contribution  
20 necessary to defray the cost to repair, replace, restore, or  
21 maintain the components identified in paragraph (1)  
22 during and at the end of their useful life, after subtracting  
23 total reserve funds as of the date of the study.

24 (f) As used in this section, "reserve accounts" means  
25 moneys that the association's board of directors has  
26 identified for use to defray the future repair or  
27 replacement of, or additions to, those major components  
28 which the association is obligated to maintain.

29 (g) As used in this section, "reserve account  
30 requirements" means the estimated funds which the  
31 association's board of directors has determined are  
32 required to be available at a specified point in time to  
33 repair, replace, or restore those major components which  
34 the association is obligated to maintain.

35 (h) This section does not apply to an association that  
36 does not have a "common area" as defined in Section  
37 1351.

38 SEC. 2. Section 1368.4 is added to the Civil Code, to  
39 read:



1 1368.4. (a) Not later than 30 days prior to the filing of  
2 any civil action by the association against the declarant or  
3 other developer of a common interest development for  
4 alleged damage to the common areas, alleged damage to  
5 the separate interests that the association is obligated to  
6 maintain or repair, or alleged damage to the separate  
7 interests that arises out of, or is integrally related to,  
8 damage to the common areas or separate interests that  
9 the association is obligated to maintain or repair, the  
10 board of directors of the association shall provide  
11 written notice by first-class mail to all members of the  
12 association who appear on the records of the association  
13 when the notice is provided. This notice shall specify all  
14 of the following:

- 15 (1) The county and court in which the action is filed.
- 16 (2) The names of the parties to the action.
- 17 (3) The reason for the action.
- 18 (4) A statement informing the members that if five  
19 percent of the members respond in writing within 15 days  
20 from the date of the notice was mailed requesting a  
21 special meeting of the members to discuss the matter, a  
22 meeting shall be held by the board of directors within 15  
23 days of the request.

24 (b) Notwithstanding subdivision (a), if the association  
25 has reason to believe that the applicable statute of  
26 limitations will expire before the association files the civil  
27 action, the association may give the notice, as described  
28 above, within 30 days after the filing of the action.

