

Assembly Bill No. 463

CHAPTER 13

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

[Approved by Governor May 26, 1995. Filed with
Secretary of State May 26, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 463, 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.

The people of the State of California do enact as follows:

SECTION 1. Section 1365.5 of the Civil Code is amended to read:

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

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

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

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

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



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

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

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

(2) However, the board may authorize the temporary transfer of money from a reserve fund to the association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the board has made a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

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

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



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

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

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

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

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

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

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

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

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

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

1368.4. (a) Not later than 30 days prior to the filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board of directors of the association shall provide written notice to each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

(2) The options, including civil actions, that are available to address the problems.

(3) The time and place of this meeting.



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

