

AMENDED IN SENATE AUGUST 21, 1995

AMENDED IN SENATE JUNE 26, 1995

AMENDED IN SENATE JUNE 13, 1995

AMENDED IN ASSEMBLY APRIL 5, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1317

Introduced by Assembly Member Speier

February 23, 1995

An act to amend ~~Section 1354~~ *Sections 1354 and 1367* of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1317, as amended, Speier. Common interest developments.

The existing Davis-Stirling Common Interest Development Act generally requires that, before a common interest development association or the owner of a separate interest therein brings an action solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, except association assessments, not to exceed \$5,000, relating to the enforcement of the governing documents of the common interest development, the association or owner shall endeavor to submit the matter to alternative dispute resolution, as specified.

This bill would delete the exception for association assessments from these requirements, *and revise the required contents of a request for alternative dispute resolution. The bill would also impose additional requirements with respect to the collection of debts based on assessments of owners by a common interest development, 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 1354 of the Civil Code is
2 amended to read:

3 1354. (a) The covenants and restrictions in the
4 declaration shall be enforceable equitable servitudes,
5 unless unreasonable, and shall inure to the benefit of and
6 bind all owners of separate interests in the development.
7 Unless the declaration states otherwise, these servitudes
8 may be enforced by any owner of a separate interest or
9 by the association, or by both.

10 (b) Unless the applicable time limitation for
11 commencing the action would run within 120 days, prior
12 to the filing of a civil action by either an association or an
13 owner or a member of a common interest development
14 solely for declaratory relief or injunctive relief, or for
15 declaratory relief or injunctive relief in conjunction with
16 a claim for monetary damages not in excess of five
17 thousand dollars (\$5,000), related to the enforcement of
18 the governing documents, the parties shall endeavor, as
19 provided in this subdivision, to submit their dispute to a
20 form of alternative dispute resolution such as mediation
21 or arbitration. The form of alternative dispute resolution
22 chosen may be binding or nonbinding at the option of the
23 parties. Any party to such a dispute may initiate this
24 process by serving on another party to the dispute a
25 Request for Resolution. The Request for Resolution shall
26 include (1) a brief description of the dispute between the
27 parties, (2) a request for alternative dispute resolution,
28 ~~and (3)~~ (3) *at least three available alternative dispute*
29 *resolution services, and* (4) a notice that the party



1 receiving the Request for Resolution is required to
2 respond thereto within 30 days of receipt or it will be
3 deemed rejected. Service of the Request for Resolution
4 shall be in the same manner as prescribed for service in
5 a small claims action as provided in Section 116.340 of the
6 Code of Civil Procedure. Parties receiving a Request for
7 Resolution shall have 30 days following service of the
8 Request for Resolution to accept or reject alternative
9 dispute resolution and, if not accepted within the 30-day
10 period by a party, shall be deemed rejected by that party.
11 If alternative dispute resolution is accepted by the party
12 upon whom the Request for Resolution is served, the
13 alternative dispute resolution shall be completed within
14 90 days of receipt of the acceptance by the party initiating
15 the Request for Resolution, unless extended by written
16 stipulation signed by both parties. The costs of the
17 alternative dispute resolution shall be borne by the
18 parties.

19 (c) At the time of filing a civil action by either an
20 association or an owner or a member of a common
21 interest development solely for declaratory relief or
22 injunctive relief, or for declaratory relief or injunctive
23 relief in conjunction with a claim for monetary damages
24 not in excess of five thousand dollars (\$5,000), related to
25 the enforcement of the governing documents, the party
26 filing the action shall file with the complaint a certificate
27 stating that alternative dispute resolution has been
28 completed in compliance with subdivision (b). The
29 failure to file a certificate as required by subdivision (b)
30 shall be grounds for a demurrer pursuant to Section
31 430.10 of the Code of Civil Procedure or a motion to strike
32 pursuant to Section 435 of the Code of Civil Procedure
33 unless the filing party certifies in writing that one of the
34 other parties to the dispute refused alternative dispute
35 resolution prior to the filing of the complaint, that
36 preliminary or temporary injunctive relief is necessary,
37 or that alternative dispute resolution is not required by
38 subdivision (b), because the limitation period for
39 bringing the action would have run within the 120-day
40 period next following the filing of the action, or the court



1 finds that dismissal of the action for failure to comply with
2 subdivision (b) would result in substantial prejudice to
3 one of the parties.

4 (d) Once a civil action specified in subdivision (a) to
5 enforce the governing documents has been filed by either
6 an association or an owner or member of a common
7 interest development, upon written stipulation of the
8 parties the matter may be referred to alternative dispute
9 resolution and stayed. The costs of the alternative dispute
10 resolution shall be borne by the parties. During this
11 referral, the action shall not be subject to the rules
12 implementing subdivision (c) of Section 68603 of the
13 Government Code.

14 (e) The requirements of subdivisions (b) and (c) shall
15 not apply to the filing of a cross-complaint.

16 (f) In any action specified in subdivision (a) to enforce
17 the governing documents, the prevailing party shall be
18 awarded reasonable attorney's fees and costs. Upon
19 motion by any party for attorney's fees and costs to be
20 awarded to the prevailing party in these actions, the
21 court, in determining the amount of the award, may
22 consider a party's refusal to participate in alternative
23 dispute resolution prior to the filing of the action.

24 (g) Unless consented to by both parties to alternative
25 dispute resolution that is initiated by a Request for
26 Resolution under subdivision (b), evidence of anything
27 said or of admissions made in the course of the alternative
28 dispute resolution process shall not be admissible in
29 evidence, and testimony or disclosure of such a statement
30 or admission may not be compelled, in any civil action in
31 which, pursuant to law, testimony can be compelled to be
32 given.

33 (h) Unless consented to by both parties to alternative
34 dispute resolution that is initiated by a Request for
35 Resolution under subdivision (b), documents prepared
36 for the purpose or in the course of, or pursuant to, the
37 alternative dispute resolution shall not be admissible in
38 evidence, and disclosure of these documents may not be
39 compelled, in any civil action in which, pursuant to law,
40 testimony can be compelled to be given.



1 (i) Members of the association shall annually be
2 provided a summary of the provisions of this section,
3 which specifically references this section. The summary
4 shall include the following language:

5 “Failure by any member of the association to comply
6 with the prefiling requirements of Section 1354 of the
7 Civil Code may result in the loss of your rights to sue the
8 association or another member of the association
9 regarding enforcement of the governing documents.”

10 The summary shall be provided either at the time the
11 pro forma budget required by Section 1365 is distributed
12 or in the manner specified in Section 5016 of the
13 Corporations Code.

14 (j) Any Request for Resolution sent to the owner of a
15 separate interest pursuant to subdivision (b) shall include
16 a copy of this section.

17 *SEC. 2. Section 1367 of the Civil Code is amended to*
18 *read:*

19 1367. (a) A regular or special assessment and any late
20 charges, reasonable costs of collection, and interest, as
21 assessed in accordance with Section 1366, shall be a debt
22 of the owner of the separate interest at the time the
23 assessment or other sums are levied. *Before an association*
24 *may collect such a debt which is past due, the association*
25 *shall, both annually and immediately prior to the*
26 *collection of any debt which is past due, notify the owner*
27 *in writing of the fee and penalty procedures, an*
28 *itemization of the charges owed by the owner, and the*
29 *collection practices used by the association, including the*
30 *right of the association to the reasonable costs of*
31 *collection. In addition, any payments towards such a debt*
32 *shall first be applied to the principal owed, and only after*
33 *the principal owed is paid in full shall such payments be*
34 *applied to interest or collection expenses.*

35 (b) The amount of the assessment, plus any costs of
36 collection, late charges, and interest assessed in
37 accordance with Section 1366, shall be a lien on the
38 owner’s interest in the common interest development
39 from and after the time the association causes to be
40 recorded with the county recorder of the county in which



1 the separate interest is located, a notice of delinquent
 2 assessment, which shall state the amount of the
 3 assessment and other sums imposed in accordance with
 4 Section 1366, a description of the owner’s interest in the
 5 common interest development against which the
 6 assessment and other sums are levied, the name of the
 7 record owner of the owner’s interest in the common
 8 interest development against which the lien is imposed,
 9 and, in order for the lien to be enforced by nonjudicial
 10 foreclosure as provided in subdivision (d) the name and
 11 address of the trustee authorized by the association to
 12 enforce the lien by sale. The notice of delinquent
 13 assessment shall be signed by the person designated in the
 14 declaration or by the association for that purpose, or if no
 15 one is designated, by the president of the association.
 16 Upon payment of the sums specified in the notice of
 17 delinquent assessment, the association shall cause to be
 18 recorded a further notice stating the satisfaction and
 19 release of the lien thereof.

20 (c) A lien created pursuant to subdivision (b) shall be
 21 prior to all other liens recorded subsequent to the notice
 22 of assessment, except that the declaration may provide
 23 for the subordination thereof to any other liens and
 24 encumbrances.

25 (d) A lien created pursuant to subdivision (b) may be
 26 enforced in any manner permitted by law, including sale
 27 by the court, sale by the trustee designated in the notice
 28 of delinquent assessment, or sale by a trustee substituted
 29 pursuant to Section 2934a. Any sale by the trustee shall be
 30 conducted in accordance with the provisions of Sections
 31 2924, 2924b, and 2924c applicable to the exercise of
 32 powers of sale in mortgages and deeds of trusts. *Prior to*
 33 *a sale by a Trustee, an association shall make at least one*
 34 *bona fide attempt to serve the owner with notice of sale*
 35 *by trustee pursuant to this section by means of personal*
 36 *service, pursuant to Section 415.10 of the Code of Civil*
 37 *Procedure before attempting any other means of service.*

38 (e) Nothing in this section or in subdivision (a) of
 39 Section 726 of the Code of Civil Procedure prohibits
 40 actions against the owner of a separate interest to recover



1 sums for which a lien is created pursuant to this section
2 or prohibits an association from taking a deed in lieu of
3 foreclosure.

4 (f) This section only applies to liens recorded on or
5 after January 1, 1986.

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