

## Assembly Bill No. 76

### CHAPTER 632

An act to amend Sections 1368 and 1375 of, and to add Sections 1363.1 and 1375.1 to, the Civil Code, relating to common interest developments.

[Approved by Governor October 3, 1997. Filed  
with Secretary of State October 6, 1997.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 76, Miller. Common interest developments.

(1) Provisions of the Davis-Stirling Common Interest Development Act, repealed as of January 1, 1997, required a prospective managing agent of a common interest development to provide a written statement to the board of directors of the association of the development containing prescribed information regarding the owners or general partners of the managing agent. Among other things, that information was required to include the status of any professional licenses, certifications, or designations held by those persons.

This bill would reenact these provisions. The bill would also require that the managing agents provide information specifying the dates that any professional licenses, certifications, or designations held are valid, rather than the status of those licenses, certifications, or designations. It also would specify that a professional common interest development manager, rather than a certified property manager or professional association manager, is included in the certifications or designations required to be included in the statement.

(2) Existing law requires the owner of a separate interest in a common interest development to provide prescribed documents relating to operation of the common interest development to the prospective purchaser of the separate interest, except as specified.

This bill would require the owner to provide the prospective purchaser with a copy of the preliminary list of defects provided to each member of the association pursuant to existing law, except as specified, and specified information regarding settlement agreements regarding defects in common areas or separate interests. The bill would require the list of defects to include a specified statement.

(3) Existing law requires the board of directors of the association of a common interest development to provide each member of the association who appears on the association records with a prescribed written notice not later than 30 days prior to the filing of any civil



action by the association against a declarant or other developer of the common interest development for, among other things, 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.

This bill would require the association to, in writing, inform only the members whose names appear on the association records of prescribed information as soon as is reasonably practicable after the resolution of a dispute, as specified, regarding alleged defects in prescribed common areas, alleged defects in separate interests that the association is obligated to maintain or repair, or for alleged defects in the separate interests that arise out of, or are integrally related to, defects in the common areas or separate interests that the association is obligated to maintain or repair. The bill would define “defects” to include any damage resulting from defects.

(4) Existing law provides specific requirements for the association to meet before it commences an action for damages against a builder of a common interest development based upon a claim for defects in the design or construction of the development. Existing law requires, in a certain situation, the association’s board of directors to hold a meeting of the association members and provide a written notice to each member that specifies, among other things, the options that are available to address the problems, including the filing of a civil action.

This bill would also require the notice to include a statement of the various, reasonably foreseeable alternatives to pay for those options.

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

SECTION 1. Section 1363.1 is added to the Civil Code, to read:

1363.1. (a) A prospective managing agent of a common interest development shall provide a written statement to the board of directors of the association of a common interest development as soon as practicable, but in no event more than 90 days, before entering into a management agreement which shall contain all of the following information concerning the managing agent:

(1) The names and business addresses of the owners or general partners of the managing agent. If the managing agent is a corporation, the written statement shall include the names and business addresses of the directors and officers and shareholders holding greater than 10 percent of the shares of the corporation.

(2) Whether or not any relevant licenses such as architectural design, construction, engineering, real estate, or accounting have been issued by this state and are currently held by the persons specified in paragraph (1). If a license is currently held by any of those persons, the statement shall contain the following information:



- (A) What license is held.
- (B) The dates the license is valid.
- (C) The name of the licensee appearing on that license.

(3) Whether or not any relevant professional certifications or designations such as architectural design, construction, engineering, real property management, or accounting are currently held by any of the persons specified in paragraph (1), including, but not limited to, a professional common interest development manager. If any certification or designation is held, the statement shall include the following information:

(A) What the certification or designation is and what entity issued it.

- (B) The dates the certification or designation is valid.
- (C) The names in which the certification or designation is held.

(b) As used in this section, a “managing agent” is a person or entity who, for compensation or in expectation of compensation, exercises control over the assets of a common interest development. A “managing agent” does not include either of the following:

- (1) A full-time employee of the association.
- (2) Any regulated financial institution operating within the normal course of its regulated business practice.

SEC. 2. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365.

(4) A true statement in writing from an authorized representative of the association as to the amount of the association’s current regular and special assessments and fees, as well as any assessments levied upon the owner’s interest in the common interest development which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner’s interest in a common interest development pursuant to Section 1367.



(5) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(6) A copy of the latest information provided for in Section 1375.1.

(7) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (7), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

SEC. 3. Section 1375.1 is added to the Civil Code, to read:

1375.1. (a) As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been resolved regarding alleged defects in the common areas, alleged defects in the separate interests that the association is obligated to maintain or repair, or alleged defects in the separate interests that arise out of, or are integrally related to, defects in the common areas or separate interests that the association is obligated to maintain or repair, where the defects giving rise to the dispute have not been corrected, the association shall, in writing, inform only the members of the association whose names appear on



the records of the association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(1) A general description of the defects that the association reasonably believes, as of the date of the disclosure, will be corrected or replaced.

(2) A good faith estimate, as of the date of the disclosure, of when the association believes that the defects identified in paragraph (1) will be corrected or replaced. The association may state that the estimate may be modified.

(3) The status of the claims for defects in the design or construction of the common interest development that were not identified in paragraph (1) whether expressed in a preliminary list of defects sent to each member of the association or otherwise claimed and disclosed to the members of the association.

(b) Nothing in this section shall preclude an association from amending the disclosures required pursuant to subdivision (a), and any amendments shall supersede any prior conflicting information disclosed to the members of the association and shall retain any privilege attached to the original disclosures.

(c) Disclosure of the information required pursuant to subdivision (a) or authorized by subdivision (b) shall not waive any privilege attached to the information.

(d) For the purposes of the disclosures required pursuant to this section, the term “defects” shall be defined to include any damage resulting from defects.

SEC. 4. Section 1375 of the Civil Code is amended to read:

1375. (a) Before an association commences an action for damages against a builder of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of subdivisions (b) to (g), inclusive, shall be met, except as otherwise provided in this section.

(b) (1) The association shall give written notice to the builder against whom the claim is made. This notice shall include all of the following:

(A) A preliminary list of defects.

(B) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if this survey has been conducted or a questionnaire has been distributed.

(C) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if this testing has been conducted.

(2) The association’s notice shall, upon delivery of the notice to the builder, commence a period of time not to exceed 90 days, unless the association and builder agree to a longer period, during which the



association and builder shall either, in accordance with the requirements of this section, attempt to settle the dispute or attempt to agree to submit it to alternative dispute resolution.

(3) (A) Except as provided in this section and notwithstanding any other provision of law, the notice by the association shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the defects claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by the association and the builder.

(B) At any time, the builder may give written notice to cancel the tolling of the statute of limitations provided in this section. Upon delivery of this written cancellation notice, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision and subdivisions (c) to (e), inclusive. The tolling of all applicable statutes of limitations shall cease 60 days after the written notice of cancellation by the builder is delivered to the association.

(c) (1) Within 25 days of the date the association delivers the notice required by subdivision (b), the builder may request in writing to meet and confer with the board of directors of the association, and to inspect the project and conduct testing, including testing that may cause physical damage to any property in the development, in order to evaluate the claim. If the builder does not make a timely request to meet and confer with the board of directors of the association, or to conduct inspection and testing, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision and subdivisions (d) and (e). Unless the builder and association otherwise agree, the meeting shall take place no later than 10 days from the date of the builder's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (g) of Section 1363. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and builder consent to their admission. The meeting shall be for the purpose of discussing all of the following:

(A) The nature and extent of the claimed defects.

(B) Proposed methods of correction, to the extent there is sufficient information.

(C) Proposals for submitting the dispute to alternative dispute resolution.

(D) Requests from the builder to inspect the project and conduct testing.

(2) If the builder requests in writing to meet and confer with the board of directors of the association pursuant to paragraph (1) of this subdivision, the builder shall deliver the notice provided by the association to the builder pursuant to subdivision (b) to any insurer that has issued a policy to the builder which imposes upon the insurer



a duty to defend the insured or indemnify the insured for losses resulting from the defects identified in the notice required by subdivision (b). The notice by the builder shall, upon receipt, impose upon that insurer any obligation which would be imposed under the terms of the policy if the insured had been served with a summons and complaint for damages. The builder shall inform the association when the builder delivers the notice to each insurer pursuant to this paragraph.

(d) (1) If the association conducted inspection and testing prior to the date it sent the written notice pursuant to subdivision (b), the association shall, at the earliest practicable date after the meeting held pursuant to subdivision (c), make available for inspection and testing at least those areas inspected or tested by the association. The inspection and testing shall be completed within 15 days from the date the association makes these areas available for inspection and testing, unless the association and builder agree to a longer period. If the builder does not timely complete the inspection and testing, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision and subdivision (e). The manner in which the inspection and testing shall be conducted, and the extent of any inspection and testing to be conducted beyond that which was conducted by the association prior to sending the notice, shall be set by agreement of the association and builder.

(2) The builder shall pay all costs of inspection and testing that is requested by the builder, shall restore the property to the condition which existed immediately prior to the testing, and shall indemnify the association and owner of the separate interest for any damages resulting from the testing.

(3) Interior inspections of occupied separate interests and destructive testing of any interior of a separate interest shall be conducted in accordance with the governing documents of the association, unless otherwise agreed to by the owner of the separate interest. If the governing documents of the association do not provide for inspection or testing of separate interests, this inspection or testing shall be conducted in a manner and at a time agreed to by the owner of the separate interest.

(4) The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this section.

(e) (1) Within 30 days of the completion of inspection and testing or within 30 days of a meeting held pursuant to subdivision (c) if no inspection and testing is conducted pursuant to subdivision (d), the builder shall submit to the association all of the following:

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



(B) A written settlement offer, and a concise explanation of the specific reasons for the terms of the offer. This offer may include an offer to submit the dispute to alternative dispute resolution.

(C) A statement that the builder has access to sufficient funds to satisfy the conditions of the settlement offer.

(D) A summary of the results of testing conducted for the purpose of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the builder with actual test results pursuant to subdivision (b), in which case the builder shall provide the association with actual test results.

(2) If the builder does not timely submit the items required by this subdivision, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision only.

(3) No less than 10 days after the builder submits the items required by this paragraph, the builder and the board of directors of the association shall meet and confer about the builder's settlement offer, including any offer to submit the dispute to alternative dispute resolution.

(f) (1) At any time after the notice required by subdivision (b) is delivered to the builder, the association and builder may agree in writing to modify or excuse any of the time periods or other obligations imposed by this section.

(2) Except for the notice required pursuant to subdivision (g), all notices, requests, statements, or other communications required pursuant to this section shall be delivered by one of the following:

(A) By first-class registered or certified mail, return receipt requested.

(B) In any manner in which it is permissible to serve a summons pursuant to Section 415.10 or 415.20 of the Code of Civil Procedure.

(g) If the board of directors of the association rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall comply with the requirements of paragraph (1) of this subdivision. If the association is relieved of its obligation to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements are satisfied, the association shall comply with the requirements of paragraph (2) of this subdivision. Under no circumstances shall the association be required to comply with both paragraph (1) and paragraph (2) of this subdivision.

(1) (A) If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days before the association commences an action for damages against the builder.

(B) No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:



(i) That a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting.

(ii) The options that are available to address the problems, including the filing of a civil action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases.

(iii) The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the board pursuant to paragraph (1) of subdivision (e), received from the builder and of any offer by the builder to submit the dispute to alternative dispute resolution.

(iv) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b) and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

(C) The builder shall pay all expenses attributable to sending the settlement offer and any offer for alternative dispute resolution to all members of the association. The builder shall also pay the expense of holding the meeting, not to exceed three dollars (\$3) per association member.

(D) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to subparagraph (B), are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(E) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(2) If the association is relieved of its obligation to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements have been satisfied, the association may commence an action for damages against the builder 30 days after sending a written notice to each member specifying all of the following:

(A) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b), and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

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

(C) A statement that if 5 percent of the members of the association request a special meeting of the members to discuss the matter within 15 days of the date the notice is mailed or delivered to the members of the association, a meeting of the members shall be held,



unless governing documents of the association provide for a different procedure for calling a special meeting of the members, in which case, the statement shall inform the members of that procedure.

(D) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(h) (1) The only method of seeking judicial relief for the failure of the association to comply with this section shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the builder after such an action has been filed. A verified application asserting such a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the builder alleging substantial noncompliance with this section, the court shall schedule a hearing within 21 days of the application to determine whether the association or builder has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3) (A) If the court finds that the association did not substantially comply with this section, the court shall stay the action for up to 90 days to allow the association to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance by the association. At any time, the court may, for good cause shown, extend the period of the stay upon application of the association.

(B) If, within the time set by the court pursuant to this section, the association has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the builder has complied with this section.

(C) If the alleged noncompliance of either the builder or the association resulted from the unreasonable withholding of consent for inspection or testing by an owner of a separate interest, it shall not be considered substantial noncompliance, provided that the party alleged to be out of compliance did not encourage the withholding of consent.

(4) If the court finds that the builder did not pay all of the costs of inspection and testing pursuant to paragraph (3) of subdivision (a), or that the builder did not pay its required share of the costs of holding the meeting and of all expenses attributable to sending the settlement offer pursuant to subparagraph (C) of paragraph (1) of subdivision (g) of this section, the court shall order the builder to pay



any deficiencies within 30 days, with interest, and any additional remedy which the court determines, in the interest of justice, should be fashioned.

(i) As used in this section:

(1) “Association” shall have the same meaning as defined in subdivision (a) of Section 1351.

(2) “Builder” means the declarant, as defined in subdivision (g) of Section 1351.

(D) “Common interest development” shall have the same meaning as in subdivision (c) of Section 1351, except that it shall not include developments or projects with less than 20 units.

