

AMENDED IN SENATE JULY 22, 2003

AMENDED IN SENATE JULY 14, 2003

AMENDED IN SENATE JUNE 23, 2003

AMENDED IN ASSEMBLY APRIL 30, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 512

**Introduced by Assembly Member Bates
(Coauthors: Assembly Members Maze and Pacheco)**

February 18, 2003

An act to amend Sections 1363, 1368, and 1373 of, to add Sections 1350.5 and 1350.7 to, to add Article 4 (commencing with Section 1357.100) to, and to add chapter and article headings to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 512, as amended, Bates. Common interest developments.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments. The act requires that a common interest development have a recorded declaration, as specified, and permits the declaration to be amended according to the act's provisions or those of the governing documents, as defined. The act requires that a common interest development be managed by an association, and that a member of the association may attend meetings of the board of directors of the association, except when they meet in executive session to consider specified matters. The act excepts certain

common interest developments expressly zoned as industrial or commercial developments, as specified, from certain of its requirements.

This bill would revise the Davis-Stirling Common Interest Development Act to add chapter and article headings to its provisions. The bill would specify that these headings do not change the scope, meaning, or intent of the bill.

This bill would also add provisions concerning procedural fairness in decisionmaking and rulemaking by associations. The bill would add requirements regarding operating rules relating to the use of the common area, the use of a separate interest, member discipline, ~~and standards for delinquent assessment collection~~ *payment plans, and the resolution of assessment disputes*, as specified. Among other things, the bill would establish criteria for valid operating rules, require that members have notice, provide an optional rulemaking procedure and an optional emergency rulemaking procedure, and establish a procedure for reversing a rule. The bill would revise the provisions regarding common interest developments that are zoned as industrial or commercial developments, as described above, and would except certain of its provisions from application to these developments. The bill would further provide general document delivery rules, to be applicable when 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. A chapter heading is added to Title 6
2 (commencing with Section 1350) of Part 4 of Division 2 of the
3 Civil Code, immediately preceding Section 1350, to read:

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5 CHAPTER 1. GENERAL PROVISIONS

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7 SEC. 2. An article heading is added to Title 6 (commencing
8 with Section 1350) of Part 4 of Division 2 of the Civil Code,
9 immediately preceding Section 1350, to read:

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11 Article 1. Preliminary Provisions

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13 SEC. 3. Section 1350.5 is added to the Civil Code, to read:



1 1350.5. Division, part, title, chapter, and section headings do
2 not in any manner affect the scope, meaning, or intent of this title.

3 SEC. 4. Section 1350.7 is added to the Civil Code, to read:

4 1350.7. (a) This section applies to delivery of a document to
5 the extent the section is made applicable by another provision of
6 this title.

7 (b) A document shall be delivered by one or more of the
8 following methods:

9 (1) Personal delivery.

10 (2) First-class mail, postage prepaid, addressed to a member at
11 the address last shown on the books of the association or otherwise
12 provided by the member. Delivery is deemed to be complete on ~~the~~
13 ~~fifth day after~~ deposit into the United States Mail.

14 (3) E-mail, facsimile, or other electronic means, if the recipient
15 has agreed to that method of delivery. If a document is delivered
16 by electronic means, delivery is complete at the time of
17 transmission.

18 (4) By publication in a periodical that is circulated primarily to
19 members of the association.

20 (5) If the association broadcasts television programming for
21 the purpose of distributing information on association business to
22 its members, by inclusion in the programming.

23 (6) A method of delivery provided in a recorded provision of
24 the governing documents.

25 (7) Any other method of delivery, provided that the recipient
26 has agreed to that method of delivery.

27 (c) A document may be included in or delivered with a billing
28 statement, newsletter, or other document that is delivered by one
29 of the methods provided in subdivision (b).

30 (d) For the purposes of this section, an unrecorded provision of
31 the governing documents providing for a particular method of
32 delivery does not constitute agreement by a member of the
33 association to that method of delivery.

34 SEC. 5. An article heading is added to Title 6 (commencing
35 with Section 1350) of Part 4 of Division 2 of the Civil Code,
36 immediately preceding Section 1351, to read:
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1 Article 2. Definitions

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3 SEC. 6. A chapter heading is added to Title 6 (commencing
4 with Section 1350) of Part 4 of Division 2 of the Civil Code,
5 immediately preceding Section 1352, to read:

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7 CHAPTER 2. GOVERNING DOCUMENTS

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9 SEC. 7. An article heading is added to Title 6 (commencing
10 with Section 1350) of Part 4 of Division 2 of the Civil Code,
11 immediately preceding Section 1352, to read:

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13 Article 1. Creation

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15 SEC. 8. An article heading is added to Title 6 (commencing
16 with Section 1350) of Part 4 of Division 2 of the Civil Code,
17 immediately preceding Section 1354, to read:

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19 Article 2. Enforcement

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21 SEC. 9. An article heading is added to Title 6 (commencing
22 with Section 1350) of Part 4 of Division 2 of the Civil Code,
23 immediately preceding Section 1355, to read:

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25 Article 3. Amendment

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27 SEC. 10. Article 4 (commencing with Section 1357.100) is
28 added to Title 6 of Part 4 of Division 2 of the Civil Code,
29 immediately following Section 1357, to read:

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31 Article 4. Operating Rules

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33 1357.100. As used in this ~~article~~, “*rule article*”:

34 (a) “*Operating rule*” means a regulation adopted by the board
35 of directors of the association that applies generally to the
36 management and operation of the common interest development
37 or the conduct of the business and affairs of the association.

38 (b) “*Rule change*” means the adoption, amendment, or repeal
39 of an operating rule by the board of directors of the association.



1 1357.110. An operating rule is valid and enforceable only if
2 all of the following requirements are satisfied:

3 (a) The rule is in writing.

4 (b) The rule is within the authority of the board of directors of
5 the association conferred by law or by the declaration, articles of
6 incorporation or association, or bylaws of the association.

7 (c) The rule is not inconsistent with governing law and the
8 declaration, articles of incorporation or association, and bylaws of
9 the association.

10 (d) The rule is adopted, amended, or repealed in good faith and
11 in substantial compliance with the requirements of this article.

12 (e) The rule is reasonable.

13 1357.120. (a) *Sections 1357.130 and 1357.140 only apply to*
14 *an operating rule that relates to one or more of the following*
15 *subjects:*

16 (1) *Use of the common area or of an exclusive use common*
17 *area.*

18 (2) *Use of a separate interest, including any aesthetic or*
19 *architectural standards that govern alteration of a separate*
20 *interest.*

21 (3) *Member discipline, including any schedule of monetary*
22 *penalties for violation of the governing documents and any*
23 *procedure for the imposition of penalties.*

24 (4) *Any standards for delinquent assessment payment plans.*

25 (5) *Any procedures adopted by the association for resolution of*
26 *assessment disputes.*

27 (b) *Sections 1357.130 and 1357.140 do not apply to the*
28 *following actions by the board of directors of an association:*

29 (1) *A decision regarding maintenance of the common area.*

30 (2) *A decision on a specific matter that is not intended to apply*
31 *generally.*

32 (3) *A decision setting the amount of a regular or special*
33 *assessment.*

34 (4) *A rule change that is required by law, if the board of*
35 *directors has no discretion as to the substantive effect of the rule*
36 *change.*

37 (5) *Issuance of a document that merely repeats existing law or*
38 *the governing documents.*

39 1357.130. (a) The board of directors shall provide *written*
40 *notice of a proposed rule change to the members at least 25 days*



1 before making the rule change. Notice is not required under this
2 subdivision if the board of directors determines that an immediate
3 rule change is necessary to address an imminent threat to public
4 health or safety or imminent risk of substantial economic loss to
5 the association.

6 (b) A decision on a proposed rule change shall be made at a
7 meeting of the board of directors, after consideration of any
8 comments made by association members.

9 (c) As soon as possible after making a rule change, but not more
10 than 15 days after making the rule change, the board of directors
11 shall deliver notice of the rule change to every association member.

12 (d) If the board of directors determines that an immediate rule
13 change is required to address an imminent threat to public health
14 or safety, or an imminent risk of substantial economic loss to the
15 association, it may make an emergency rule change; and no notice
16 is required, as specified in subdivision (a). An emergency rule
17 change is effective for 120 days, unless the rule change provides
18 for a shorter effective period. A rule change made under this
19 subdivision may not be readopted under this subdivision.

20 (e) A notice required by this section is subject to Section
21 1350.7.

22 ~~1357.130.—~~

23 *1357.140.* (a) Members of an association owning 5 percent or
24 more of the separate interests may call a special meeting to reverse
25 a rule change.

26 (b) A special meeting *of the members* may be called by
27 delivering a written request to the ~~chair~~ *president* or secretary of
28 the board of directors, *after which the board shall deliver notice*
29 *of the meeting to association's members and hold the meeting in*
30 *conformity with Section 7511 of the Corporations Code.* The
31 written request may not be delivered more than 30 days after the
32 members of the association are notified of the rule change.
33 Members are deemed to have been notified of a rule change on
34 delivery of notice of the rule change, or on enforcement of the
35 resulting rule, whichever is sooner. For the purposes of Section
36 8330 of the Corporations Code, collection of signatures to call a
37 special meeting under this section is a purpose reasonably related
38 to the interests of the members of the association. A member
39 request to copy or inspect the membership list solely for that



1 purpose may not be denied on the grounds that the purpose is not
2 reasonably related to the member's interests as a member.

3 (c) The rule change may be reversed by the affirmative vote of
4 a majority of the votes represented and voting at a duly held
5 meeting at which a quorum is present (which affirmative votes also
6 constitute a majority of the required quorum) ~~or by written ballot~~
7 ~~in conformity with Section 7513 of the Corporations Code~~, or if
8 the declaration or bylaws require a greater proportion, by the
9 affirmative vote or written ballot of the proportion required. *In lieu*
10 *of calling the meeting described in this section, the board may*
11 *distribute a written ballot to every member of the association in*
12 *conformity with the requirements of Section 7513 of the*
13 *Corporations Code.*

14 (d) Unless otherwise provided in the declaration or bylaws, for
15 the purposes of this section, a member may cast one vote per
16 separate interest owned.

17 (e) A meeting called under this section is governed by Chapter
18 5 (commencing with Section 7510) of Part 3 of Division 2 of Title
19 1 of, and Sections 7612 and 7613 of, the Corporations Code.

20 (f) A rule change reversed under this section may not be
21 readopted for one year after the date of the meeting reversing the
22 rule change. *Nothing in this section precludes the board of*
23 *directors from adopting a different rule on the same subject as the*
24 *rule change that has been reversed.*

25 ~~The~~ (g) ~~As soon as possible after the close of voting, but not~~
26 ~~more than 15 days after the close of voting, the board of directors~~
27 shall provide notice of the results of a member vote held pursuant
28 to this section to every association member. Delivery of notice
29 under this subdivision is subject to Section 1350.7.

30 (h) This section does not apply to an emergency rule change
31 made under subdivision (d) of section 1357.120.

32 ~~1357.140. (a) Sections 1357.120 and 1357.130 only apply to~~
33 ~~an operating rule that relates to one or more of the following~~
34 ~~subjects:~~

35 ~~(1) Use of the common area or of an exclusive use common~~
36 ~~area.~~

37 ~~(2) Use of a separate interest, including any aesthetic or~~
38 ~~architectural standards that govern alteration of a separate interest.~~



1 ~~(3) Member discipline, including any schedule of monetary~~
2 ~~penalties for violation of the governing documents and any~~
3 ~~procedure for the imposition of penalties.~~

4 ~~(4) Assessment collection procedures.~~

5 ~~(b) Sections 1357.120 and 1357.130 do not apply to the~~
6 ~~following actions by the board of directors of an association:~~

7 ~~(1) A decision regarding maintenance of the common area.~~

8 ~~(2) A decision in a specific case that is not intended to apply~~
9 ~~generally.~~

10 ~~(3) A decision setting the amount of a regular or special~~
11 ~~assessment.~~

12 ~~(4) A rule change that is required by law, if the board of~~
13 ~~directors has no discretion as to the substantive effect of the rule~~
14 ~~change.~~

15 ~~(5) Issuance of a document that merely repeats existing law or~~
16 ~~the governing documents.~~

17 1357.150. (a) This article applies to a rule change
18 commenced on or after January 1, 2004.

19 (b) Nothing in this article affects the validity of a rule change
20 commenced before January 1, 2004.

21 (c) For the purposes of this section, a rule change is commenced
22 when the board of directors of the association takes its first official
23 action leading to adoption of the rule change.

24 SEC. 11. A chapter heading is added to Title 6 (commencing
25 with Section 1350) of Part 4 of Division 2 of the Civil Code,
26 immediately preceding Section 1358, to read:

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28 CHAPTER 3. OWNERSHIP RIGHTS AND INTERESTS

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30 SEC. 12. A chapter heading is added to Title 6 (commencing
31 with Section 1350) of Part 4 of Division 2 of the Civil Code,
32 immediately preceding Section 1363, to read:

33
34 CHAPTER 4. GOVERNANCE

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36 SEC. 13. An article heading is added to Title 6 (commencing
37 with Section 1350) of Part 4 of Division 2 of the Civil Code,
38 immediately preceding Section 1363, to read:

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Article 1. Association

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SEC. 14. Section 1363 of the Civil Code is amended to read:
1363. (a) A common interest development shall be managed by an association which may be incorporated or unincorporated. The association may be referred to as a community association.
(b) An association, whether incorporated or unincorporated, shall prepare a budget pursuant to Section 1365 and disclose information, if requested, in accordance with Section 1368.
(c) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.
The association, whether incorporated or unincorporated, may exercise the powers granted to an association by Section 383 of the Code of Civil Procedure and the powers granted to the association in this title.
(d) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.
(e) Notwithstanding any other provision of law, notice of meetings of the members shall specify those matters the board intends to present for action by the members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action.
(f) Members of the association shall have access to association records, including accounting books and records and membership lists, in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. The members of the association shall have the same access to the operating rules of the association as they have to the accounting books and records of the association.
(g) If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents or rules of the



1 association, including any monetary penalty relating to the
2 activities of a guest or invitee of a member, the board of directors
3 shall adopt and distribute to each member, by personal delivery or
4 first-class mail, a schedule of the monetary penalties that may be
5 assessed for those violations, which shall be in accordance with
6 authorization for member discipline contained in the governing
7 documents. The board of directors shall not be required to
8 distribute any additional schedules of monetary penalties unless
9 there are changes from the schedule that was adopted and
10 distributed to the members pursuant to this subdivision.

11 (h) When the board of directors is to meet to consider or impose
12 discipline upon a member, the board shall notify the member in
13 writing, by either personal delivery or first-class mail, at least 10
14 days prior to the meeting. The notification shall contain, at a
15 minimum, the date, time, and place of the meeting, the nature of
16 the alleged violation for which a member may be disciplined, and
17 a statement that the member has a right to attend and may address
18 the board at the meeting. The board of directors of the association
19 shall meet in executive session if requested by the member being
20 disciplined.

21 If the board imposes discipline on a member, the board shall
22 provide the member a written notification of the disciplinary
23 action, by either personal delivery or first-class mail, within 15
24 days following the action. A disciplinary action shall not be
25 effective against a member unless the board fulfills the
26 requirements of this subdivision.

27 (i) Whenever two or more associations have consolidated any
28 of their functions under a joint neighborhood association or similar
29 organization, members of each participating association shall be
30 entitled to attend all meetings of the joint association other than
31 executive sessions, (1) shall be given reasonable opportunity for
32 participation in those meetings and (2) shall be entitled to the same
33 access to the joint association's records as they are to the
34 participating association's records.

35 (j) Nothing in this section shall be construed to create, expand,
36 or reduce the authority of the board of directors of an association
37 to impose monetary penalties on an association member for a
38 violation of the governing documents or rules of the association.



1 SEC. 15. An article heading is added to Title 6 (commencing
2 with Section 1350) of Part 4 of Division 2 of the Civil Code,
3 immediately preceding Section 1363.05, to read:

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5 Article 2. Common Interest Development Open Meeting Act

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7 SEC. 16. An article heading is added to Title 6 (commencing
8 with Section 1350) of Part 4 of Division 2 of the Civil Code,
9 immediately preceding Section 1363.1, to read:

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11 Article 3. Managing Agents

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13 SEC. 17. An article heading is added to Title 6 (commencing
14 with Section 1350) of Part 4 of Division 2 of the Civil Code,
15 immediately preceding Section 1363.5, to read:

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17 Article 4. Public Information

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19 SEC. 18. A chapter heading is added to Title 6 (commencing
20 with Section 1350) of Part 4 of Division 2 of the Civil Code,
21 immediately preceding Section 1364, to read:

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23 CHAPTER 5. OPERATIONS

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25 SEC. 19. An article heading is added to Title 6 (commencing
26 with Section 1350) of Part 4 of Division 2 of the Civil Code,
27 immediately preceding Section 1364, to read:

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29 Article 1. Common Areas

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31 SEC. 20. An article heading is added to Title 6 (commencing
32 with Section 1350) of Part 4 of Division 2 of the Civil Code,
33 immediately preceding Section 1365, to read:

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35 Article 2. Fiscal Matters

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37 SEC. 21. An article heading is added to Title 6 (commencing
38 with Section 1350) of Part 4 of Division 2 of the Civil Code,
39 immediately preceding Section 1365.7, to read:

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Article 3. Insurance

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SEC. 22. An article heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1366, to read:

Article 4. Assessments

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SEC. 23. A chapter heading is added to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code, immediately preceding Section 1368, to read:

CHAPTER 6. TRANSFER OF OWNERSHIP INTERESTS

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SEC. 24. Section 1368 of the Civil Code is amended to read:

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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:

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(1) A copy of the governing documents of the common interest development, including any operating rules, and including a copy of the association’s articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

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(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.

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

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(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association’s current regular and special assessments and fees, any assessments levied upon the owner’s interest in the common interest development that are unpaid on the date of the statement,



1 and any monetary fines or penalties levied upon the owner's
2 interest and unpaid on the date of the statement. The statement
3 obtained from an authorized representative shall also include true
4 information on late charges, interest, and costs of collection which,
5 as of the date of the statement, are or may be made a lien upon the
6 owner's interest in a common interest development pursuant to
7 Section 1367 or 1367.1.

8 (5) A copy or a summary of any notice previously sent to the
9 owner pursuant to subdivision (h) of Section 1363 that sets forth
10 any alleged violation of the governing documents that remains
11 unresolved at the time of the request. The notice shall not be
12 deemed a waiver of the association's right to enforce the governing
13 documents against the owner or the prospective purchaser of the
14 separate interest with respect to any violation. This paragraph shall
15 not be construed to require an association to inspect an owner's
16 separate interest.

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

26 (7) A copy of the latest information provided for in Section
27 1375.1.

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

33 (b) Upon written request, an association shall, within 10 days
34 of the mailing or delivery of the request, provide the owner of a
35 separate interest with a copy of the requested items specified in
36 paragraphs (1) to (8), inclusive, of subdivision (a). The association
37 may charge a fee for this service, which shall not exceed the
38 association's reasonable cost to prepare and reproduce the
39 requested items.



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

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

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

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

16 SEC. 25. A chapter heading is added to Title 6 (commencing
17 with Section 1350) of Part 4 of Division 2 of the Civil Code,
18 immediately preceding Section 1368.4, to read:

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20 CHAPTER 7. CIVIL ACTIONS AND LIENS

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22 SEC. 26. A chapter heading is added to Title 6 (commencing
23 with Section 1350) of Part 4 of Division 2 of the Civil Code,
24 immediately preceding Section 1370, to read:

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26 CHAPTER 8. CONSTRUCTION OF INSTRUMENTS AND ZONING

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28 SEC. 27. A chapter heading is added to Title 6 (commencing
29 with Section 1350) of Part 4 of Division 2 of the Civil Code,
30 immediately preceding Section 1375, to read:

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32 CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

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34 SEC. 28. A chapter heading is added to Title 6 (commencing
35 with Section 1350) of Part 4 of Division 2 of the Civil Code,
36 immediately preceding Section 1376, to read:

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38 CHAPTER 10. IMPROVEMENTS

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40 SEC. 29. Section 1373 of the Civil Code is amended to read:



1 1373.

2 (a) The following provisions do not apply to a common interest
3 development that is limited to industrial or commercial uses by
4 zoning or by its declaration:

5 (1) Section 1356.

6 (2) Article 4 (commencing with Section 1357.100) of Chapter
7 2 of Title 6 of Part 4 of Division 2 of the Civil Code.

8 (3) Subdivision (b) of Section 1363.

9 (4) Section 1365.

10 (5) Section 1365.5.

11 (6) Subdivision (b) of Section 1366.

12 (7) Section 1366.1.

13 (8) Section 1368.

14 (b) The Legislature finds that the provisions listed in
15 subdivision (a) are appropriate to protect purchasers in residential
16 common interest developments, however, the provisions may not
17 be necessary to protect purchasers in commercial or industrial
18 developments since the application of those provisions could
19 result in unnecessary burdens and costs for these types of
20 developments.

