

Assembly Bill No. 512

Passed the Assembly September 9, 2003

Chief Clerk of the Assembly

Passed the Senate September 4, 2003

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 1363, 1363.6, 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, 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. The act requires common interest development associations to submit specified information to the Secretary of State to assist with the identification of common interest developments.

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, standards for delinquent assessment 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 of a proposed rule change, except as specified, 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.

This bill would also require the association to include the name of the president of the association with the information that it is required to submit to the Secretary of State.

This bill would incorporate additional changes in Section 1368 of the Civil Code proposed by AB 1086, to become operative if both bills are enacted and take effect on or before January 1, 2004, and this bill is enacted last.

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

SECTION 1. 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 1350, to read:

CHAPTER 1. GENERAL PROVISIONS

SEC. 2. 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 1350, to read:

Article 1. Preliminary Provisions

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

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

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

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

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

(1) Personal delivery.

(2) First-class mail, postage prepaid, addressed to a member at the address last shown on the books of the association or otherwise



provided by the member. Delivery is deemed to be complete on deposit into the United States mail.

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

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

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

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

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

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

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

SEC. 5. 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 1351, to read:

Article 2. Definitions

SEC. 6. 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 1352, to read:

CHAPTER 2. GOVERNING DOCUMENTS

SEC. 7. 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 1352, to read:



Article 1. Creation

SEC. 8. 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 1354, to read:

Article 2. Enforcement

SEC. 9. 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 1355, to read:

Article 3. Amendment

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

Article 4. Operating Rules

1357.100. As used in this article:

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

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

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

(a) The rule is in writing.

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

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

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

(e) The rule is reasonable.



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

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

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

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

(4) Any standards for delinquent assessment payment plans.

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

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

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

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

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

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

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

1357.130. (a) The board of directors shall provide written notice of a proposed rule change to the members at least 30 days before making the rule change. The notice shall include the text of the proposed rule change and a description of the purpose and effect of the proposed rule change. Notice is not required under this subdivision if the board of directors determines that an immediate rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the association.

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

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



If the rule change was an emergency rule change made under subdivision (d), the notice shall include the text of the rule change, a description of the purpose and effect of the rule change, and the date that the rule change expires.

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

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

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

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

(c) The rule change may be reversed by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum), or if the declaration or bylaws require a greater proportion, by the affirmative vote or written ballot of the proportion required. In lieu of calling the meeting described in this section, the board may distribute a



written ballot to every member of the association in conformity with the requirements of Section 7513 of the Corporations Code.

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

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

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

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

(h) This section does not apply to an emergency rule change made under subdivision (d) of Section 1357.130.

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

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

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

SEC. 11. 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 1358, to read:

CHAPTER 3. OWNERSHIP RIGHTS AND INTERESTS

SEC. 12. 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 1363, to read:



CHAPTER 4. GOVERNANCE

SEC. 13. 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 1363, to read:

Article 1. Association

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

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

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

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



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

SEC. 15. 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 1363.05, to read:

Article 2. Common Interest Development Open Meeting Act

SEC. 16. 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 1363.1, to read:

Article 3. Managing Agents

SEC. 17. 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 1363.5, to read:

Article 4. Public Information

SEC. 18. Section 1363.6 of the Civil Code is amended to read:

1363.6. (a) To assist with the identification of common interest developments, each association, whether incorporated or unincorporated, shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:

(1) A statement that the association is formed to manage a common interest development under the Davis-Stirling Common Interest Development Act.

(2) The name of the association.

(3) The street address of the association's onsite office, or, if none, of the responsible officer or managing agent of the association.

(4) The name, address, and either the daytime telephone number or e-mail address of the president of the association, other than the address, telephone number, or e-mail address of the association's onsite office or managing agent of the association.



(5) The name, street address, and daytime telephone number of the association's managing agent, if any.

(6) The county, and if in an incorporated area, the city in which the development is physically located. If the boundaries of the development are physically located in more than one county, each of the counties in which it is located.

(7) If the development is in an unincorporated area, the city closest in proximity to the development.

(8) The nine-digit ZIP Code, front street, and nearest cross street of the physical location of the development.

(9) The type of common interest development, as defined in subdivision (c) of Section 1351, managed by the association.

(10) The number of separate interests, as defined in subdivision (l) of Section 1351, in the development.

(b) The association shall submit the information required by this section as follows:

(1) By incorporated associations, within 90 days after the filing of its original articles of incorporation, and thereafter at the time the association files its biennial statement of principal business activity with the Secretary of State pursuant to Section 8210 of the Corporations Code.

(2) By unincorporated associations, in July of 2003, and in that same month biennially thereafter. Upon changing its status to that of a corporation, the association shall comply with the filing deadlines in paragraph (1).

(c) The association shall notify the Secretary of State of any change in the street address of the association's onsite office or of the responsible officer or managing agent of the association in the form and for a fee prescribed by the Secretary of State, within 60 days of the change.

(d) On and after January 1, 2006, the penalty for an incorporated association's noncompliance with the initial or biennial filing requirements of this section shall be suspension of the association's rights, privileges, and powers as a corporation and monetary penalties, to the same extent and in the same manner as suspension and monetary penalties imposed pursuant to Section 8810 of the Corporations Code.

(e) The Secretary of State shall make the information submitted pursuant to paragraph (4) of subdivision (a) available only for governmental purposes and only to Members of the



Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. The information submitted pursuant to this section shall be made available for governmental or public inspection, as the case may be, on or before July 1, 2004, and thereafter.

SEC. 19. 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 1364, to read:

CHAPTER 5. OPERATIONS

SEC. 20. 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 1364, to read:

Article 1. Common Areas

SEC. 21. 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 1365, to read:

Article 2. Fiscal Matters

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 1365.7, to read:

Article 3. Insurance

SEC. 23. 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

SEC. 24. 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

SEC. 25. 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, 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.

(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 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, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative 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 or 1367.1.

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

(6) 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.

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

(8) 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 (8), 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. 25.5. 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, 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.

(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 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, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative 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 or 1367.1.

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

(6) 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 does 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.

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

(8) 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 (8), inclusive, of subdivision (a). The association may charge a fee for this service that may not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) (1) Subject to the provisions of paragraph (2), neither an association nor a community service organization or similar entity may impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:



(A) An amount not to exceed the association's actual costs to change its records.

(B) An amount authorized by subdivision (b).

(2) The amendments made to this subdivision by the act adding this paragraph do not apply to a community service organization or similar entity that is described in subparagraph (A) or (B):

(A) The community service organization or similar entity satisfies both of the following requirements:

(i) The community service organization or similar entity was established prior to February 20, 2003.

(ii) The community service organization or similar entity exists and operates, in whole or in part, to fund or perform environmental mitigation or to restore or maintain wetlands or native habitat, as required by the state or local government as an express written condition of development.

(B) The community service organization or similar entity satisfies all of the following requirements:

(i) The community service organization or similar entity is not an organization or entity described in subparagraph (A).

(ii) The community service organization or similar entity was established and received a transfer fee prior to January 1, 2004.

(iii) On and after January 1, 2006, the community service organization or similar entity offers a purchaser the following payment options for the fee or charge it collects at time of transfer:

(I) Paying the fee or charge at the time of transfer.

(II) Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the community service organization or similar entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount owed. If the purchaser sells the separate interest before the end of the installment payment plan period, he or she shall pay the remaining balance prior to transfer.

(3) For the purposes of this subdivision, a "community service organization or similar entity" means a nonprofit entity, other than an association, that is organized to provide services to residents of the common interest development or to the public in addition to the residents, to the extent community common areas or facilities are available to the public. A "community service organization or similar entity" does not include an entity that has been organized



solely to raise money and contribute to other nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code and that provide housing or housing assistance.

(d) Any person or entity who willfully violates this section is liable to the purchaser of a separate interest that 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.

(g) For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

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 1368.4, to read:

CHAPTER 7. CIVIL ACTIONS AND LIENS

SEC. 27. 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 1370, to read:

CHAPTER 8. CONSTRUCTION OF INSTRUMENTS AND ZONING

SEC. 28. 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 1375, to read:

CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

SEC. 29. 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 1376, to read:



CHAPTER 10. IMPROVEMENTS

SEC. 30. Section 1373 of the Civil Code is amended to read:

1373. (a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by its declaration:

(1) Section 1356.

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

(3) Subdivision (b) of Section 1363.

(4) Section 1365.

(5) Section 1365.5.

(6) Subdivision (b) of Section 1366.

(7) Section 1366.1.

(8) Section 1368.

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

SEC. 31. Section 25.5 of this bill incorporates amendments to Section 1368 of the Civil Code proposed by both this bill and AB 1086. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 1368 of the Civil Code, and (3) this bill is enacted after AB 1086, in which case Section 25 of this bill shall not become operative.



Approved _____, 2003

Governor

