

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 728

Introduced by Assembly Member Leno

February 19, 2003

An act to amend ~~Section 11000.1~~ *Sections 11000.1 and 11018.12* of the Business and Professions Code, *to amend Section 1675 of the Civil Code, and to amend Sections 66427 and 66452.4 of the Government Code*, relating to subdivided lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 728, as amended, Leno. Real estate: ~~undivided interests subdivisions.~~

~~Existing~~

(1) Existing law provides for the regulation of real estate transactions, including subdivided lands transactions and defines “subdivided lands” and “subdivision” for these purposes with the exception of undivided interests that meet specified conditions. Existing law also defines “subdivided lands” and “subdivision” to include, among other things, any condominium project containing 5 or more condominiums, as defined, and authorizes the Real Estate Commissioner to issue a conditional public report when “subdivided lands” or a “subdivision” are offered for sale to the public and specified requirements are met.

This bill would make a clarifying change to these provisions and would extend the term of a conditional public report from 6 months to 3 years and a term of renewal from one additional term to additional terms of 6 months each, as specified.

(2) Existing law provides that a provision for the payment of liquidated damages in a contract to purchase and sell residential property is valid if the amount actually paid by a buyer who fails to complete the purchase of the property does not exceed 3% of the contract price unless the buyer establishes that the amount is unreasonable. If the amount actually paid exceeds 3% of the purchase price, the provision is invalid unless the party seeking to uphold the provision establishes that the amount actually paid is reasonable.

This bill would delete these provisions and instead provide that the amount actually paid pursuant to a liquidated damages provision is valid to the extent that payment is actually made unless the buyer establishes that the amount is unreasonable as liquidated damages.

(3) The Subdivision Map Act provides that a governing body may not, among other things, refuse approval of a parcel, tentative, or final map of a condominium project on account of the design or the location of buildings on the property shown on the map that are not violative of local ordinances.

This bill would in addition provide that a governing body may not refuse approval of a parcel, tentative, or final map of a condominium project on account of the absence of a condominium plan or plans, as defined.

(4) The Subdivision Map Act requires that a tentative map is deemed to be validly approved if no action is taken upon a tentative map by an authorized advisory agency or the legislative body of a city or county to approve, conditionally approve, or disapprove the tentative map within the time limits specified in the act, and the tentative map complies with applicable requirements of the act and local ordinances enacted pursuant to the act.

This bill would require that a subdivider whose subdivision is deemed approved pursuant to these provisions is entitled, upon request of the local agency or the legislative body, to receive a written certification of approval. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

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

1 SECTION 1. Section 11000.1 of the Business and Professions
2 Code is amended to read:
3 11000.1. (a) “Subdivided lands” and “subdivision,” as
4 defined by Sections 11000 and 11004.5, also include improved or
5 unimproved land or lands, a lot or lots, or a parcel or parcels, of
6 any size, in which, for the purpose of sale or lease or financing,
7 whether immediate or future, five or more undivided interests are
8 created or are proposed to be created.
9 (b) This section does not apply to the creation or proposed
10 creation of undivided interests in land if any one of the following
11 conditions exists:
12 (1) The undivided interests are held or to be held by persons
13 related one to the other by blood or marriage.
14 (2) The undivided interests are to be purchased and owned
15 solely by persons who present evidence satisfactory to the Real
16 Estate Commissioner that they are knowledgeable and
17 experienced investors who comprehend the nature and extent of
18 the risks involved in the ownership of these interests. The Real
19 Estate Commissioner shall grant an exemption from this part if the
20 undivided interests are to be purchased by no more than 10
21 persons, each of whom furnishes a signed statement to the
22 commissioner that he or she (1) is fully informed concerning the
23 real property to be acquired and his or her interest therein including
24 the risks involved in ownership of undivided interests, and (2) is
25 purchasing the interest or interests for his or her own account and
26 with no present intention to resell or otherwise dispose of the
27 interest for value, and (3) expressly waives protections afforded to
28 a purchaser by this part.
29 (3) The undivided interests are created as the result of a
30 foreclosure sale.
31 (4) The undivided interests are created by a valid order or
32 decree of a court.
33 (5) The offering and sale of the undivided interests have been
34 expressly qualified by the issuance of a permit from the
35 Commissioner of Corporations pursuant to the Corporate

1 Securities Law of 1968 (Division 1 (commencing with Section
2 25000) of Title 4 of the Corporations Code).

3 (6) The real property is offered for sale as a time-share project
4 as defined in Section 11003.5.

5 *SEC. 2. Section 11018.12 of the Business and Professions*
6 *Code is amended to read:*

7 11018.12. (a) The commissioner may issue a conditional
8 public report for a subdivision specified in Section 11004.5 if the
9 requirements of subdivision (e) are met, all deficiencies and
10 substantive inadequacies in the documents that are required to
11 make an application for a final public report for the subdivision
12 substantially complete have been corrected, the material elements
13 of the setup of the offering to be made under the authority of the
14 conditional public report have been established, and all
15 requirements for the issuance of a public report set forth in the
16 regulations of the commissioner have been satisfied, except for
17 one or more of the following requirements, as applicable:

18 (1) A final map has not been recorded.

19 (2) A condominium plan pursuant to subdivision (e) of Section
20 1351 of the Civil Code has not been recorded.

21 (3) A declaration of covenants, conditions, and restrictions
22 pursuant to Section 1353 of the Civil Code has not been recorded.

23 (4) A declaration of annexation has not been recorded.

24 (5) A recorded subordination of existing liens to the declaration
25 of covenants, conditions, and restrictions or declaration of
26 annexation, or escrow instructions to effect recordation prior to the
27 first sale, are lacking.

28 (6) Filed articles of incorporation are lacking.

29 (7) A current preliminary report of a licensed title insurance
30 company issued after filing of the final map and recording of the
31 declaration covering all subdivision interests to be included in the
32 public report has not been provided.

33 (8) Other requirements the commissioner determines are likely
34 to be timely satisfied by the applicant, notwithstanding the fact that
35 the failure to meet these requirements makes the application
36 qualitatively incomplete.

37 (b) The commissioner may issue a conditional public report for
38 a subdivision not referred to or specified in Section 11000.1 or
39 11004.5 if the requirements of subdivision (e) are met, all
40 deficiencies and substantive inadequacies in the documents that

1 are required to make an application for a final public report for the
2 subdivision substantially complete have been corrected, the
3 material elements of the setup of the offering to be made under the
4 authority of the conditional public report have been established,
5 and all requirements for issuance of a public report set forth in the
6 regulations of the commissioner have been satisfied, except for
7 one or more of the following requirements, as applicable:

8 (1) A final map has not been recorded.

9 (2) A declaration of covenants, conditions, and restrictions has
10 not been recorded.

11 (3) A current preliminary report of a licensed title insurance
12 company issued after filing of the final map and recording of the
13 declaration covering all subdivision interests to be included in the
14 public report has not been provided.

15 (4) Other requirements the commissioner determines are likely
16 to be timely satisfied by the applicant, notwithstanding the fact that
17 the failure to meet these requirements makes the application
18 qualitatively incomplete.

19 (c) A decision by the commissioner to not issue a conditional
20 public report shall be noticed in writing to the applicant within five
21 business days and that notice shall specifically state the reasons
22 why the report is not being issued.

23 (d) Notwithstanding the provisions of Section 11018.2, a
24 person may sell or lease, or offer for sale or lease, lots or parcels
25 in a subdivision pursuant to a conditional public report if, as a
26 condition of the sale or lease or offer for sale or lease, delivery of
27 legal title or other interest contracted for will not take place until
28 issuance of a public report and provided that the requirements of
29 subdivision (e) are met.

30 (e) (1) Evidence shall be supplied that all purchase money will
31 be deposited in compliance with subdivision (a) of Section
32 11013.2 or subdivision (a) of Section 11013.4, and in the case of
33 a subdivision referred to in subdivision (a) of this section, evidence
34 shall be given of compliance with paragraphs (1) and (2) of
35 subdivision (a) of Section 11018.5.

36 (2) A description of the nature of the transaction shall be
37 supplied.

38 (3) Provision shall be made for the return of the entire sum of
39 money paid or advanced by the purchaser if a subdivision public
40 report has not been issued within six months of the date of issuance

1 of the conditional public report or the purchaser is dissatisfied with
2 the public report because of a change pursuant to Section 11012.

3 (f) A subdivider, principal, or his or her agent shall provide a
4 prospective purchaser a copy of the conditional public report and
5 a written statement including all of the following:

6 (1) Specification of the information required for issuance of a
7 public report.

8 (2) Specification of the information required in the public
9 report that is not available in the conditional public report, along
10 with a statement of the reasons why that information is not
11 available at the time of issuance of the conditional public report.

12 (3) A statement that no person acting as a principal or agent
13 shall sell or lease, or offer for sale or lease, lots or parcels in a
14 subdivision for which a conditional public report has been issued
15 except as provided in this article.

16 (4) Specification of the requirements of subdivision (e).

17 (g) The prospective purchaser shall sign a receipt that he or she
18 has received and has read the conditional public report and the
19 written statement provided pursuant to subdivision (f).

20 (h) The term of a conditional public report shall not exceed ~~six~~
21 ~~months~~ *three years*, and may be renewed for ~~one additional term~~
22 *additional terms* of six months *each* if the commissioner
23 determines that the requirements for issuance of a public report are
24 likely to be satisfied during the renewal term.

25 *SEC. 3. Section 1675 of the Civil Code is amended to read:*

26 1675. (a) As used in this section, “residential property”
27 means real property primarily consisting of a dwelling that meets
28 both of the following requirements:

29 (1) The dwelling contains not more than four residential units.

30 (2) At the time the contract to purchase and sell the property is
31 made, the buyer intends to occupy the dwelling or one of its units
32 as his residence.

33 (b) A provision in a contract to purchase and sell residential
34 property ~~which~~ *that* provides that all or any part of a payment made
35 by the buyer shall constitute liquidated damages to the seller upon
36 the buyer’s failure to complete the purchase of the property is valid
37 to the extent that payment in the form of cash or check, including
38 a postdated check, is actually made if the provision satisfies the
39 requirements of Sections 1677 and 1678 and ~~of~~ subdivision (c) ~~or~~
40 ~~(d)~~ of this section.

1 (c) ~~If the~~ The amount actually paid pursuant to the liquidated
2 damages provision ~~does not exceed 3 percent of the purchase price,~~
3 ~~the provision~~ is valid to the extent that payment is actually made
4 unless the buyer establishes that ~~such~~ the amount is unreasonable
5 as liquidated damages.

6 ~~(d) If the amount actually paid pursuant to the liquidated~~
7 ~~damages provision exceeds 3 percent of the purchase price, the~~
8 ~~provision is invalid unless the party seeking to uphold the~~
9 ~~provision establishes that the amount actually paid is reasonable~~
10 ~~as liquidated damages.~~

11 ~~(e)~~

12 (d) For the purposes of ~~subdivisions (c) and (d)~~ subdivision (c),
13 the reasonableness of an amount actually paid as liquidated
14 damages shall be determined by taking into account both of the
15 following:

16 (1) The circumstances existing at the time the contract was
17 made.

18 (2) The price and other terms and circumstances of any
19 subsequent sale or contract to sell and purchase the same property
20 if such sale or contract is made within six months of the buyer's
21 default.

22 SEC. 4. Section 66427 of the Government Code is amended to
23 read:

24 66427. (a) A map of a condominium project, a community
25 apartment project, or of the conversion of five or more existing
26 dwelling units to a stock cooperative project need not show the
27 buildings or the manner in which the buildings or the airspace
28 above the property shown on the map are to be divided, nor shall
29 the governing body have the right to refuse approval of a parcel,
30 tentative, or final map of the project on account of the design or
31 the location of buildings on the property shown on the map that are
32 not violative of local ordinances or on account of the manner in
33 which airspace is to be divided in conveying the condominium.

34 Fees

35 (b) A map need not include a condominium plan or plans, as
36 defined in subdivision (e) of Section 1351 of the Civil Code, and
37 the governing body may not refuse approval of a parcel, tentative,
38 or final map of the project on account of the absence of a
39 condominium plan.

1 (c) Fees and lot design requirements shall be computed and
2 imposed with respect to those maps on the basis of parcels or lots
3 of the surface of the land shown thereon as included in the project.

4 ~~Nothing~~

5 (d) ~~Nothing~~ herein shall be deemed to limit the power of the
6 legislative body to regulate the design or location of buildings in
7 ~~such~~ a project by or pursuant to local ordinances.

8 ~~If~~

9 (e) If the governing body has approved a parcel map or final
10 map for the establishment of condominiums on property pursuant
11 to the requirements of this division, the separation of a
12 three-dimensional portion or portions of the property from the
13 remainder of the property or the division of that three-dimensional
14 portion or portions into condominiums shall not constitute a
15 further subdivision as defined in Section 66424, provided each of
16 the following conditions has been satisfied:

17 ~~(a)–~~

18 (1) The total number of condominiums established is not
19 increased above the number authorized by the local agency in
20 approving the parcel map or final map.

21 ~~(b)–~~

22 (2) A perpetual estate or an estate for years in the remainder of
23 the property is held by the condominium owners in undivided
24 interests in common, or by an association as defined in subdivision
25 (a) of Section 1351 of the Civil Code, and the duration of the estate
26 in the remainder of the property is the same as the duration of the
27 estate in the condominiums.

28 ~~(c)–~~

29 (3) The three-dimensional portion or portions of property are
30 described on a condominium plan or plans, as defined in
31 subdivision (e) of Section 1351 of the Civil Code.

32 SEC. 5. Section 66452.4 of the Government Code is amended
33 to read:

34 66452.4. (a) If no action is taken upon a tentative map by an
35 advisory agency ~~which~~ that is authorized by local ordinance to
36 approve, conditionally approve, or disapprove the tentative map
37 or by the legislative body within the time limits specified in this
38 chapter or any authorized extension thereof, the tentative map as
39 filed, shall be deemed to be approved, insofar as it complies with
40 other applicable requirements of this division and any local

ordinance ordinances, and it shall be the duty of the clerk of the legislative body to certify or state his or her approval.

(b) Once a tentative map is deemed approved pursuant to subdivision (a), a subdivider shall be entitled, upon request of the local agency or the legislative body, to receive a written certification of approval.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

