

AMENDED IN SENATE AUGUST 26, 2003

AMENDED IN SENATE JULY 22, 2003

AMENDED IN SENATE JULY 7, 2003

AMENDED IN SENATE JUNE 25, 2003

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 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: subdivisions.

(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 renewal of a conditional public report from one additional term to additional terms of 6 months each, as specified,~~ and would extend the term of a conditional public report for attached residential condominium units, as defined, to 30 months and a renewal to one additional term of 6 months.

(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 provide that for the initial sale of a newly constructed attached residential condominium, the amount actually paid to the seller *in the event of a buyer's default* pursuant to a liquidated damages provision that exceeds 3% of the purchase price of the residential unit is subject to specified requirements, including an accounting of its costs and revenues, as specified. If the purchaser is a “new qualified buyer,” as defined, the seller shall perform the accounting within 60 days after the new qualified buyer has entered into the contract to purchase the unit.

(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: yes. State-mandated local program: 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



1 real property to be acquired and his or her interest therein including
2 the risks involved in ownership of undivided interests, and (2) is
3 purchasing the interest or interests for his or her own account and
4 with no present intention to resell or otherwise dispose of the
5 interest for value, and (3) expressly waives protections afforded to
6 a purchaser by this part.

7 (3) The undivided interests are created as the result of a
8 foreclosure sale.

9 (4) The undivided interests are created by a valid order or
10 decree of a court.

11 (5) The offering and sale of the undivided interests have been
12 expressly qualified by the issuance of a permit from the
13 Commissioner of Corporations pursuant to the Corporate
14 Securities Law of 1968 (Division 1 (commencing with Section
15 25000) of Title 4 of the Corporations Code).

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

18 SEC. 2. Section 11018.12 of the Business and Professions
19 Code is amended to read:

20 11018.12. (a) The commissioner may issue a conditional
21 public report for a subdivision specified in Section 11004.5 if the
22 requirements of subdivision (e) are met, all deficiencies and
23 substantive inadequacies in the documents that are required to
24 make an application for a final public report for the subdivision
25 substantially complete have been corrected, the material elements
26 of the setup of the offering to be made under the authority of the
27 conditional public report have been established, and all
28 requirements for the issuance of a public report set forth in the
29 regulations of the commissioner have been satisfied, except for
30 one or more of the following requirements, as applicable:

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

32 (2) A condominium plan pursuant to subdivision (e) of Section
33 1351 of the Civil Code has not been recorded.

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

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

37 (5) A recorded subordination of existing liens to the declaration
38 of covenants, conditions, and restrictions or declaration of
39 annexation, or escrow instructions to effect recordation prior to the
40 first sale, are lacking.



1 (6) Filed articles of incorporation are lacking.

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

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

10 (b) The commissioner may issue a conditional public report for
11 a subdivision not referred to or specified in Section 11000.1 or
12 11004.5 if the requirements of subdivision (e) are met, all
13 deficiencies and substantive inadequacies in the documents that
14 are required to make an application for a final public report for the
15 subdivision substantially complete have been corrected, the
16 material elements of the setup of the offering to be made under the
17 authority of the conditional public report have been established,
18 and all requirements for issuance of a public report set forth in the
19 regulations of the commissioner have been satisfied, except for
20 one or more of the following requirements, as applicable:

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

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

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

28 (4) Other requirements the commissioner determines are likely
29 to be timely satisfied by the applicant, notwithstanding the fact that
30 the failure to meet these requirements makes the application
31 qualitatively incomplete.

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

36 (d) Notwithstanding the provisions of Section 11018.2, a
37 person may sell or lease, or offer for sale or lease, lots or parcels
38 in a subdivision pursuant to a conditional public report if, as a
39 condition of the sale or lease or offer for sale or lease, delivery of
40 legal title or other interest contracted for will not take place until



1 issuance of a public report and provided that the requirements of
2 subdivision (e) are met.

3 (e) (1) Evidence shall be supplied that all purchase money will
4 be deposited in compliance with ~~Section 11013.2 or subdivision~~
5 *(a) of Section 11013.2 or subdivision (a) of Section 11013.4*, and
6 in the case of a subdivision referred to in subdivision (a) of this
7 section, evidence shall be given of compliance with paragraphs (1)
8 and (2) of subdivision (a) of Section 11018.5.

9 (2) A description of the nature of the transaction shall be
10 supplied.

11 (3) Provision shall be made for the return of the entire sum of
12 money paid or advanced by the purchaser if a subdivision public
13 report has not been issued during the term of the conditional public
14 report, or as extended, or the purchaser is dissatisfied with the
15 public report because of a change pursuant to Section 11012.

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

19 (1) Specification of the information required for issuance of a
20 public report.

21 (2) Specification of the information required in the public
22 report that is not available in the conditional public report, along
23 with a statement of the reasons why that information is not
24 available at the time of issuance of the conditional public report.

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

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

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

33 (h) The term of a conditional public report shall not exceed six
34 months, and may be renewed for ~~additional terms of six months~~
35 *each one additional term of six months* if the commissioner
36 determines that the requirements for issuance of a public report are
37 likely to be satisfied during the renewal term.

38 (i) The term of a conditional public report for attached
39 residential condominium units ~~consisting of 10 units or more~~, as
40 defined pursuant to Section 783 of the Civil Code, *consisting of 25*



1 *units or more as specified on the approved tentative tract map,*
2 shall not exceed 30 months and may be renewed for one additional
3 term of six months if the commissioner determines that the
4 requirements for issuance of a public report are likely to be
5 satisfied during the renewal term.

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

7 1675. (a) As used in this section, “residential property”
8 means real property primarily consisting of a dwelling that meets
9 both of the following requirements:

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

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

14 (b) A provision in a contract to purchase and sell residential
15 property that provides that all or any part of a payment made by
16 the buyer shall constitute liquidated damages to the seller upon the
17 buyer’s failure to complete the purchase of the property is valid to
18 the extent that payment in the form of cash or check, including a
19 postdated check, is actually made if the provision satisfies the
20 requirements of Sections 1677 and 1678 and either subdivision (c)
21 or (d) of this section.

22 (c) If the amount actually paid pursuant to the liquidated
23 damages provision does not exceed 3 percent of the purchase price,
24 the provision is valid to the extent that payment is actually made
25 unless the buyer establishes that the amount is unreasonable as
26 liquidated damages.

27 (d) If the amount actually paid pursuant to the liquidated
28 damages provision exceeds 3 percent of the purchase price, the
29 provision is invalid unless the party seeking to uphold the
30 provision establishes that the amount actually paid is reasonable
31 as liquidated damages.

32 (e) For the purposes of subdivisions (c) and (d), the
33 reasonableness of an amount actually paid as liquidated damages
34 shall be determined by taking into account both of the following:

35 (1) The circumstances existing at the time the contract was
36 made.

37 (2) The price and other terms and circumstances of any
38 subsequent sale or contract to sell and purchase the same property
39 if the sale or contract is made within six months of the buyer’s
40 default.



1 (f) (1) Notwithstanding either subdivision (c) or (d), for the
2 initial sale of newly constructed attached condominium units, as
3 defined pursuant to Section 783 of the Civil Code, that involves the
4 sale of an attached residential condominium unit located within a
5 structure of 10 or more residential condominium units and the
6 amount actually paid to the seller pursuant to the liquidated
7 damages provision exceeds 3 percent of the purchase price of the
8 residential unit in the transaction both of the following shall occur
9 *in the event of a buyer's default:*

10 (A) The seller shall perform an accounting of its costs and
11 revenues related to and fairly allocable to the construction and sale
12 of the residential unit within 60 calendar days after the final close
13 of escrow of the sale of the unit within the structure.

14 (B) The accounting shall include any and all costs and revenues
15 related to the construction and sale of the residential property and
16 any delay caused by buyer's default. ~~In the event that the~~
17 ~~accounting establishes that the seller did not incur damages in~~
18 ~~excess of 3 percent of the purchase price in the terminated~~
19 ~~transaction on the sale of the residential property as a result of the~~
20 ~~buyer's default, then the~~ *The seller shall make reasonable efforts*
21 *to mitigate any damages arising from the default. The seller shall*
22 *refund to the buyer any amounts previously retained as liquidated*
23 *damages in excess of the greater of either 3 percent of the*
24 *originally agreed-upon purchase price of the residential property*
25 *or the amount of the seller's losses resulting from the buyer's*
26 *default, as calculated by the accounting.*

27 (2) The refund shall be sent to the buyer's last known address
28 within 90 days after the final close of escrow of the sale or lease
29 of all the residential condominium units within the structure.

30 (3) If the amount retained by the seller after the accounting does
31 not exceed 3 percent of the purchase price, the amount is valid
32 unless the buyer establishes that the amount is unreasonable as
33 liquidated damages pursuant to subdivision (e).

34 (4) Subdivision (d) shall not apply to any dispute regarding the
35 reasonableness of any amount retained as liquidated damages
36 pursuant to this subdivision.

37 (5) Notwithstanding the time periods regarding the
38 performance of the accounting set forth in paragraph (1), if a "new
39 qualified buyer" has entered into a contract to purchase the
40 residential property in question, the seller shall perform the



1 accounting within 60 calendar days after a new qualified buyer has
2 entered into a contract to purchase.

3 (6) As used in this subdivision, the term “structure” shall mean
4 either of the following:

5 (A) Improvements constructed on a common foundation.

6 (B) Improvements constructed by the same owner that must be
7 constructed concurrently due to the design characteristics of the
8 improvements or physical characteristics of the property on which
9 the improvements are located.

10 (7) As used in this subdivision, the term “new qualified buyer”
11 shall mean a buyer that:

12 (A) Has been issued a loan commitment, which satisfies the
13 purchase agreement loan contingency requirement, by an
14 institutional lender to obtain a loan for an amount equal to the
15 purchase price less any downpayment possessed by the buyer.

16 ~~(B) Was not in contract to purchase a different residential
17 property in the structure immediately prior to entering into the
18 contract to purchase the residential property in question.~~

19 ~~(C)~~

20 (B) Has contracted to pay a purchase price that is greater than
21 or equal to the purchase price to be paid by the original buyer.

22 SEC. 4. Section 66427 of the Government Code is amended
23 to 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 (b) A map need not include a condominium plan or plans, as
35 defined in subdivision (e) of Section 1351 of the Civil Code, and
36 the governing body may not refuse approval of a parcel, tentative,
37 or final map of the project on account of the absence of a
38 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 (d) Nothing herein shall be deemed to limit the power of the
5 legislative body to regulate the design or location of buildings in
6 a project by or pursuant to local ordinances.

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

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

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

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

27 SEC. 5. Section 66452.4 of the Government Code is amended
28 to read:

29 66452.4. (a) If no action is taken upon a tentative map by an
30 advisory agency that is authorized by local ordinance to approve,
31 conditionally approve, or disapprove the tentative map or by the
32 legislative body within the time limits specified in this chapter or
33 any authorized extension thereof, the tentative map as filed, shall
34 be deemed to be approved, insofar as it complies with other
35 applicable requirements of this division and any local ordinances,
36 and it shall be the duty of the clerk of the legislative body to certify
37 or state his or her approval.

38 (b) Once a tentative map is deemed approved pursuant to
39 subdivision (a), a subdivider shall be entitled, upon request of the



1 local agency or the legislative body, to receive a written
2 certification of approval.

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

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