

AMENDED IN ASSEMBLY MAY 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1836

Introduced by Assembly Member Harman

January 22, 2004

An act to amend Sections 1354 and ~~1366.3~~, 1357.120, and 1366.3 of, to amend and renumber Section 1368.4 of, and to add Article 5 (commencing with Section 1363.810) to Chapter 4 of, and Article 1 (commencing with Section 1368.3) and Article 2 (commencing with Section 1369.510) to Chapter 7 of, Title 6 of Part 4 of Division 2 of, the Civil Code, and to repeal Section 383 of the Code of Civil Procedure, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1836, as amended, Harman. Common interest developments: dispute resolution.

Existing law provides that a common interest development association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings, in various circumstances, including enforcement of the governing documents. The existing Davis-Stirling Common Interest Development Act requires, before a common interest development association or an owner of a separate interest therein brings certain actions related to the enforcement of the development's governing documents, that the parties endeavor to submit their dispute to alternative dispute resolution, as specified. *Existing law defines and regulates operating rules in connection with common interest*

development associations, and apply them to association procedures for resolution of assessment disputes.

This bill would revise and recast ~~these~~ *the provisions described above relating to dispute resolution.* The bill would specify that a common interest development association and an owner of a separate interest may enforce governing documents other than the declaration. The bill would create a new dispute resolution procedure for conflicts between an association and a member, to be applied when the dispute concerns specified subjects. The bill would require an association to provide a fair, reasonable, and expeditious procedure for resolving these disputes, as defined by certain minimum standards, and would provide a procedure for associations that do not have a procedure of their own that meets the minimum standards, ~~subject to good faith implementation among them that the member not be charged a fee to participate in the process.~~ *The bill would also require that the association provide notice of its dispute resolution process, as specified.*

The bill would revise the existing dispute resolution provisions, described above, to clarify their application to other nonjudicial processes and to broaden their applicability to include actions enforcing the Davis-Stirling Common Interest Development Act and the Nonprofit Mutual Benefit Corporation Law. Among other things, the bill would also provide for the tolling of a statute of limitations in certain circumstances, expand the permissible methods of service of a request to submit a dispute to the resolution process, and change the confidentiality protections applied to these procedures. *This bill would require that a common interest development association's procedures for the resolution of all disputes, not only those related to assessments, satisfy requirements regarding association operating rules.* The bill would make additional technical and conforming changes.

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. Section 1354 of the Civil Code is amended to
- 2 read:
- 3 1354. (a) The covenants and restrictions in the declaration
- 4 shall be enforceable equitable servitudes, unless unreasonable,
- 5 and shall inure to the benefit of and bind all owners of separate
- 6 interests in the development. Unless the declaration states



otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.

(c) In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs.

SEC. 2. *Section 1357.120 of the Civil Code is amended to read:*

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.

SEC. 3. Article 5 (commencing with Section 1363.810) is added to Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 5. Dispute Resolution Procedure

1363.810. (a) This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the governing documents of the common interest development or association.

(b) This article supplements, and does not replace, Article 2 (commencing with Section 1369.510) of Chapter 7, relating to alternative dispute resolution as a prerequisite to an enforcement action.

(c) This article does not apply to a dispute that is subject to subdivision (c) of Section 1367.1.

1363.820. (a) An association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article.

~~(b) A dispute resolution procedure provided by an association is presumed to be fair, reasonable, and expeditious. The presumption created by this subdivision is a presumption affecting the burden of proof. In developing a procedure pursuant to this article, an association shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs available through the Department of Consumer Affairs and programs available through the United States Department of Housing and Urban Development and other public agencies, which may be accessed by means of the Internet.~~

(c) If an association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article, the procedure provided in Section 1363.840 applies and satisfies the requirement of subdivision (a).

1363.830. A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

(a) The procedure may be invoked by either party to the dispute. *A request invoking the procedure shall be in writing.*

1 (b) *The procedure shall provide for prompt deadlines. The*
2 *procedure shall state the maximum time for the association to act*
3 *on a request invoking the procedure.*

4 (c) If the procedure is invoked by a member, the association
5 shall participate in, ~~and is bound by any resolution of the dispute~~
6 ~~pursuant to~~, the procedure.

7 ~~(c)~~

8 (d) If the procedure is invoked by the association, the member
9 may elect not to participate in the procedure. If the member
10 participates but the dispute is resolved other than by agreement of
11 the member, the member shall have a right of appeal to the
12 association's board of directors.

13 ~~(d)~~

14 (e) *A resolution of a dispute pursuant to the procedure, that is*
15 *not in conflict with the law or the governing documents, binds the*
16 *association and is judicially enforceable. An agreement reached*
17 *pursuant to the procedure, that is not in conflict with the law or the*
18 *governing documents, binds the parties and is judicially*
19 *enforceable.*

20 ~~(e)~~

21 (f) *The procedure shall provide a means by the member and the*
22 *association may explain their positions.*

23 (g) A member of the association shall not be charged a fee to
24 participate in the process.

25 1363.840. (a) This section applies in an association that does
26 not otherwise provide a fair, reasonable, and expeditious dispute
27 resolution procedure. The procedure provided in this section is
28 fair, reasonable, and expeditious, within the meaning of this
29 article, ~~subject to good faith implementation by an association.~~

30 (b) Either party to a dispute within the scope of this article may
31 invoke the following procedure:

32 (1) The party may request the other party to meet and confer in
33 an effort to resolve the dispute. The request shall be in writing.

34 (2) A member of an association may refuse a request to meet
35 and confer. The association may not refuse a request to meet and
36 confer.

37 (3) The association's board of directors shall designate a
38 member of the board to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in *good faith* in an effort to resolve the dispute.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is either consistent with the authority granted by the board of directors to its designee or the agreement is ratified by the board of directors.

~~SEC. 3.~~

(d) *A member of the association may not be charged a fee to participate in the process.*

SEC. 4. *Section 1363.850 is added to the Civil Code, to read: 1363.850. The notice provided pursuant to Section 1369.590 shall include a description of the internal dispute resolution process provided pursuant to this article.*

SEC. 5. Section 1366.3 of the Civil Code is amended to read: 1366.3. (a) The exception for disputes related to association assessments in Article 2 (commencing with Section 1369.510) of Chapter 7 does not apply if, in a dispute between the owner of a separate interest and the association regarding the assessments imposed by the association, the owner of the separate interest chooses to pay in full to the association all of the charges listed in paragraphs (1) to (4), inclusive, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than 30 days from the recording of a notice of delinquent assessment in accordance with Section 1367 or 1367.1; and in those instances, the association shall inform the owner that the owner may resolve the dispute through alternative dispute resolution as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7, civil action, and any other procedures to resolve the dispute that may be available through the association.

(1) The amount of the assessment in dispute.

(2) Late charges.

(3) Interest.

(4) All reasonable fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including reasonable attorney's fees not to exceed four hundred twenty-five dollars (\$425).

(b) The right of any owner of a separate interest to utilize alternative dispute resolution under this section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any owner of a separate interest and the association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this section. The owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the association on the total amount paid under paragraphs (1) to (4), inclusive, of subdivision (a), if it is determined through alternative dispute resolution that the assessment levied by the association was not correctly levied.

~~SEC. 4.~~

SEC. 6. Article 1 (commencing with Section 1368.3) is added to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 1. Miscellaneous Provisions

1368.3. An association established to manage a common interest development has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual owners of the common interest development, in matters pertaining to the following:

(a) Enforcement of the governing documents.

(b) Damage to the common area.

(c) Damage to a separate interest that the association is obligated to maintain or repair.

(d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair.

1368.4. (a) In an action maintained by an association pursuant to subdivision (b), (c), or (d) of Section 1368.3, the

1 amount of damages recovered by the association shall be reduced
2 by the amount of damages allocated to the association or its
3 managing agents in direct proportion to their percentage of fault
4 based upon principles of comparative fault. The comparative fault
5 of the association or its managing agents may be raised by way of
6 defense, but shall not be the basis for a cross-action or separate
7 action against the association or its managing agents for
8 contribution or implied indemnity, where the only damage was
9 sustained by the association or its members. It is the intent of the
10 Legislature in enacting this subdivision to require that
11 comparative fault be pleaded as an affirmative defense, rather than
12 a separate cause of action, where the only damage was sustained
13 by the association or its members.

14 (b) In an action involving damages described in subdivision
15 (b), (c), or (d) of Section 1368.3, the defendant or cross-defendant
16 may allege and prove the comparative fault of the association or
17 its managing agents as a setoff to the liability of the defendant or
18 cross-defendant even if the association is not a party to the
19 litigation or is no longer a party whether by reason of settlement,
20 dismissal, or otherwise.

21 (c) Subdivisions (a) and (b) apply to actions commenced on or
22 after January 1, 1993.

23 (d) Nothing in this section affects a person's liability under
24 Section 1431, or the liability of the association or its managing
25 agent for an act or omission which causes damages to another.

26 ~~SEC. 5.~~

27 *SEC. 7.* Section 1368.4 of the Civil Code is amended and
28 renumbered to read:

29 1368.5. (a) Not later than 30 days prior to the filing of any
30 civil action by the association against the declarant or other
31 developer of a common interest development for alleged damage
32 to the common areas, alleged damage to the separate interests that
33 the association is obligated to maintain or repair, or alleged
34 damage to the separate interests that arises out of, or is integrally
35 related to, damage to the common areas or separate interests that
36 the association is obligated to maintain or repair, the board of
37 directors of the association shall provide written notice to each
38 member of the association who appears on the records of the
39 association when the notice is provided. This notice shall specify
40 all of the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

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

(3) The time and place of this meeting.

(b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.

~~SEC. 6.~~

SEC. 8. Article 2 (commencing with Section 1369.510) is added to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 2. Alternative Dispute Resolution

1369.510. As used in this article:

(a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding ~~at the option~~, *with the voluntary consent* of the parties.

(b) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this title.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents of a common interest development.

1369.520. (a) An association or an owner or a member of a common interest development may not file an enforcement action *in the superior court* unless the parties have endeavored to submit their dispute to alternative dispute resolution *pursuant to this article*.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in

1 conjunction with a claim for monetary damages not in excess of
2 five thousand dollars (\$5,000). ~~Except~~

3 *(c) This section does not apply to a small claims action.*

4 *(d) Except as provided in Section 1366.3, this section does not*
5 *apply to an action for association assessments. This section does*
6 *not apply to a small claims action.*

7 1369.530. (a) Any party to a dispute may initiate the process
8 required by Section 1369.520 by serving on all other parties to the
9 dispute a Request for Resolution. The Request for Resolution shall
10 include all of the following:

11 (1) A brief description of the dispute between the parties.

12 (2) A request for alternative dispute resolution.

13 (3) A notice that the party receiving the Request for Resolution
14 is required to respond within 30 days of receipt or the request will
15 be deemed rejected.

16 (4) If the party on whom the request is served is the owner of
17 a separate interest, a copy of this article.

18 (b) Service of the Request for Resolution shall be by personal
19 delivery, first class mail, express mail, facsimile transmission, or
20 other means reasonably calculated to provide the party on whom
21 the request is served actual notice of the request.

22 (c) A party on whom a Request for Resolution is served has 30
23 days following service to accept or reject the request. If a party
24 does not accept the request within that period, the request is
25 deemed rejected by the party.

26 1369.540. (a) If the party on whom a Request for Resolution
27 is served accepts the request, the parties shall complete the
28 alternative dispute resolution within 90 days after the party
29 initiating the request receives the acceptance, unless this period is
30 extended by written stipulation signed by both parties.

31 (b) Chapter 2 (commencing with Section 1115) of Division 9
32 of the Evidence Code applies to any form of alternative dispute
33 resolution initiated by a Request for Resolution under this article,
34 other than arbitration.

35 (c) The costs of the alternative dispute resolution shall be borne
36 by the parties.

37 1369.550. ~~If the applicable time limitation for commencing~~
38 ~~an enforcement action would run within 120 days after service of~~
39 ~~a Request for Resolution, the time limitation is extended to the~~
40 ~~120th day after service. If the parties have stipulated to an~~

1 ~~extension of the alternative dispute resolution period beyond the~~
2 ~~120th day after service of a Request for Resolution pursuant to~~
3 ~~Section 1369.540, a time limitation that would expire during the~~
4 ~~alternative dispute resolution period is extended to the end of the~~
5 ~~stipulated period. a Request for Resolution is served before the end~~
6 ~~of the applicable time limitation for commencing an enforcement~~
7 ~~action, the time limitation is tolled during the following periods:~~

8 (a) *The period provided in Section 1369.530 for response to a*
9 *Request for Resolution.*

10 (b) *If the Request for Resolution is accepted, the period*
11 *provided by Section 1369.540 for completion of alternative dispute*
12 *resolution, including any extension of time stipulated to by the*
13 *parties pursuant to Section 1369.540.*

14 1369.560. (a) At the time of commencement of an
15 enforcement action, the party commencing the action shall file
16 with the initial pleading a certificate stating that ~~alternative one or~~
17 ~~more of the following conditions is satisfied:~~

18 (1) *Alternative dispute resolution has been completed in*
19 *compliance with this article.*

20 (2) *One of the other parties to the dispute did not accept the*
21 *terms offered for alternative dispute resolution.*

22 (3) *Preliminary or temporary injunctive relief is necessary.*

23 (b) Failure to file a certificate pursuant to subdivision (a) is
24 grounds for a demurrer or a motion to strike unless ~~one of the~~
25 ~~following conditions is satisfied:~~

26 ~~(1) The party commencing the action certifies in writing that~~
27 ~~one of the other parties to the dispute refused alternative dispute~~
28 ~~resolution before commencement of the action, or that preliminary~~
29 ~~or temporary injunctive relief is necessary.~~

30 ~~(2) The~~ the court finds that dismissal of the action for failure
31 to comply with this article would result in substantial prejudice to
32 one of the parties.

33 1369.570. (a) After an enforcement action is commenced, on
34 written stipulation of the parties, the matter may be referred to
35 alternative dispute resolution ~~and~~. *The referred action is stayed.*
36 *During the stay, the action is not subject to the rules implementing*
37 *subdivision (c) of Section 68603 of the Government Code.*

38 (b) The costs of the alternative dispute resolution shall be borne
39 by the parties.

~~(c) During a referral, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.~~

1369.580. In an enforcement action in which fees and costs may be awarded *pursuant to subdivision (c) of Section 1374*, the court, in determining the amount of the award, may consider *whether* a party's refusal to participate in alternative dispute resolution before commencement of the action *was reasonable*.

1369.590. (a) An association shall annually provide its members a summary of the provisions of this article that specifically references this article. The summary shall include the following language:

~~"Failure language:~~

"*Failure* of a member of the association to comply with the ~~prefiling~~ *alternative dispute resolution* requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."

(b) The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner prescribed in Section 5016 of the Corporations Code. *The summary shall include a description of the association's internal dispute resolution process, as required by Section 1363.850.*

~~SEC. 7.~~

SEC. 9. Section 383 of the Code of Civil Procedure is repealed.