

AMENDED IN SENATE JUNE 1, 2004

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 , 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~~ *applies* them to association procedures for resolution of assessment disputes.

This bill would revise and recast 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, 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



1 interests in the development. Unless the declaration states
2 otherwise, these servitudes may be enforced by any owner of a
3 separate interest or by the association, or by both.

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

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

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

12 1357.120. (a) Sections 1357.130 and 1357.140 only apply to
13 an operating rule that relates to one or more of the following
14 subjects:

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

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

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

22 (4) Any standards for delinquent assessment payment plans.

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

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

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

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

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

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

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

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

40

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) 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.~~ *such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development.*

(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.

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

1 (c) If the procedure is invoked by a member, the association
2 shall participate in the procedure.

3 (d) If the procedure is invoked by the association, the member
4 may elect not to participate in the procedure. If the member
5 participates but the dispute is resolved other than by agreement of
6 the member, the member shall have a right of appeal to the
7 association's board of directors.

8 (e) A resolution of a dispute pursuant to the procedure, that is
9 not in conflict with the law or the governing documents, binds the
10 association and is judicially enforceable. An agreement reached
11 pursuant to the procedure, that is not in conflict with the law or the
12 governing documents, binds the parties and is judicially
13 enforceable.

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

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

18 1363.840. (a) This section applies in an association that does
19 not otherwise provide a fair, reasonable, and expeditious dispute
20 resolution procedure. The procedure provided in this section is
21 fair, reasonable, and expeditious, within the meaning of this
22 article.

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

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

27 (2) A member of an association may refuse a request to meet
28 and confer. The association may not refuse a request to meet and
29 confer.

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

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

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

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

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

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

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

8 SEC. 4. Section 1363.850 is added to the Civil Code, to read:
9 1363.850. The notice provided pursuant to Section 1369.590
10 shall include a description of the internal dispute resolution
11 process provided pursuant to this article.

12 SEC. 5. Section 1366.3 of the Civil Code is amended to read:
13 1366.3. (a) The exception for disputes related to association
14 assessments in Article 2 (commencing with Section 1369.510) of
15 Chapter 7 does not apply if, in a dispute between the owner of a
16 separate interest and the association regarding the assessments
17 imposed by the association, the owner of the separate interest
18 chooses to pay in full to the association all of the charges listed in
19 paragraphs (1) to (4), inclusive, and states by written notice that
20 the amount is paid under protest, and the written notice is mailed
21 by certified mail not more than 30 days from the recording of a
22 notice of delinquent assessment in accordance with Section 1367
23 or 1367.1; and in those instances, the association shall inform the
24 owner that the owner may resolve the dispute through alternative
25 dispute resolution as set forth in Article 2 (commencing with
26 Section 1369.510) of Chapter 7, civil action, and any other
27 procedures to resolve the dispute that may be available through the
28 association.

29 (1) The amount of the assessment in dispute.

30 (2) Late charges.

31 (3) Interest.

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

36 (b) The right of any owner of a separate interest to utilize
37 alternative dispute resolution under this section may not be
38 exercised more than two times in any single calendar year, and not
39 more than three times within any five calendar years. Nothing
40 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. 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 amount of damages recovered by the association shall be reduced by the amount of damages allocated to the association or its managing agents in direct proportion to their percentage of fault based upon principles of comparative fault. The comparative fault of the association or its managing agents may be raised by way of defense, but shall not be the basis for a cross-action or separate action against the association or its managing agents for contribution or implied indemnity, where the only damage was sustained by the association or its members. It is the intent of the Legislature in enacting this subdivision to require that comparative fault be pleaded as an affirmative defense, rather than

1 a separate cause of action, where the only damage was sustained
2 by the association or its members.

3 (b) In an action involving damages described in subdivision
4 (b), (c), or (d) of Section 1368.3, the defendant or cross-defendant
5 may allege and prove the comparative fault of the association or
6 its managing agents as a setoff to the liability of the defendant or
7 cross-defendant even if the association is not a party to the
8 litigation or is no longer a party whether by reason of settlement,
9 dismissal, or otherwise.

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

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

15 SEC. 7. Section 1368.4 of the Civil Code is amended and
16 renumbered to read:

17 1368.5. (a) Not later than 30 days prior to the filing of any
18 civil action by the association against the declarant or other
19 developer of a common interest development for alleged damage
20 to the common areas, alleged damage to the separate interests that
21 the association is obligated to maintain or repair, or alleged
22 damage to the separate interests that arises out of, or is integrally
23 related to, damage to the common areas or separate interests that
24 the association is obligated to maintain or repair, the board of
25 directors of the association shall ~~provide~~ *provide a* written notice
26 to each member of the association who appears on the records of
27 the association when the notice is provided. This notice shall
28 specify all of the following:

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

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

33 (3) The time and place of this meeting.

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



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

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

(d) Except as provided in Section 1366.3, this section does not apply to an action for association assessments.

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

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

(2) A request for alternative dispute resolution.

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

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

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

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

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

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

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

1369.550. If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

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

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

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

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

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

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

4 (b) Failure to file a certificate pursuant to subdivision (a) is
5 grounds for a demurrer or a motion to strike unless the court finds
6 that dismissal of the action for failure to comply with this article
7 would result in substantial prejudice to one of the parties.

8 1369.570. (a) After an enforcement action is commenced, on
9 written stipulation of the parties, the matter may be referred to
10 alternative dispute resolution. The referred action is stayed.
11 During the stay, the action is not subject to the rules implementing
12 subdivision (c) of Section 68603 of the Government Code.

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

15 1369.580. In an enforcement action in which fees and costs
16 may be awarded pursuant to subdivision (c) of Section ~~1374~~ 1354,
17 the court, in determining the amount of the award, may consider
18 whether a party's refusal to participate in alternative dispute
19 resolution before commencement of the action was reasonable.

20 1369.590. (a) An association shall annually provide its
21 members a summary of the provisions of this article that
22 specifically references this article. The summary shall include the
23 following language:

24
25 "Failure of a member of the association to comply with the
26 alternative dispute resolution requirements of Section 1369.520 of
27 the Civil Code may result in the loss of your right to sue the
28 association or another member of the association regarding
29 enforcement of the governing documents or the applicable law."
30

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

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