

AMENDED IN SENATE JULY 6, 2004  
AMENDED IN SENATE JUNE 28, 2004  
AMENDED IN SENATE JUNE 15, 2004  
AMENDED IN SENATE JUNE 1, 2004  
AMENDED IN ASSEMBLY MAY 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1836**

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**Introduced by Assembly Member Harman**

January 22, 2004

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An act to amend Sections 1354, ~~1357.120, and 1367.1~~ *and 1357.120* 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 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 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.

This 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. The 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.

The bill would incorporate additional changes in Section 1357.120 of the Civil Code proposed by AB 2376 that would become operative only if AB 2376 and this bill are both chaptered and become effective on or before January 1, 2005, and this bill is chaptered last.



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

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

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

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

17 1357.120. (a) Sections 1357.130 and 1357.140 only apply to  
18 an operating rule that relates to one or more of the following  
19 subjects:

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

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

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

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

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

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

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

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



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

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

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

8 SEC. 2.5. Section 1357.120 of the Civil Code is amended to  
9 read:

10 1357.120. (a) Sections 1357.130 and 1357.140 only apply to  
11 an operating rule that relates to one or more of the following  
12 subjects:

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

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

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

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

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

23 (6) Any procedures for reviewing and approving or  
24 disapproving a proposed physical change to a member's separate  
25 interest or to the common area.

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

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

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

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

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

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

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



1 Article 5. Dispute Resolution Procedure

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

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

14 1363.820. (a) An association shall provide a fair, reasonable,  
15 and expeditious procedure for resolving a dispute within the scope  
16 of this article.

17 (b) In developing a procedure pursuant to this article, an  
18 association shall make maximum, reasonable use of available  
19 local dispute resolution programs involving a neutral third party,  
20 including low-cost mediation programs such as those listed on the  
21 Internet Web sites of the Department of Consumer Affairs and the  
22 United States Department of Housing and Urban Development.

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

27 1363.830. A fair, reasonable, and expeditious dispute  
28 resolution procedure shall at a minimum satisfy all of the  
29 following requirements:

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

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

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

37 (d) If the procedure is invoked by the association, the member  
38 may elect not to participate in the procedure. If the member  
39 participates but the dispute is resolved other than by agreement of



1 the member, the member shall have a right of appeal to the  
2 association's board of directors.

3 (e) A resolution of a dispute pursuant to the procedure, that is  
4 not in conflict with the law or the governing documents, binds the  
5 association and is judicially enforceable. An agreement reached  
6 pursuant to the procedure, that is not in conflict with the law or the  
7 governing documents, binds the parties and is judicially  
8 enforceable.

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

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

13 1363.840. (a) This section applies in an association that does  
14 not otherwise provide a fair, reasonable, and expeditious dispute  
15 resolution procedure. The procedure provided in this section is  
16 fair, reasonable, and expeditious, within the meaning of this  
17 article.

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

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

22 (2) A member of an association may refuse a request to meet  
23 and confer. The association may not refuse a request to meet and  
24 confer.

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

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

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

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

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

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



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

3 1363.850. The notice provided pursuant to Section 1369.590  
4 shall include a description of the internal dispute resolution  
5 process provided pursuant to this article.

6 SEC. 4. Section 1367.1 of the Civil Code is amended to read:

7 ~~1367.1. (a) A regular or special assessment and any late~~  
8 ~~charges, reasonable fees and costs of collection, reasonable~~  
9 ~~attorney's fees, if any, and interest, if any, as determined in~~  
10 ~~accordance with Section 1366, shall be a debt of the owner of the~~  
11 ~~separate interest at the time the assessment or other sums are~~  
12 ~~levied. At least 30 days prior to recording a lien upon the separate~~  
13 ~~interest of the owner of record to collect a debt that is past due~~  
14 ~~under this subdivision, the association shall notify the owner of~~  
15 ~~record in writing by certified mail of the following:~~

16 (1) ~~A general description of the collection and lien enforcement~~  
17 ~~procedures of the association and the method of calculation of the~~  
18 ~~amount, a statement that the owner of the separate interest has the~~  
19 ~~right to inspect the association records, pursuant to Section 8333~~  
20 ~~of the Corporations Code, and the following statement in 14-point~~  
21 ~~boldface type, if printed, or in capital letters, if typed:~~  
22 ~~“IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS~~  
23 ~~PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND~~  
24 ~~IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT~~  
25 ~~COURT ACTION”.~~

26 (2) ~~An itemized statement of the charges owed by the owner,~~  
27 ~~including items on the statement which indicate the amount of any~~  
28 ~~delinquent assessments, the fees and reasonable costs of~~  
29 ~~collection, reasonable attorney's fees, any late charges, and~~  
30 ~~interest, if any.~~

31 (3) ~~A statement that the owner shall not be liable to pay the~~  
32 ~~charges, interest, and costs of collection, if it is determined the~~  
33 ~~assessment was paid on time to the association.~~

34 (4) ~~The right to request a meeting with the board as provided~~  
35 ~~by subdivision (c).~~

36 (b) ~~Any payments made by the owner of a separate interest~~  
37 ~~toward the debt set forth, as required in subdivision (a), shall first~~  
38 ~~be applied to the assessments owed, and, only after the assessments~~  
39 ~~owed are paid in full shall the payments be applied to the fees and~~  
40 ~~costs of collection, attorney's fees, late charges, or interest. When~~



1 an owner makes a payment, the owner may request a receipt and  
2 the association shall provide it. The receipt shall indicate the date  
3 of payment and the person who received it. The association shall  
4 provide a mailing address for overnight payment of assessments.

5 (e) An owner, other than an owner of any interest that is  
6 described in Section 11003.5 of the Business and Professions  
7 Code, may submit a written request to meet with the board to  
8 discuss a payment plan for the debt noticed pursuant to subdivision  
9 (a). The association shall provide the owners the standards for  
10 payment plans, if any exist. The board shall meet with the owner  
11 in executive session within 45 days of the postmark of the request,  
12 if the request is mailed within 15 days of the date of the postmark  
13 of the notice, unless there is no regularly scheduled board meeting  
14 within that period, in which case the board may designate a  
15 committee of one or more members to meet with the owner.

16 (d) The amount of the assessment, plus any costs of collection,  
17 late charges, and interest assessed in accordance with Section  
18 1366, shall be a lien on the owner's interest in the common interest  
19 development from and after the time the association causes to be  
20 recorded with the county recorder of the county in which the  
21 separate interest is located, a notice of delinquent assessment,  
22 which shall state the amount of the assessment and other sums  
23 imposed in accordance with Section 1366, a legal description of  
24 the owner's interest in the common interest development against  
25 which the assessment and other sums are levied, the name of the  
26 record owner of the owner's interest in the common interest  
27 development against which the lien is imposed. In order for the  
28 lien to be enforced by nonjudicial foreclosure as provided in  
29 subdivision (g), the notice of delinquent assessment shall state the  
30 name and address of the trustee authorized by the association to  
31 enforce the lien by sale. The notice of delinquent assessment shall  
32 be signed by the person designated in the declaration or by the  
33 association for that purpose, or if no one is designated, by the  
34 president of the association, and mailed in the manner set forth in  
35 Section 2924b, to all record owners of the owner's interest in the  
36 common interest development no later than 10 calendar days after  
37 recordation. Within 21 days of the payment of the sums specified  
38 in the notice of delinquent assessment, the association shall record  
39 or cause to be recorded in the office of the county recorder in which  
40 the notice of delinquent assessment is recorded a lien release or



1 ~~notice of rescission and provide the owner of the separate interest~~  
2 ~~a copy of the lien release or notice that the delinquent assessment~~  
3 ~~has been satisfied. A monetary charge imposed by the association~~  
4 ~~as a means of reimbursing the association for costs incurred by the~~  
5 ~~association in the repair of damage to common areas and facilities~~  
6 ~~for which the member or the member's guests or tenants were~~  
7 ~~responsible may become a lien against the member's separate~~  
8 ~~interest enforceable by the sale of the interest under Sections 2924,~~  
9 ~~2924b, and 2924c, provided the authority to impose a lien is set~~  
10 ~~forth in the governing documents. It is the intent of the Legislature~~  
11 ~~not to contravene Section 2792.26 of Title 10 of the California~~  
12 ~~Code of Regulations, as that section appeared on January 1, 1996,~~  
13 ~~for associations of subdivisions that are being sold under authority~~  
14 ~~of a subdivision public report, pursuant to Part 2 (commencing~~  
15 ~~with Section 11000) of Division 4 of the Business and Professions~~  
16 ~~Code.~~

17 ~~(e) Except as indicated in subdivision (d), a monetary penalty~~  
18 ~~imposed by the association as a disciplinary measure for failure of~~  
19 ~~a member to comply with the governing instruments, except for~~  
20 ~~the late payments, may not be characterized nor treated in the~~  
21 ~~governing instruments as an assessment that may become a lien~~  
22 ~~against the member's subdivision separate interest enforceable by~~  
23 ~~the sale of the interest under Sections 2924, 2924b, and 2924c.~~

24 ~~(f) A lien created pursuant to subdivision (d) shall be prior to~~  
25 ~~all other liens recorded subsequent to the notice of assessment,~~  
26 ~~except that the declaration may provide for the subordination~~  
27 ~~thereof to any other liens and encumbrances.~~

28 ~~(g) An association may not voluntarily assign or pledge the~~  
29 ~~association's right to collect payments or assessments, or to~~  
30 ~~enforce or foreclose a lien to a third party, except when the~~  
31 ~~assignment or pledge is made to a financial institution or lender~~  
32 ~~chartered or licensed under federal or state law, when acting within~~  
33 ~~the scope of that charter or license, as security for a loan obtained~~  
34 ~~by the association; however, the foregoing provision may not~~  
35 ~~restrict the right or ability of an association to assign any unpaid~~  
36 ~~obligations of a former member to a third party for purposes of~~  
37 ~~collection. Subject to the limitations of this subdivision, after the~~  
38 ~~expiration of 30 days following the recording of a lien created~~  
39 ~~pursuant to subdivision (d), the lien may be enforced in any~~  
40 ~~manner permitted by law, including sale by the court, sale by the~~



1 trustee designated in the notice of delinquent assessment, or sale  
2 by a trustee substituted pursuant to Section 2934a. Any sale by the  
3 trustee shall be conducted in accordance with Sections 2924,  
4 2924b, and 2924c applicable to the exercise of powers of sale in  
5 mortgages and deeds of trusts. The fees of a trustee may not exceed  
6 the amounts prescribed in Sections 2924c and 2924d.

7 ~~(h) Nothing in this section or in subdivision (a) of Section 726  
8 of the Code of Civil Procedure prohibits actions against the owner  
9 of a separate interest to recover sums for which a lien is created  
10 pursuant to this section or prohibits an association from taking a  
11 deed in lieu of foreclosure.~~

12 ~~(i) If it is determined that a lien previously recorded against the  
13 separate interest was recorded in error, the party who recorded the  
14 lien shall, within 21 calendar days, record or cause to be recorded  
15 in the office of the county recorder in which the notice of  
16 delinquent assessment is recorded a lien release or notice of  
17 rescission and provide the owner of the separate interest with a  
18 declaration that the lien filing or recording was in error and a copy  
19 of the lien release or notice of rescission.~~

20 ~~(j) (1) An association that fails to comply with the procedures  
21 set forth in this section shall, prior to recording a lien, recommence  
22 the required notice process.~~

23 ~~(2) Any costs associated with recommencing the notice process  
24 shall be borne by the association and not by the owner of a separate  
25 interest.~~

26 ~~(k) This section only applies to liens recorded on or after  
27 January 1, 2003.~~

28 SEC. 5.—Article 1 (commencing with Section 1368.3) is added  
29 to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code,  
30 to read:

31  
32  
33

Article 1. Miscellaneous Provisions

34 1368.3. An association established to manage a common  
35 interest development has standing to institute, defend, settle, or  
36 intervene in litigation, arbitration, mediation, or administrative  
37 proceedings in its own name as the real party in interest and  
38 without joining with it the individual owners of the common  
39 interest development, in matters pertaining to the following:

40 (a) Enforcement of the governing documents.



1 (b) Damage to the common area.

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

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

7 1368.4. (a) In an action maintained by an association  
8 pursuant to subdivision (b), (c), or (d) of Section 1368.3, the  
9 amount of damages recovered by the association shall be reduced  
10 by the amount of damages allocated to the association or its  
11 managing agents in direct proportion to their percentage of fault  
12 based upon principles of comparative fault. The comparative fault  
13 of the association or its managing agents may be raised by way of  
14 defense, but shall not be the basis for a cross-action or separate  
15 action against the association or its managing agents for  
16 contribution or implied indemnity, where the only damage was  
17 sustained by the association or its members. It is the intent of the  
18 Legislature in enacting this subdivision to require that  
19 comparative fault be pleaded as an affirmative defense, rather than  
20 a separate cause of action, where the only damage was sustained  
21 by the association or its members.

22 (b) In an action involving damages described in subdivision  
23 (b), (c), or (d) of Section 1368.3, the defendant or cross-defendant  
24 may allege and prove the comparative fault of the association or  
25 its managing agents as a setoff to the liability of the defendant or  
26 cross-defendant even if the association is not a party to the  
27 litigation or is no longer a party whether by reason of settlement,  
28 dismissal, or otherwise.

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

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

34 ~~SEC. 6.~~

35 *SEC. 5.* Section 1368.4 of the Civil Code is amended and  
36 renumbered to read:

37 1368.5. (a) Not later than 30 days prior to the filing of any  
38 civil action by the association against the declarant or other  
39 developer of a common interest development for alleged damage  
40 to the common areas, alleged damage to the separate interests that



1 the association is obligated to maintain or repair, or alleged  
2 damage to the separate interests that arises out of, or is integrally  
3 related to, damage to the common areas or separate interests that  
4 the association is obligated to maintain or repair, the board of  
5 directors of the association shall provide a written notice to each  
6 member of the association who appears on the records of the  
7 association when the notice is provided. This notice shall specify  
8 all of the following:

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

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

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

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

19 ~~SEC. 7.~~

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

23

24 Article 2. Alternative Dispute Resolution

25

26 1369.510. As used in this article:

27 (a) "Alternative dispute resolution" means mediation,  
28 arbitration, conciliation, or other nonjudicial procedure that  
29 involves a neutral party in the decisionmaking process. The form  
30 of alternative dispute resolution chosen pursuant to this article may  
31 be binding or ~~nonbinding~~, *nonbinding*, with the voluntary consent  
32 of the parties.

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

35 (1) Enforcement of this title.

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

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



1 1369.520. (a) An association or an owner or a member of a  
2 common interest development may not file an enforcement action  
3 in the superior court unless the parties have endeavored to submit  
4 their dispute to alternative dispute resolution pursuant to this  
5 article.

6 (b) This section applies only to an enforcement action that is  
7 solely for declaratory, injunctive, or writ relief, or for that relief in  
8 conjunction with a claim for monetary damages not in excess of  
9 five thousand dollars (\$5,000).

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

11 ~~(d) Notwithstanding subdivision (b), this section applies to an~~  
12 ~~action for collection of assessments, except a small claims action.~~

13 (d) *Except as otherwise provided by law, this section does not*  
14 *apply to an assessment dispute.*

15 1369.530. (a) Any party to a dispute may initiate the process  
16 required by Section 1369.520 by serving on all other parties to the  
17 dispute a Request for Resolution. The Request for Resolution shall  
18 include all of the following:

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

20 (2) A request for alternative dispute resolution.

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

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

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

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

34 1369.540. (a) If the party on whom a Request for Resolution  
35 is served accepts the request, the parties shall complete the  
36 alternative dispute resolution within 90 days after the party  
37 initiating the request receives the acceptance, unless this period is  
38 extended by written stipulation signed by both parties.

39 (b) Chapter 2 (commencing with Section 1115) of Division 9  
40 of the Evidence Code applies to any form of alternative dispute



1 resolution initiated by a Request for Resolution under this article,  
2 other than arbitration.

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

5 1369.550. If 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  
12 dispute resolution, including any extension of time stipulated to by  
13 the 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 one or more of the  
17 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 the court finds  
25 that dismissal of the action for failure to comply with this article  
26 would result in substantial prejudice to one of the parties.

27 1369.570. (a) After an enforcement action is commenced, on  
28 written stipulation of the parties, the matter may be referred to  
29 alternative dispute resolution. The referred action is stayed.  
30 During the stay, the action is not subject to the rules implementing  
31 subdivision (c) of Section 68603 of the Government Code.

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

34 1369.580. In an enforcement action in which fees and costs  
35 may be awarded pursuant to subdivision (c) of Section 1354, the  
36 court, in determining the amount of the award, may consider  
37 whether a party's refusal to participate in alternative dispute  
38 resolution before commencement of the action was reasonable.

39 1369.590. (a) An association shall annually provide its  
40 members a summary of the provisions of this article that



1 specifically references this article. The summary shall include the  
2 following language:

3

4 “Failure of a member of the association to comply with the  
5 alternative dispute resolution requirements of Section 1369.520 of  
6 the Civil Code may result in the loss of your right to sue the  
7 association or another member of the association regarding  
8 enforcement of the governing documents or the applicable law.”

9

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

15 ~~SEC. 8.~~

16 *SEC. 7.* Section 383 of the Code of Civil Procedure is  
17 repealed.

18 ~~SEC. 9.~~

19 *SEC. 8.* Section 2.5 of this bill incorporates amendments to  
20 Section 1357.120 of the Civil Code proposed by both this bill and  
21 AB 2376. It shall only become operative if (1) both bills are  
22 enacted and become effective on or before January 1, 2005, (2)  
23 each bill amends Section 1357.120 of the Civil Code, and (3) this  
24 bill is enacted after AB 2376, in which case Section 2 of this bill  
25 shall not become operative.

