

AMENDED IN SENATE JULY 6, 2004

AMENDED IN SENATE JUNE 15, 2004

AMENDED IN ASSEMBLY MAY 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2376

Introduced by Assembly Member Bates
(Coauthors: Assembly Members Harman, Maze, and Pacheco)
(Coauthor: Senator Oller)

February 19, 2004

An act to amend Sections 1357.120 and 1373 of, and to add Section 1378 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2376, as amended, Bates. Common interest developments: architectural review.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments. The act requires that a common interest development have a recorded declaration, and the act defines governing documents as the declaration, and any other documents, such as the bylaws, operating rules, and articles of incorporation, which govern the operation of the development. The governing documents may regulate the physical features of the development. Existing law requires that common interest development operating rule changes satisfy certain criteria and applies these requirements only to operating rules relating to specified subjects. Existing law exempts common interest developments that are limited

to industrial or commercial uses, as specified, from the application of certain provisions of the act.

This bill would require the procedures of common interest development associations for reviewing and approving proposed physical changes to a member's separate interest to satisfy the requirements regarding operating rules described above.

This bill would revise the definition of a common interest development that is limited to industrial or commercial use for purposes of exempting that development from certain provisions of the act. The bill would include in these exemptions provisions regarding physical changes in a separate interest or the common area, as specified.

The bill would provide that, if a common interest development association's governing documents require association approval before an owner may make a physical change to the owner's separate interest or to the common area, the association must satisfy specified requirements in reviewing a proposed change, including providing a fair, reasonable, and expeditious procedure for making its decision, as specified, and making a decision on a proposed change in writing. The bill would provide that an applicant whose proposal is denied is entitled to reconsideration at an open meeting of the board of directors of the association, except as specified. The bill would provide that its provisions do not authorize a change to the common area that is inconsistent with the association's governing documents or governing law. The provisions of the bill would not apply to common interest developments that are limited to industrial or commercial uses, as specified. The bill would require an association to provide notice annually of any requirements for association approval of physical changes to property, as specified.

The bill would also incorporate additional changes to Section 1357.120 proposed by AB 1836 and this bill to take effect only if both bills are enacted and become effective on or before January 1, 2005, and this bill is enacted last.

~~This bill would provide that, in addition, would make one of its provisions would become operative only if AB 1836 is enacted and becomes effective on or before January 1, 2004 2005, and adds a specified section to the Civil Code.~~

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



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

SECTION 1. 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.

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

(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. 1.5. 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.

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

(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. 2. Section 1373 of the Civil Code is amended to read:

1373. (a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located:

(1) Section 1356.

(2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of Part 4 of Division 2.

(3) Subdivision (b) of Section 1363.

(4) Section 1365.

(5) Section 1365.5.

(6) Subdivision (b) of Section 1366.

(7) Section 1366.1.

(8) Section 1368.

(9) Section 1378.

(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to protect purchasers in residential common interest developments, however, the provisions may not be necessary to protect purchasers in commercial or industrial developments since the application of those provisions could result in unnecessary burdens and costs for these types of developments.

SEC. 3. Section 1378 is added to the Civil Code, to read:

1378. (a) This section applies if an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

(1) The association shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall be included in the association's governing documents. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the board of directors.

(2) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) A decision on a proposed change shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the board of directors.

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors of the association that made the decision, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board of directors or a body that has the same membership as the board of directors, at a meeting that satisfies the requirements of Section 1363.05.

(b) Nothing in this section authorizes a physical change to the common area in a manner that is inconsistent with an association's governing documents or governing law.

(c) An association shall annually provide its members with notice of any requirements for association approval of physical changes to property. The notice shall describe the types of changes that require association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

SEC. 3.5. Section 1378 is added to the Civil Code, to read:

1378. (a) This section applies if an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

(1) The association shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall be included in the association's governing documents. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the board of directors.

(2) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) A decision on a proposed change shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the board of directors.

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors of the association that made the decision, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board of directors or a body that has the same membership as the board of directors, at a meeting that satisfies the requirements of Section 1363.05. Reconsideration by

1 the board does not constitute dispute resolution within the meaning
2 of Section 1363.820.

3 (b) Nothing in this section authorizes a physical change to the
4 common area in a manner that is inconsistent with an association's
5 governing documents or governing law.

6 (c) An association shall annually provide its members with
7 notice of any requirements for association approval of physical
8 changes to property. The notice shall describe the types of changes
9 that require association approval and shall include a copy of the
10 procedure used to review and approve or disapprove a proposed
11 change.

12 SEC. 4. *Section 1.5 of this bill incorporates amendments to*
13 *Section 1357.120 of the Civil Code proposed by both this bill and*
14 *AB 1836. It shall only become operative if (1) both bills are*
15 *enacted and become effective on or before January 1, 2005, (2)*
16 *each bill amends Section 1357.120 of the Civil Code, and (3) this*
17 *bill is enacted after AB 1836, in which case Section 1 of this bill*
18 *shall not become operative.*

19 SEC. 5. Section 3.5 of this bill shall only become operative if
20 Assembly Bill 1836 is enacted and becomes effective on or before
21 January 1, ~~2004~~ 2005, and adds Section 1363.820 to the Civil
22 Code, in which case Section 3 of this bill shall ~~be inoperative~~ not
23 become operative.

