

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 770

Introduced by Assembly Member Mullin

February 18, 2005

An act to amend Sections 1369.510 and 1373 of, to add Section 1363.7 to, and to add Chapter 11 (commencing with Section 1380) 1380.010) to Title 6 of Part 4 of Division 2 of, the Civil Code, relating to common interest developments, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 770, as amended, Mullin. Common interest developments: ~~bureau~~ ombudsperson.

~~Existing law~~ The Davis-Stirling Common Interest Development Act defines and regulates common interest developments, which include condominiums and planned developments. ~~Existing law~~ The act requires that a common interest development be managed by an association, and establishes requirements for association operating rules and meetings and for the resolution of specified disputes. *Among other things, the act requires the association that manages a development to provide a fair, reasonable, and expeditious procedure for resolving disputes between the association and members of the association involving their rights, duties, or liabilities under the act. The act also requires an association or an owner of a separate interest or a member of an association to endeavor to submit their dispute to alternative dispute resolution before they file certain enforcement actions in the superior court.*

This bill would ~~add provisions regarding the Common Interest Development Bureau, that consist of a definition of that bureau, until~~

January 1, 2011, establish in the Department of Consumer Affairs, the Office of the Common Interest Development Ombudsperson. The bill would require the Ombudsperson, among other things, to offer training materials and courses to common interest development directors, officers, and owners, in subjects relevant to the operation of a common interest development and the rights and duties of an association or owner. The bill would require the Ombudsperson to maintain a toll-free telephone number and Internet Web site for purposes of further providing that information and assistance, and would require an association director or agent to meet certain requirements in that regard. The bill would authorize the Ombudsperson to provide assistance in resolving common interest development disputes, and would require a specified fee for that resolution. The bill would impose a biennial association fee on common interest development associations to fund the administration of the provisions of the bill, for deposit in a newly created fund, the Fee Account of the Common Interest Development Ombudsperson Fund. Because the funds in that account would be continuously appropriated, the bill would make an appropriation.

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

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

1 SECTION 1. Section 1363.7 is added to the Civil Code, to
2 read:

3 1363.7. An association shall provide its members with annual
4 written notice of the Internet Web site address and toll-free
5 telephone number of the Common Interest Development
6 Ombudsperson established pursuant to Chapter 11 (commencing
7 with Section 1380.010).

8 SEC. 2. Section 1369.510 of the Civil Code is amended to
9 read:

10 1369.510. As used in this article:

11 (a) "Alternative dispute resolution" means mediation,
12 arbitration, conciliation, or other nonjudicial procedure, *including*
13 mediation pursuant to Section 1380.300, that involves a neutral
14 party in the ~~decisionmaking~~ decision making process. The form
15 of alternative dispute resolution chosen pursuant to this article

1 may be binding or nonbinding, with the voluntary consent of the
2 parties.

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

5 (1) Enforcement of this title.

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

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

11 *SEC. 3. Section 1373 of the Civil Code is amended to read:*

12 1373. (a) The following provisions do not apply to a
13 common interest development that is limited to industrial or
14 commercial uses by zoning or by a declaration of covenants,
15 conditions, and restrictions that has been recorded in the official
16 records of each county in which the common interest
17 development is located:

18 (1) Section 1356.

19 (2) Article 4 (commencing with Section 1357.100) of Chapter
20 2 of Title 6 of Part 4 of Division 2.

21 (3) Subdivision (b) of Section 1363.

22 (4) Section 1365.

23 (5) Section 1365.5.

24 (6) Subdivision (b) of Section 1366.

25 (7) Section 1366.1.

26 (8) Section 1368.

27 (9) Section 1378.

28 (10) Chapter 11 (commencing with Section 1380.010).

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

36 ~~SECTION 1.~~

37 *SEC. 4. Chapter 11 (commencing with Section—1380)*
38 *1380.010) is added to Title 6 of Part 4 of Division 2 of the Civil*
39 *Code, to read:*

1 CHAPTER 11. COMMON INTEREST DEVELOPMENT ~~BUREAU~~
2 OMBUDSPERSON PILOT PROJECT

3
4 Article 1. Definitions

5
6 ~~1380.1380.010.~~ Unless the provision or context otherwise
7 requires, the definitions in this article govern the construction of
8 this chapter.

9 ~~1381. "Bureau" means the Common Interest Development~~
10 ~~Bureau.~~

11 1380.020. "Owner" means the owner of a separate interest.

12 1380.030. "Person" includes a natural person, firm,
13 association, organization, partnership, business trust,
14 corporation, limited liability company, or public entity.

15
16 Article 2. Administration

17
18 1380.100. The Legislature finds and declares all of the
19 following:

20 (a) There are more than 36,000 residential common interest
21 developments in California, comprising more than 3,000,000
22 dwellings. Common interest developments comprise
23 approximately one-quarter of the state's housing stock.

24 (b) Managing a common interest development is a complex
25 responsibility. Community associations are run by volunteer
26 directors who may have little or no prior experience in managing
27 real property, operating a nonprofit association or corporation,
28 complying with the law governing common interest
29 developments, and interpreting and enforcing restrictions and
30 rules imposed by the governing documents of the common
31 interest development. Homeowners may not fully understand
32 their rights and obligations under the law and the governing
33 documents. Mistakes and misunderstandings are inevitable and
34 may lead to serious, costly, and divisive problems. The Common
35 Interest Development Ombudsperson seeks to educate community
36 association officers and homeowners as to their legal rights and
37 obligations. Effective education can prevent or reduce the
38 severity of problems within a common interest development.

39 (c) The principal remedy for a violation of common interest
40 development law is private litigation. Litigation is not an ideal

1 remedy for many common interest development disputes, where
2 the disputants are neighbors who must maintain ongoing
3 relationships. The adversarial nature of litigation can disrupt
4 these relationships, creating animosity that degrades the quality
5 of life within the community and makes future disputes more
6 likely to arise. Litigation imposes costs on a common interest
7 development community as a whole, costs that must be paid by
8 all members through increased assessments. Many homeowners
9 cannot afford to bring a lawsuit and are effectively denied the
10 benefit of laws designed for their protection. The Common
11 Interest Development Ombudsperson provides a neutral,
12 nonjudicial forum for resolution of common interest development
13 disputes. Many disputes can be resolved inexpensively,
14 informally, and amicably through ombudsperson-facilitated
15 mediation.

16 (d) Anecdotal accounts of abuses within common interest
17 developments create continuing public demand for reform of
18 common interest development law. This results in frequent
19 changes to the law, making it more difficult to understand and
20 apply and imposing significant transitional costs on common
21 interest developments statewide. By collecting empirical data on
22 the nature and incidence of problems within common interest
23 developments, the Common Interest Development Ombudsperson
24 provides a sound basis for prioritizing reform efforts, thereby
25 increasing the stability of common interest development law.

26 (e) The costs of the Common Interest Development
27 Ombudsperson Pilot Project shall be borne entirely by common
28 interest development homeowners, through imposition of a
29 biennial fee.

30 1380.110. (a) There is in the Department of Consumer
31 Affairs the Office of the Common Interest Development
32 Ombudsperson, under the supervision and control of the director
33 of the Department of Consumer Affairs.

34 (b) The director of the Department of Consumer Affairs shall
35 employ a Common Interest Development Ombudsperson and
36 other officers and employees as necessary to discharge the
37 requirements of this chapter. The Common Interest Development
38 Ombudsperson shall have the powers delegated by the director.

39 (c) The Ombudsperson shall adopt rules governing practices
40 and procedures under this chapter. Any rule adopted under this

1 subdivision is subject to the rulemaking provisions of the
2 Administrative Procedure Act (Chapter 3.5 (commencing with
3 Section 11340) of Part 1 of Division 3 of Title 2 of the
4 Government Code).

5 (d) Information and advice provided by the Ombudsperson has
6 no binding legal effect and is not subject to the rulemaking
7 provisions of the Administrative Procedure Act (Chapter 3.5
8 (commencing with Section 11340) of Part 1 of Division 3 of Title
9 2 of the Government Code).

10 (e) There shall be no liability on the part of, and no cause of
11 action of any nature shall arise against, the State of California or
12 any of its employees, agents, or representatives for providing or
13 failing to provide information or advice pursuant to this chapter.

14 (f) The Ombudsperson may convene an advisory committee to
15 make recommendations on matters within the Ombudsperson's
16 jurisdiction. A member of an advisory committee shall receive
17 per diem and expenses pursuant to Section 103 of the Business
18 and Professions Code. In selecting the members of an advisory
19 committee, the Ombudsperson shall ensure a fair representation
20 of the interests involved.

21 1380.120. The Common Interest Development Ombudsperson
22 shall report annually to the Legislature, no later than October 1
23 of each year. The report shall include all of the following
24 information:

25 (a) Annual workload and performance data, including the
26 number of requests for assistance received, the manner in which
27 a request was or was not resolved, and the staff time required to
28 resolve the inquiry. For each category of data, the
29 Ombudsperson shall provide subtotals based on the type of
30 question or dispute involved in the request.

31 (b) Analysis of the most common and serious types of disputes
32 within common interest developments, along with any
33 recommendations for statutory reform to reduce the frequency or
34 severity of those disputes.

35 (c) On or before January 1, 2009, the Ombudsperson shall
36 submit recommendations to the Legislature on the following
37 topics:

38 (1) Whether the Ombudsperson should be authorized to
39 enforce common interest development law.

1 (2) *Whether the Ombudsperson should be authorized to*
2 *oversee association elections.*

3 (3) *Whether the scope of application of Section 1380.230*
4 *should be narrowed or broadened.*

5 1380.130. (a) *On filing information with the Secretary of*
6 *State every two years, pursuant to subdivision (a) of Section*
7 *1363.6, an association shall submit a Common Interest*
8 *Development Ombudsperson Fee. This fee is in addition to the*
9 *fee submitted pursuant to Section 1363.6. Failure to submit the*
10 *Common Interest Development Ombudsperson Fee is deemed*
11 *noncompliance with Section 1363.6.*

12 (b) *The Common Interest Development Ombudsperson Fee*
13 *shall equal the number of separate interests within the*
14 *association multiplied by the biennial fee amount. The initial*
15 *biennial fee amount is ten dollars (\$10).*

16 (c) *An association is excused from paying the fee for a*
17 *separate interest if another association has paid the fee for that*
18 *separate interest. An association that is excused from paying the*
19 *fee for a separate interest shall certify, on a form developed by*
20 *the Secretary of State for that purpose, that another association*
21 *has paid the fee for that separate interest. The Ombudsperson*
22 *may adopt, by regulation, a rule governing which association is*
23 *required to pay the fee for a separate interest that is part of more*
24 *than one association.*

25 (d) *The Common Interest Development Ombudsperson shall*
26 *increase or decrease the biennial fee amount every two years to*
27 *provide only the revenue that it estimates will be necessary for its*
28 *operation during the next two-year period. The biennial fee*
29 *amount shall not exceed twenty dollars (\$20).*

30 (e) *Section 1366 does not limit an assessment increase*
31 *necessary to recover the fee imposed by this section.*

32 1380.140. *Common Interest Development Ombudsperson fee*
33 *revenue received by the Secretary of State and fee revenue*
34 *received by the Common Interest Development Ombudsperson*
35 *shall be transferred to the State Treasurer and placed in the Fee*
36 *Account of the Common Interest Development Ombudsperson*
37 *Fund, which is hereby created. All funds in the Fee Account of*
38 *the Common Interest Development Ombudsperson Fund are*
39 *continuously appropriated to the Ombudsperson, to be used*

1 exclusively for expenditures necessary for the proper
2 administration of this chapter.

3 1380.150. (a) This chapter shall remain in effect only until
4 January 1, 2011, and as of that date is repealed, unless a later
5 enacted statute that is enacted before January 1, 2011, deletes or
6 extends that date.

7 (b) The Common Interest Development Ombudsperson Pilot
8 Project is subject to the sunset review process conducted by the
9 Joint Committee on Boards, Commissions, and Consumer
10 Protection pursuant to Division 1.2 (commencing with Section
11 473) of the Business and Professions Code.

12
13 Article 3. Education
14

15 1380.200. (a) The Common Interest Development
16 Ombudsperson shall offer training materials and courses to
17 common interest development directors, officers, and owners, in
18 subjects relevant to the operation of a common interest
19 development and the rights and duties of an association or
20 owner.

21 (b) The Ombudsperson may charge a fee for training
22 materials or courses, not to exceed their actual cost.

23 1380.210. The Common Interest Development Ombudsperson
24 shall maintain a toll-free telephone number to provide
25 information or assistance on matters relating to common interest
26 developments.

27 1380.220. (a) The Common Interest Development
28 Ombudsperson shall maintain an Internet Web site, which shall
29 provide all of the following information:

30 (1) The text of this title, the Nonprofit Mutual Benefit
31 Corporation Law (Part 3 (commencing with Section 7110) of
32 Division 2 of Title 1 of the Corporations Code), and any other
33 statute or regulation that the Ombudsperson determines would
34 be relevant to the operation of a common interest development or
35 the rights and duties of an association or owner.

36 (2) Information concerning nonjudicial resolution of disputes
37 that may arise within a common interest development, including
38 contacts for locally available dispute resolution programs
39 organized pursuant to Chapter 8 (commencing with Section 465)
40 of Division 1 of the Business and Professions Code.

1 (3) A description of the services provided by the
2 Ombudsperson and information on how to contact the
3 Ombudsperson for assistance.

4 (4) An analysis, prepared each year, of legislative changes to
5 common interest development law.

6 (5) Any other information that the Ombudsperson determines
7 would be useful to an association or owner.

8 (b) Information provided on the Ombudsperson's Internet Web
9 site shall also be made available in printed form. The
10 Ombudsperson may charge a fee for the purchase of printed
11 material, not to exceed the actual cost of printing and delivery.

12 1380.230. (a) Within 60 days of assuming office as an
13 association director or providing services as a managing agent,
14 an association director or managing agent shall certify that the
15 director or managing agent has read each of the following:

16 (1) The declaration, articles of incorporation or association,
17 and by-laws of the association that the director or managing
18 agent serves.

19 (2) This title or, if the Common Interest Development
20 Ombudsperson prepares a detailed summary of the requirements
21 of this title, that summary.

22 (b) A director shall file the certification required by this
23 section with the Ombudsperson. A managing agent shall file the
24 certification required by this section with the association served
25 by that managing agent.

26 (c) For the purposes of this section, "managing agent" means
27 a person or entity who, for compensation or in expectation of
28 compensation, exercises control over the assets of a common
29 interest development. "Managing agent" does not include a
30 regulated financial institution operating within the normal
31 course of its regulated business practice.

32 Article 4. Informal Dispute Resolution

33
34 1380.300. (a) Any interested person may request that the
35 office of the Common Interest Development Ombudsperson
36 provide assistance in resolving a dispute involving the law
37 governing common interest developments or the governing
38 documents of a common interest development.
39

1 **(b)** *On receipt of a request for assistance the Ombudsperson*
2 *shall, within the limits of the available resources, confer with the*
3 *interested parties and assist in efforts to resolve the dispute by*
4 *mutual agreement of the parties. If a dispute cannot be resolved*
5 *through informal conference, the Ombudsperson may offer to*
6 *mediate the dispute.*

7 **(c)** *The Ombudsperson may, by regulation, adopt a fee for*
8 *mediation services of not more than twenty-five dollars (\$25) per*
9 *mediation.*

10 **(d)** *The Ombudsperson may contract with private parties to*
11 *provide mediation services pursuant to this section.*

12 **(e)** *Chapter 2 (commencing with Section 1115) of Division 9 of*
13 *the Evidence Code applies to mediation initiated under this*
14 *section.*