

AMENDED IN ASSEMBLY JANUARY 23, 2006

AMENDED IN ASSEMBLY APRIL 25, 2005

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CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 770**

**Introduced by Assembly Member Mullin**

February 18, 2005

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An act to amend Section 11504 of the Business and Professions Code, and to amend Sections 1369.510 and 1373 of, to add Section 1363.7 to, and to add Chapter 11 (commencing with Section 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: ombudsperson.

(1) Existing law requires a person who either provides or contemplates providing the services of a common interest development manager to a community association to annually disclose to the board of directors of the community association specified information, including whether or not he or she has met certain requirements to be called a certified common interest development manager and the location of his or her primary office.

This bill would require this information to be disclosed in writing, and would additionally require the person to disclose whether or not he or she has read the governing documents of the community association.

(2) The Davis-Stirling Common Interest Development Act defines and regulates common interest developments, which include condominiums and planned developments. 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, until January 1, ~~2011~~ 2012, 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: ~~yes~~no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 11504 of the Business and Professions
- 2 Code is amended to read:

1 11504. (a) On or before September 1, 2003, and on an annual  
2 basis thereafter, a person who either provides or contemplates  
3 providing the services of a common interest development  
4 manager to a community association shall disclose to the board  
5 of directors of the community association the following  
6 information in writing:

7 (1) Whether or not the common interest development manager  
8 has met the requirements of Section 11502 so he or she may be  
9 called a certified common interest development manager.

10 (2) The name, address, and telephone number of the  
11 professional association that certified the common interest  
12 development manager, the date the manager was certified, and  
13 the status of the certification.

14 (3) The location of his or her primary office.

15 (4) Prior to entering into or renewing a contract with a  
16 community association, the common interest development  
17 manager shall disclose to the governing board of the community  
18 association whether the fidelity insurance of the community  
19 manager or his or her employer covers the operating and reserve  
20 funds of the community association. This requirement may not  
21 be construed to compel or require a community association or  
22 common interest development manager to require fidelity  
23 insurance.

24 (5) Possession of an active real estate license, if applicable.

25 (6) Whether or not the common interest development manager  
26 has read the governing documents of the community association.

27 (b) This section may not preclude a common interest  
28 development manager from disclosing information as required in  
29 Section 1363.1 of the Civil Code.

30 SEC. 2. Section 1363.7 is added to the Civil Code, to read:

31 1363.7. An association shall provide its members with annual  
32 written notice of the Internet Web site address and toll-free  
33 telephone number of the Common Interest Development  
34 Ombudsperson established pursuant to Chapter 11 (commencing  
35 with Section 1380.010).

36 SEC. 3. Section 1369.510 of the Civil Code is amended to  
37 read:

38 1369.510. As used in this article:

39 (a) "Alternative dispute resolution" means mediation,  
40 arbitration, conciliation, or other nonjudicial procedure, including

1 mediation pursuant to Section 1380.300, that involves a neutral  
2 party in the decisionmaking process. The form of alternative  
3 dispute resolution chosen pursuant to this article may be binding  
4 or nonbinding, with the voluntary consent of the parties.

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

7 (1) Enforcement of this title.

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

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

13 SEC. 4. Section 1373 of the Civil Code is amended to read:

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

20 (1) Section 1356.

21 (2) Article 4 (commencing with Section 1357.100) of Chapter  
22 2.

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

24 (4) Section 1365.

25 (5) Section 1365.5.

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

27 (7) Section 1366.1.

28 (8) Section 1368.

29 (9) Section 1378.

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

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

38 SEC. 5. Chapter 11 (commencing with Section 1380.010) is  
39 added to Title 6 of Part 4 of Division 2 of the Civil Code, to read:

1 CHAPTER 11. COMMON INTEREST DEVELOPMENT  
2 OMBUDSPERSON PILOT PROJECT

3  
4 Article 1. Definitions

5  
6 1380.010. Unless the provision or context otherwise requires,  
7 the definitions in this article govern the construction of this  
8 chapter.

9 1380.020. “Owner” means the owner of a separate interest.

10 1380.030. “Person” includes a natural person, firm,  
11 association, organization, partnership, business trust, corporation,  
12 limited liability company, or public entity.

13  
14 Article 2. Administration

15  
16 1380.100. The Legislature finds and declares all of the  
17 following:

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

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

37 (c) The principal remedy for a violation of common interest  
38 development law is private litigation. Litigation is not an ideal  
39 remedy for many common interest development disputes, where  
40 the disputants are neighbors who must maintain ongoing

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

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

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

29 1380.110. (a) There is in the Department of Consumer  
30 Affairs the Office of the Common Interest Development  
31 Ombudsperson, under the supervision and control of the Director  
32 of Consumer Affairs.

33 (b) ~~The~~ *Commencing July 1, 2007, the* Director of Consumer  
34 Affairs shall employ a Common Interest Development  
35 Ombudsperson and other officers and employees as necessary to  
36 discharge the requirements of this chapter. The Common Interest  
37 Development Ombudsperson shall have the powers delegated by  
38 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) The Ombudsperson may convene an advisory committee to  
11 make recommendations on matters within the Ombudsperson's  
12 jurisdiction. A member of an advisory committee shall receive  
13 per diem and expenses pursuant to Section 103 of the Business  
14 and Professions Code. In selecting the members of an advisory  
15 committee, the Ombudsperson shall ensure a fair representation  
16 of the interests involved.

17 1380.120. The Common Interest Development  
18 Ombudsperson shall report annually to the Legislature, no later  
19 than October 1 of each year. The report shall include all of the  
20 following information:

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

27 (b) Analysis of the most common and serious types of disputes  
28 within common interest developments, along with any  
29 recommendations for statutory reform to reduce the frequency or  
30 severity of those disputes.

31 (c) On or before January 1, ~~2009~~ 2010, the Ombudsperson  
32 shall submit recommendations to the Legislature on the  
33 following topics:

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

36 (2) Whether the Ombudsperson should be authorized to  
37 oversee association elections.

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

1 1380.130. (a) On filing information with the Secretary of  
2 State every two years, pursuant to subdivision (a) of Section  
3 1363.6, an association shall submit a Common Interest  
4 Development Ombudsperson Fee. This fee is in addition to the  
5 fee submitted pursuant to Section 1363.6. Failure to submit the  
6 Common Interest Development Ombudsperson Fee is deemed  
7 noncompliance with Section 1363.6.

8 (b) The Common Interest Development Ombudsperson Fee  
9 shall equal the number of separate interests within the association  
10 multiplied by the biennial fee amount. The initial biennial fee  
11 amount is ten dollars (\$10).

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

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

26 (e) Subdivision (b) of Section 1366 does not limit an  
27 assessment increase necessary to recover the fee imposed by this  
28 section.

29 1380.140. Common Interest Development Ombudsperson fee  
30 revenue received by the Secretary of State and fee revenue  
31 received by the Common Interest Development Ombudsperson  
32 shall be transferred to the State Treasurer and placed in the Fee  
33 Account of the Common Interest Development Ombudsperson  
34 Fund, which is hereby created. All funds in the Fee Account of  
35 the Common Interest Development Ombudsperson Fund ~~are~~  
36 ~~continuously appropriated to the Ombudsperson,~~ *upon*  
37 *appropriation by the Legislature,* are to be used exclusively for  
38 expenditures necessary for the proper administration of this  
39 chapter.

1 1380.150. (a) This chapter shall remain in effect only until  
2 January 1, ~~2011~~ 2012, and as of that date is repealed, unless a  
3 later enacted statute that is enacted before January 1, ~~2011~~ 2012,  
4 deletes or extends that date.

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

10

11 Article 3. Education

12

13 1380.200. (a) The Common Interest Development  
14 Ombudsperson shall offer training materials and courses to  
15 common interest development directors, officers, and owners, in  
16 subjects relevant to the operation of a common interest  
17 development and the rights and duties of an association or owner.

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

20 1380.210. The Common Interest Development  
21 Ombudsperson shall maintain a toll-free telephone number to  
22 provide information or assistance on matters relating to common  
23 interest developments.

24 1380.220. (a) The Common Interest Development  
25 Ombudsperson shall maintain an Internet Web site, which shall  
26 provide all of the following information:

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

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

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

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

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

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

9 1380.230. (a) Within 60 days of assuming office as an  
10 association director, the director shall certify that he or she has  
11 read each of the following:

12 (1) The declaration, articles of incorporation or association,  
13 and bylaws of the association.

14 (2) This title or, if the Common Interest Development  
15 Ombudsperson prepares a detailed summary of the requirements  
16 of this title, that summary.

17 (b) A director shall file the certification required by this  
18 section with the Ombudsperson.

19

20 Article 4. Informal Dispute Resolution

21

22 1380.300. (a) Any interested person may request that the  
23 Office of the Common Interest Development Ombudsperson  
24 provide assistance in resolving a dispute involving the law  
25 governing common interest developments or the governing  
26 documents of a common interest development.

27 (b) On receipt of a request for assistance, the Ombudsperson  
28 shall, within the limits of the available resources, confer with the  
29 interested parties and assist in efforts to resolve the dispute by  
30 mutual agreement of the parties. If a dispute cannot be resolved  
31 through informal conference, the Ombudsperson may offer to  
32 mediate the dispute.

33 (c) The Ombudsperson may, by regulation, adopt a fee for  
34 mediation services of not more than ~~twenty-five dollars (\$25)~~  
35 *fifty dollars (\$50)* per mediation.

36 (d) The Ombudsperson may contract with private parties to  
37 provide mediation services pursuant to this section.

1 (e) Chapter 2 (commencing with Section 1115) of Division 9  
2 of the Evidence Code applies to mediation initiated under this  
3 section.

O