

AMENDED IN SENATE JUNE 26, 2006

AMENDED IN ASSEMBLY JANUARY 23, 2006

AMENDED IN ASSEMBLY APRIL 25, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

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**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~~ *Section* 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.

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, 2012~~ *July 1, 2009*, 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 report annually to the Legislature, and to submit recommendations to the Legislature on specified topics by January 1, 2009.~~ *The bill would require the Ombudsperson, commencing July 1, 2007, 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 as specified.*

*This bill would impose a biennial association fee on common interest development associations to fund the administration of the provisions of the bill, for deposit, payable upon filing specified information with the Secretary of State. The bill would require the Secretary of State to deposit the fee revenue in a newly created fund, the Fee Account of the Common Interest Development Ombudsperson Fund, for the administration of these provisions upon appropriation*

by the Legislature. The bill would require the Secretary of State to develop a form for an association that is excused from paying the fee to certify that another association has paid the fee, as specified. The bill would provide that costs incurred by the Secretary of State pursuant to these provisions shall be reimbursed from the Common Interest Development Ombudsperson Fund.

Vote: majority. Appropriation: 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:  
3 11504. (a) On or before September 1, 2003, and on an annual  
4 basis thereafter, a person who either provides or contemplates  
5 providing the services of a common interest development  
6 manager to a community association shall disclose to the board  
7 of directors of the community association the following  
8 information in writing:  
9 (1) Whether or not the common interest development manager  
10 has met the requirements of Section 11502 so he or she may be  
11 called a certified common interest development manager.  
12 (2) The name, address, and telephone number of the  
13 professional association that certified the common interest  
14 development manager, the date the manager was certified, and  
15 the status of the certification.  
16 (3) The location of his or her primary office.  
17 (4) Prior to entering into or renewing a contract with a  
18 community association, the common interest development  
19 manager shall disclose to the governing board of the community  
20 association whether the fidelity insurance of the community  
21 manager or his or her employer covers the operating and reserve  
22 funds of the community association. This requirement may not  
23 be construed to compel or require a community association or  
24 common interest development manager to require fidelity  
25 insurance.  
26 (5) Possession of an active real estate license, if applicable.  
27 (6) Whether or not the common interest development manager  
28 has read the governing documents of the community association.

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

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

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

10 ~~SEC. 3. Section 1369.510 of the Civil Code is amended to~~  
11 ~~read:~~

12 ~~1369.510. As used in this article:~~

13 (a) ~~“Alternative dispute resolution” means mediation,~~  
14 ~~arbitration, conciliation, or other nonjudicial procedure, including~~  
15 ~~mediation pursuant to Section 1380.300, that involves a neutral~~  
16 ~~party in the decisionmaking process. The form of alternative~~  
17 ~~dispute resolution chosen pursuant to this article may be binding~~  
18 ~~or nonbinding, with the voluntary consent of the parties.~~

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

21 (1) ~~Enforcement of this title.~~

22 (2) ~~Enforcement of the Nonprofit Mutual Benefit Corporation~~  
23 ~~Law (Part 3 (commencing with Section 7110) of Division 2 of~~  
24 ~~Title 1 of the Corporations Code).~~

25 (3) ~~Enforcement of the governing documents of a common~~  
26 ~~interest development.~~

27 ~~SEC. 4.~~

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

29 1373. (a) The following provisions do not apply to a  
30 common interest development that is limited to industrial or  
31 commercial uses by zoning or by a declaration of covenants,  
32 conditions, and restrictions that has been recorded in the official  
33 records of each county in which the common interest  
34 development is located:

35 (1) Section 1356.

36 (2) Article 4 (commencing with Section 1357.100) of Chapter  
37 2.

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

39 (4) Section 1365.

40 (5) Section 1365.5.

- 1 (6) Subdivision (b) of Section 1366.
- 2 (7) Section 1366.1.
- 3 (8) Section 1368.
- 4 (9) Section 1378.
- 5 (10) Chapter 11 (commencing with Section 1380.010).
- 6 (b) The Legislature finds that the provisions listed in
- 7 subdivision (a) are appropriate to protect purchasers in residential
- 8 common interest developments; however, the provisions may not
- 9 be necessary to protect purchasers in commercial or industrial
- 10 developments since the application of those provisions could
- 11 result in unnecessary burdens and costs for these types of
- 12 developments.

13 ~~SEC. 5.~~

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

16  
17 CHAPTER 11. COMMON INTEREST DEVELOPMENT  
18 OMBUDSPERSON PILOT PROJECT

19  
20 Article 1. Definitions

21  
22 1380.010. Unless the provision or context otherwise requires,  
23 the definitions in this article govern the construction of this  
24 chapter.

25 1380.020. "Owner" means the owner of a separate interest.

26 1380.030. "Person" includes a natural person, firm,  
27 association, organization, partnership, business trust, corporation,  
28 limited liability company, or public entity.

29  
30 Article 2. Administration

31  
32 1380.100. The Legislature finds and declares all of the  
33 following:

34 (a) There are more than ~~36,000~~ 41,000 residential common  
35 interest developments in California, comprising more than  
36 ~~3,000,000~~ 4,300,000 dwellings. Common interest developments  
37 comprise approximately one-quarter of the state's housing stock.

38 (b) Managing a common interest development is a complex  
39 responsibility. Community associations are run by volunteer  
40 directors who may have little or no prior experience in managing

1 real property, operating a nonprofit association or corporation,  
2 complying with the law governing common interest  
3 developments, and interpreting and enforcing restrictions and  
4 rules imposed by the governing documents of the common  
5 interest development. Homeowners may not fully understand  
6 their rights and obligations under the law and the governing  
7 documents. Mistakes and misunderstandings are inevitable and  
8 may lead to serious, costly, and divisive problems. The Common  
9 Interest Development Ombudsperson seeks to educate  
10 community association officers and homeowners as to their legal  
11 rights and obligations. Effective education can prevent or reduce  
12 the severity of problems within a common interest development.

13 (c) The principal remedy for a violation of common interest  
14 development law is private litigation. Litigation is not an ideal  
15 remedy for many common interest development disputes, where  
16 the disputants are neighbors who must maintain ongoing  
17 relationships. The adversarial nature of litigation can disrupt  
18 these relationships, creating animosity that degrades the quality  
19 of life within the community and makes future disputes more  
20 likely to arise. Litigation imposes costs on a common interest  
21 development community as a whole, costs that must be paid by  
22 all members through increased assessments. Many homeowners  
23 cannot afford to bring a lawsuit and are effectively denied the  
24 benefit of laws designed for their protection. The Common  
25 Interest Development Ombudsperson provides a neutral,  
26 nonjudicial forum for resolution of common interest development  
27 disputes. ~~Many disputes can be resolved inexpensively,  
28 informally, and amicably through ombudsperson-facilitated  
29 mediation.~~

30 (d) Anecdotal accounts of abuses within common interest  
31 developments create continuing public demand for reform of  
32 common interest development law. This results in frequent  
33 changes to the law, making it more difficult to understand and  
34 apply and imposing significant transitional costs on common  
35 interest developments statewide. By collecting empirical data on  
36 the nature and incidence of problems within common interest  
37 developments, the Common Interest Development  
38 Ombudsperson provides a sound basis for prioritizing reform  
39 efforts, thereby increasing the stability of common interest  
40 development law.

1 (e) The costs of the Common Interest Development  
2 Ombudsperson Pilot Project shall be borne entirely by common  
3 interest development homeowners, through imposition of a  
4 biennial fee.

5 1380.110. (a) There is in the Department of Consumer  
6 Affairs the Office of the Common Interest Development  
7 Ombudsperson, under the supervision and control of the Director  
8 of Consumer Affairs.

9 (b) Commencing July 1, 2007, the Director of Consumer  
10 Affairs shall employ, *pursuant to the State Civil Service Act*  
11 *(Part 2 (commencing with Section 18500) of Division 5 of Title 2*  
12 *of the Government Code)*, a Common Interest Development  
13 Ombudsperson and other officers and employees as necessary to  
14 discharge the requirements of this chapter. The Common Interest  
15 Development Ombudsperson shall have the powers delegated by  
16 the director.

17 (c) The Ombudsperson shall adopt rules governing practices  
18 and procedures under this chapter. Any rule adopted under this  
19 subdivision is subject to the rulemaking provisions of the  
20 Administrative Procedure Act (Chapter 3.5 (commencing with  
21 Section 11340) of Part 1 of Division 3 of Title 2 of the  
22 Government Code).

23 (d) Information and advice provided by the Ombudsperson has  
24 no binding legal effect and is not subject to the rulemaking  
25 provisions of the Administrative Procedure Act (Chapter 3.5  
26 (commencing with Section 11340) of Part 1 of Division 3 of Title  
27 2 of the Government Code).

28 (e) The Ombudsperson may convene an advisory committee to  
29 make recommendations on matters within the Ombudsperson's  
30 jurisdiction. A member of an advisory committee shall receive  
31 per diem and expenses pursuant to Section 103 of the Business  
32 and Professions Code. In selecting the members of an advisory  
33 committee, the Ombudsperson shall ensure a fair representation  
34 of the interests involved.

35 1380.120. The Common Interest Development  
36 Ombudsperson shall report annually to the Legislature, no later  
37 than October 1 of each year. The report shall include all of the  
38 following information:

39 (a) Annual workload and performance data, including the  
40 number of requests for assistance received, the manner in which

1 a request was or was not resolved, and the staff time required to  
2 resolve the inquiry. For each category of data, the Ombudsperson  
3 shall provide subtotals based on the type of question or dispute  
4 involved in the request.

5 (b) Analysis of the most common and serious types of disputes  
6 within common interest developments, along with any  
7 recommendations for statutory reform to reduce the frequency or  
8 severity of those disputes.

9 (c) On or before January 1, ~~2010~~ 2009, the Ombudsperson  
10 shall submit recommendations to the Legislature on the  
11 following topics:

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

14 (2) Whether the Ombudsperson should be authorized to  
15 oversee association elections.

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

18 (4) *Whether the Ombudsperson should provide or subsidize*  
19 *mediation of common interest development disputes.*

20 1380.130. (a) On filing information with the Secretary of  
21 State every two years, pursuant to subdivision (a) of Section  
22 1363.6, an association shall submit a Common Interest  
23 Development Ombudsperson-Fee *fee*. This fee is in addition to  
24 the fee submitted pursuant to Section 1363.6. Failure to submit  
25 the Common Interest Development Ombudsperson-Fee *fee* is  
26 deemed noncompliance with Section 1363.6. *Costs incurred by*  
27 *the Secretary of State pursuant to this section shall be*  
28 *reimbursed from the Common Interest Development*  
29 *Ombudsperson Fund.*

30 (b) The Common Interest Development Ombudsperson-Fee  
31 *fee* shall equal the number of separate interests within the  
32 association multiplied by the biennial fee amount. The ~~initial~~  
33 biennial fee amount is ~~ten dollars (\$10)~~ *two dollars (\$2)*.

34 (c) An association is excused from paying the fee for a  
35 separate interest if another association has paid the fee for that  
36 separate interest. An association that is excused from paying the  
37 fee for a separate interest shall certify, on a form developed by  
38 the Secretary of State for that purpose, that another association  
39 has paid the fee for that separate interest. The Ombudsperson  
40 may adopt, by regulation, a rule governing which association is

1 required to pay the fee for a separate interest that is part of more  
2 than one association.

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

8 (e)

9 (d) Subdivision (b) of Section 1366 does not limit an  
10 assessment increase necessary to recover the fee imposed by this  
11 section.

12 1380.140. Common Interest Development Ombudsperson fee  
13 revenue received by the Secretary of State and fee revenue  
14 received by the Common Interest Development Ombudsperson  
15 shall be transferred to the State Treasurer and placed in the Fee  
16 Account of the Common Interest Development Ombudsperson  
17 Fund, which is hereby created. All funds in the Fee Account of  
18 the Common Interest Development Ombudsperson Fund, upon  
19 appropriation by the Legislature, are to be used exclusively for  
20 expenditures necessary for the proper administration of this  
21 chapter.

22 1380.150. (a) This chapter shall remain in effect only until  
23 ~~January 1, 2012~~ *July 1, 2009*, and as of that date is repealed,  
24 unless a later enacted statute that is enacted before ~~January 1,~~  
25 ~~2012~~ *July 1, 2009*, deletes or extends that date.

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

31 (c) *Article 3 (commencing with Section 1380.200) and Article*  
32 *4 (commencing with Section 1380.300) shall become operative*  
33 *on July 1, 2007.*

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35 Article 3. Education

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37 1380.200. (a) The Common Interest Development  
38 Ombudsperson shall offer training materials and courses to  
39 common interest development directors, officers, and owners, in

1 subjects relevant to the operation of a common interest  
2 development and the rights and duties of an association or owner.

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

5 1380.210. The Common Interest Development  
6 Ombudsperson shall maintain a toll-free telephone number to  
7 provide information or assistance on matters relating to common  
8 interest developments.

9 1380.220. (a) The Common Interest Development  
10 Ombudsperson shall maintain an Internet Web site, which shall  
11 provide all of the following information:

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

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

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

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

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

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

34 1380.230. (a) Within 60 days of assuming office as an  
35 association director, the director shall certify that he or she has  
36 read each of the following:

37 (1) The declaration, articles of incorporation or association,  
38 and bylaws of the association.

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

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

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Article 4. Informal Dispute Resolution

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1380.300. (a) Any interested person may request that the  
Office of the Common Interest Development Ombudsperson  
provide assistance in resolving a dispute ~~involving~~ *between an  
association and an owner that involves* the law governing  
common interest developments or the governing documents of a  
common interest development.

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

~~(c) The Ombudsperson may, by regulation, adopt a fee for  
mediation services of not more than fifty dollars (\$50) per  
mediation.~~

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

~~(e) Chapter 2 (commencing with Section 1115) of Division 9  
of the Evidence Code applies to mediation initiated under this  
section. *The Ombudsperson shall not charge a fee for this  
service.*~~