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CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 770

Introduced by Assembly Member Mullin

February 18, 2005

An act to amend Section 11504 of the Business and Professions Code, and to amend 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 July 1, 2009, establish in the Department of Consumer Affairs, the Office of the Common Interest Development Ombudsperson. The bill would require the Ombudsperson, 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, as specified.

This bill would impose a biennial association fee on common interest development associations, 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. On or before July 1, 2007, and annually thereafter, an
6 association shall provide its members with annual written notice
7 of the Internet Web site address and toll-free telephone number
8 of the Common Interest Development Ombudsperson established
9 pursuant to Chapter 11 (commencing with Section 1380.010).

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

11 1373. (a) The following provisions do not apply to a
12 common interest development that is limited to industrial or
13 commercial uses by zoning or by a declaration of covenants,
14 conditions, and restrictions that has been recorded in the official
15 records of each county in which the common interest
16 development is located:

- 17 (1) Section 1356.
- 18 (2) Article 4 (commencing with Section 1357.100) of Chapter
- 19 2.
- 20 (3) Subdivision (b) of Section 1363.
- 21 (4) Section 1365.
- 22 (5) Section 1365.5.
- 23 (6) Subdivision (b) of Section 1366.
- 24 (7) Section 1366.1.
- 25 (8) Section 1368.
- 26 (9) Section 1378.
- 27 (10) Chapter 11 (commencing with Section 1380.010).

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

35 SEC. 4. Chapter 11 (commencing with Section 1380.010) is
36 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 41,000 residential common interest
19 developments in California, comprising more than 4,300,000
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 Ombudsman 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.

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

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

27 1380.110. (a) There is in the Department of Consumer
28 Affairs the Office of the Common Interest Development
29 Ombudsperson, under the supervision and control of the Director
30 of Consumer Affairs.

31 (b) Commencing July 1, 2007, the Director of Consumer
32 Affairs shall employ, pursuant to the State Civil Service Act (Part
33 2 (commencing with Section 18500) of Division 5 of Title 2 of
34 the Government Code), 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 may 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, the Ombudsperson shall
32 submit recommendations to the Legislature on the following
33 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 (4) Whether the Ombudsperson should provide or subsidize
2 mediation of common interest development disputes.

3 1380.130. (a) On filing information with the Secretary of
4 State every two years, pursuant to subdivision (a) of Section
5 1363.6, an association shall submit a Common Interest
6 Development Ombudsperson fee. This fee is in addition to the
7 fee submitted pursuant to Section 1363.6. Failure to submit the
8 Common Interest Development Ombudsperson fee is deemed
9 noncompliance with Section 1363.6. Costs incurred by the
10 Secretary of State pursuant to this section shall be reimbursed
11 from the Common Interest Development Ombudsperson Fund.

12 (b) The Common Interest Development Ombudsperson fee
13 shall equal the number of separate interests within the association
14 multiplied by the biennial fee amount. The biennial fee amount is
15 ~~two dollars (\$2)~~. *six dollars (\$6)*.

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

28 1380.140. Common Interest Development Ombudsperson fee
29 revenue received by the Secretary of State and fee revenue
30 received by the Common Interest Development Ombudsperson
31 shall be transferred to the State Treasurer and placed in the Fee
32 Account of the Common Interest Development Ombudsperson
33 Fund, which is hereby created. All funds in the Fee Account of
34 the Common Interest Development Ombudsperson Fund, upon
35 appropriation by the Legislature, are to be used exclusively for
36 expenditures necessary for the proper administration of this
37 chapter.

38 1380.150. (a) This chapter shall remain in effect only until
39 July 1, 2009, and as of that date is repealed, unless a later enacted

1 statute that is enacted before July 1, 2009, deletes or extends that
2 date.

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

8 (c) Article 3 (commencing with Section 1380.200) and Article
9 4 (commencing with Section 1380.300) shall become operative
10 on July 1, 2007.

11

12 Article 3. Education

13

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

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

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

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

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

34 (2) Information concerning nonjudicial resolution of disputes
35 that may arise within a common interest development, including
36 contacts for locally available dispute resolution programs
37 organized pursuant to Chapter 8 (commencing with Section 465)
38 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
9 Web 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, the director shall certify that he or she has
14 read each of the following:

15 (1) The declaration, articles of incorporation or association,
16 and bylaws of the association.

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

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

22

23 Article 4. Informal Dispute Resolution

24

25 1380.300. (a) Any interested person may request that the
26 Office of the Common Interest Development Ombudsperson
27 provide assistance in resolving a dispute between an association
28 and an owner that involves the law governing common interest
29 developments or the governing documents of a common interest
30 development.

31 (b) On receipt of a request for assistance, the Ombudsperson
32 shall, within the limits of the available resources, confer with the
33 interested parties and assist in efforts to resolve the dispute by
34 mutual agreement of the parties. *A communication made under
35 this subdivision is deemed to be mediation for the purposes of
36 Chapter 2 (commencing with Section 1115) of Division 9 of the
37 Evidence Code.*

38 The

- 1 (c) *The* Ombudsperson shall not charge a fee for this service.

O