

**Assembly Bill No. 770**

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Passed the Assembly August 29, 2006

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*Chief Clerk of the Assembly*

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Passed the Senate August 28, 2006

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

CHAPTER \_\_\_\_\_

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, 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.

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

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

11504. (a) On or before September 1, 2003, and on an annual basis thereafter, a person who either provides or contemplates providing the services of a common interest development manager to a community association shall disclose to the board

of directors of the community association the following information in writing:

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

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

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

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

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

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

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

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

1363.7. On or before July 1, 2007, and annually thereafter, an association shall provide its members with annual written notice of the Internet Web site address and toll-free telephone number of the Common Interest Development Ombudsperson established pursuant to Chapter 11 (commencing with Section 1380.010).

SEC. 3. 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.
- (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.
- (10) Chapter 11 (commencing with Section 1380.010).

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

CHAPTER 11. COMMON INTEREST DEVELOPMENT  
OMBUDSPERSON PILOT PROJECT

Article 1. Definitions

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

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

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

Article 2. Administration

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

- (a) There are more than 41,000 residential common interest developments in California, comprising more than 4,300,000

dwellings. Common interest developments comprise approximately one-quarter of the state's housing stock.

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

(c) The principal remedy for a violation of common interest development law is private litigation. Litigation is not an ideal remedy for many common interest development disputes, where the disputants are neighbors who must maintain ongoing relationships. The adversarial nature of litigation can disrupt these relationships, creating animosity that degrades the quality of life within the community and makes future disputes more likely to arise. Litigation imposes costs on a common interest development community as a whole, costs that must be paid by all members through increased assessments. Many homeowners cannot afford to bring a lawsuit and are effectively denied the benefit of laws designed for their protection. The Common Interest Development Ombudsperson provides a neutral, nonjudicial forum for resolution of common interest development disputes.

(d) Anecdotal accounts of abuses within common interest developments create continuing public demand for reform of common interest development law. This results in frequent changes to the law, making it more difficult to understand and apply and imposing significant transitional costs on common interest developments statewide. By collecting empirical data on the nature and incidence of problems within common interest developments, the Common Interest Development

Ombudsperson provides a sound basis for prioritizing reform efforts, thereby increasing the stability of common interest development law.

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

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

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

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

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

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

1380.120. The Common Interest Development Ombudsperson shall report annually to the Legislature, no later

than October 1 of each year. The report shall include all of the following information:

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

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

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

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

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

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

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

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

(b) The Common Interest Development Ombudsperson fee shall equal the number of separate interests within the association multiplied by the biennial fee amount. The biennial fee amount is six dollars (\$6).

(c) An association is excused from paying the fee for a separate interest if another association has paid the fee for that separate interest. An association that is excused from paying the fee for a separate interest shall certify, on a form developed by

the Secretary of State for that purpose, that another association has paid the fee for that separate interest. The Ombudsperson may adopt, by regulation, a rule governing which association is required to pay the fee for a separate interest that is part of more than one association.

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

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

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

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

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

### Article 3. Education

1380.200. (a) The Common Interest Development Ombudsperson shall 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 4. Informal Dispute Resolution

1380.300. (a) Any interested person may request that the Office of the Common Interest Development Ombudsperson provide assistance in resolving a dispute 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. A communication made under this subdivision is deemed to be mediation for the purposes of Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code.

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









Approved \_\_\_\_\_, 2006

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*Governor*