

AMENDED IN SENATE JUNE 9, 2010

AMENDED IN SENATE MAY 24, 2010

AMENDED IN ASSEMBLY APRIL 20, 2010

AMENDED IN ASSEMBLY MARCH 9, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1927

Introduced by Assembly Member Knight

February 17, 2010

An act to amend Section 1368 of, and to add Section 1360.2 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1927, as amended, Knight. Real property: common interest developments.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. Under existing law, a common interest development is managed by an association pursuant to the provisions of the governing documents of the development.

This bill would provide that any provision that is added to or included in a governing document *initially* recorded on or after January 1, 2011, that prohibits the rental or lease of a separate interest is void, unless the provision imposing the prohibition is approved by $\frac{2}{3}$ of the owners of separate interests with voting power, as provided.

Existing law requires that an owner of a separate interest in a common interest development provide certain items to a prospective purchaser prior to transfer of title.

This bill would also require the owner of a separate interest, when a governing document prohibits the rental or leasing of all or any of the separate interests, to provide a statement describing the prohibition.

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

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

1 SECTION 1. The Legislature finds and declares that the rights
2 of common interest development owners to rent or lease their
3 properties, as the rights existed at the time they acquired them,
4 should be protected by the State of California. The Legislature
5 further finds and declares that a common interest development
6 creates a unique home ownership model that is unlike the status
7 of a single family home in a traditional neighborhood. Property
8 owners and residents who purchase units within, and live in, a
9 common interest development governed by a homeowner's
10 association have agreed to live under rules and guidelines created
11 by a democratic process. It is best, therefore, as provided herein,
12 that the owners of units within a common interest development
13 determine, through the exercise of a democratic decisionmaking
14 process, what is best for their communities.

15 SEC. 2. Section 1360.2 is added to the Civil Code, to read:

16 1360.2. (a) Unless approved as provided in this section, any
17 provision that prohibits the rental or lease of a separate interest in
18 a common interest development and that is added to a governing
19 document on or after January 1, 2011, or that is included in a
20 governing document *initially* recorded on or after January 1, 2011,
21 is void.

22 (b) On or after January 1, 2011, if a common interest
23 development adopts a governing document or an amendment to a
24 governing document that prohibits the rental or lease of a separate
25 interest in a common interest development, that provision shall be
26 approved by a vote of the owners of separate interests with voting
27 power in the common interest development.

28 (c) The vote required by this section shall be conducted pursuant
29 to the requirements of Section 1363.03. Notwithstanding any
30 provisions of the governing documents to the contrary and unless
31 the association's governing documents in effect as of February 17,
32 2010, require a different percentage, the provision that prohibits

1 the rental or lease of a separate interest in the common interest
2 development shall be approved by not less than two-thirds of the
3 voting power of the owners of separate interests in the common
4 interest development.

5 SEC. 3. Section 1368 of the Civil Code is amended to read:

6 1368. (a) The owner of a separate interest, other than an owner
7 subject to the requirements of Section 11018.6 of the Business and
8 Professions Code, shall, as soon as practicable before transfer of
9 title to the separate interest or execution of a real property sales
10 contract therefor, as defined in Section 2985, provide the following
11 to the prospective purchaser:

12 (1) A copy of the governing documents of the common interest
13 development, including any operating rules, and including a copy
14 of the association's articles of incorporation, or, if not incorporated,
15 a statement in writing from an authorized representative of the
16 association that the association is not incorporated.

17 (2) If there is a restriction in the governing documents limiting
18 the occupancy, residency, or use of a separate interest on the basis
19 of age in a manner different from that provided in Section 51.3, a
20 statement that the restriction is only enforceable to the extent
21 permitted by Section 51.3 and a statement specifying the applicable
22 provisions of Section 51.3.

23 (3) A copy of the most recent documents distributed pursuant
24 to Section 1365.

25 (4) A true statement in writing obtained from an authorized
26 representative of the association as to the amount of the
27 association's current regular and special assessments and fees, any
28 assessments levied upon the owner's interest in the common
29 interest development that are unpaid on the date of the statement,
30 and any monetary fines or penalties levied upon the owner's
31 interest and unpaid on the date of the statement. The statement
32 obtained from an authorized representative shall also include true
33 information on late charges, interest, and costs of collection which,
34 as of the date of the statement, are or may be made a lien upon the
35 owner's interest in a common interest development pursuant to
36 Section 1367 or 1367.1.

37 (5) A copy or a summary of any notice previously sent to the
38 owner pursuant to subdivision (h) of Section 1363 that sets forth
39 any alleged violation of the governing documents that remains
40 unresolved at the time of the request. The notice shall not be

1 deemed a waiver of the association's right to enforce the governing
2 documents against the owner or the prospective purchaser of the
3 separate interest with respect to any violation. This paragraph shall
4 not be construed to require an association to inspect an owner's
5 separate interest.

6 (6) A copy of the preliminary list of defects provided to each
7 member of the association pursuant to Section 1375, unless the
8 association and the builder subsequently enter into a settlement
9 agreement or otherwise resolve the matter and the association
10 complies with Section 1375.1. Disclosure of the preliminary list
11 of defects pursuant to this paragraph does not waive any privilege
12 attached to the document. The preliminary list of defects shall also
13 include a statement that a final determination as to whether the list
14 of defects is accurate and complete has not been made.

15 (7) A copy of the latest information provided for in Section
16 1375.1.

17 (8) Any change in the association's current regular and special
18 assessments and fees which have been approved by the
19 association's board of directors, but have not become due and
20 payable as of the date disclosure is provided pursuant to this
21 subdivision.

22 (9) If there is a provision in the governing documents that
23 prohibits the rental or leasing of all or any of the separate interests
24 in the common interest development to a renter, lessee, or tenant,
25 a statement describing the prohibition.

26 (b) Upon written request, an association shall, within 10 days
27 of the mailing or delivery of the request, provide the owner of a
28 separate interest with a copy of the requested items specified in
29 paragraphs (1) to (8), inclusive, of subdivision (a). The items
30 required to be made available pursuant to this section may be
31 maintained in electronic form and requesting parties shall have
32 the option of receiving them by electronic transmission or machine
33 readable storage media if the association maintains these items in
34 electronic form. The association may charge a reasonable fee for
35 this service based upon the association's actual cost to procure,
36 prepare, and reproduce the requested items.

37 (c) (1) Subject to the provisions of paragraph (2), neither an
38 association nor a community service organization or similar entity
39 may impose or collect any assessment, penalty, or fee in connection
40 with a transfer of title or any other interest except for the following:

1 (A) An amount not to exceed the association's actual costs to
2 change its records.

3 (B) An amount authorized by subdivision (b).

4 (2) The amendments made to this subdivision by the act adding
5 this paragraph do not apply to a community service organization
6 or similar entity that is described in subparagraph (A) or (B):

7 (A) The community service organization or similar entity
8 satisfies both of the following requirements:

9 (i) The community service organization or similar entity was
10 established prior to February 20, 2003.

11 (ii) The community service organization or similar entity exists
12 and operates, in whole or in part, to fund or perform environmental
13 mitigation or to restore or maintain wetlands or native habitat, as
14 required by the state or local government as an express written
15 condition of development.

16 (B) The community service organization or similar entity
17 satisfies all of the following requirements:

18 (i) The community service organization or similar entity is not
19 an organization or entity described in subparagraph (A).

20 (ii) The community service organization or similar entity was
21 established and received a transfer fee prior to January 1, 2004.

22 (iii) On and after January 1, 2006, the community service
23 organization or similar entity offers a purchaser the following
24 payment options for the fee or charge it collects at time of transfer:

25 (I) Paying the fee or charge at the time of transfer.

26 (II) Paying the fee or charge pursuant to an installment payment
27 plan for a period of not less than seven years. If the purchaser
28 elects to pay the fee or charge in installment payments, the
29 community service organization or similar entity may also collect
30 additional amounts that do not exceed the actual costs for billing
31 and financing on the amount owed. If the purchaser sells the
32 separate interest before the end of the installment payment plan
33 period, he or she shall pay the remaining balance prior to transfer.

34 (3) For the purposes of this subdivision, a "community service
35 organization or similar entity" means a nonprofit entity, other than
36 an association, that is organized to provide services to residents
37 of the common interest development or to the public in addition
38 to the residents, to the extent community common areas or facilities
39 are available to the public. A "community service organization or
40 similar entity" does not include an entity that has been organized

1 solely to raise moneys and contribute to other nonprofit
2 organizations that are qualified as tax exempt under Section
3 501(c)(3) of the Internal Revenue Code and that provide housing
4 or housing assistance.

5 (d) Any person or entity who willfully violates this section is
6 liable to the purchaser of a separate interest that is subject to this
7 section for actual damages occasioned thereby and, in addition,
8 shall pay a civil penalty in an amount not to exceed five hundred
9 dollars (\$500). In an action to enforce this liability, the prevailing
10 party shall be awarded reasonable attorneys' fees.

11 (e) Nothing in this section affects the validity of title to real
12 property transferred in violation of this section.

13 (f) In addition to the requirements of this section, an owner
14 transferring title to a separate interest shall comply with applicable
15 requirements of Sections 1133 and 1134.

16 (g) For the purposes of this section, a person who acts as a
17 community association manager is an agent, as defined in Section
18 2297, of the association.