

AMENDED IN SENATE AUGUST 4, 2010

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.

This bill would also incorporate additional changes to Section 1368 of the Civil Code, as proposed by SB 1128, to be operative only if SB 1128 and this bill are both enacted, each bill amends Section 1368 of the Civil Code, and this bill is enacted after SB 1128.

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)~~

23 (a) On or after January 1, 2011, if a common interest
24 development adopts a governing document or an amendment to a
25 governing document that prohibits the rental or lease of a separate

1 interest in a common interest development, that provision shall be
2 approved by a vote of the owners of separate interests with voting
3 power in the common interest development.

4 (e)

5 (b) The vote required by this section shall be conducted pursuant
6 to the requirements of Section 1363.03. ~~Notwithstanding any~~
7 ~~provisions of the governing documents to the contrary and unless~~
8 ~~the association's governing documents in effect as of February 17,~~
9 ~~2010, require a different percentage, the provision that prohibits~~
10 ~~the rental or lease of a separate interest in the common interest~~
11 ~~development shall be approved by not less than two-thirds of the~~
12 ~~voting power of the owners of separate interests in the common~~
13 ~~interest development.~~

14 (c) *The vote, as required by this section, shall be subject to the*
15 *vote approval standards for adopting or amending governing*
16 *documents.*

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

18 1368. (a) The owner of a separate interest, other than an owner
19 subject to the requirements of Section 11018.6 of the Business and
20 Professions Code, shall, as soon as practicable before transfer of
21 title to the separate interest or execution of a real property sales
22 contract therefor, as defined in Section 2985, provide the following
23 to the prospective purchaser:

24 (1) A copy of the governing documents of the common interest
25 development, including any operating rules, and including a copy
26 of the association's articles of incorporation, or, if not incorporated,
27 a statement in writing from an authorized representative of the
28 association that the association is not incorporated.

29 (2) If there is a restriction in the governing documents limiting
30 the occupancy, residency, or use of a separate interest on the basis
31 of age in a manner different from that provided in Section 51.3, a
32 statement that the restriction is only enforceable to the extent
33 permitted by Section 51.3 and a statement specifying the applicable
34 provisions of Section 51.3.

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

37 (4) A true statement in writing obtained from an authorized
38 representative of the association as to the amount of the
39 association's current regular and special assessments and fees, any
40 assessments levied upon the owner's interest in the common

1 interest development that are unpaid on the date of the statement,
2 and any monetary fines or penalties levied upon the owner's
3 interest and unpaid on the date of the statement. The statement
4 obtained from an authorized representative shall also include true
5 information on late charges, interest, and costs of collection which,
6 as of the date of the statement, are or may be made a lien upon the
7 owner's interest in a common interest development pursuant to
8 Section 1367 or 1367.1.

9 (5) A copy or a summary of any notice previously sent to the
10 owner pursuant to subdivision (h) of Section 1363 that sets forth
11 any alleged violation of the governing documents that remains
12 unresolved at the time of the request. The notice shall not be
13 deemed a waiver of the association's right to enforce the governing
14 documents against the owner or the prospective purchaser of the
15 separate interest with respect to any violation. This paragraph shall
16 not be construed to require an association to inspect an owner's
17 separate interest.

18 (6) A copy of the preliminary list of defects provided to each
19 member of the association pursuant to Section 1375, unless the
20 association and the builder subsequently enter into a settlement
21 agreement or otherwise resolve the matter and the association
22 complies with Section 1375.1. Disclosure of the preliminary list
23 of defects pursuant to this paragraph does not waive any privilege
24 attached to the document. The preliminary list of defects shall also
25 include a statement that a final determination as to whether the list
26 of defects is accurate and complete has not been made.

27 (7) A copy of the latest information provided for in Section
28 1375.1.

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

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

38 (b) Upon written request, an association shall, within 10 days
39 of the mailing or delivery of the request, provide the owner of a
40 separate interest with a copy of the requested items specified in

1 paragraphs (1) to (8), inclusive, of subdivision (a). The items
2 required to be made available pursuant to this section may be
3 maintained in electronic form and requesting parties shall have
4 the option of receiving them by electronic transmission or machine
5 readable storage media if the association maintains these items in
6 electronic form. The association may charge a reasonable fee for
7 this service based upon the association's actual cost to procure,
8 prepare, and reproduce the requested items.

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

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

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

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

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

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

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

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

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

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

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

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

38 (II) Paying the fee or charge pursuant to an installment payment
39 plan for a period of not less than seven years. If the purchaser
40 elects to pay the fee or charge in installment payments, the

1 community service organization or similar entity may also collect
2 additional amounts that do not exceed the actual costs for billing
3 and financing on the amount owed. If the purchaser sells the
4 separate interest before the end of the installment payment plan
5 period, he or she shall pay the remaining balance prior to transfer.

6 (3) For the purposes of this subdivision, a “community service
7 organization or similar entity” means a nonprofit entity, other than
8 an association, that is organized to provide services to residents
9 of the common interest development or to the public in addition
10 to the residents, to the extent community common areas or facilities
11 are available to the public. A “community service organization or
12 similar entity” does not include an entity that has been organized
13 solely to raise moneys and contribute to other nonprofit
14 organizations that are qualified as tax exempt under Section
15 501(c)(3) of the Internal Revenue Code and that provide housing
16 or housing assistance.

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

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

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

28 (g) For the purposes of this section, a person who acts as a
29 community association manager is an agent, as defined in Section
30 2297, of the association.

31 *SEC. 3.5. Section 1368 of the Civil Code is amended to read:*

32 1368. (a) The owner of a separate interest, other than an owner
33 subject to the requirements of Section 11018.6 of the Business and
34 Professions Code, shall, as soon as practicable before transfer of
35 title to the separate interest or execution of a real property sales
36 contract therefor, as defined in Section 2985, provide the following
37 to the prospective purchaser:

38 (1) A copy of the governing documents of the common interest
39 development, including any operating rules, and including a copy
40 of the association’s articles of incorporation, or, if not incorporated,

1 a statement in writing from an authorized representative of the
2 association that the association is not incorporated.

3 (2) If there is a restriction in the governing documents limiting
4 the occupancy, residency, or use of a separate interest on the basis
5 of age in a manner different from that provided in Section 51.3, a
6 statement that the restriction is only enforceable to the extent
7 permitted by Section 51.3 and a statement specifying the applicable
8 provisions of Section 51.3.

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

11 (4) A true statement in writing obtained from an authorized
12 representative of the association as to the amount of the
13 association's current regular and special assessments and fees, any
14 assessments levied upon the owner's interest in the common
15 interest development that are unpaid on the date of the statement,
16 and any monetary fines or penalties levied upon the owner's
17 interest and unpaid on the date of the statement. The statement
18 obtained from an authorized representative shall also include true
19 information on late charges, interest, and costs of collection which,
20 as of the date of the statement, are or may be made a lien upon the
21 owner's interest in a common interest development pursuant to
22 Section 1367 or 1367.1.

23 (5) A copy or a summary of any notice previously sent to the
24 owner pursuant to subdivision (h) of Section 1363 that sets forth
25 any alleged violation of the governing documents that remains
26 unresolved at the time of the request. The notice shall not be
27 deemed a waiver of the association's right to enforce the governing
28 documents against the owner or the prospective purchaser of the
29 separate interest with respect to any violation. This paragraph shall
30 not be construed to require an association to inspect an owner's
31 separate interest.

32 (6) A copy of the preliminary list of defects provided to each
33 member of the association pursuant to Section 1375, unless the
34 association and the builder subsequently enter into a settlement
35 agreement or otherwise resolve the matter and the association
36 complies with Section 1375.1. Disclosure of the preliminary list
37 of defects pursuant to this paragraph does not waive any privilege
38 attached to the document. The preliminary list of defects shall also
39 include a statement that a final determination as to whether the list
40 of defects is accurate and complete has not been made.

1 (7) A copy of the latest information provided for in Section
2 1375.1.

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

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

12 (b) Upon written request, an association shall, within 10 days
13 of the mailing or delivery of the request, provide the owner of a
14 separate interest with a copy of the requested items specified in
15 paragraphs (1) to (8), inclusive, of subdivision (a). The items
16 required to be made available pursuant to this section may be
17 maintained in electronic form and requesting parties shall have
18 the option of receiving them by electronic transmission or machine
19 readable storage media if the association maintains these items in
20 electronic form. The association may charge a reasonable fee for
21 this service based upon the association's actual cost to procure,
22 prepare, and reproduce the requested items.

23 (c) ~~(1) Subject to the provisions of~~ *Except as provided in*
24 *paragraph (2), neither an association nor a community service*
25 *organization or similar entity may impose or collect any*
26 *assessment, penalty, or fee in connection with a transfer of title or*
27 *any other interest except for the following:*

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

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

31 (2) ~~The amendments made to this subdivision by the act adding~~
32 ~~this prohibition in paragraph (1) does not apply to a community~~
33 ~~service organization or similar entity, or to a nonprofit entity that~~
34 ~~provides services to a common interest development under a~~
35 ~~declaration of trust, that is described in subparagraph (A) or (B):~~

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

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

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

6 (B) The community service organization or similar entity, *or a*
7 *nonprofit entity that provides services to a common interest*
8 *development under a declaration of trust*, satisfies all of the
9 following requirements:

10 (i) ~~The community service organization or similar entity is not~~
11 ~~an organization or entity described in subparagraph (A).~~

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

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

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

18 (II) Paying the fee or charge pursuant to an installment payment
19 plan for a period of not less than seven years. If the purchaser
20 elects to pay the fee or charge in installment payments, the
21 ~~community service organization or similar entity~~ may also collect
22 additional amounts that do not exceed the actual costs for billing
23 and financing on the amount owed. If the purchaser sells the
24 separate interest before the end of the installment payment plan
25 period, he or she shall pay the remaining balance prior to transfer.

26 (3) For the purposes of this subdivision, a “community service
27 organization or similar entity” means a nonprofit entity, other than
28 an association, that is organized to provide services to residents
29 of the common interest development or to the public in addition
30 to the residents, to the extent community common areas or facilities
31 are available to the public. A “community service organization or
32 similar entity” does not include an entity that has been organized
33 solely to raise moneys and contribute to other nonprofit
34 organizations that are qualified as tax exempt under Section
35 501(c)(3) of the Internal Revenue Code and that provide housing
36 or housing assistance.

37 (d) Any person or entity who willfully violates this section is
38 liable to the purchaser of a separate interest that is subject to this
39 section for actual damages occasioned thereby and, in addition,
40 shall pay a civil penalty in an amount not to exceed five hundred

1 dollars (\$500). In an action to enforce this liability, the prevailing
2 party shall be awarded reasonable attorneys' fees.

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

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

8 (g) For the purposes of this section, a person who acts as a
9 community association manager is an agent, as defined in Section
10 2297, of the association.

11 *SEC. 4. Section 3.5 of this bill incorporates amendments to*
12 *Section 1368 of the Civil Code proposed by both this bill and SB*
13 *1128. It shall only become operative if (1) both bills are enacted*
14 *and become effective on or before January 1, 2011, (2) each bill*
15 *amends Section 1368 of the Civil Code, and (3) this bill is enacted*
16 *after SB 1128, in which case Section 3 of this bill shall not become*
17 *operative.*