

Memorandum 2003-32

Procedural Fairness in CID Rulemaking and Decisionmaking

The Commission's first recommendations on common interest development law were introduced in the Legislature this year. AB 512 (Bates) would implement the Commission's recommendations on *Procedural Fairness in CID Rulemaking and Decisionmaking* (33 Cal. L. Revision Comm'n Reports 81 (2003)) and *Organization of the Davis Stirling Common Interest Development Act* (33 Cal. L. Revision Comm'n Reports 1 (2003)). The latter recommendation was also incorporated in AB 1731 (Assembly Housing and Community Development), as a backup in case AB 512 failed passage. As AB 512 now appears likely to be enacted, the Assembly Housing and Community Development Committee removed provisions relating to the Commission's recommendation from AB 1731.

This memorandum: (1) provides an update on the status of AB 512, (2) requests Commission ratification of Comment revisions resulting from legislative changes to that bill, and (3) presents the Commission with a choice on how to handle provisions that were dropped from the bill.

STATUS OF AB 512

As reported in Memorandum 2003-23 (June 2, 2003), AB 512 has attracted considerable critical attention as it has moved through the Legislature. The Executive Council of Homeowners ("ECHO") consistently objected to the "safe harbor" approach taken in implementing the architectural review and rulemaking provisions. The Congress of California Seniors ("the Seniors") opposed the bill, requiring a number of changes that would tend to provide more direct decisionmaking power for homeowners. The Community Associations Institute, Leisure World, and others had concerns about some of the practical consequences imposed on boards as a consequence of the bill's procedures.

Prior to the bill being heard in the Senate Housing and Community Development Committee, the Community Associations Institute wrote Senator Ducheny, the Chair of that committee, suggesting that the bill had too many unresolved issues and should be made into a two-year bill. At the hearing, no one

testified in support of the bill, while both ECHO and the Seniors spoke against it (though from different perspectives). Despite a favorable staff analysis, the committee members elected not to vote on the bill and scheduled it for rehearing, with a suggestion that something be done to resolve the opposition's concerns. With ECHO's insistence on mandatory procedures, and the Seniors' opposition unless their suggested amendments be taken, it was clear that the bill would not survive another hearing intact.

After consulting with Commission Chair David Huebner, Assembly Member Bates, and Senate Housing Committee staff, a possible compromise took shape — the architectural review provisions would be removed from the bill, and the rulemaking provisions would be made mandatory. Most of the opposition to the bill focused on the architectural procedures, and it was thought that: (1) the rulemaking provisions could be enacted this year, and (2) the architectural provisions could be revisited to determine whether they are salvageable in one form or another.

In a very short time frame, the bill was amended along those lines and reheard by the Senate Housing Committee. The bill passed, with an understanding that all of the interested parties would meet in an effort to reach consensus on a handful of remaining issues before the bill was heard by the Senate Judiciary Committee. The meeting with the interest groups was fairly productive, leaving only minor timing issues unresolved.

The unresolved difference came down to a period of a few days. The Seniors wanted a 30 day period of advance notice to members before a board could change an operating rule. ECHO had pointed out that many association boards meet monthly. Those boards would like to propose a rule change at one meeting, and make their final decision on the proposal at the next. A 30 day notice period would preclude this, because it would not be possible to get notices printed and delivered 30 days before the next meeting. ECHO indicated it would accept a 25 day period, although it still had concerns about whether notices could be prepared and delivered in five days. The Seniors would not accept a 25 day period. They understood ECHO's position, but felt that 25 days was too short a period for members to review a proposed rule change and comment, especially if actual mailing time would further reduce the 25 day period. The staff and Assembly Member Bates felt that ECHO's concern was practical and reasonable and the bill was amended to provide for 25 days notice.

At the Senate Judiciary hearing it became clear that the Seniors had convinced several committee members that 25 days notice was too short. It appeared certain that the bill would not be approved by the committee unless the period was lengthened. Assembly Member Bates agreed to amend the bill to provide for 30 days notice and the bill was approved.

The bill was amended again on August 29 to make technical changes (including an unrelated amendment of Civil Code Section 1363.6, accepted by Assembly Member Bates as a courtesy to ECHO and CAI). The most substantive of the amendments was to require that notice of a proposed rule change include the text of the proposed rule change and a brief explanation of its purpose (restoring language that had inadvertently dropped out in the process of making the rulemaking procedure mandatory). That change was requested by the Assembly Housing and Community Development Committee. A copy of AB 512, as amended on August 29, 2003, is attached.

RATIFICATION OF COMMENT REVISIONS

As a consequence of amendments to AB 512, a few Comments require revision. For the most part, the revisions resulted from the renumbering of sections. A draft report on the Comment revisions is attached for the Commission's review and approval. If approved, this report will be published as an Appendix to the next Annual Report.

ARCHITECTURAL REVIEW

The Commission recommended the creation of a statutory procedure for association review of a proposed alteration of a homeowners' separate interest property ("architectural review"). The Commission decided against imposing a mandatory procedure. Instead, a minimum standard of fairness, reasonableness, and good faith would be imposed. A detailed procedure would then be provided as an optional safe harbor.

There are a number of justifications for this approach:

- (1) There are a wide variety of CID forms and circumstances. Unavoidably, a mandatory procedure would be a poor fit for many associations.
- (2) Many boards already have fair and reasonable architectural review procedures in place. A mandatory statute would require those

associations to bear the cost of changing procedures for little or no substantive benefit.

- (3) We have been told that knowledge of changes in CID law is slow to spread. Boards that are ignorant of a mandatory procedure will undoubtedly violate it. This would provide fertile ground for lawsuits challenging board decisions on purely procedural grounds.

Despite these arguments, ECHO opposed the safe harbor approach, insisting that the procedure must be mandatory. ECHO also argued that the proposed procedures were too complex and unwieldy. The Seniors also criticized the procedure as being too complex. Those intersecting critiques were sufficient to derail the architectural review provisions in the Senate. The staff doubts that an attempt to reintroduce the architectural review provisions in their original form would succeed.

The staff sees two options on how we might proceed: (1) Make the procedure mandatory, but significantly scale back its complexity. (2) Set the architectural review provisions aside. These options are discussed below.

Scaled Back Proposal

In order to achieve the uniformity that ECHO sees as crucial, without imposing ill-fitting procedures on many associations, the proposal would need to be significantly scaled back. Rather than attempting to spell out a detailed procedure, replete with deadlines and notices, perhaps it would be possible to set out a brief set of mandatory principles. These principles would be more concrete than a requirement of “fairness and reasonableness” but would still be loose enough to accommodate many existing procedures. Consider, for example, the following:

(a) This section only applies if an association’s governing documents require association approval before a member can alter the member’s separate interest.

(b) The association shall provide a fair, reasonable, and expeditious procedure for review and approval of a proposed alteration.

(c) The procedure for review and approval of a proposed alteration shall at a minimum satisfy all of the following requirements:

(1) Application for approval of a proposed alteration shall be made in the manner prescribed by the association.

(2) If a proposed alteration would foreseeably affect the property rights of other members, those members shall have notice of the

proposed alteration and an opportunity to comment on the proposal before a decision is made.

(3) The decisionmaker shall provide the applicant with a written decision. A disapproval decision shall include an explanation of the basis for disapproval.

(4) If a proposed alteration is disapproved, the applicant may appeal the disapproval to the board of directors. This paragraph does not apply if the board of directors made the original decision.

The preceding language encompasses the key policy points reflected in the Commission's safe harbor procedure, but does so without any specific timetable. Associations that don't currently provide for written decisions, neighbor notice, or appeal to the full board would have some adjusting to do, but fine details of procedure would be left for the associations to determine.

The staff believes that an approach along these lines has a chance of succeeding. It would be mandatory, but not cumbersome. The feasibility of this approach could be tested in staff meetings with interest groups.

Set It Aside

The other main option is to set the architectural provisions aside for now. In their present form they are probably unenactable. A great deal of staff time and effort went into trying to salvage them, without success. Interest group opposition to these provisions was active, persistent, and successful.

Conclusion

The staff would be interested to hear from the groups that opposed the architectural review provision on whether a stripped down version along the lines discussed above would be acceptable, at least as a starting point for discussion. If so, then it might be worth the staff resources necessary to solicit broader input on the proposal with an eye toward development of a revised recommendation. If the interest groups oppose the streamlined approach and do not offer any alternative, it would probably be better to save our scarce resources and work on something more productive. The issue of architectural review could always be revisited at a later date.

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

September 9, 2003

DRAFT REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON ASSEMBLY BILL 512

Assembly Bill 512, authored by Assembly Member Patricia Bates, implements two California Law Revision Commission recommendations: *Organization of Davis-Stirling Common Interest Development Act*, 33 Cal. L. Revision Comm'n Reports 1 (2003), *Common Interest Development Law: Procedural Fairness in Association Rulemaking and Decisionmaking*, 33 Cal. L. Revision Comm'n Reports 81 (2003). The new and revised Comments set out below supersede the comparable Comments in the recommendations and reflect amendments made to Assembly Bill 512 in the legislative process.

Civ. Code § 1350.7 (added). Document delivery

Comment. Section 1350.7 is new. It provides general document delivery rules that apply where this section is incorporated by reference in this title. For provisions incorporating this section by reference, see Sections 1357.130 (rulemaking), 1357.140 (rule change reversal).

See also Sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined).

Civ. Code § 1357.110 (added). Validity of operating rule

Comment. Section 1357.110 is new. Subdivisions (b) and (c) provide that an ultra vires operating rule is invalid. See *MaJor v. Miraverde Homeowners Ass’n, Inc.*, 7 Cal. App. 4th 618, 628, 9 Cal. Rptr. 2d 237, 243 (1992) (“Where the association exceeds its scope of authority, any rule or decision resulting from such an ultra vires act is invalid whether or not it is a ‘reasonable’ response to a particular circumstance.”).

Nothing in this section affects the burden of proof a party bears when asserting a claim for relief or a defense. See Evid. Code § 500 (burden of proof).

See also Sections 1351(a) (“association” defined), 1351(h) (“declaration” defined), 1357.100(a), (“operating rule” defined).

Civ. Code § 1357.120 (added). Application of rulemaking provisions

Comment. Subdivision (a) of Section 1357.120 specifies the types of operating rules that are governed by Sections 1357.130 and 1357.140.

Subdivision (b) provides a list of actions by an association board of directors that are not subject to Sections 1357.130 and 1357.140. Subdivision (b)(2) excludes decisions that are adjudicative or executive in nature. Subdivision (b)(3) excludes the setting of generally applicable assessments. Budgeting and the setting of assessments are governed by other law. See Sections 1365-1365.5, 1366. Subdivision (b)(4) reflects the fact that a board of directors may be legally required to make a specific rule change. Subdivision (b)(5) recognizes that mere repetition of an existing rule is not the making of a new rule.

See also Sections 1351(b) (“common area” defined), 1351(i) (“exclusive use common area” defined), 1351(j) (“governing documents” defined), 1351(l) (“separate interest” defined), (“operating rule” defined).

Civ. Code § 1357.130 (added). Rulemaking procedure

Comment. Section 1357.130 provides the procedure to be followed when making a rule change.

Subdivisions (a) and (c) require that notice be provided to every member. Failure to provide notice to every member will not invalidate a rule change if the failure is minor and inadvertent. See Section 1357.110(d) (substantial compliance with rulemaking procedure, in good faith, required).

Subdivision (b) provides that a decision on a proposed rule change shall be made at a meeting of the board of directors. See Section 1363.05 (“Common Interest Development Open Meeting Act”).

See also Sections 1351(a) (“association” defined), 1357.100 (“rule change” defined).

Civ. Code § 1357.140 (added). Rule change reversal

Comment. Section 1357.140 authorizes member reversal of a recent rule change. This authority is limited to cases where members owning five percent or more of the separate interests call a meeting for that purpose within the specified time. The governing documents of an association may provide other additional procedures for member participation in rulemaking.

Subdivision (a) makes clear that organizing a special meeting to reverse a rule change is a proper purpose for access to an association’s membership records. Nothing in subdivision (a) affects other limitations on member access to membership records. See, e.g., Corp. Code §§ 8330(c) (board may offer reasonable alternative), 8332 (access limited to protect constitutional rights of members).

Subdivision (c) is drawn from Corporations Code Section 5034.

See also Sections 1351(a) (“association” defined), 1357.100 (“rule change” defined).

Civ. Code § 1357.150 (added). Prospective application

Comment. Section 1357.180 provides for prospective application of this article. A rule change commenced before January 1, 2004 would not be subject to this article, regardless of when the rulemaking process is completed.

See also Section 1357.100 (“rule change” defined).

Civ. Code § 1363 (amended). Management by association

Comment. Subdivision (f) of Section 1363 is amended to make clear that an association’s operating rules are subject to inspection by members. The subdivision is also amended to reference two types of records that are subject to inspection under existing law.

See also Sections 1351(a) (“association” defined), 1351(c) (“common interest development” defined), 1351(j) (“governing documents” defined).

Civ. Code § 1373 (amended). Nonresidential developments

Comment. Section 1373 is amended to exempt exclusively industrial and exclusively commercial common interest developments from application of the specified provisions governing association rulemaking.

AMENDED IN SENATE AUGUST 29, 2003

AMENDED IN SENATE AUGUST 25, 2003

AMENDED IN SENATE JULY 22, 2003

AMENDED IN SENATE JULY 14, 2003

AMENDED IN SENATE JUNE 23, 2003

AMENDED IN ASSEMBLY APRIL 30, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 512

Introduced by Assembly Member Bates
(Coauthors: Assembly Members Maze and Pacheco)
(Coauthor: Senator Denham)

February 18, 2003

An act to amend Sections 1363, *1363.6*, 1368, and 1373 of, to add Sections 1350.5 and 1350.7 to, to add Article 4 (commencing with Section 1357.100) to, and to add chapter and article headings to Title 6 (commencing with Section 1350) of Part 4 of Division 2 of, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 512, as amended, Bates. Common interest developments.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments. The act requires that a common interest development have a recorded declaration, as specified, and permits the declaration to be amended according to the act's provisions or those of the governing documents, as defined. The

act requires that a common interest development be managed by an association, and that a member of the association may attend meetings of the board of directors of the association, except when they meet in executive session to consider specified matters. The act excepts certain common interest developments expressly zoned as industrial or commercial developments, as specified, from certain of its requirements. *The act requires common interest development associations to submit specified information to the Secretary of State to assist with the identification of common interest developments.*

This bill would revise the Davis-Stirling Common Interest Development Act to add chapter and article headings to its provisions. The bill would specify that these headings do not change the scope, meaning, or intent of the bill.

This bill would also add provisions concerning procedural fairness in decisionmaking and rulemaking by associations. The bill would add requirements regarding operating rules relating to the use of the common area, the use of a separate interest, member discipline, standards for delinquent assessment payment plans, and the resolution of assessment disputes, as specified. Among other things, the bill would establish criteria for valid operating rules, require that members have notice of a proposed rule change, except as specified, and establish a procedure for reversing a rule. The bill would revise the provisions regarding common interest developments that are zoned as industrial or commercial developments, as described above, and would except certain of its provisions from application to these developments. The bill would further provide general document delivery rules, to be applicable when specified.

This bill would also require the association to include the name of the president of the association with the information that it is required to submit to the Secretary of State.

This bill would incorporate additional changes in Section 1368 of the Civil Code proposed by AB 1086, to become operative if both bills are enacted and take effect on or before January 1, 2004, and this bill is enacted last.

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. A chapter heading is added to Title 6
2 (commencing with Section 1350) of Part 4 of Division 2 of the
3 Civil Code, immediately preceding Section 1350, to read:

4
5 CHAPTER 1. GENERAL PROVISIONS
6

7 SEC. 2. An article heading is added to Title 6 (commencing
8 with Section 1350) of Part 4 of Division 2 of the Civil Code,
9 immediately preceding Section 1350, to read:

10
11 Article 1. Preliminary Provisions
12

13 SEC. 3. Section 1350.5 is added to the Civil Code, to read:

14 1350.5. Division, part, title, chapter, and section headings do
15 not in any manner affect the scope, meaning, or intent of this title.

16 SEC. 4. Section 1350.7 is added to the Civil Code, to read:

17 1350.7. (a) This section applies to delivery of a document to
18 the extent the section is made applicable by another provision of
19 this title.

20 (b) A document shall be delivered by one or more of the
21 following methods:

22 (1) Personal delivery.

23 (2) First-class mail, postage prepaid, addressed to a member at
24 the address last shown on the books of the association or otherwise
25 provided by the member. Delivery is deemed to be complete on
26 deposit into the United States mail.

27 (3) E-mail, facsimile, or other electronic means, if the recipient
28 has agreed to that method of delivery. If a document is delivered
29 by electronic means, delivery is complete at the time of
30 transmission.

31 (4) By publication in a periodical that is circulated primarily to
32 members of the association.

33 (5) If the association broadcasts television programming for
34 the purpose of distributing information on association business to
35 its members, by inclusion in the programming.

36 (6) A method of delivery provided in a recorded provision of
37 the governing documents.

1 (7) Any other method of delivery, provided that the recipient
2 has agreed to that method of delivery.

3 (c) A document may be included in or delivered with a billing
4 statement, newsletter, or other document that is delivered by one
5 of the methods provided in subdivision (b).

6 (d) For the purposes of this section, an unrecorded provision of
7 the governing documents providing for a particular method of
8 delivery does not constitute agreement by a member of the
9 association to that method of delivery.

10 SEC. 5. An article heading is added to Title 6 (commencing
11 with Section 1350) of Part 4 of Division 2 of the Civil Code,
12 immediately preceding Section 1351, to read:

13
14 Article 2. Definitions

15
16 SEC. 6. A chapter heading is added to Title 6 (commencing
17 with Section 1350) of Part 4 of Division 2 of the Civil Code,
18 immediately preceding Section 1352, to read:

19
20 CHAPTER 2. GOVERNING DOCUMENTS

21
22 SEC. 7. An article heading is added to Title 6 (commencing
23 with Section 1350) of Part 4 of Division 2 of the Civil Code,
24 immediately preceding Section 1352, to read:

25
26 Article 1. Creation

27
28 SEC. 8. An article heading is added to Title 6 (commencing
29 with Section 1350) of Part 4 of Division 2 of the Civil Code,
30 immediately preceding Section 1354, to read:

31
32 Article 2. Enforcement

33
34 SEC. 9. An article heading is added to Title 6 (commencing
35 with Section 1350) of Part 4 of Division 2 of the Civil Code,
36 immediately preceding Section 1355, to read:

37

1 Article 3. Amendment

2

3 SEC. 10. Article 4 (commencing with Section 1357.100) is
4 added to Title 6 of Part 4 of Division 2 of the Civil Code,
5 immediately following Section 1357, to read:

6

7 Article 4. Operating Rules

8

9 1357.100. As used in this article:

10 (a) “Operating rule” means a regulation adopted by the board
11 of directors of the association that applies generally to the
12 management and operation of the common interest development
13 or the conduct of the business and affairs of the association.

14 (b) “Rule change” means the adoption, amendment, or repeal
15 of an operating rule by the board of directors of the association.

16 1357.110. An operating rule is valid and enforceable only if
17 all of the following requirements are satisfied:

18 (a) The rule is in writing.

19 (b) The rule is within the authority of the board of directors of
20 the association conferred by law or by the declaration, articles of
21 incorporation or association, or bylaws of the association.

22 (c) The rule is not inconsistent with governing law and the
23 declaration, articles of incorporation or association, and bylaws of
24 the association.

25 (d) The rule is adopted, amended, or repealed in good faith and
26 in substantial compliance with the requirements of this article.

27 (e) The rule is reasonable.

28 1357.120. (a) Sections 1357.130 and 1357.140 only apply to
29 an operating rule that relates to one or more of the following
30 subjects:

31 (1) Use of the common area or of an exclusive use common
32 area.

33 (2) Use of a separate interest, including any aesthetic or
34 architectural standards that govern alteration of a separate interest.

35 (3) Member discipline, including any schedule of monetary
36 penalties for violation of the governing documents and any
37 procedure for the imposition of penalties.

38 (4) Any standards for delinquent assessment payment plans.

39 (5) Any procedures adopted by the association for resolution of
40 assessment disputes.

1 (b) Sections 1357.130 and 1357.140 do not apply to the
2 following actions by the board of directors of an association:

3 (1) A decision regarding maintenance of the common area.

4 (2) A decision on a specific matter that is not intended to apply
5 generally.

6 (3) A decision setting the amount of a regular or special
7 assessment.

8 (4) A rule change that is required by law, if the board of
9 directors has no discretion as to the substantive effect of the rule
10 change.

11 (5) Issuance of a document that merely repeats existing law or
12 the governing documents.

13 1357.130. (a) The board of directors shall provide written
14 notice of a proposed rule change to the members at least 30 days
15 before making the rule change. *The notice shall include the text of*
16 *the proposed rule change and a description of the purpose and*
17 *effect of the proposed rule change.* Notice is not required under this
18 subdivision if the board of directors determines that an immediate
19 rule change is necessary to address an imminent threat to public
20 health or safety or imminent risk of substantial economic loss to
21 the association.

22 (b) A decision on a proposed rule change shall be made at a
23 meeting of the board of directors, after consideration of any
24 comments made by association members.

25 (c) As soon as possible after making a rule change, but not more
26 than 15 days after making the rule change, the board of directors
27 shall deliver notice of the rule change to every association member.
28 *If the rule change was an emergency rule change made under*
29 *subdivision (d), the notice shall include the text of the rule change,*
30 *a description of the purpose and effect of the rule change, and the*
31 *date that the rule change expires.*

32 (d) If the board of directors determines that an immediate rule
33 change is required to address an imminent threat to public health
34 or safety, or an imminent risk of substantial economic loss to the
35 association, it may make an emergency rule change; and no notice
36 is required, as specified in subdivision (a). An emergency rule
37 change is effective for 120 days, unless the rule change provides
38 for a shorter effective period. A rule change made under this
39 subdivision may not be readopted under this subdivision.

1 (e) A notice required by this section is subject to Section
2 1350.7.

3 1357.140. (a) Members of an association owning 5 percent or
4 more of the separate interests may call a special meeting *of the*
5 *members* to reverse a rule change.

6 (b) A special meeting of the members may be called by
7 delivering a written request to the president or secretary of the
8 board of directors, after which the board shall deliver notice of the
9 meeting to *the* association's members and hold the meeting in
10 conformity with Section 7511 of the Corporations Code. The
11 written request may not be delivered more than 30 days after the
12 members of the association are notified of the rule change.
13 Members are deemed to have been notified of a rule change on
14 delivery of notice of the rule change, or on enforcement of the
15 resulting rule, whichever is sooner. For the purposes of Section
16 8330 of the Corporations Code, collection of signatures to call a
17 special meeting under this section is a purpose reasonably related
18 to the interests of the members of the association. A member
19 request to copy or inspect the membership list solely for that
20 purpose may not be denied on the grounds that the purpose is not
21 reasonably related to the member's interests as a member.

22 (c) The rule change may be reversed by the affirmative vote of
23 a majority of the votes represented and voting at a duly held
24 meeting at which a quorum is present (which affirmative votes also
25 constitute a majority of the required quorum), or if the declaration
26 or bylaws require a greater proportion, by the affirmative vote or
27 written ballot of the proportion required. In lieu of calling the
28 meeting described in this section, the board may distribute a
29 written ballot to every member of the association in conformity
30 with the requirements of Section 7513 of the Corporations Code.

31 (d) Unless otherwise provided in the declaration or bylaws, for
32 the purposes of this section, a member may cast one vote per
33 separate interest owned.

34 (e) A meeting called under this section is governed by Chapter
35 5 (commencing with Section 7510) of Part 3 of Division 2 of Title
36 1 of, and Sections 7612 and 7613 of, the Corporations Code.

37 (f) A rule change reversed under this section may not be
38 readopted for one year after the date of the meeting reversing the
39 rule change. Nothing in this section precludes the board of

1 directors from adopting a different rule on the same subject as the
2 rule change that has been reversed.

3 (g) As soon as possible after the close of voting, but not more
4 than 15 days after the close of voting, the board of directors shall
5 provide notice of the results of a member vote held pursuant to this
6 section to every association member. Delivery of notice under this
7 subdivision is subject to Section 1350.7.

8 (h) This section does not apply to an emergency rule change
9 made under subdivision (d) of ~~section 1357.120~~ *Section 1357.130*.
10 1357.150. (a) This article applies to a rule change
11 commenced on or after January 1, 2004.

12 (b) Nothing in this article affects the validity of a rule change
13 commenced before January 1, 2004.

14 (c) For the purposes of this section, a rule change is commenced
15 when the board of directors of the association takes its first official
16 action leading to adoption of the rule change.

17 SEC. 11. A chapter heading is added to Title 6 (commencing
18 with Section 1350) of Part 4 of Division 2 of the Civil Code,
19 immediately preceding Section 1358, to read:

20

21 CHAPTER 3. OWNERSHIP RIGHTS AND INTERESTS

22

23 SEC. 12. A chapter heading is added to Title 6 (commencing
24 with Section 1350) of Part 4 of Division 2 of the Civil Code,
25 immediately preceding Section 1363, to read:

26

27 CHAPTER 4. GOVERNANCE

28

29 SEC. 13. An article heading is added to Title 6 (commencing
30 with Section 1350) of Part 4 of Division 2 of the Civil Code,
31 immediately preceding Section 1363, to read:

32

33 Article 1. Association

34

35 SEC. 14. Section 1363 of the Civil Code is amended to read:
36 1363. (a) A common interest development shall be managed
37 by an association which may be incorporated or unincorporated.
38 The association may be referred to as a community association.

1 (b) An association, whether incorporated or unincorporated,
2 shall prepare a budget pursuant to Section 1365 and disclose
3 information, if requested, in accordance with Section 1368.

4 (c) Unless the governing documents provide otherwise, and
5 regardless of whether the association is incorporated or
6 unincorporated, the association may exercise the powers granted
7 to a nonprofit mutual benefit corporation, as enumerated in
8 Section 7140 of the Corporations Code, except that an
9 unincorporated association may not adopt or use a corporate seal
10 or issue membership certificates in accordance with Section 7313
11 of the Corporations Code.

12 The association, whether incorporated or unincorporated, may
13 exercise the powers granted to an association by Section 383 of the
14 Code of Civil Procedure and the powers granted to the association
15 in this title.

16 (d) Meetings of the membership of the association shall be
17 conducted in accordance with a recognized system of
18 parliamentary procedure or any parliamentary procedures the
19 association may adopt.

20 (e) Notwithstanding any other provision of law, notice of
21 meetings of the members shall specify those matters the board
22 intends to present for action by the members, but, except as
23 otherwise provided by law, any proper matter may be presented at
24 the meeting for action.

25 (f) Members of the association shall have access to association
26 records, including accounting books and records and membership
27 lists, in accordance with Article 3 (commencing with Section
28 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the
29 Corporations Code. The members of the association shall have the
30 same access to the operating rules of the association as they have
31 to the accounting books and records of the association.

32 (g) If an association adopts or has adopted a policy imposing
33 any monetary penalty, including any fee, on any association
34 member for a violation of the governing documents or rules of the
35 association, including any monetary penalty relating to the
36 activities of a guest or invitee of a member, the board of directors
37 shall adopt and distribute to each member, by personal delivery or
38 first-class mail, a schedule of the monetary penalties that may be
39 assessed for those violations, which shall be in accordance with
40 authorization for member discipline contained in the governing

1 documents. The board of directors shall not be required to
2 distribute any additional schedules of monetary penalties unless
3 there are changes from the schedule that was adopted and
4 distributed to the members pursuant to this subdivision.

5 (h) When the board of directors is to meet to consider or impose
6 discipline upon a member, the board shall notify the member in
7 writing, by either personal delivery or first-class mail, at least 10
8 days prior to the meeting. The notification shall contain, at a
9 minimum, the date, time, and place of the meeting, the nature of
10 the alleged violation for which a member may be disciplined, and
11 a statement that the member has a right to attend and may address
12 the board at the meeting. The board of directors of the association
13 shall meet in executive session if requested by the member being
14 disciplined.

15 If the board imposes discipline on a member, the board shall
16 provide the member a written notification of the disciplinary
17 action, by either personal delivery or first-class mail, within 15
18 days following the action. A disciplinary action shall not be
19 effective against a member unless the board fulfills the
20 requirements of this subdivision.

21 (i) Whenever two or more associations have consolidated any
22 of their functions under a joint neighborhood association or similar
23 organization, members of each participating association shall be
24 entitled to attend all meetings of the joint association other than
25 executive sessions, (1) shall be given reasonable opportunity for
26 participation in those meetings and (2) shall be entitled to the same
27 access to the joint association's records as they are to the
28 participating association's records.

29 (j) Nothing in this section shall be construed to create, expand,
30 or reduce the authority of the board of directors of an association
31 to impose monetary penalties on an association member for a
32 violation of the governing documents or rules of the association.

33 SEC. 15. An article heading is added to Title 6 (commencing
34 with Section 1350) of Part 4 of Division 2 of the Civil Code,
35 immediately preceding Section 1363.05, to read:

36

1 Article 2. Common Interest Development Open Meeting Act

2

3 SEC. 16. An article heading is added to Title 6 (commencing
4 with Section 1350) of Part 4 of Division 2 of the Civil Code,
5 immediately preceding Section 1363.1, to read:

6

7

Article 3. Managing Agents

8

9 SEC. 17. An article heading is added to Title 6 (commencing
10 with Section 1350) of Part 4 of Division 2 of the Civil Code,
11 immediately preceding Section 1363.5, to read:

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Article 4. Public Information

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15 SEC. 18. *Section 1363.6 of the Civil Code is amended to read:*

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1363.6. (a) To assist with the identification of common
interest developments, each association, whether incorporated or
unincorporated, shall submit to the Secretary of State, on a form
and for a fee not to exceed thirty dollars (\$30) that the Secretary
of State shall prescribe, the following information concerning the
association and the development that it manages:

(1) A statement that the association is formed to manage a
common interest development under the Davis-Stirling Common
Interest Development Act.

(2) The name of the association.

(3) The street address of the association's onsite office, or, if
none, of the responsible officer or managing agent of the
association.

(4) The *name*, address, and either the daytime telephone
number or e-mail address of the president of the association, other
than the address, telephone number, or e-mail address of the
association's onsite office or managing agent of the association.

(5) The name, street address, and daytime telephone number of
the association's managing agent, if any.

(6) The county, and if in an incorporated area, the city in which
the development is physically located. If the boundaries of the
development are physically located in more than one county, each
of the counties in which it is located.

(7) If the development is in an unincorporated area, the city
closest in proximity to the development.

1 (8) The nine-digit ZIP Code, front street, and nearest cross
2 street of the physical location of the development.

3 (9) The type of common interest development, as defined in
4 subdivision (c) of Section 1351, managed by the association.

5 (10) The number of separate interests, as defined in subdivision
6 (l) of Section 1351, in the development.

7 (b) The association shall submit the information required by
8 this section as follows:

9 (1) By incorporated associations, within 90 days after the filing
10 of its original articles of incorporation, and thereafter at the time
11 the association files its biennial statement of ~~principle~~ *principal*
12 business activity with the Secretary of State pursuant to Section
13 8210 of the Corporations Code.

14 (2) By unincorporated associations, in July of 2003, and in that
15 same month biennially thereafter. Upon changing its status to that
16 of a corporation, the association shall comply with the filing
17 deadlines in paragraph (1).

18 (c) The association shall notify the Secretary of State of any
19 change in the street address of the association's onsite office or of
20 the responsible officer or managing agent of the association in the
21 form and for a fee prescribed by the Secretary of State, within 60
22 days of the change.

23 (d) On and after January 1, 2006, the penalty for an
24 incorporated association's noncompliance with the initial or
25 biennial filing requirements of this section shall be suspension of
26 the association's rights, privileges, and powers as a corporation
27 and monetary penalties, to the same extent and in the same manner
28 as suspension and monetary penalties imposed pursuant to Section
29 8810 of the Corporations Code.

30 (e) The Secretary of State shall make the information
31 submitted pursuant to paragraph (4) of subdivision (a) available
32 only for governmental purposes and only to members of the
33 Legislature and the Business, Transportation and Housing
34 Agency, upon written request. All other information submitted
35 pursuant to this section shall be subject to public inspection
36 pursuant to the California Public Records Act, Chapter 3.5
37 (commencing with Section 6250) of Division 7 of Title 1 of the
38 Government Code. The information submitted pursuant to this
39 section shall be made available for governmental or public

1 inspection, as the case may be, on or before July 1, 2004, and
2 thereafter.

3 *SEC. 19.* A chapter heading is added to Title 6 (commencing
4 with Section 1350) of Part 4 of Division 2 of the Civil Code,
5 immediately preceding Section 1364, to read:

6
7 CHAPTER 5. OPERATIONS

8
9 ~~SEC. 19.~~

10 *SEC. 20.* An article heading is added to Title 6 (commencing
11 with Section 1350) of Part 4 of Division 2 of the Civil Code,
12 immediately preceding Section 1364, to read:

13
14 Article 1. Common Areas

15
16 ~~SEC. 20.~~

17 *SEC. 21.* An article heading is added to Title 6 (commencing
18 with Section 1350) of Part 4 of Division 2 of the Civil Code,
19 immediately preceding Section 1365, to read:

20
21 Article 2. Fiscal Matters

22
23 ~~SEC. 21.~~

24 *SEC. 22.* An article heading is added to Title 6 (commencing
25 with Section 1350) of Part 4 of Division 2 of the Civil Code,
26 immediately preceding Section 1365.7, to read:

27
28 Article 3. Insurance

29
30 ~~SEC. 22.~~

31 *SEC. 23.* An article heading is added to Title 6 (commencing
32 with Section 1350) of Part 4 of Division 2 of the Civil Code,
33 immediately preceding Section 1366, to read:

34
35 Article 4. Assessments

36
37 ~~SEC. 23.~~

38 *SEC. 24.* A chapter heading is added to Title 6 (commencing
39 with Section 1350) of Part 4 of Division 2 of the Civil Code,
40 immediately preceding Section 1368, to read:

1 CHAPTER 6. TRANSFER OF OWNERSHIP INTERESTS

2

3 ~~SEC. 24.~~

4 SEC. 25. Section 1368 of the Civil Code is amended to read:

5 1368. (a) The owner of a separate interest, other than an
6 owner subject to the requirements of Section 11018.6 of the
7 Business and Professions Code, shall, as soon as practicable before
8 transfer of title to the separate interest or execution of a real
9 property sales contract therefor, as defined in Section 2985,
10 provide the following to the prospective purchaser:

11 (1) A copy of the governing documents of the common interest
12 development, including any operating rules, and including a copy
13 of the association's articles of incorporation, or, if not
14 incorporated, a statement in writing from an authorized
15 representative of the association that the association is not
16 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
22 applicable 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 shall 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 (b) Upon written request, an association shall, within 10 days
23 of the mailing or delivery of the request, provide the owner of a
24 separate interest with a copy of the requested items specified in
25 paragraphs (1) to (8), inclusive, of subdivision (a). The association
26 may charge a fee for this service, which shall not exceed the
27 association’s reasonable cost to prepare and reproduce the
28 requested items.

29 (c) An association shall not impose or collect any assessment,
30 penalty, or fee in connection with a transfer of title or any other
31 interest except the association’s actual costs to change its records
32 and that authorized by subdivision (b).

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

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

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

4 ~~SEC. 25.~~

5 *SEC. 25.5. Section 1368 of the Civil Code is amended to read:*

6 1368. (a) The owner of a separate interest, other than an
7 owner subject to the requirements of Section 11018.6 of the
8 Business and Professions Code, shall, as soon as practicable before
9 transfer of title to the separate interest or execution of a real
10 property sales contract therefor, as defined in Section 2985,
11 provide the following 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
15 incorporated, a statement in writing from an authorized
16 representative of the association that the association is not
17 incorporated.

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

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

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

38 (5) A copy or a summary of any notice previously sent to the
39 owner pursuant to subdivision (h) of Section 1363 that sets forth
40 any alleged violation of the governing documents that remains

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

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

17 (7) A copy of the latest information provided for in Section
18 1375.1.

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

24 (b) Upon written request, an association shall, within 10 days
25 of the mailing or delivery of the request, provide the owner of a
26 separate interest with a copy of the requested items specified in
27 paragraphs (1) to (8), inclusive, of subdivision (a). The association
28 may charge a fee for this service, ~~which shall~~ *that may* not exceed
29 the association's reasonable cost to prepare and reproduce the
30 requested items.

31 ~~An association shall not~~ (1) *Subject to the provisions of*
32 *paragraph (2), neither an association nor a community service*
33 *organization or similar entity may impose or collect any*
34 *assessment, penalty, or fee in connection with a transfer of title or*
35 *any other interest except for the following:*

36 (A) *An amount not to exceed* the association's actual costs to
37 change its records ~~and that~~.

38 (B) *An amount* authorized by subdivision (b).

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

4 (A) *The community service organization or similar entity*
5 *satisfies both of the following requirements:*

6 (i) *The community service organization or similar entity was*
7 *established prior to February 20, 2003.*

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

13 (B) *The community service organization or similar entity*
14 *satisfies all of the following requirements:*

15 (i) *The community service organization or similar entity is not*
16 *an organization or entity described in subparagraph (A).*

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

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

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

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

31 (3) *For the purposes of this subdivision, a “community service*
32 *organization or similar entity” means a nonprofit entity, other than*
33 *an association, that is organized to provide services to residents of*
34 *the common interest development or to the public in addition to the*
35 *residents, to the extent community common areas or facilities are*
36 *available to the public. A “community service organization or*
37 *similar entity” does not include an entity that has been organized*
38 *solely to raise money and contribute to other nonprofit*
39 *organizations that are qualified as tax exempt under Section*

1 *501(c)(3) of the Internal Revenue Code and that provide housing*
2 *or housing assistance.*

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

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

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

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

18 A chapter heading is added to Title 6 (commencing with
19 Section 1350) of Part 4 of Division 2 of the Civil Code,
20 immediately preceding Section 1368.4, to read:

21

22 CHAPTER 7. CIVIL ACTIONS AND LIENS

23

24 ~~SEC. 26.~~

25 *SEC. 27.* A chapter heading is added to Title 6 (commencing
26 with Section 1350) of Part 4 of Division 2 of the Civil Code,
27 immediately preceding Section 1370, to read:

28

29 CHAPTER 8. CONSTRUCTION OF INSTRUMENTS AND ZONING

30

31 ~~SEC. 27.~~

32 *SEC. 28.* A chapter heading is added to Title 6 (commencing
33 with Section 1350) of Part 4 of Division 2 of the Civil Code,
34 immediately preceding Section 1375, to read:

35

36 CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

37

38 ~~SEC. 28.~~

1 *SEC. 29.* A chapter heading is added to Title 6 (commencing
 2 with Section 1350) of Part 4 of Division 2 of the Civil Code,
 3 immediately preceding Section 1376, to read:

4

5

CHAPTER 10. IMPROVEMENTS

6

7 ~~*SEC. 29.*~~

8 *SEC. 30.* Section 1373 of the Civil Code is amended to read:

9 1373. (a) The following provisions do not apply to a
 10 common interest development that is limited to industrial or
 11 commercial uses by zoning or by its declaration:

12 (1) Section 1356.

13 (2) Article 4 (commencing with Section 1357.100) of Chapter
 14 2 of Title 6 of Part 4 of Division 2 ~~of the Civil Code.~~

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

16 (4) Section 1365.

17 (5) Section 1365.5.

18 (6) Subdivision (b) of Section 1366.

19 (7) Section 1366.1.

20 (8) Section 1368.

21 (b) The Legislature finds that the provisions listed in
 22 subdivision (a) are appropriate to protect purchasers in residential
 23 common interest developments, however, the provisions may not
 24 be necessary to protect purchasers in commercial or industrial
 25 developments since the application of those provisions could
 26 result in unnecessary burdens and costs for these types of
 27 developments.

28 *SEC. 31.* *Section 25.5 of this bill incorporates amendments to*
 29 *Section 1368 of the Civil Code proposed by both this bill and AB*
 30 *1086. It shall only become operative if (1) both bills are enacted*
 31 *and become effective on or before January 1, 2004, (2) each bill*
 32 *amends Section 1368 of the Civil Code, and (3) this bill is enacted*
 33 *after AB 1086, in which case Section 25 of this bill shall not*
 34 *become operative.*