

Memorandum 2004-39

State Assistance to Common Interest Developments (Staff Draft)

The Commission has directed the staff to prepare a draft proposal for creation of a common interest development oversight agency. The agency would be charged with providing information to the public regarding common interest development law and assisting in the resolution of CID disputes. A staff draft tentative recommendation is attached. The Commission should consider whether to make any changes to that draft and whether to circulate it for public comment.

Various features of the attached draft are discussed below.

GENERAL APPROACH

The staff draft sets out the basic framework for a CID oversight agency. It defines the agency's place in state government, its general powers and duties, and its funding source. The specifics of how the agency would implement its responsibilities would, for the most part, be left to agency development. We cannot predict with any accuracy what procedures or priorities would be best suited to practical realities. A grant of broad operational discretion would allow the agency to learn and adjust its procedures over time.

LOCATION AND STRUCTURE

The proposed law would create the Common Interest Development Bureau ("Bureau") within the Department of Consumer Affairs ("DCA"). That decision reflects two choices: (1) where to locate the agency, and (2) whether to create an entity headed by a single executive officer or by a multi-member board. Those choices are discussed below.

Location within Department of Consumer Affairs

Previous staff memoranda have discussed the various options in terms of where to locate the proposed agency. DCA is a good choice to host the agency. Its overall mission is consistent with that of the Bureau, to protect the public by receiving, investigating, and resolving complaints of professional misconduct. It

serves as an umbrella organization coordinating and overseeing the operation of a number of semi-autonomous regulatory bodies. From a drafting point of view it is a simple matter to add another appendage to the existing DCA structure. DCA's considerable experience in regulating various businesses and professions should prove valuable in starting up a new regulatory body.

Other agencies also have desirable attributes. The Department of Real Estate drafts the regulations that control a CID's initial governing documents. Combining that responsibility with ongoing oversight of CID governance would provide benefits in both areas of responsibility. However, the department currently has no Commissioner and is unable, at this time, to take a position on the merits of the proposed law or its willingness to be considered as a host department.

The Department of Justice has considerable experience with law enforcement, but with an emphasis on criminal rather than civil law. Its website does invite consumer complaints, but it mostly refers consumers to other agencies (primarily DCA). A consumer complaint form on the Department of Justice website advises that "the Attorney General does not represent private citizens seeking the return of money or other personal remedies." Because the Department of Justice seems more oriented toward protecting public rights than private rights, it may not be the best candidate for common interest development oversight responsibility. The staff has contacted the Department of Justice to discuss the proposed law but has not yet received a response.

The attached draft would make DCA the host department. That is a tentative decision that can be changed later if it is desirable to do so.

Board or Bureau?

The proposed agency could be headed by a multi-member board or by a single executive officer. There are advantages and disadvantages to either approach. A multi-member board can bring a range of perspectives to its policy deliberations and typically operates in public meetings, providing the public with an opportunity to comment on policy issues. However, turnover in board membership can disrupt institutional continuity. Failure to fill a vacancy can paralyze a board.

An executive officer can be more efficient than a board, because the executive officer can make a policy decision without debate and a public hearing. Executives tend to serve longer than board members, providing greater

institutional continuity. If the executive office is vacated, a bureau can continue to function by appointing an acting replacement. However, an executive officer would probably not be very accessible to the public, reducing the opportunity for direct input in the agency's policy formation.

While the staff sees substantive merit in both approaches, political considerations weigh slightly in favor of a single executive officer. The current administration has indicated its desire to increase government efficiency through consolidation of agencies. Rather than move boxes around on the state's organizational chart, Governor Schwarzenegger has vowed to "blow them up." The California Performance Review, sponsored by the Governor to develop specific proposals for increased structural efficiency in state government, has expressed general skepticism regarding multi-member boards. Of the 339 independent boards that it evaluated, it proposed abolishing 117 of them. The CPR report explains:

When state goals are pursued through un-elected boards and commissions, government is less accountable than if the task had been performed directly. If a program is failing California, good government demands that blame be easy to affix and hard to deflect. The current structure of boards and commissions creates the opposite situation. ...

...
Boards and commissions first became popular in the late 19th Century. As a response to the corrupt "big city bosses" that ruled American cities during the late 1800s and the early 1900s, reformers sought to remove power and influence over services from what they believed were the clutches of highly partisan and self-centered politicians. Instead, key government decisions would be made by boards and commissions comprised of "experts" who would supposedly apply their expertise in a neutral fashion, influenced only by what worked and what was right, or so the theory went.

The controversy surrounding the criminal trials of the officers accused of beating Rodney King and the subsequent riots provides an excellent example of how boards and commissions can insulate elected officials and confuse accountability. During the riots, former Police Chief Daryl Gates was widely criticized for failing to send in a sufficient number of police soon enough to prevent bloodshed and looting. Yet, under Los Angeles' boards and commissions structure, neither the Mayor [nor] the City Council—those most accountable to the electorate—could fire the Chief. That could only be done by the unelected appointees of the Los Angeles Police Commission.

While boards and commissions have in some measure successfully insulated decision-makers from politics and given a semblance of transparency and public access, the problem now is a

lack of general accountability. When something goes wrong with a board or commission, the electorate feels powerless because it is powerless; there is literally no one to hold directly accountable. And transparency without accountability is a façade.

The staff is not sure that an appointed board holding public meetings would be less accountable than an agency headed by a single executive officer. Concern about direct accountability could be addressed in part by giving the Governor power to remove an appointee for cause. Nonetheless, it is clear that multi-member boards are disfavored in the current administration. A proposal that calls for creation of a multi-member board would probably meet resistance. For that reason, the staff draft provides for a bureau rather than a board. That approach can be changed fairly easily if the Commission feels that a multi-member board should be used instead.

MAIN FEATURES OF PROPOSED LAW

Statement of Legislative Intent

It seems likely that a proposal to create a new regulatory agency (the “Common Interest Development Bureau”) would meet with more skepticism from the Legislature, the Governor, and the public than is typical for a Law Revision Commission proposal. For that reason it is important to provide a clear explanation of the purpose and functions of the proposed agency. We would ordinarily provide such an explanation in the preliminary part of the recommendation. However, individual Legislators and members of the public may not have the Commission’s recommendation available when first reviewing the proposed law. For that reason, the proposed law includes an explanatory provision, framed as a statement of legislative findings and declarations.

The explanatory statement emphasizes the importance of education and mediation in resolving problems. It describes disciplinary action as a “last resort.” This should help guide the Bureau in setting its priorities, while also giving some comfort to those who might worry about the potential for draconian enforcement policies. The explanatory statement is set out below:

1380.100. The Legislature finds and declares all of the following:
(a) There are more than 36,000 residential common interest developments in California, comprising more than 3,000,000 dwellings. Common interest developments comprise approximately one quarter of the state’s housing stock.

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

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

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

(e) The costs of the Common Interest Development Bureau shall be borne entirely by common interest development homeowners, through imposition of a small biennial fee. No general fund revenue shall be used to fund the services provided by the bureau.

Education

The proposed law requires the Bureau to maintain an informational website, similar to that previously recommended by the Commission. Information provided on the website would also be available in printed form. The Bureau would also be required to provide a toll-free telephone number that could be used to request information and advice. The Bureau would also provide training courses to association officers and homeowners. The Bureau would be authorized to charge a fee to cover the actual cost of providing printed material or training.

Mediation

Proposed Section 1380.300 provides:

1380.300. Any person may request the bureau's assistance in resolving a dispute involving the law governing common interest developments or a common interest development's governing documents. On receipt of a request for assistance the bureau shall, within the limits of its resources, investigate the dispute, confer with the interested parties, and assist in efforts to resolve the dispute by mutual agreement of the parties.

This gives the Bureau broad authority to informally investigate and mediate disputes, without dictating any specific procedure.

Coordination with Existing ADR Requirements

Under existing Civil Code Section 1354 a person is required to offer ADR before filing certain types of CID lawsuits. That requirement is not inconsistent with proposed Section 1380.300, but the two provisions could be better coordinated.

One alternative would be to simply make clear that Bureau-assisted mediation may be used to satisfy the pre-litigation ADR requirements. That would leave the choice of ADR form up to the parties, but would make clear that use of the Bureau's mediation process is a valid choice.

Another alternative would be to provide that Bureau mediation is the *only* form of ADR that satisfies Section 1354. That would eliminate an existing problem: a person who wishes to avoid ADR can offer a form that the other party is likely to reject.

A third possibility would be to require that all pre-litigation mediation be conducted through the Bureau and make participation in mediation *mandatory for*

all parties. Under existing law, the non-filing party in a dispute always has the right to refuse to participate in ADR. The only consequence of refusal is that the court may note the fact of refusal in determining the amount of any costs and fees that are awarded to the prevailing party. The proposed law could remove the right to refuse ADR.

The Commission has been hesitant about making participation in mediation completely mandatory. The success of mediation depends in large part on the willingness of the parties to negotiate in good faith. A recent report on mediation programs in the superior court casts additional light on the issue.

AOC Early Mediation Pilot Program Analysis

A recent report of the Administrative Office of the Courts reviews experience under five pilot programs conducted in 2000 and 2001, in which early mediation of lawsuits was encouraged or required by the superior courts. See *Evaluation of the Early Mediation Pilot Programs* (Admin. Office of the Courts, Feb. 27, 2004). The programs were generally successful. They increased settlement rates and litigant satisfaction and reduced trial rates and court workloads. *Id.* at 29-31.

However, success rates varied with the type of program, as indicated in the table below (describing unlimited civil cases within the experimental group). The table indicates (1) the percentage of eligible cases referred to mediation, (2) the rate of settlement of cases referred to mediation, and (3) the rate of settlement of *all* eligible cases (including cases that were not referred to mediation):

Program Type	County	(1) Rate of Referral	(2) Settlement of Referred Cases	(3) Settlement of Eligible Cases
Mandatory	Fresno	See below	55%	55%
Semi-Mandatory	Los Angeles	41%	49%	14%
Semi-Mandatory	San Diego	47%	58%	19%
Voluntary	Contra Costa	34%	60%	15%
Voluntary	Sonoma	28%	62%	14%

Note: a comparison of the different pilot programs is not a true “apples-to-apples” comparison; the programs differed in operational details that may have affected their rates of success (e.g., minimum mediator qualifications). *Id.* at 35.

The Fresno County program was the closest to being completely mandatory. Cases were referred to mediation randomly, but parties were allowed to show cause why a case was inappropriate for mediation. About 11% of the referred cases were excused from mediation for cause. *Id.* at 224. Note that the percentage

of cases referred to mediation was capped. Under a full implementation of the Fresno approach, all cases would be referred to mediation.

The Los Angeles and San Diego programs are described in the table as “semi-mandatory” because willingness of the parties to participate was a major factor in deciding whether to refer a case to mediation. “[The] wishes of the litigants played an important role in the mediation referral process, just as they would in a voluntary program.” *Id.* at 87, 150.

In general, voluntary mediation is more likely to succeed than involuntary mediation. However, a system of voluntary mediation results in fewer cases being referred to mediation (28-47% of total cases). Thus, while voluntary mediation improves the rate of successful mediation, the total number of cases resolved through mediation remains fairly low (14-19% of eligible cases).

In mandatory mediation the total number of eligible cases resolved through mediation is much higher (55%). This suggests that there are a significant number of cases in which the parties would not voluntarily participate in mediation, but nonetheless will settle if forced into mediation. However, mandatory mediation also results in a higher number of unsuccessful mediations. In Fresno’s mandatory program, 45% of the eligible cases were forced into unsuccessful mediation, adding to the cost and delay of resolving those cases. Under the voluntary and semi-mandatory programs, a much smaller percentage of the cases involve unsuccessful mediation (11% to 19%).

Does the heightened number of cases settled through mandatory mediation justify imposing mediation on everyone, even though half of the mediations will fail to produce a settlement? From the point of view of conserving judicial resources, a mandatory system probably makes sense. From the perspective of conserving litigant resources, the advantage is less clear — many more cases will avoid the cost of litigation, but half of all cases will be forced into unsuccessful mediation, adding to the cost and delay of resolving their cases.

Recommendation

Legislation implementing the Commission’s recommendation on ADR in CID disputes is still pending. That bill preserves the status quo with respect to voluntariness. The staff recommends against revisiting that decision at this time, especially in the context of a proposal that may well be controversial. If the Bureau is eventually established and develops a demonstrably effective approach

to mediation of CID disputes, we could then reconsider whether to require participation in the Bureau's process as a pre-requisite to litigation.

The staff recommends that the existing ADR provisions be amended to make clear that participation in the Bureau's process would satisfy the ADR requirement. A revision to that effect is included in the staff draft as an amendment to proposed Civil Code Section 1369.510 (which would be added by AB 1836 (Harman) as part of a recodification of the existing ADR requirements). That change would allow and encourage use of the Bureau's process, but would not require it.

Law Enforcement Powers

Some disputes cannot be resolved through appeals to reason and good will. If the Bureau finds a violation of CID law, and efforts to remedy the violation through mediation are unsuccessful, the Bureau would have authority to issue a corrective citation. A citation would order abatement of the violation and could include appropriate equitable relief (e.g., restitution of unlawfully collected fines). Where warranted, a citation could include an administrative fine to be paid to the Bureau. The following standards would govern imposition of a fine:

1380.310. ... (c) A citation may include an administrative fine of not more than \$1,000 per violation, to be paid to the bureau. In determining whether to impose a fine and the amount of any fine imposed, the bureau shall consider the gravity of the violation, the presence or absence of just cause or excuse, and any history of prior violations. A fine shall not be imposed against an individual unless the bureau finds, by clear and convincing evidence, that the violation committed by the individual involved malice, oppression, or fraud, as those terms are defined in Section 3294 of the Civil Code. If the bureau imposes a fine against an individual, the individual shall not be indemnified by the community association.

The ability of the Bureau to impose a fine on an individual would be limited to cases of knowing egregious misconduct (based on the existing standard for imposition of punitive damages in a civil case). That would allow discipline of bad actors without deterring board service by those who act in good faith (even if negligent). In the case of knowing misconduct the Bureau could also order removal of the wrongdoer from office.

A person who receives a citation would have the right to contest it in an administrative hearing. The results of that hearing would be subject to writ

review. If a hearing is not contested or is upheld after administrative and judicial review it would be enforceable in the superior court.

The Bureau would be required to publish all final corrective citations on its website. This is consistent with existing law that requires DCA to publish the disciplinary history of licensees on its website. Such information helps consumers to avoid a business (or community association) that has a history of violation of the law. That provides a strong incentive to follow the law or accept a mediated remedy of a violation.

Funding

The proposed law would require that a community association pay a Common Interest Development Bureau Fee to support the operations of the Bureau. The fee would be calculated by multiplying a “per unit base amount” by the number of separate interests within the association (e.g., a CID with 25 units would pay 25 times the per unit base amount). The fee would be paid when the association registers with the Secretary of State, every two years, pursuant to Civil Code Section 1363.6(a). The Secretary of State would deposit the fees collected into the Common Interest Development Bureau Fund established exclusively for use by the Bureau. Fees, fines, and reimbursement collected by the Bureau would also be deposited into the fund. The Bureau would be funded exclusively from the special fund; it would not receive any general fund revenues.

The per unit base amount would initially be \$10. Because the fee is only collected every two years, that would average to \$5 per unit per year. The Bureau would be required to adjust the per unit base amount every two years, to provide only the revenue that it estimates will be necessary for its operations in the next two years. The per unit base amount would be capped at \$20 (i.e., \$10 per unit per year).

A community association could increase assessments to recover the fee amount. This would spread the cost of the Bureau equally to all CID homeowners.

Some homes are included in more than one association, either because there is a master association comprised of all members of two or more community associations, or because the home is part of a sub-association established for the maintenance of facilities that only benefit a minority of members within a community association. That could lead to a home being counted more than once

for purposes of determining fees owed. Proposed Section 1380.120(a) would avoid that result by exempting master associations and sub-associations from payment of the Common Interest Development Bureau Fee. A note following Section 1380.120 asks for input on whether that solution is workable and appropriate.

PILOT PROJECT

The proposed law would be subject to a five year sunset provision. This is a common feature of consumer protection agencies established within the Department of Consumer Affairs.

The Joint Legislative Sunset Review Committee exists to review the operation of a consumer protection agency that is subject to a sunset provision and to make a recommendation on whether there is a continued public need for the agency's existence. Bus. & Prof. Code § 473.4. An agency under review must provide the Joint Committee with a detailed report analyzing its activities, funding, and expenditures. Bus. & Prof. Code § 473.2. The Joint Committee then holds a public hearing to receive testimony regarding the continued need for the agency. Under the proposed law the Common Interest Development Bureau would be subject to review by the Joint Committee. This provides an important measure of agency accountability. It should also help to allay some concerns about whether a CID agency is needed; if it turns out that the benefits of the agency don't justify the cost to homeowners the sunset date can be allowed to operate.

CONCLUSION

The staff recommends that the attached draft be circulated for public comment as a tentative recommendation, with or without any changes that the Commission directs. Given the magnitude of the proposed change, the staff also recommends that the Commission request an informational hearing on the proposed law before the Housing and Community Development Committees of the Assembly and Senate. Such a hearing would give the Commission a better sense of the will of the Legislature and executive branch.

Respectfully submitted,

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COMMON INTEREST DEVELOPMENT BUREAU

1 A common interest development (“CID”) is a housing development
2 characterized by (1) separate ownership of dwelling space (or a right of exclusive
3 occupancy) coupled with an undivided interest in common property, (2) covenants,
4 conditions, and restrictions that limit use of both the common area and separate
5 ownership interests, and (3) management of common property and enforcement of
6 restrictions by a community association. CIDs include condominiums, community
7 apartment projects, housing cooperatives, and planned unit developments.¹

8 There are over 36,000 CIDs in California, ranging in size from three to 27,000
9 units each.² These developments comprise over three million total housing units,
10 approximately one quarter of the state’s housing stock.³ CIDs accounted for 60%
11 of all residential construction starts during the 1990s. The planned unit
12 development alone represented more than 40% of single family home sales during
13 that period.⁴

14 CIDs are governed by volunteer directors, elected from among the unit owners.
15 Faced with the complexity of CID law, many of these volunteers make mistakes
16 and violate procedures for conducting hearings, adopting budgets, establishing
17 reserves, enforcing rules and restrictions, and collecting assessments. This
18 inevitably leads to conflicts within the development, either between the association
19 management and an individual homeowner, or between homeowners.

20 Empirical information is not available concerning the incidence of such disputes
21 in California. They are not uncommon, however. Data is available from other
22 jurisdictions in which there is government supervision of CID operations. For
23 example, in Nevada the Ombudsman for Owners in Common Interest
24 Communities receives approximately one complaint for every 100 common
25 interest dwelling units per year. In California, with its approximately three million
26 CID dwelling units, that would yield about 300,000 complaints each year.⁵

27 A homeowner who believes that a community association is violating the law or
28 has otherwise breached its duties has no effective remedy other than civil
29 litigation. Law enforcement authorities will generally not intervene in disputes
30 involving private associations. For example, Corporations Code Section 8216
31 authorizes the Attorney General to act on behalf of a member, director, or officer
32 of a mutual benefit corporation who complains about a failure of the corporation to
33 comply with specified provisions of the Corporations Code (relating to meetings,

1. See Civ. Code § 1351.

2. Gordon, *Planned Developments in California: Private Communities and Public Life* 21-22 (Cal. Pub. Policy Inst., 2004).

3. *Id.* at 20-21.

4. *Id.* at 3.

5. For another effort to estimate the frequency of CID disputes, see Johnston & Johnston-Dodds, *Common Interest Developments: Housing at Risk?* 35 (Cal. Res. Bur., Aug. 2002).

1 elections, document filing, record-keeping, and access to records). However, as a
2 matter of policy, the Attorney General does not pursue legal action in such cases.⁶

3 Litigation is not an ideal remedy for many common interest development
4 disputes, where the disputants are neighbors who must maintain ongoing
5 relationships. The adversarial nature of litigation can disrupt these relationships,
6 creating animosity that degrades the quality of life within the community and
7 makes future disputes more likely to arise. Litigation imposes costs on a common
8 interest development community as a whole; costs that must be paid by all
9 members through increased assessments. Many homeowners cannot afford to
10 bring a lawsuit, especially in cases where money damages are not at issue,⁷ and are
11 effectively denied the benefit of laws designed for their protection.

12 PROPOSED LAW

13 **Common Interest Development Bureau**

14 The proposed law would establish the Common Interest Development Bureau
15 within the Department of Consumer Affairs. The Bureau's structure and powers
16 are similar to those of other consumer protection agencies within state
17 government.

18 The Bureau would have two primary responsibilities:

19 (1) *Education.* The Bureau would maintain an informational website, distribute
20 informational publications, and conduct training classes. It would maintain a toll-
21 free telephone number that CID homeowners and officers could use to request
22 information or advice. The goal would be to educate community association
23 officers and homeowners as to their legal rights and obligations and to provide
24 training in effective community association management. Education can prevent or
25 reduce the severity of mistakes and misunderstandings that might otherwise result
26 in costly and rancorous disputes.

27 (2) *Dispute resolution.* The Bureau would provide a neutral, nonjudicial forum
28 for resolution of common interest development disputes. Many disputes could be
29 resolved informally through Bureau facilitated mediation. As a last resort, the
30 Bureau would have authority to issue a citation for violation of the law.⁸ Bureau
31 assistance in resolving disputes would provide an affordable remedy to a
32 homeowner whose rights have been violated and would increase the accountability
33 of CID boards.

34 The proposed law would also require that the Bureau publish all citations on its
35 website. This is similar to existing law that requires the Department of Consumer

6. See Commission Staff Memorandum 2001-44 (May 3, 2001).

7. Many CID disputes involve laws regulating community association governance (e.g., procedures for elections, meetings, or access to records). In such a case the relief sought will typically be an injunction or declaratory relief.

8. *Cf.* Bus. & Prof. Code § 125.9 (Department of Consumer Affairs citation authority).

1 Affairs to publish the disciplinary history of licensees on its website.⁹ This practice
2 would allow a potential CID home buyer to research whether a particular
3 community association has a history of violating the law.

4 **Empirical Data**

5 An important incidental benefit of the proposed law would be the ability of the
6 Bureau to collect a significant body of empirical data on the nature and incidence
7 of CID disputes in California. This would provide a basis for carefully targeted
8 reform of CID law.

9 **Reduced Court Congestion**

10 Improved education and accountability would reduce the number of serious
11 common interest development disputes that arise. Administrative dispute
12 resolution assistance would resolve many disputes that might otherwise end up in
13 court. As a result, the proposed law would significantly reduce the number of CID
14 cases that are filed in the courts.

15 **Cost**

16 The cost to operate a state agency that processes hundreds of thousands of
17 complaints each year would be significant. Under current fiscal conditions, it
18 would not be feasible to fund such an agency from the state's general fund.

19 Instead, the proposed law would impose a modest fee on CID homeowners, of
20 no more than 10 dollars per dwelling per year. This would produce up to \$30
21 million in revenue per year. This is comparable to the budget of other agencies
22 with similar consumer protection responsibilities.¹⁰ The Bureau would be funded
23 exclusively from fee revenue.

24 The fee would be paid to the Secretary of State as part of an existing CID
25 registration requirement.¹¹ Associations would pass the fee along to their members
26 through a modest increase in annual assessments.

27 A per unit fee would spread the cost of agency operations evenly to all CID
28 homeowners. Some homeowners in well-run associations might object to
29 subsidizing assistance in resolving disputes within associations that are poorly
30 managed. However, the Bureau's educational services will benefit all associations.
31 In addition, agency enforcement actions will eventually produce a body of
32 administrative decisions that can help fill gaps and resolve ambiguities in the law,
33 reducing the need for legal advice and the risk of litigation for all associations.¹²

9. See, e.g., Bus. & Prof. Code § 27.

10. For example, the proposed 2004-2005 budget for the Department of Fair Employment and Housing and the Fair Employment and Housing Commission combined is around \$20 million.

11. See Civ. Code § 1363.6.

12. See Gov't Code § 11425.60 (precedent decisions).

1 A similar funding mechanism has been used successfully in other jurisdictions
2 that provide education and dispute resolution services to common interest
3 communities.¹³

4 **Pilot Program**

5 The proposed law would be subject to a five year sunset provision. This is a
6 common feature of consumer protection agencies established within the
7 Department of Consumer Affairs.

8 The Joint Legislative Sunset Review Committee exists to review the operation of
9 a consumer protection agency that is subject to a sunset provision and to make a
10 recommendation on whether there is a continued public need for the agency's
11 existence.¹⁴ An agency under review must provide the Joint Committee with a
12 detailed report analyzing its activities, funding, and expenditures.¹⁵ The Joint
13 Committee then holds a public hearing to receive testimony regarding the
14 continued need for the agency. Under the proposed law the Common Interest
15 Development Bureau would be subject to review by the Joint Committee. This
16 provides an important measure of agency accountability.

17 **EXPERIENCE IN OTHER JURISDICTIONS**

18 A number of other jurisdictions currently provide education and dispute
19 resolution services to common interest communities. Experience in those
20 jurisdictions demonstrates the feasibility of such programs and shows that there is
21 significant public demand for such services.

22 A partial survey of CID programs in other jurisdictions is provided below.
23 Where information on the success rate of these programs is available it has been
24 provided.

25 **Information and Advice**

26 *Virginia*

27 Virginia maintains a Common Interest Community Association Liaison in its
28 Department of Professional and Occupational Regulation. The Liaison has the
29 following duties:

30 [Serve] as an information resource on issues relating to the governance,
31 administration and operation of common interest communities, including the laws
32 and regulations relating thereto. Such information may include nonbinding
33 interpretations of laws or regulations governing common interest communities
34 and referrals to public and private agencies offering alternative dispute resolution

13. See "Experience in Other Jurisdictions," *infra*.

14. Bus. & Prof. Code § 473.4.

15. Bus. & Prof. Code § 473.2.

1 services, with a goal of reducing and resolving conflicts among associations and
2 their members.¹⁶

3 The liaison maintains an informational website¹⁷ and funds various educational
4 events and publications. The liaison maintains a telephone number for homeowner
5 inquiries, receiving about 1,200 inquiries per year. The liaison provides
6 information and advice, but does not intervene in disputes.

7 Liaison operations are funded by an annual fee of \$25 per association.

8 *Great Britain*

9 Great Britain provides a Leasehold Advisory Service. Its purpose is to give legal
10 advice concerning housing disputes to anyone who asks for it. It is overseen by a
11 board consisting of representatives of all stakeholders in the housing market.

12 The concept of this operation is that many disputes are not settled because
13 parties are unaware of, or have a mistaken conception of, their legal rights. By
14 providing independent legal advice to all, the agency helps people involved in
15 disputes understand their legal rights better, which in turn makes them more
16 realistic in coming to a resolution of their differences.

17 Advice is provided by telephone, written correspondence, email, or in person.
18 The agency publishes information and advice on its website¹⁸ and in print. In
19 addition, the agency provides training to local authorities, housing associations
20 and professional bodies.

21 The agency's seven consultants processed nearly 27,000 inquiries in 2003.

22 **State-Assisted Mediation or Arbitration**

23 In some jurisdictions, participation in mediation or arbitration is required as a
24 prerequisite to litigation of a CID dispute. In California, a person who wishes to
25 file certain types of civil actions to enforce an association's governing documents
26 must first endeavor to submit the dispute to alternative dispute resolution.¹⁹ In
27 Hawaii, Nevada, and Florida the state takes steps to actively support the ADR
28 process.

29 *Hawaii*

30 In Hawaii, the Real Estate Commission maintains a list of local mediation
31 centers that are under contract to the state to mediate condominium governance
32 disputes. The state subsidizes the mediation of specified types of disputes. The
33 parties to a subsidized mediation pay only a modest fee.

34 The Real Estate Commission also offers information and advice to condominium
35 homeowners and their boards. It publishes information on the Internet and in print,

16. See Va. Code Ann. § 55-530.

17. See <<http://www.virginiaca.net>>.

18. See <<http://www.lease-advice.org>>.

19. See Civ. Code § 1354.

1 and responds to specific inquiries. In 2003, the Commission answered nearly
2 26,000 requests for information or advice.

3 The Real Estate Commission's educational function and its mediation subsidy
4 are funded by a \$4 per unit annual fee on registered condominium associations.

5 *Nevada*

6 In Nevada, the Real Estate Division of the Department of Business and Industry
7 maintains a list of mediators and arbitrators that it has approved based on their
8 training and experience in resolving CID disputes. Disputants must choose a
9 mediator or arbitrator from the list. If they cannot agree, the Division will choose
10 the mediator or arbitrator. In general, the parties are responsible for the cost of
11 ADR, but the state has discretion to pay the mediator or arbitrator.²⁰

12 *Florida*

13 In Florida, the Division of Florida Land Sales, Condominiums, and Mobile
14 Homes of the Department of Business and Professional Regulation maintains a
15 staff of attorneys who serve as arbitrators in certain condominium disputes. The
16 petitioner must pay a \$50 filing fee, but the cost of the arbitrator is otherwise borne
17 by the state.²¹

18 Florida's program has a staff of five attorney-arbitrators and one mediator. It
19 processes about 625 cases a year. Fewer than 5% of the cases that are resolved
20 through arbitration are challenged in the courts. A Florida state task force recently
21 recommended that the condominium arbitration program be expanded to apply to
22 all community association disputes.²²

23 **Informal Intervention**

24 Nevada has a state office of Ombudsman for Owners in Common Interest
25 Communities within the Real Estate Division of the Department of Business and
26 Industry. The Ombudsman has the following responsibilities:²³

- 27 (1) To assist in processing claims submitted for mediation or arbitration
28 pursuant to Nevada's mandatory ADR statute (see discussion above).
29 (2) To assist owners to understand their rights and responsibilities, including
30 publishing materials relating to rights and responsibilities of homeowners.
31 (3) To assist board members to carry out their duties.
32 (4) To investigate disputes involving community association law or the
33 governing documents of an association and assist in resolving such disputes.
34 (5) To compile a registry of CID associations.

20. See Nev. Rev. Stat. §§ 38.300-38.360.

21. See Fla. Stat. Ann. § 718.1255.

22. See Florida Department of Business and Professional Regulation, Final Report of the Homeowners' Association Task Force (2004).

23. See Nev. Rev. Stat. Ann. § 116.625.

1 The Nevada Ombudsman handles approximately 3,000 complaints a year. The
2 Ombudsman’s office is funded by a fee of \$3 per unit per year.

3 **Law Enforcement**

4 *Hawaii*

5 Hawaii’s Real Estate Commission has authority to investigate violations of
6 specific statutes under its jurisdiction. If it finds a violation it can issue a cease and
7 desist order or seek a court injunction. A violation may also be referred for
8 prosecution as a crime.²⁴ For the most part this authority is limited to laws
9 governing the development and sale of condominiums. However, one of the
10 provisions that can be enforced administratively is a requirement that members
11 have access to association records.²⁵

12 *Maryland*

13 Montgomery County, Maryland, has by ordinance adopted a complete scheme
14 for nonjudicial resolution of CID disputes. The scheme was established in 1991,
15 following a task force study that identified a number of major concerns and issues,
16 including inequality of bargaining power and the need to provide for due process
17 in fundamental association activities. The law creates a county Commission on
18 Common Interest Communities that, among other activities, seeks to reduce the
19 number and divisiveness of disputes, provide and encourage informal resolution of
20 disputes, or (if necessary) conduct formal hearings.²⁶

21 The Commission is composed of 15 voting members appointed by the County
22 Executive, consisting of six CID residents, six CID professionals, and three real
23 estate professionals. It also has non-voting designees of heads of major county
24 departments (including planning, environment, public works, transportation,
25 housing, and community affairs).

26 A dispute may not be filed with the Commission until the parties have made a
27 good faith attempt to exhaust all procedures provided in the association
28 documents, and at least 60 days have elapsed since those procedures were
29 initiated.

30 The Commission will provide mediation services to the parties on request. If
31 mediation fails, or is rejected by a party, the dispute goes to a hearing. The hearing
32 is conducted pursuant to standard county administrative hearing procedures. The
33 Commission may compel production of books and records and attendance of
34 witnesses, and may invoke the court’s contempt power. The hearing panel may
35 resolve the dispute, may award damages, and may award costs and attorney’s fees
36 in appropriate situations. Its decision is binding on the parties.

24. See Haw. Rev. Stat. §§ 514A-46 - 514A-49.

25. See Haw. Rev. Stat. § 514A-83.5.

26. See Chapter 10B of the Montgomery County Code.

1 The hearing panel’s decision is subject to judicial review on three grounds only
2 — the decision does not comply with law, it is not supported by substantial
3 evidence, or it is arbitrary and capricious. The court may award costs and fees. A
4 failure to comply with the decision is a civil offense, and the decision is
5 enforceable by the full enforcement mechanisms of the county, including the
6 County Attorney.

7 In recent years, an average of 40 to 64 cases have been filed each year (about
8 one dispute for every 2,200 registered units). About half of all complaints filed are
9 resolved without a formal hearing. An average of about three cases per year are
10 appealed to the courts.

11 The Montgomery County program is funded by a \$2.25 annual per-unit fee.
12 There is also a \$50 fee to file a dispute.

13 *Nevada*

14 In 2003, Nevada created a new oversight body, the Commission for Common
15 Interest Communities.²⁷ The Commission for Common Interest Communities is
16 charged with collecting specified types of information about common interest
17 communities, developing and promoting various educational programs, developing
18 standards for mandatory mediation and arbitration of CID disputes, and
19 developing a program to certify and discipline community managers.

20 In addition, the Commission for Common Interest Communities has authority to
21 adjudicate an alleged violation of the common interest community statutes and
22 regulations. It may not adjudicate disputes involving an association’s governing
23 documents.

24 A person who believes that there has been a violation of law must first provide
25 notice to the alleged violator. The notice requirements are designed to provide an
26 opportunity to correct the problem informally. If the problem is not corrected, the
27 aggrieved person may file an affidavit with the Real Estate Division. The affidavit
28 is referred to the Ombudsman who will attempt to resolve the problem by informal
29 means. If the problem cannot be resolved with the Ombudsman’s assistance, the
30 Real Estate Division conducts an investigation to determine whether there is good
31 cause to proceed with a hearing. If there is good cause to proceed, the complaint is
32 heard by the Commission or by a hearing panel appointed by the Commission. The
33 Commission has authority to issue subpoenas, which are enforceable by court
34 order.

35 The Commission has a number of remedies at its disposal. It may issue an order
36 requiring that the violator cease and desist from unlawful conduct or take
37 affirmative action to correct conditions resulting from a violation. It can impose an
38 administrative fine of up to \$1,000 per violation. The Commission may also order
39 an audit of an association or require that a board hire a certified community

27. See Nev. Rev. Stat. §§ 116.745-116.750.

1 manager. A boardmember or other officer who has knowingly or willfully violated
2 the law can be ordered removed from office.

3 In general, a boardmember or other officer is not personally liable for a fine.
4 However, if a boardmember or other officer is found to have knowingly and
5 willfully violated the law, that officer may be held personally liable.

6 The Commission is comprised of five gubernatorial appointees, with the
7 following qualifications: one homeowner who has served on an association board,
8 one developer, one member who holds a permit or certificate (i.e., a property
9 manager), one certified public accountant, one attorney.

10 *Great Britain*

11 Great Britain has an Independent Housing Ombudsman. The jurisdiction of that
12 office does not cover the British equivalent of CID housing; however, it does
13 cover similar community housing issues arising out of the landlord-tenant
14 relationship in what are basically public housing complexes. The Ombudsman
15 receives tenant complaints and resolves them free of charge.

16 The office uses a number of dispute resolution techniques, including informal
17 intervention, formal inquiry, mediation, arbitration, and final recommendation. It
18 rarely conducts hearings, performing most of its work on the basis of paper
19 submissions. The operation appears to have been successful, keeping the bulk of
20 these disputes out of court.

21 The office has quasi-judicial powers. Its final recommendations are
22 determinative, but are subject to judicial review.

23 *Australia*

24 Australia has state-run dispute resolution programs for “strata schemes”
25 (including condominiums) in three states: New South Wales, Queensland, and
26 Western Australia.

27 New South Wales has the most fully-developed program. The agency (Strata
28 Schemes & Mediation Services) includes a commissioner, full-time mediators,
29 adjudicators, and an appeals board. The agency provides governmental oversight
30 and public information, as well as dispute resolution services, and employs
31 customer service officers who provide free information to the public on the
32 governing laws. The agency is funded by the state, but a person submitting a
33 dispute for resolution must pay a filing fee of \$58 AUS (approximately \$43 US).

34 A dispute is first submitted to mediation with a government-provided mediator.
35 If mediation fails or is deemed inappropriate, the case proceeds to adjudication.
36 There is a written adjudication system, which is based on the documentary record.
37 A decision reached through written adjudication may be appealed to an
38 administrative “tribunal” which holds a formal hearing to decide the matter. Cases
39 may also be appealed to the courts, though that rarely occurs.

40 In 2003, there were 918 applications submitted for adjudication in New South
41 Wales (out of approximately 750,000 “strata scheme” housing units).

- 1 The programs in Queensland and Western Australia are less fully developed, but
- 2 include some combination of mediation or conciliation, paper-based adjudication,
- 3 and appeal to a specialist tribunal.

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1

PROPOSED LEGISLATION

2

Civ. Code §§ 1380.010-1380.320 (added). Common Interest Development Bureau

3

SECTION 1. Chapter 11 (commencing with Section 1380.010) is added to Title 6 of Part 4 of Division 2 of the Civil Code, to read:

4

5

CHAPTER 11. COMMON INTEREST DEVELOPMENT BUREAU

6

Article 1. Definitions

7

§ 1380.010. Application of definitions

8

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

9

10

Comment. Section 1380.010 is new.

11

§ 1380.020. “Bureau” defined

12

1380.020. “Bureau” means the Common Interest Development Bureau.

13

Comment. Section 1380.020 is new.

14

§ 1380.030. “Homeowner” defined

15

1380.030. “Homeowner” means the owner of a separate interest.

16

Comment. Section 1380.030 is new. See also Section 1351(l) (“separate interest” defined).

17

§ 1380.040. “Person” defined

18

1380.040. “Person” includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.

20

Comment. Section 1380.040 defines “person” broadly to include various forms of legal entity. Cf. Evid. Code § 175, Fam. Code § 105.

21

22

Article 2. Administration

23

§ 1380.100. Legislative findings and declarations

24

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

25

(a) There are more than 36,000 residential common interest developments in California, comprising more than 3,000,000 dwellings. Common interest developments comprise approximately one quarter of the state’s housing stock.

27

28

(b) Common interest development management is complex. Community associations are run by volunteer directors who may have little or no prior experience in managing real property, operating a nonprofit association or corporation, complying with the law governing common interest developments, and interpreting and enforcing restrictions and rules imposed by a common interest

29

30

31

32

1 development’s governing documents. Homeowners may not fully understand their
2 rights and obligations under the law or a common interest development’s
3 governing documents. Mistakes and misunderstandings are inevitable and may
4 lead to serious, costly, and divisive problems. The Common Interest Development
5 Bureau seeks to educate community association officers and homeowners as to
6 their legal rights and obligations. Effective education can prevent or reduce the
7 severity of problems within a common interest development.

8 (c) Under prior law, the principal remedy for a violation of common interest
9 development law was private litigation. Litigation is not an ideal remedy for many
10 common interest development disputes, where the disputants are neighbors who
11 must maintain ongoing relationships. The adversarial nature of litigation can
12 disrupt these relationships, creating animosity that degrades the quality of life
13 within the community and makes future disputes more likely to arise. Litigation
14 imposes costs on a common interest development community as a whole; costs
15 that must be paid by all members through increased assessments. Many
16 homeowners cannot afford to bring a lawsuit and are effectively denied the benefit
17 of laws designed for their protection. The Common Interest Development Bureau
18 provides a neutral, nonjudicial forum for resolution of common interest
19 development disputes. Many disputes can be resolved inexpensively, informally,
20 and amicably through bureau facilitated mediation. As a last resort, the bureau has
21 authority to issue a citation for violation of the law.

22 (d) Anecdotal accounts of abuses within common interest developments create
23 continuing public demand for reform of common interest development law. This
24 results in frequent changes to the law, making it more difficult to understand and
25 apply and imposing significant transitional costs on common interest
26 developments statewide. By collecting empirical data on the nature and incidence
27 of problems within common interest developments, the Common Interest
28 Development Bureau provides a sound basis for prioritizing reform efforts,
29 thereby increasing the stability of common interest development law.

30 (e) The costs of the Common Interest Development Bureau shall be borne
31 entirely by common interest development homeowners, through imposition of a
32 small biennial fee. No general fund revenue shall be used to fund the services
33 provided by the bureau.

34 **Comment.** Section 1380.100 is new. See also Section 1351(c) (“common interest
35 development” defined), 1351(j) (“governing documents” defined), 1380.030 (“homeowner”
36 defined).

37 **§ 1380.110. Common Interest Development Bureau**

38 1380.110. (a) There is in the Department of Consumer Affairs the Common
39 Interest Development Bureau, under the supervision and control of the director of
40 the Department of Consumer Affairs.

1 (b) The director of the Department of Consumer Affairs may employ a bureau
2 chief and other officers and employees as necessary to discharge the duties of the
3 bureau. The chief shall have the powers delegated by the director.

4 (c) The bureau shall adopt rules governing its practices and procedures. A rule
5 adopted under this section is subject to Chapter 3.5 (commencing with Section
6 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

7 (d) Information and advice provided by the bureau has no binding legal effect
8 and is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of
9 Division 3 of Title 2 of the Government Code.

10 (e) There shall be no liability on the part of, and no cause of action of any nature
11 shall arise against, the State of California or any of its employees, agents, or
12 representatives for providing or failing to provide information or advice pursuant
13 to this chapter.

14 **Comment.** Section 1380.110 is new. Subdivision (c) authorizes the Bureau to adopt rules
15 governing its practices and procedures. Such rules are subject to the rulemaking requirements of
16 the Administrative Procedure Act. Subdivision (d) provides that information or advice provided
17 by the bureau has no binding effect and is not a regulation under the rulemaking provisions of the
18 Administrative Procedure Act. Subdivision (e) immunizes the bureau from liability for any
19 information or advice that it provides or fails to provide. Provisions immunizing state agencies
20 from liability for information disclosure are common. See, e.g., Bus. & Prof. Code § 10176.1
21 (Department of Real Estate); Health & Safety Code § 1799.105 (poison control center); Ins. Code
22 § 932 (insurance bureau). See also Section 1380.020 (“bureau” defined); Bus. & Prof. Code
23 §§ Sections 10 (delegation of powers or duties), 310 (powers and duties of the director).

24 **§ 1380.120. Funding**

25 1380.120. (a) On filing information with the Secretary of State pursuant to
26 subdivision (a) of Section 1363.6, a community association shall submit a
27 Common Interest Development Bureau Fee, in addition to the fee submitted
28 pursuant to Section 1363.6. Failure to submit the Common Interest Development
29 Bureau Fee is deemed noncompliance with Section 1363.6. This subdivision does
30 not apply to either of the following types of association:

31 (1) A master association comprised of two or more community associations.

32 (2) A sub-association comprised of fewer than all of the separate interests within
33 a community association.

34 (b) The Common Interest Development Bureau Fee submitted by a community
35 association shall equal the number of separate interests within the community
36 association multiplied by the per unit base amount. The initial per unit base
37 amount is ten dollars (\$10).

38 (c) The bureau shall increase or decrease the per unit base amount every two
39 years to provide only the revenue that it estimates will be necessary for its
40 operation during the next two year period. The per unit base amount shall not
41 exceed twenty dollars (\$20).

42 (d) Common Interest Development Bureau Fee revenue received by the
43 Secretary of State shall be transferred to the State Treasurer and placed in the
44 Common Interest Development Bureau Fund. Fees, fines, or reimbursement paid

1 to the bureau pursuant to this chapter shall be transferred to the State Treasurer and
2 placed in the Common Interest Development Bureau Fund.

3 (f) All funds in the Common Interest Development Bureau Fund are
4 continuously appropriated to the bureau, to be used exclusively for expenditures
5 necessary for the proper administration of this chapter. No other funds shall be
6 available to the bureau.

7 **Comment.** Section 1380.120 is new. The fee established by subdivision (a) does not apply to a
8 master association comprised of two or more community associations. Nor does it apply to a sub-
9 association comprised of fewer than all of the separate interests within a community association
10 (e.g., a sub-association might be established to manage common property that only benefits a
11 defined segment of a common interest development's members). These exceptions are intended to
12 ensure that each common interest development dwelling will only be counted once for the
13 purposes of calculating the fee. See also Sections 1351(*I*) ("separate interest" defined), 1363(a)
14 ("community association" defined), 1380.020 ("bureau" defined).

15 ☞ **Note.** Some CID homes are included in more than one community association. For example, a
16 home might be included in a "master association" that encompasses more than one community
17 association, or it might be included in a sub-association that maintains common facilities that are
18 only available to a subset of the total common interest development community. In principle, a
19 CID home that is included in more than one community association should only be counted once
20 in calculating fees under this section. Subdivision (a)(1)-(2) includes language implementing that
21 policy. The Commission invites comments on whether the proposed language is appropriate and
22 workable.

23 § 1380.130. Application of chapter

24 1380.130. (a) This chapter does not apply to a common interest development that
25 is limited to industrial or commercial uses by zoning or by a declaration of
26 covenants, conditions, and restrictions that has been recorded in the official
27 records of each county in which the common interest development is located.

28 (b) This chapter is repealed by operation of law on January 1, 2012 unless a
29 subsequent statute repealing this section or extending the date of repeal of this
30 chapter is enacted and takes effect on or before January 1, 2012.

31 (c) The bureau is subject to review by the Joint Legislative Sunset Review
32 Committee pursuant to Chapter 1 (commencing with Section 473) of Division 1.2
33 of the Business and Professions Code.

34 **Comment.** Subdivision (a) of Section 1380.130 limits the application of this chapter to
35 residential common interest developments. *Cf.* Civ. Code § 1373. See also Section 1351(c)
36 ("common interest development" defined).

37 Article 3. Education

38 § 1380.200. Community association training

39 1380.200. (a) The bureau may offer training materials and courses to common
40 interest development directors, officers, and homeowners, in subjects relevant to
41 the operation of a common interest development and the rights and duties of a
42 community association or homeowner.

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

1 **§ 1380.310. Violation of law**

2 1380.310. (a) If the bureau learns of a probable violation of the law governing
3 common interest developments it may attempt to remedy the violation informally,
4 as provided in Section 1380.300.

5 (b) If the bureau finds that a violation has occurred and that it cannot be
6 remedied informally under Section 1380.300, the bureau may issue a citation by
7 serving it on the person responsible for the violation. The citation shall cite the
8 statute or regulation that has been violated and the facts constituting the violation.
9 The citation shall order abatement of the violation and may order additional
10 equitable relief as appropriate. If the bureau finds, by clear and convincing
11 evidence, that a violation involved malice, oppression, or fraud, as those terms are
12 defined in Section 3294, the bureau may order removal of the violator from office
13 within a community association.

14 (c) A citation may include an administrative fine of not more than \$1,000 per
15 violation, to be paid to the bureau. In determining whether to impose a fine and the
16 amount of any fine imposed, the bureau shall consider the gravity of the violation,
17 the presence or absence of just cause or excuse, and any history of prior violations.
18 A fine shall not be imposed against an individual unless the bureau finds, by clear
19 and convincing evidence, that the violation committed by the individual involved
20 malice, oppression, or fraud, as those terms are defined in Section 3294. If the
21 bureau imposes a fine against an individual, the individual shall not be
22 indemnified by the community association.

23 (d) If a citation is not contested or is upheld after administrative and judicial
24 review, the bureau shall publish the citation on its Internet website for a period of
25 three years.

26 (e) If a citation is not contested or is upheld after administrative and judicial
27 review, the bureau may file an action in superior court for enforcement of the
28 citation. If, after a hearing, the court determines that the citation was not contested
29 or was upheld after administrative and judicial review, the court shall issue a
30 judgment enforcing the citation. The court shall not review the merits of the
31 citation. The court's judgment is nonappealable and has the same force and effect
32 as, and is subject to all the provisions of law relating to, a judgment in a civil
33 action.

34 **Comment.** Section 1380.310 is new. Subdivision (a) provides for investigation and informal
35 attempts to remedy a violation of the law. Subdivisions (b) and (c) authorizes issuance of citation
36 to correct a violation of law that cannot be remedied by informal means. *Cf.* Bus. & Prof. Code §
37 125.9 (authority to issue corrective citations). Subdivision (d) provides for Internet publication of
38 a final citation. *Cf.* Bus. & Prof. Code § 27 (Internet publication of disciplinary status of
39 Department of Consumer Affairs licensee). See also Sections 1351(c) ("common interest
40 development" defined), 1380.020 ("bureau" defined), 1380.040 ("person" defined).

41 **§ 1380.320. Administrative hearing**

42 1380.320. A person named in a citation may contest the findings or orders
43 included in the citation by filing a written request with the bureau for an

1 administrative hearing. A hearing held by the bureau pursuant to this section is
2 subject to the administrative adjudication provisions of the Administrative
3 Procedure Act.

4 **Comment.** Section 1380.320 is new. See Gov't Code § 11400 ("administrative adjudication
5 provisions of the Administrative Procedure Act" includes Chapter 4.5 (commencing with Section
6 11400) of and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
7 the Government Code. See also Sections 1380.020 ("bureau" defined), 1380.040 ("person"
8 defined); Gov't Code § 11523 (judicial review of final agency decision).

9 **Civ. Code § 1363.7 (added). Common Interest Development Bureau information**

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

11 1363.7. An association shall provide its members with annual written notice of
12 the Internet website address and toll-free telephone number of the Common
13 Interest Development Bureau established pursuant to Chapter 11.

14 **Comment.** Section 1363.7 is added to require that a community association provide its
15 members with contact information for the Common Interest Development Bureau.

16 **Civ. Code § 1369.510 (amended). Definitions**

17 1369.510. As used in this article:

18 (a) "Alternative dispute resolution" means mediation, arbitration, conciliation, or
19 other nonjudicial procedure, including mediation pursuant to Section 1380.300,
20 that involves a neutral party in the decisionmaking process. The form of
21 alternative dispute resolution chosen pursuant to this article may be binding or
22 nonbinding, with the voluntary consent of the parties.

23 (b) "Enforcement action" means a civil action or proceeding, other than a cross-
24 complaint, for any of the following purposes:

25 (1) Enforcement of this title.

26 (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3
27 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations
28 Code).

29 (3) Enforcement of the governing documents of a common interest development.

30 **Comment.** Section 1369.510 is amended to make clear that "alternative dispute resolution"
31 includes an attempt to mediate a dispute under procedures established by the Common Interest
32 Development Bureau.

33 ☞ **Note.** Section 1369.510, which would be added by Assembly Bill 1836 (Harman), is part of
34 the proposed recodification and cleanup of the existing pre-litigation ADR requirements provided
35 in Civil Code Section 1354. If AB 1836 is not enacted, a substantively equivalent amendment
36 would be proposed for Section 1354.